WHITE BOOK

Proposals for improvement of the business environment in Serbia

2019

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

Dear Reader,

We are delighted to present the new edition of the White Book, the major publication of the Foreign Investors' Council (FIC). The FIC is an independent association that gathers foreign investors operating in Serbia; FIC members have invested over EUR 35 billion and continue investing in Serbia, and they employ more than 100,000 people in the country.

The purpose of this annual publication is to provide the FIC members, stakeholders and institutions with a comprehensive overview of the latest developments in the business environment in Serbia. The White Book offers specific recommendations, all aimed at achieving an even stronger economic growth and better living standards for citizens.

Many experts from the FIC member companies have been working on the recommendations of the White Book - through engagement in 11 FIC committees and participation in expert dialogue with the state administration and EU institutions. This strong engagement of the FIC members in the preparation of the White Book confirms their long-term commitment to Serbia and the will to contribute to making the country a better place to do business.

The White Book 2019 notes a steady progress in improving the business climate and a 41% progress in the partial implementation of White Book recommendations, which is higher than the average score since 2011, when the White Book score card was first introduced. Compared with last year's 34%, the 2019 White Book score card shows a progress improved by seven percentage points.

The White Book Task Force, which was launched in 2017 and relaunched in January 2019 to accelerate the implementation of the White Book recommendations, has contributed to the higher White Book score, reflecting an increased commitment of the stakeholders - the FIC and the Government - to cooperate more efficiently and invest resources to make the Task Force more operational and more result-oriented. The FIC looks forward to continuing this positive trend by utilizing the White Book Task Force as an institutional mechanism for continuous and successful dialogue between the Government and the business community.

The FIC Index shows that in 2019, two of the top four performers tobacco and transport – have retained their positions from 2018, while two new sectors - oil & gas and notaries – have achieved significant progress during 2019. However, not all priorities of the Task Force show the same progress: digitalization, anti-illicit trade and bankruptcy have achieved moderate progress, while labor, forex and food safety lack any progress.

That is why it is important to continue reforms, now more than ever, as Serbia progresses on the EU accession path. The FIC recognizes the EU integration process as one of crucial importance for speeding up the reforms and increasing the country's competitiveness. The accession process will positively impact the market context, making it transparent and attractive for investment.

The FIC is uniquely positioned to support Serbia's EU accession process. The FIC members have significant expertise in the regulatory area, a good knowledge of the Serbian and EU markets and the capacity to provide assistance when requested. The FIC will continue to serve as a focal point for businesses and will continue the standing dialogue with the EU institutions.

Serbia continues to experience a growing inflow of foreign direct investments (FDIs) and, today, the country is not only well-positioned as an attractive investment destination, but also recognized as such – The Financial Times – fDi Intelligence, ranked Serbia as the leading country in its Greenfield FDI Performance Index 2019.

Keeping up the positive trend of recent years, Serbia has delivered macroeconomic stability and a healthy GDP growth. Consistent efforts of the Government to position Serbia as an investor-friendly country and the commitment to accelerate reforms and improve the business climate will support the further growth of FDIs, which is an important element of the country's development.

The FIC member companies will continue to be the driving engine of the Serbian economy, bringing investments and jobs, new technologies and know-how, and developing cooperation with local small and medium sized enterprises (SMEs) and suppliers.

The FIC remains true to its mission to be a partner for growth, and that is why we will advocate for a further acceleration of reforms with a shared goal to come as close as possible to a 50% implementation rate of the White Book recommendations next year. Considering the progress accomplished in 2019, this goal looks feasible.

Yana Mikhailova
FIC President

FOREWORD EU

Dear White Book reader,

It is my great pleasure to foreword the 2019 White Book edition of the Foreign Investors Council (FIC).

I am truly impressed by the role FIC has played in Serbia since its establishment in 2002, with a growing membership that now includes over 120 businesses with more than 100,000 employees. This is a testament of the value and success of its mission. It has become one of the EU key partners in Serbia – firstly, because EU business represents 70% of all foreign investments in Serbia, but also because, through FIC and its members, the EU receives valuable information on the opportunities and challenges that EU businesses face on their operations on the ground.

The White Book, as one of the flagship initiatives of FIC, goes beyond a simple overview of the business sentiment in Serbia. It is a unique platform for dialogue between the authorities and the private sector, as well as a useful tool for domestic and foreign investors. The European Union pays special attention to this document – its findings are particular useful for preparing the European Commission Annual Report, assessing the Economic Reform Program or identifying issues that affect business in Serbia. This comprehensive and holistic approach sets a clear "to do list" for the improvement of the business environment. The balance score card and the recommendations provided for each area represent also important signals for the EU assessment and monitoring of the economic situation in Serbia.

As for previous editions, the 2019 White Book identifies the key issues that businesses face when doing business in Serbia. It is important for all relevant stakeholders, from the Government to all the relevant institutions, to follow-up on the key recommendations. Their implementation will inform the EU analysis on the progress realized.

The wide and long view of the EU is the European perspective for Serbia and the WB region which remains strong and credible. The 2018 Strategy for the Western Balkans that was launched last year translates this approach into concrete work. It is a clear political commitment to enlargement and a blueprint for strengthening relations between the EU and the Western Balkans. The incoming EU leadership has clearly put the Western Balkans high on the political agenda and will build on the huge amount of work done so far.

The enlargement is a process based on key reforms, including the ones identified in the White Book.

The European Commission's Annual Report (released this year in May) provides the most authoritative and updated overview of the accession progress in all the relevant areas. Economic governance and economic convergence with the EU economic cycle has become a key objective in the enlargement process. The positive effects of years of reform work in addressing long-standing systemic weaknesses are producing results: major fiscal adjustments have improved debt sustainability, macroeconomic stability has been maintained, economic growth is positive, inflation remains under control, and employment is increasing. Growth in exports to the EU and the region are also a positive sign. Even more significant is Serbia's success in attracting foreign investments: with 2.2 bn EUR worth of FDI in the first part of this year, the increase is more than 40% in comparison to last year. This is due to Serbia's excellent results in achieving macroeconomic stability, its strategic location, and relatively skilled labor-force. But even more so, by the key reforms introduced in the context of the EU accession process and its free trade agreement with the EU and the Central European Free Trade Agreement.

Of course structural reforms must continue in many areas.

First and foremost, in the rule of law area – fight against corruption, independent and efficient judicial system, enforcement of contracts – all essential to a predictable and sound economic growth.

Weaknesses need to be addressed in the fiscal governance framework, the public administration and the tax administration, and the role of the State in the economy, particularly in the area of state aid, public procurement and increased transparency in bilateral loan agreements.

Business environment and business confidence also need improvements: cutting red tape, protecting of investors and better bankruptcy policies; strengthening the institutional and regulatory environment; increasing the role of public consultations in the law-making process. Businesses need to be consulted in an open, inclusive and transparent process in initiatives that affect them.

In sum, it is evident that the results of the reform process are already visible, and they've improved the economy of the Country while bringing Serbia and the European Union

closer. The latest figures show that the EU is by far Serbia's key trading partner, accounting for 67% of Serbia's total exports and more than 60% of Serbia's total imports for an overall trade balance of over 24 bn euro (2018). Serbia's exports to the EU have continued to grow, tripling from EUR 3.2 billion in 2009 to EUR 10.9 billion in 2018.

Preliminary 2019 figures indicated a positive trend, that could further improve if issues such as the non- recognition of EU certificates (both, technical conformity or SPS standards), legislation harmonisation, were tackled.

More generally, the full integration in the EU single market and in the EU will depend by the comprehensive transformative accession process. At the moment of writing Serbia has opened 17 out of 34 chapters, with two provisionally closed.

The perspective for Serbia to become an EU Member is real. Common work is key. The active, professional and passioned support from our dedicated partners, like the Foreign Investors Council, will help raising awareness and finding common solutions to advance in this process.

Sincerely,

Sem Fabrizi
Ambassador of the European
Union to the Republic of Serbia

FIC INDEX FOR 2019

TABLE 1: RANKING BY PROGRESS IN IMPLEMENTING RECOMMENDATIONS IN 2019

2019	Scores			Number of recommendations			Ranking		Years
Recommendations	Average score in 2019	Average score in 2018	Change of scores in 2019	Significant progress in 2019	Certain progress in 2019	No progress in 2019	Ranking in 2019	Ranking in 2018	Average time of outstanding recommendations
Sectors									
Law on notaries	2.67	2.00	0.67	2	1	0	1	6	1.67
Oil and gas sector	2.20	1.90	0.30	2	2	1	2	8	4.40
Tobacco industry	2.00	2.00	0.00	0	5	0	3	4	3.50
Transport	2.00	2.00	0.00	0	5	0	4	3	4.40
Taxes: Latest developments (parafiscals)	2.00	1.38	0.62	2	1	2	5	34	4.60
Protection of users of financial services	2.00	2.00	0.00	0	3	0	6	2	5.00
Consumer protection	2.00	1.60	0.40	0	3	0	7	21	5.33
Prevention of money laundering	2.00	1.75	0.25	0	3	0	8	10	7.50
Labour legislation: Staff leasing	2.00	1.00	1.00	0	3	0	9	56	9.33
Central register of beneficial owners	2.00	NA	NA	1	0	1	10	NA	NA
Environmental regulations	1.83	1.56	0.27	1	3	2	11	24	5.33
Investment and business climate	1.80	1.40	0.40	0	4	1	12	31	4.60
Real estate: Construction land and development	1.80	2.14	-0.34	0	4	1	13	1	4.60
Telecommunications	1.78	1.53	0.25	1	5	3	14	25	1.89
Illicit trade prevention and inspection oversight	1.71	1.88	-0.17	0	5	2	15	9	3.07
Non-performing loans	1.67	1.22	0.45	1	0	2	16	42	2.67
Capital market trends	1.67	1.50	0.17	0	2	1	17	27	3.33
Intellectual property	1.67	2.00	-0.33	0	2	1	18	5	3.67
Private security industry	1.67	1.36	0.31	0	2	1	19	35	5.00
Pharmaceuticals	1.65	1.30	0.35	4	5	11	20	39	3.45
E-commerce and digitalization	1.60	1.38	0.22	1	1	3	21	32	1.60
Energy sector	1.60	1.64	-0.04	0	3	2	22	17	1.80
Law on bankruptcy	1.57	1.29	0.28	0	4	3	23	40	3.43
Taxes: Corporate income tax	1.57	1.13	0.44	1	2	4	24	49	6.43
Food& Agriculture: Livestock production	1.50	1.67	-0.17	0	1	1	25	13	1.00

2019	Scores			Number of recommendations			Ranking		Years
Recommendations	Average score in 2019	Average score in 2018	Change of scores in 2019	Significant progress in 2019	Certain progress in 2019	No progress in 2019	Ranking in 2019	Ranking in 2018	Average time of outstanding recommendations
Sectors									
Insurance: Motor third party liability	1.50	1.00	0.50	0	1	1	26	59	6.00
Real estate: Cadastral procedures	1.43	1.63	-0.20	0	3	4	28	19	3.57
Customs	1.40	1.33	0.07	0	2	3	29	38	1.00
Public-private partnerships	1.40	1.44	-0.04	0	2	3	30	29	3.00
Food&Agriculture: Quality assurance and food declarations	1.33	1.75	-0.42	0	1	2	32	11	2.00
Dual vocational education	1.33	1.50	-0.17	0	1	2	33	26	2.00
Law on payment transactions	1.33	1.67	-0.34	0	1	2	34	15	2.00
Food& Agriculture: Food safety law	1.33	1.09	0.24	0	3	4	35	51	2.83
Real estate: Restitution	1.33	1.67	-0.34	0	1	2	36	14	3.00
Taxes: Personal income tax	1.33	1.18	0.15	1	0	5	37	46	3.50
Arbitration proceedings	1.33	1.33	0.00	0	1	2	38	37	4.33
Protection of competition	1.33	1.71	-0.38	0	2	4	39	12	4.57
Labour legislation: Employment of foreigners	1.33	1.50	-0.17	0	1	2	40	28	6.00
State aid	1.33	1.38	-0.05	0	1	2	41	33	7.00
Trade	1.33	1.57	-0.24	0	1	2	42	22	7.33
Law on personal data protection	1.33	1.43	-0.10	1	0	5	43	30	8.50
Taxes: Property tax	1.20	1.00	0.20	0	1	4	47	58	2.40
Human capital	1.20	1.63	-0.43	0	1	4	48	20	3.60
Judicial proceedings	1.20	1.63	-0.43	0	1	4	49	18	4.38
Company law	1.17	2.00	-0.83	0	1	5	50	7	4.17
Foreign exchange operations	1.14	1.21	-0.07	0	1	6	51	43	3.14
Leasing	1.14	1.33	-0.19	0	1	6	52	36	4.43
Taxes: Value added tax	1.14	1.14	0.00	0	1	6	53	48	4.71
Food&Agriculture: Sanitary and phytosanitary inspections	1.00	1.08	-0.08	0	0	5	55	52	1.40
Insurance: Related legislation	1.00	1.00	0.00	0	0	5	56	65	1.60

2019	Scores			Number of recommendations			Ranking		Years
Recommendations	Average score in 2019	Average score in 2018	Change of scores in 2019	Significant progress in 2019	Certain progress in 2019	No progress in 2019	Ranking in 2019	Ranking in 2018	Average time of outstanding recommendations
Sectors									
Labour regulations: Secondment abroad	1.00	1.00	0.00	0	0	3	57	54	2.33
Insurance: Natural disasters and shared services	1.00	1.00	0.00	0	0	2	58	62	2.50
Labour legislation: The Labour Law	1.00	1.00	0.00	0	0	7	59	60	3.14
Law on whistleblowers	1.00	1.20	-0.20	0	0	3	60	44	3.33
Insurance: Law	1.00	1.00	0.00	0	0	2	61	64	3.50
Law on Central Register of Temporary Restriction of Rights	1.00	1.00	0.00	0	0	2	62	66	3.50
Real estate: Mortgages and real estate financial leasing	1.00	1.20	-0.20	0	0	3	63	45	4.00
Public procurement	1.00	1.00	0.00	0	0	4	64	55	4.00
Taxes: Tax procedure	1.00	1.12	-0.12	0	0	7	65	50	4.33
Labour legislation: Professional rehabilitation and employment of persons with disabilities	1.00	1.00	0.00	0	0	3	66	57	7.67
AVERAGE / TOTAL	1.47	1.38	0.09	18	98	170			4.03
Divisions									
Real estate	1.44	1.66	-0.22	0	8	10	27	16	3.79
Taxes	1.36	1.15	0.21	4	7	31	31	47	4.49
Food & Agriculture	1.29	1.24	0.05	0	5	12	44	41	1.81
Human capital & dual education	1.25	1.57	-0.32	0	2	6	45	23	2.80
Labour regulations	1.21	1.05	0.16	0	4	15	46	53	6.33
Insurance	1.09	1.00	0.09	0	1	10	54	67	2.74

RANKING METHODOLOGY

Starting with the previous edition of the White Book we have included in our annual report a 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. The groundwork for the ranking methodology was laid in the White Book for 2011, which first provided tables with score cards assessing the progress 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.

Each methodology of ranking qualitative characteristics has certain advantages and disadvantages. The advantage is that a large number of features can be reduced to a small number of indicators or scores that can be compared in an obvious way. Thus, one can immediately see whether progress has been made in a given year compared to the previous year and which sectors are the most responsible for this.

Ranking problems, on the other hand, are multiple. All FIC members are treated equally, so that each sector has the same importance in forming the end result. It is true that the FIC has singled out a number of sectors as "Drivers of development", but does not set them apart from other sectors in the ranking process. Furthermore, sectors are not identical, so there must necessarily be a different number of sectoral recommendations. The composition of these recommendations may change from year to year according to the dynamics of changing regulations and economic policies of the Government of Serbia. In this regard, there is no fixed number of recommendations, or a predefined questionnaire with possible recommendations, evaluated by FIC members, and published by the White Book. To alleviate at least some of this difficulty this year, we have reduced the total number of recommendations and distributed them more evenly across sectors. This year, we have 286 recommendations, with a standard deviation of 2.8 per sector, compared to the previous year when we had 506 recommendations and a standard deviation of 5.5 per sector. In addition, we maintained the principle that scores are determined on the basis of weighted averages[1].

As Table 1 shows, the transport sector had no recommendation evaluated as significant progress (0x3), 5 recommendations with certain progress (5x2=10), and no recommendation without progress (0x1=0), which altogether makes 10 points (0+10+0). If this number is divided by the number of recommendations (10/5 = 2), 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 telecommunications sector, which has nine recommendations, but the lower average score, of 1.78 ((1x3+5x2+3x1)/9=1.78). Without the weighted average scores, comparisons would not be possible due to significant differences in the number of recommendations for each sector.

Of course, the average conceals some of the information that matters, and above all the variability of progress on the recommendations. In this edition of the White Book, we will approximate this variability over the number of recommendations without progress, which can easily be compared with the total number of recommendations. Additionally, it does matter when the recommendations were first proposed and how much time elapsed before they were adopted. The longer the recommendations wait for adoption, the less valuable their progress will be as it produces a positive effect later. We use this criterion as a supplementary criterion for ranking if recommendations have the same score. Better ranked are those recommendations that have shorter waiting times.

We also list the rankings for 2018 so that it is possible to compare sectors this year with the previous year. Some sectors, which are at the top of the rankings this year, were quite low in 2018. This was, for example, the case with the labour law sector (staff leasing), which ranked 56th in 2018, and now ranks ninth.

In Table 1, we marked the best and worst ranked sectors. The former had an overall progress score greater than 2.0, while the latter had a minimum score, of 1.0.

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:

$$q_i = \frac{\sum_{j=1}^{3} p_j \cdot N_{i,j}}{\sum_{j=1}^{3} N_{i,j}}.$$

Each chapter of the *White Book*, beside the title, has the sector's score. In addition to individual sectors, there are 6 cross-cutting areas: Human Capital and Vocational Education, Real Estate and Construction, Food Safety, Labour Regulations, Taxes and Insurance. Table 1 clearly shows which sectors make up each area. The six cross-cutting areas are listed in the bottom section of Table 1, in a separate bracket. There is a total of 60 sectors and 6 areas. As previously stated, there were 272 recommendations in 2018, while there are 286 recommendations in 2019. The average score in 2018 was 1.38, while in 2019 it was higher, at 1.47. The difference between the two years is 0.09 points, which indicates that in 2019 relevant progress was made in the implementation of the FIC recommendations compared to 2018. The average waiting time to make progress was 4.03 years in 2019, representing a slight increase in delays over the previous year when the delay averaged 3.85 years.

FIC OVERVIEW

Seventeen years ago, the Foreign Investors Council (FIC) was founded as an independent business association of foreign investors in Serbia. Today, with more than 120 members, the FIC represents the biggest voluntary, exclusively foreign investors' grouping in the country. To illustrate this number closer, the FIC members directly employ over 100,000 people, with investments exceeding EUR 35 billion so far.

Since its foundation, the FIC has remained committed to its core mission: to actively promote and develop a predictable, competitive, and sustainable business environment, through an open dialogue with the decision-makers and other relevant stakeholders. With determination to support Serbia's economic reform processes and be a partner for a stronger and more business-friendly economy, the FIC remains grounded in its fundamental features: independence, expertise, international best practices, cooperation and anchoring the processes towards EU integration.

INDEPENDENCE

The FIC's operations are financed solely through membership fees. Thus, it is self-sustainable entity, without accepted external grants, donations, or sponsorships. Regardless of their size, member-companies pay the same fee, with the exception of those elected to the Board of Directors, who pay a higher membership fee.

The FIC promotes broader interests of the business community. Through the established mechanism of a two-step decision-making process, it ensures that the majority view is represented, without positions and recommendations conflicting with the interests of other member companies. All decisions are taken first at the level of working committees, with the full inclusion of members, and subsequently confirmed by the FIC's Board of Directors. All member-companies have the same voting power.

EXPERTISE

Despite the fact that there are more than 20 different sectors under the FIC's roof, their competition and opposing interests and views do not pose limitations to joint recommendations and their active promotion. The exceptional value of the FIC is its ability to find common ground among interests of different sectors and industries and ultimately among various possible solutions. The FIC's expertise comes from its members and their vast international knowledge and experience, which the FIC intersects and utilizes for the mutual benefit.

The FIC is immensely proud of its 11 working committees, both cross-sectoral and sectoral, as they gather representatives of the member companies which are experts in their respective fields. Based on exchange of knowledge and expertise, they analyze specific regulatory areas and policies, and formulate joint conclusions and proposals.

The FIC's youngest committee, the Pharma Industry Committee formed in September last year, today numbers more than 10 members, some of them being the largest companies in this area on the global level. The FIC has a policy to form and dissolve working committees, based on members' interest in participating in impacting improvements of the regulatory framework in a specific area.

The White Book is a trademark of the FIC, which covers a broad range of information. Based on its main conclusions, the FIC continuously participates in number of advocacy activities to improve the existing or draft regulations, as well as their implementation. The FIC communicates its views and proposals through the so-called position papers (PPs), which are prepared by the FIC working committees and then discussed with the state and stakeholders.

Finally, the FIC offers its regulatory expertise free of charge to all stakeholders through various projects and activities.

BEST PRACTICES

The FIC and its members are setting their work goals to high ethical standards, clear management rules, and innovation. Led by the best practices model, foreign investors bring not only fresh capital but also new technologies, strong corporate rules, solid business ethics, and a sustainability concept. By reinforcing responsibility towards shareholders, the workforce, suppliers, clients, the environment and society, the FIC promotes strong ethical rules and corporate governance principles. Over the seventeen 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 association.

COOPERATION

Since the foundation, the FIC has been advocating for business climate reforms. In regular dialogue with the state, and with all relevant stakeholders, such as the EU and diplomatic corps, international financial institutions, development

agencies, academia, and other business and public-private associations, the FIC has always remained open to project partnerships with those who share its views and goals.

The FIC is particularly proud of its institutionalized cooperation with the Government of Serbia through the Working Group on the Implementation of the White Book Recommendations, chaired by the Prime Minister and composed of members of the FIC's Board of Directors and Ministers of the Government responsible for topics covered by the White Book. The task of the Working Group is to define concrete measures for the implementation of the White Book recommendations and to monitor the implementation of those measures.

EU INTEGRATION

Seventy-five percent of the FIC members come from the EU, while other members also have an EU footprint. Thus, the FIC has the unique ability to combine knowledge and experience about the European and Serbian markets and provide advice and concrete suggestions on 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 EU, the FIC has increased its engagement in this field, maintaining regular dialogue with both negotiating sides and providing expert advice.

OVERVIEW OF FIC ACTIVITIES DURING THE PERIOD OCTOBER 2018 – OCTOBER 2019

The FIC has reviewed in detail 30 regulations and submitted over 50 written initiatives regarding existing or new draft laws during the period between the two editions of the White Book. We have also kept a watchful eye on the implementation of legislation, with particular attention on the degree and consistency of the implementation of laws and regulations adopted during the past period.

The topics we covered were mainly from the following 6 areas we believe to be priorities:

1. Improvement and more consistent application of tax regulations, with particular emphasis on the transparency of the legislative procedure,
2. Improvement of labour law regulations, focusing on the draft Law on Agency Employment,
3. Creation of a framework for promoting digitalization and e-commerce,
4. Introduction of a harmonized overall legal framework, with emphasis on regulations regarding the protection of personal data, protection of competition and foreign exchange operations,
5. Improvement of regulations on real estate and construction, particularly the Law on Planning and Construction and Law on Converting the Right of Use into the Right of Possession over Construction Land with Compensation,
6. Ensuring efficient market surveillance and support to the full implementation of the Law on Inspection Oversight through participation in the Government Working Group for Combating Illicit Commerce.

We would particularly like to note the engagement of the FIC in the following:

- Analysis of the draft Law on the Protection of Competition, where to date the Legal Committee of the FIC has provided 180 elaborated proposals for improvements as a member of the Government Working Group for drafting this regulation. The draft Law has not been adopted yet, thus the final results of this activity are unknown at this point;

- Improvement of tax regulations, where the Tax Committee of the FIC has conducted a detailed analysis of several laws and key by-laws in this field, including the Law on Corporate Income Tax, Law on Personal Income Tax, Law on Property Tax, and regulations on the tax depreciation of fixed assets and registration of value added tax;

- Promotion of the uniform implementation of the new Law on the Protection of Personal Data, with the FIC organizing a "Reality Check" conference in July with representatives of the Ministry of Justice and the Commissioner.

Furthermore, the FIC also worked on the improvement of regulations and their implementation regarding the Company Law, foreign exchange operations, protection of personal data, enforcement and security, alternative investment funds, open investment funds with public supply, control of state aid, consumer protection, public-private partnerships, Law on Value Added Tax, Law on Tax Procedures and Tax Administration, Law on Accounting, agency employment, occupational health and safety, tax treatment for the reimbursement of transportation costs for coming in and leaving work, modernization of trainings in the field of insurance, as well as regulations in the field of agriculture (food safety and product declarations), automotive industry (electric vehicles and combating illicit commerce), leasing (simplification of the registration process for vehicles subject to leasing), and telecommunications.

The FIC has maintained a very active dialogue with all levels of the state – from meetings with the highest representatives of the Government to fundamental discussions with representatives of state administration. Furthermore, our representatives were and still are participants in 20 Government working groups on various topics, from the modernization of the Tax Administration, through facilitation of commerce and combating illicit commerce, amendments to the laws on the protection of competition, enforcement and security, litigation proceedings, investment funds, and the conversion of the right of use to the right of possession over construction land with compensation, to employment and occupational health and safety.

During the past year the FIC has continued its active participation in the European integration process of Serbia. During early October a FIC delegation travelled to Brussels where it held a number of meetings with eight directorate generals of the European Commission and the Ambassador of Serbia to the European Union, including a meeting with the Director for the Western Balkans at the Directorate-General for European Neighbourhood Policy and Enlargement Negotiations.

We firmly believe it is important to continuously and consistently communicate that Serbia needs to remain in the focus of the EU, and that we are ready to provide active support to both negotiating parties to better understand the specifics of the Serbian market and modalities of its adaptation to European principles and standards.

In 2019, the FIC organized a "Reality Check" conference dedicated to the harmonization of the implementation of the new Law on the Protection of Personal Data. Participants in the panel discussion held at the conference were the authors of the new Law, representatives of the Ministry of Justice, and representatives of the Commissioner. The FIC members had the opportunity to engage in an open dialogue on the views of responsible institutions regarding the interpretation of the provisions of the new Law.

The FIC has also maintained an active dialogue throughout the year with all other relevant stakeholders, international financial institutions, development agencies, embassies, and of course, business and other associations. We believe in dialogue and a positive effect that synergy with partners can bring, and will remain open for cooperation in the future.

Finally, we wish to emphasize that everything the FIC is doing stems from the direct engagement of its members – foreign companies that voluntarily invest their resources and share their knowledge to increase the wellbeing of all. Therefore, the FIC can also be seen as a product of corporate social responsibility, as one of the many activities that the FIC members, champions of corporate social responsibility, are implementing in Serbia as part of their dedication to doing business in accordance with high management standards, and contributing to the communities they are operating in.

To achieve its goal, the FIC will continue to listen to the interests of its members, promote an active debate and work hard on formulating recommendations to improve the competitiveness of the Serbian market and create better conditions for new investments. We will also endeavour to remain a reliable partner in the future to all relevant stakeholders in our joint efforts aimed at the economic development of 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

As the driving force behind economic growth, the business sector is uniquely positioned to help establish a more equitable, inclusive, and sustainable society. 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 – Sustainable Investment and new market opportunities

During 2018, the Sustainable Development Goals (SDGs), a universally accepted guide for sustainable development to all people, organizations and countries around the world, also came into life in Serbia through numerous initiatives. In June this year, Serbia issued a National Voluntary Report on the implementation of the Agenda 2030. The report shows commitment to sustainable development, but also the need for a stronger involvement of all relevant actors, especially the business sector, and a systemic approach to the implementation of the Agenda, as well as reporting on the progress. In the Global Sustainability Index for 2018, Serbia took the good 40th place, outranking some more developed economies. However, the country's lowest scores were in the areas of environmental protection, circular economy and climate change.

At the same time, the European Union (EU) is developing regulations on the establishment of a framework to facilitate sustainable investment. The EU's ambition is to unlock EUR 175 billion in private investment a year until 2030 in order to bridge the investment gap towards achieving a transition to a sustainable economy. To support this ambition, an Action Plan was developed, with two main objectives - to redirect capital flows with the aim of achieving sustainable growth and mitigating risk factors related to ESG (Environment, Social, and Governance). Preparing the future regulations, the European Commission has developed a classification system, or Taxonomy, for environmentally sustainable economic activities. The Taxonomy is a key element of the Action Plan, aimed at providing guidance for policymakers, industry and investors on how to support and invest in economic activities that contribute to achieving a climate neutral economy.

This will mean that investors will demand even more comparable, relevant and timely data to direct their decisions, in addition to the existing Directive on Nonfinancial Information Disclosure, which made non-financial reporting on environmental matters, social and employee aspects, respect for human rights, and anticorruption issues mandatory for all large public-interest entities with more than 500 employees. The aforementioned EU regulation provides perspective and guidance for companies operating in Serbia. It is good to note that, following outstanding global practices, a number of companies in Serbia issue annual sustainability reports in line with Global Reporting Initiative (GRI) standards.

However, the transition to a more sustainable economy will not only bring obligations, but also business opportunities. A report by the Business & Sustainable Development Commission shows a strong business case for sustainable development. Achieving SDGs in just four economic areas – food and agriculture; cities; energy and materials; and health and wellbeing – could bring at global level more than USD 12 trillion annually to the private sector by 2030.

Venture philanthropy – towards making a long-term social impact

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

CSR and government responsibility

New trends imply a greater responsibility of the state itself, emphasizing commitment to fostering a competitive economy based on sustainable and responsible principles. This should be primarily done by creating an affirmative environment and, furthermore, by incorporating sustainable practices, whenever possible, into state-led 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 – to mention just a few of the numerous opportunities for state engagement.

A step forward – A multi-sector approach for the common good

By establishing the Philanthropy Council in August 2018, based on a decision of Prime Minister Ana Brnabić, Serbia made a step towards improving the legal and regulatory issues related to giving for the common good and business engagement in this regard. The establishment of the Philanthropy Council was initiated by the Coalition for Giving (the Ana and Vlade Divac Foundation, Smart Kolektiv, the Trag Foundation, Catalyst Balkans, the Responsible Business Forum, the Serbian Philanthropy Forum and the Serbian Chamber of Commerce) with the support from USAID, while the Government is represented by officials from relevant ministries and institutions. Within the Philanthropy Council, working groups and one working body have been formed with the aim of offering solutions for improving the existing legal and regulatory framework for philanthropy development, such as taxes on donations in goods and services, taxes on students' scholarships, the management of food surpluses, and other matters.

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

1.80

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

The implementation of FIC's recommendations for a better investment and business climate made a progress this year with the average score of 1.80, which is a rise of 0.40 points compared to the last year.

Many macroeconomic indicators of a good investment climate were present in 2019: high GDP growth, decreasing public debt, a sustainable fiscal deficit, increased employment, a stable banking sector, accommodative monetary policy and low inflation. However, there were also challenges: the country's risk remained below the investment grade, the manufacturing industry went into recession in the middle of the year, inflation threatened to turn into deflation, and key trading partners in the EU's are on the verge of recession. On the balance, the achievements greatly outperformed challenges.

Public finances were consolidated in 2017 when the general government deficit turned into a 1.1% surplus, which in 2018 slightly decreased to 0.6% of GDP. A deficit of -0.5% of GDP is scheduled for this year. The general government's balance sheet shows a small surplus of 0.2% of GDP in the first half of this year, but public sector wages and pensions are expected to grow by the end of the year, which is likely to bring the fiscal balance back to the scheduled level. The government intends to maintain a fiscal deficit of -0.5% in the medium term, which would reduce the public debt-to-GDP ratio by about 2 percentage points annually, provided that there is no new debt.

On the other side of the balance sheet, the public debt has decreased from 56.2% in the previous year to 53.4% at the end of Q2 2019. We expect new bilateral credit arrangements for infrastructure financing in the second half of the year, which will affect the level of public debt.

Inflation is low and is still at the lower band of the target corridor. In 2018 average inflation was 2.0% per year, while this year it was 2.4% and 2.1% at the end of Q2 and Q3, respectively. It is at the lower boundary of the target corridor set at 3% +/- 1.5%. The average expected 12-month inflation is pin at the target inflation rate of 3%. However, there is concern about the fall in prices over the past three months, which may be an indicator of a possible entry into deflation.

The dinar strengthened slightly against the euro with the exchange rate falling from 118.19 at the end of last year to 117.78 at the end of August this year. In real terms, the dinar is overvalued against the euro, which harms the competitiveness of Serbia's export-led industry. Nevertheless, the NBS is determined to support the overvalued exchange rate. It reduced the repo rate to a historical minimum of 2.5% per year. Foreign exchange reserves amounted at the end of 2018 to 11.261 billion euros, while they raised up in August 2019 to 12.758 billion euro. This is a welcome increase since foreign reserves are still unable to finance 6-month imports (EUR 13,469), which considered to be the safety level of external liquidity.

Foreign trade also maintains last year's growth trends. Exports and imports rose at rates of 10% and 12.2%, respectively, in the first half of this year. The coverage of imports by exports was kept at 85%. This indicates that the balance of payments deficit will accumulate this year up to 6-7% of GDP.

The share of investments in GDP is still low. It was 20% in 2018, while in the first half of this year, it did not change much. It is interesting to notice that the inflow of foreign direct investment recorded a significant increase over last year. The net inflow in the first half of the year was 1.8 billion euros, representing 3.9% of GDP or a 27% increase over the same period last year. This inflow will be sufficient to cover the balance of payments deficit.

In terms of the country's investment risk, Serbia has reached the stage next to its first investment rating, according to Fitch (BB+), while these prospects are positive, but still two (Standard & Poors BB) or three steps (Moody Ba3) away from the investment grade. The conditions for such a rating remain the same: sustained high GDP growth rates, reduction of non-economic risks, sustainable fiscal stability and progress with regards structural changes. In this respect, the IMF's conclusion in July this year to approve a second revision of the Arrangement for Policy Coordination Instruments (PCI) had a positive impact.

IMPROVEMENTS

In terms of economic growth, the expectations of the Government and IFIs were 3.5% GDP, down from 4.2% last year. The corresponding rate in the first half of the year was 2.8%, so the target rate can be achieved if the third and fourth quarter improved to 4% and 4.5%, respectively. Please note that the factors for such a high economic growth last year were rooted in favourable external conditions (low interest rates, moderate growth in oil prices, growth in the region, EU export demand and stable prices), most of which were not present this year. Moreover, the international trade war already damaged our major trading partners, which should be also taken into account.

Good employment results continued. The registered unemployment rate dropped by about 9% in mid-2019 compared to mid-2018. On the other hand, registered employment rose by just over 2.0% over the same period.

Economic growth has enabled higher public revenues and fiscal stabilization with minimal cuts in public expenditures. Consequently, the share of public debt in GDP has also decreased.

One new chapter in the EU accession negotiations was opened in 2019 (Chapter 9, Financial Services), so that the number of open chapters increased to 17 (out of total 35). However, no chapter was closed in 2019. There has been a lot of diplomatic activity in the process of joining the Western Balkans region to the EU, but specific results are still expected in the coming period.

REMAINING ISSUES

Negotiations on the UK's exit from the EU, for the time being, have a neutral effect on Serbia's EU integration process. This process of integration, however, is still slower than expected. It seems that the main hurdle was located in unfinished negotiations about the chapter 35.

The high economic growth in 2019 is largely due to increased investment activity in the construction industry (especially the construction of the Turkish pipeline stream through Serbia), rather than the result of general industrial development. Export's contribution to GDP growth is significant and forms a 5% growth on its own. On the opposite side, imports reduced this growth to 2.8%. So, a better balance between export and import remains an issue.

Public capital expenditure strongly affect the economic climate in which private companies operate. Its size was 3.9% of GDP in 2018 and 3.5% of GDP in the first half of this year. The Government is ready to finance investment projects from external loans, but this must be accompanied by appropriate budget expenditures. The Government has pledged to increase capital expenditure to 3.5% of GDP on average in the medium term, but the need for accelerated development requires at least one more percentage point. The investment ratio to GDP of 22% guarantees an average economic growth of 4% under normal circumstances. This requires, in addition to boosting private investment, high public investment in infrastructure, environmental protection, education and the health system.

The share of public debt in GDP is reduced, but its regular repayment engages at least 10% of GDP, thus shrinking the space for savings and investment. There is a need to restructure public enterprises to reduce losses and alleviate budgetary pressure. In addition, there are serious problems at the level of finances of local communities, which cannot finance the improvement of local infrastructure (drinking water, waste water, garbage dumps).

The tax administration is a key fiscal institution on which not only the collection of public revenues depends, but also the quality of the overall business infrastructure. We

are aware that there is a program adopted by the Government to transform the Tax Administration up to 2020, but so far there was only a partial implementation. FIC members encourage the Government to proceed with the full implementation as soon as possible.

The new PCI arrangement with the IMF has been concluded with the aim of maintaining macroeconomic and fiscal stability and reducing country risk. The IMF emphasizes that structural reforms have only been launched, as well as the modernization of the tax administration. At the same time, the risk of weakening economic activity in countries in the EU that are Serbia's main trading partners has increased. FIC members specifically support the efforts of the Serbian authorities to reduce the country's risk and get Serbia its first investment rating.

FIC RECOMMENDATIONS

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

- Maintaining fiscal stability, and continue with efforts to reducing the public debt to an affordable level,
- 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 regarding all modes of transport: road, railway, water and air transport. That is why, in 2019, the construction of international corridors, maintenance and modernization of existing infrastructure and harmonization of regulations with European standards has continued. Emphasis was placed on finishing the southern and eastern arms of Corridor 10, its extension to the Belgrade bypass, the opening of finalized sections on Corridor 11 and proceeding with its construction, the modernization of rail transport, the opening of new lines in air transport, the restructuring of ports and infrastructure companies. The activity in the transport system was not only technical, but also strategic, given the conclusion of bilateral intergovernmental arrangements as well as commercial agreements with foreign investors for future projects. All this has intensified infrastructure investments that have significantly contributed to economic growth.

This pillar has achieved some progress on all the recommendations set out in last year's White Book. As a result, transport as a whole ranked 4th in the Foreign Investors Council (FIC) rankings regarding the success in implementing recommendations in 2019. We also note that the average waiting time for this implementation has been reduced from 5.4 to 4.4 years, which indicates that transport remains a sector with long-standing problems, but also with great development opportunities.

ENERGY

This sector combines the generation and transmission of electricity, the market for renewable energy resources and the market for energy efficiency. Serbia has correctly completed the transposition of the European Union's (EU) Third Energy Package into the national legislation and fully liberalized the electricity market.

As for the renewable energy market, a new incentive scheme for the generation and sale of renewable energy has been successful in 2019, and the wind segment, which is the largest in the region, was recently put into operation. Therefore, the implementation of the regulation has been extended until the end of this year. In the field of energy efficiency, several improvement projects have been successfully awarded to private investors for public lighting across Serbia, with the readiness of major cities to work on this.

We note that the contracting of energy supply for households and small consumers has started to work, but at regulated prices which have not changed for two years. State power utility EPS is still a major supplier of electricity, although there are about 60 registered wholesalers. Belgrade-based South East European Power Exchange (SEEPEX) has increased its membership from 16 to 18 members.

The energy sector is ranked 22nd in the FIC rankings in 2019, which is a slightly worsened position compared to the previous year. Three of the recommendations are assessed to have had a certain progress, while two recommendations are without progress. We note that last year the White Book adjusted recommendations in this area, and consequently reduced the average waiting time for their implementation to only 1.1 years. This year the waiting time was extended to 1.8 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 key expectations of the telecommunications industry in 2019. They were partly achieved by passing the Law on Fees for the Use of Public Goods, by concluding a roaming agreement for the Western Balkans region, by adopting a new methodology for determining the annual fee for the use of radio relay links and defining relevant markets subject to prior regulation of operators with significant market power, in accordance with the regulatory framework of the EU. During 2019, IP interconnection has become a mandatory part of the standard offers for fixed and mobile termination, which will significantly improve the business and access to transmission capacities of public network operators. However, expectations regarding the adoption of the Law on Electronic Communications, together with supporting regulations and implied changes to existing practices, have not yet materialized.

According to the assessment of foreign investors in the field of telecommunications, there has been progress compared to the last year. The entire sector has visibly improved its position on the FIC rankings for 2019, by 11 places, and is now positioned in the 14th place. One recommendation has had significant progress, five have achieved certain progress, and three are with no progress.

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. The Law on Electronic Gov-

ernance has been an umbrella regulation in 2019 that has structured the use of information technologies by the public administration, both at at state and local government level. It has encouraged electronic communication between citizens and the administration, and made it possible for the administration to avoid asking citizens to provide information it already has in its records.

Some other novelties have been introduced during 2019. With the adoption of a new Law on Trade and amendments to the Law on Electronic Commerce, the business models of trade with electronic stores, electronic platforms and dropshipping have been improved. Additionally, the positive effects of the Law on Electronic Document, Electronic Identification and Trust Services in Electronic Commerce, based on Serbia's incorporation of the EIDAS Regulation of the EU, have been identified. A number of by-laws have been adopted, laying down common requirements that must be met by trusted services, as well as technical standards for a qualified electronic signature creation device. Amendments to the Foreign Exchange Law have also resulted in progress in the field of electronic payments. In 2019, an instant payment system run by the National Bank of Serbia (NBS) - the IPS NBS system - has operated smoothly.

The Digitalization and E-commerce sector has advanced by 11 places in the FIC rankings in 2019 and is now ranked 21st. One recommendation has had significant progress, one certain progress, and three recommendations have continued with no progress in 2019.

REAL ESTATE AND CONSTRUCTION

As in last year's edition of the White Book, the implementation of the Law on Planning and Construction remains in the focus of the FIC, 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 the cadastre and cadastral procedure.

The sector as a whole is not homogeneous, and in the past its different segments performed differently. This has not been the case in 2019, when all parts of the sector have deteriorated with respect to the implementation of the recommendations proposed last year. The regulation on construction land and development was the leader in the FIC ranking list for two years in a row. However, this sector has dropped from the 1st to 13th place during 2019. In itself, its score of 1.80 is not low, and the situation with the number of building permits issued is favorable because it has increased since the integrated procedure was introduced. Nevertheless, other sectors have advanced much more and improved their place in the reformers rankings. Something similar has happened with other real estate and construction sectors, whose scores are far lower compared with Construction Land and Development.

This situation has pushed the whole area ten places down from last year's position; it now occupies the 27th place in the White Book ranking. The change in the overall score is a negative -0.22 points. No recommendation has had significant progress, eight recommendations have made certain progress, and as many as ten recommendations are with no progress.

WORKFORCE AND HUMAN CAPITAL

There has been certain progress in the area of labour relations and the labour market in the last year. The whole area has improved from 53rd place to 46th place in the FIC rankings for 2019, raising the overall progress index from 1.05 points to 1.21 points. The absolute value of that score is low and unsatisfactory. Moreover, this is only due to certain progress in the sector of Staff Leasing, which has climbed to the 9th place in the ranking list, with the score 2.0. Out of the total number of recommendations in the whole area, none of the recommendations have made significant progress, four of them have had certain progress (out of which three in the Staff Leasing sector), and fifteen of them have seen no progress. The average waiting time for the implementation of recommendations has increased from 4.9 years to 6.3 years.

Separately, the Employment of Foreigners sector has had a negative progress (-0.17), while Temporary Work Abroad, Employment of Persons with Disabilities and the implementation of the Labor Law have had no progress compared to last year. Something similar has happened with Human Capital and Dual Education. They have had negative marginal scores, of -0.43 and -0.17, respectively.

As was the case in the previous year, in the FIC's view, the potential of the Workforce and Human Capital sector has obviously not been utilized as a pillar of development in 2019.

top

INFRASTRUCTURE

TRANSPORT 2.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Amendment of legislation and implementation practices to allow for an 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, an adequate regulatory framework should be provided, in order to enable the development of this sector, which will take into consideration constructive recommendations of relevant stakeholders	2017		√	
Increase the quality control and inspection of materials when performing the works; implement international quality and public sector project management standards	2014		√	
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	2014		√	
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	2014		√	
Implementation of measures to improve intermodality features within the Serbian transport system	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 harmonization 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 modernization 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 ensure the sustainability of the restructured railway companies.

The waterways, and Serbia's international connectedness through them, are underutilized, 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 is represented in amendments to the Law on Inland Navigation and Ports.

Intermodal transport, with three partially constructed terminals, is still in its infancy, with a 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/modernization of infrastructure, and harmonization 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 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.

The emphasis has been placed on building Corridors 10 and 11. In August 2019, works on the Obrenovac – Čačak highway section on Corridor 11 were finished, and works on the Surčin – Obrenovac section are expected to be finished at the end of 2019. The southern part of Corridor 10, the highway through the Grdelica gorge, has been finalized and opened to traffic. Construction on the Preljina-Požega section of Corridor 11 began in May 2019 and is expected to be finished within 36 months. The Government of the Republic of Serbia plans the construction of the section of Corridor 11 between Požega and Boljare, part of the Belgrade-South Adriatic highway corridor, and negotiations with China Communication Construction Company are soon to begin.

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 will be installed during 2019. Also, under a project titled "Hydro-technical and excavator works in critical sectors on the Danube River in Serbia," preparatory works are under way between Bačka Palanka and Belgrade for the launch of works at the Danube's section near Čortanovci.

During 2019 the preparation of technical documentation has been in progress for building a new port in Belgrade, whose construction is expected in December 2023.

The rail sector cooperation with countries in the region has continued this year - at the beginning of September 2019 a project to reconstruct the Niš - Dimitrovgrad railway will commence, which is important due to the fact that this railway connects the Republic of Serbia and the Republic of Bulgaria, and which is targeted for completion at the end of 2023. During 2019, the rehabilitation of the railway along Corridor 10, in the total length of 112 km, is expected to be completed.

In the air transport segment, during 2019 the reconstruction of a runway at the Nikola Tesla airport is expected to be finished. Also, it should be pointed out that the Nikola Tesla airport posted positive quarterly business results for the January-March period. The opening of a part of the military airport Morava in Lađevci near Kraljevo for civil flights occured at the end of June of 2019.

Having in mind all ongoing 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 roads, an aggravating circumstance given that this issue is directly connected with traffic safety.

One of the pending issues is the lack of a suitable incentive scheme for the purchase and import of electric 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.

Modernization 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 the 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 an 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, an adequate regulatory framework should be provided, in order to enable the development of this sector, which will take into consideration constructive recommendations of relevant stakeholders.
- 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. The 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 1.60

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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	2016			√
Renewables				
Incentive system from 2019 to be tailored to accelerate investments in the renewables sector	2018		√	
Increase of the cap on incentives for wind and solar energy	2018			√
Energy Effciency				
Adoption of a 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 the public and 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 a need for the regulation of 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).

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 2019, whereas 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 a comprehensive 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.

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

SEEPEX membership grew to 18 members.

Renewables

Several notable projects approved under the present framework have reached financial close and are under construction. The Decree on Incentives for the Production of Electricity from Renewable Sources and from Highly Efficient Combined Electricity and Heat Production extended the validity of incentives until 31 December 2019.

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 so, 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 a 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 overhauled. It is not clear whether Serbia will have enough funds for these investments.

It can often be heard that an electricity price increase in Serbia would be justified, but vulnerable customers must be protected.

Renewables

Serbia still does not have concrete plans for incentivizing renewables from 2020 – 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, quotas for incentivizing wind (500 MW) and solar (10 MW) energy have already been exhausted, and are way below the market demand, consequently, Serbia should revisit the idea of raising them.

Energy Efficiency

As to energy performance contracting (EnPC), apart from the need to have consistent practices in the 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 to introduce further sector-specific incentives for energy efficiency projects in the relevant regulations (notably, real estate and tax-related regulations) as well as the need to gradually raise financiers' awareness of the practical feasibility of ESCO projects.

As to energy supply contracting (ESC), the adoption of a 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 the case of minor Serbian municipalities);
- practical implementation of the rules relevant to determining the value of projects that are PPP-specific and of the rules of public budgeting needs to be improved, and the capacities of the public sector to be strengthened.

FIC RECOMMENDATIONS

Electricity

- Regulation of electricity prices to be abandoned (but vulnerable customers to be protected), allowing new investments in the modernisation and revitalisation of coal and electricity production.

Renewables

- Incentive system 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 a functional model contract to govern 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 1.78

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2017		√	
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.	2018		√	
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 achieve proclaimed liberalization of the fixed market.	2018		√	
Provision of the universal service should be regulated in a clear, transparent, and predictable manner and under economically justified principles.	2018			√
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 a smooth implementation of 4G technology and create preconditions for the implementation of 5G technology.	2017		√	
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.	2018			√
Regulation of IP interconnection between operators in the Republic of Serbia.	2018		√	
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.	2014	√		
Combating the illegal termination of international traffic through amendments to the Criminal Code.	2016			√

CURRENT SITUATION

This year, the most significant regional ICT event, the Western Balkans Digital Summit, was held on 4 and 5 April 2019 in Belgrade. The conference brought together over 3000 participants and about 200 speakers representing 30 economies. Apart from the Government of the Republic of Serbia that hosted this event, the Digital Summit was attended by representatives of the European Commission, international organizations, regional ministries and regulatory bodies, innovative companies and other participants. The fact that this event was organized once again confirmed the Government's commitment to ensure economic growth and accelerate regional economic integration through digital transformation. The Regional Roaming Agreement lowering the roaming charges in the Western Balkans was concluded during the summit, bearing in mind the importance of electronic communications for the economic and social prosperity of citizens. Furthermore, an agreement on mutual recognition of trusted services in e-commerce was signed between Serbia and Montenegro.

Taking into consideration the global trends in the telecommunications sector, 5G technology is expected to be one of the biggest waves of the fourth industrial revolution. It is anticipated that the implementation of the new technology will enable innovation and increase productivity in the fields of transport, agriculture, medicine, and logistics through the use of a large number of sensors and data. As for future radio frequency spectrum auctions, the FIC proposes that the model and timeframe for radio frequency spectrum auctions should be selected in consultation with the industry and in a timely manner, with a view to selling those bands that are needed the most from the point of view of technologies used and market demands.

The introduction of new technologies, the construction of the necessary digital infrastructure, the efficient use of public goods, including radio frequencies and telecommunications resources, will depend to a large extent on the regulatory and legal framework that remains to be adopted. The new Law on Electronic Communications is the first major opportunity before us and we hope that the provisions of the law and the accompanying by-laws will create the necessary conditions. The law has not been adopted this year, although the Ministry of Trade, Tourism and Telecommunications has made an effort for it to happen, so we hope that it will be adopted soon.

During 2018, RATEL aligned the identification of relevant markets susceptible to ex ante regulation with the regulatory framework of the European Union (EU). Accordingly, the Regulatory Agency for Electronic Communications (RATEL) carried out new analyses of relevant markets and issued decisions to identify operators with significant market power. RATEL's analysis of the wholesale market for central access provided at a fixed location for mass-market products governs the bitstream access service, which can be implemented through: copper pairs network, xDSL technology and a hybrid fibre optic and coaxial cable (HFC) network of media distribution operators. Additionally, the analysis of the wholesale market for local access to network elements provided at a fixed location also included the dark fibre infrastructure, which will in the future be part of the standard offer of operators with significant market power.

Mobile operators are still faced with the inability to set up and construct base stations in almost any urban area for three key reasons:

1. The first reason involves an arbitrary interpretation and excessively frequent reference by local environmental secretariats to the principle of the prohibition of exposure to non-ionizing radiation sources and the proportionality principle referred to in the Law on Non-ionizing Radiation Protection. To exacerbate the problem, such decisions get confirmed by the Ministry of Environmental Protection in the second instance.

2. The second reason: urban plans arbitrarily introduce restrictions determining the minimum required distance for sites where base stations can be set up in relation to adjacent facilities, although there is no basis in the law governing protection against non-ionizing radiation for such restrictions. Specifically, in their by-laws (General/Detailed Regulation Plans, General Urban Plans, Spatial Plans, Municipal Assembly Decisions), local governments introduce restrictions that are stricter than those imposed by the Law on Non-Ionizing Radiation Protection and the Law on Environmental Impact Assessment with respect to base station installation requirements, for example the distance from individual buildings (e.g. 30m away from an adjacent apartment building, or even the prohibition of setting up base stations on residential buildings) leading to the actual inability to cover urban areas with mobile signal. Due to this limitation, mobile operators are in many cases unable to improve the coverage and quality of service in order to respond to requests from customers who complain about service availability.

3. Thirdly, the Law on Environmental Impact Assessment does not impose the obligation to produce an environmental impact assessment for setting up each individual base station, and in practice, local environmental secretariats almost always require this assessment. According to the relevant EU regulations, no environmental impact assessment is required as a condition for setting up a base station. In order to comply with EU regulations in this field, it is necessary to amend List 2 of the Regulation establishing the list of projects for which an impact assessment is required and the list of projects for which an environmental impact assessment may be required, by excluding mobile base stations from this list. Drafting an environmental impact assessment for each individual base station greatly slows down the process of setting up base stations as it takes as long as 9 months on average, and is a significant financial burden.

It is very important to emphasize that in Serbia the restrictions on allowed electromagnetic field levels are several times stricter than in the EU member states, and that the actual values of the electromagnetic field levels measured on the ground are often ten times below the maximum allowed values. We hope that the RATEL website will further educate the population and representatives of local governments, as it provides real-time information about electromagnetic field levels.

Other laws and significant regulations adopted in the previous period that are not part of the sector but will have an impact on telco industry include the Law on Fees for Use of Public Goods and the Law on Personal Data Protection, which will be discussed in more detail in the section titled "Positive Developments".

POSITIVE DEVELOPMENTS

The Regional Roaming Agreement for the Western Balkans (Serbia, North Macedonia, Montenegro, Bosnia and Herzegovina, Albania and AP Kosovo and Metohija) has already brought a significant reduction of charges for end-users as of 1 July 2019, and is expected to further contribute in its second phase to the integration and socio-economic prosperity of the Western Balkans. During the second phase, as of 1 July 2021, roaming charges will be entirely abolished between the aforementioned economies, which will allow customers to communicate as if they were at home (Roam Like at Home). In this way, users in this region will enjoy the same benefits as nationals of the EU Member States. The Telecommunications Committee of the FIC welcomes this initiative as it will lead to overall mobile traffic growth and contribute to the socio-economic prosperity of the region.

Law on Fees for the Use of Public Goods that governs the fees for the use of public goods, which were previously governed by various regulations, was adopted at the end of 2018. The Law on Fees has furthered the legal stability and predictability of business operations, especially having in mind the fact that local governments are prevented from arbitrarily increasing the fees, and that it allows greater transparency of public revenues since it defines the allocation of income from fees.

At the proposal of the Ministry of Trade, Tourism and Telecommunications, great progress has been made regarding the annual fee for the use of radio-relay links, the fee base being regulated at the level of one radio frequency pair on a radio-relay connection section, replacing the frequency level, as was the case earlier. Despite a significant increase of the fee base, this reduced the financial burden on mobile operators by about 30%. The FIC commends such a solution as it avoids double charging. On the other hand, a reasonably defined fee will encourage further investment into increasing the capacities of mobile operators' transport networks in Serbia.

During 2019, the IP interconnection will be a mandatory part of the standard offers for fixed and mobile termination, which will significantly improve business and accelerate the implementation of transport capacities between operators of public mobile and fixed networks, in line with the already established business practices of electronic communications network operators on a global scale. Since IP interconnection is more advanced than the TDM technology, which has been predominantly used so far, this technological breakthrough will result in a significant reduction in inter-operator costs.

REMAINING ISSUES

The drafting process and the content of the Regional Roaming Agreement in the Western Balkans region would have been of better quality if the industry had been consulted in a timely manner regarding the technical requirements and deadlines for their implementation that mobile operators had to implement. Setting 1 July 2019 as the date on which the Agreement starts to apply means that less than 3 months were allowed for very demanding changes to technical systems. The implementation of the Agreement entailed changes to the technical billing systems both at the wholesale level between the operators and at the retail level towards customers. Also, since no consultations were held, this regulation was introduced during that same business year and was not foreseen during the budgeting process, which adversely affected business predictability and financial results. However, thanks to the professional capacity and initiative of RATEL and the Ministry of Trade, Tourism and Telecommunications, an adequate transitional solution for the Agreement's implementation was found and the same model was used in all six markets.

Public consultations on a Rulebook on amendments to the Rulebook on number portability on public telephone networks at a fixed location and on mobile networks were conducted in May 2018 by RATEL, but without its adoption. Adopting this Rulebook would speed up and simplify the process of number porting.

Given that as of 2016 RATEL started to regulate the provision of public communications services at a fixed location via public mobile communication networks using CLL technology, it is necessary to continue the liberalization of the CLL technology implementation in order to increase the competitiveness and meet the needs of customers, having in mind the effects that have been achieved so far.

There are still certain fees that are not based on cost principles and potentially lead to disproportionately high costs for operators in certain situations. An example of this is the fee for issuing individual licenses for the use of radio frequencies in the case of status change, change of name, or company or operator identification mark, defined by the Rulebook on determining fees for the provision of services under the jurisdiction of RATEL. In this case, the Rulebook provides for payment of up to 50% of the total fee for the issue of an individual license.

Direct Carrier Billing (DCB), as the simplest, most widespread way to buy applications from platforms such as Google Play, is not yet available in Serbia. DCB involves the purchase of digital content for mobile devices through telecommunication services charges paid by customers to their mobile operators. This model has been operating in the EU for years, including the countries in the region, since the Payment Services Directive (PSD1 and PSD2) recognizes the transaction in question as an exception to payment services. Although the national legal framework is harmonized with the EU, specifically the Law on Payment Services has been harmonized with the PSD1 Directive, the National Bank of Serbia (NBS) has not changed its position that in order to provide this service, mobile operators should be registered as payment institutions, which would make the model commercially unviable.

Problems related to the inability to set up and construct base stations due to an inadequate interpretation and application of environmental regulations, as well as restrictions in local government by-laws regulating spatial planning are explained in detail in the section titled "Current Situation".

FIC RECOMMENDATIONS

- When negotiating international agreements in the field of electronic communications, it would be necessary to organize a public consultation process and involve industry representatives in the consultation process to look at the technical specifics, timeframes and financial implications in order to increase business predictability.
- Adoption of the new Law on Electronic Communications and leaving sufficient deadlines for the implementation of prepaid registration of users and other new features introduced by the law.
- Adoption of the Rulebook on Amendments to the Rulebook on Number Portability for Services Provided over Public Mobile Communications Networks and Rulebook on Amendments to the Rulebook on Number Portability in Public Telephone Networks at a Fixed Location as soon as possible.
- With regard to future radio frequency spectrum auctions, the proposal of the FIC is to select a model and timeframe for radio frequency spectrum auctions, in timely consultations with the industry, with a view to selling those bands that are needed the most from the point of view of technologies used and market demands.
- Precise guidelines should be provided by the Ministry of Environmental Protection to local environmental secretariats, based on applicable legislation, to stop the excessively frequent reference and arbitrary interpretation of the principle of the prohibition of exposure to non-ionizing radiation sources and the proportionality principle referred to in the Law on Non-ionizing Radiation Protection when issuing permits for the construction of base stations.
- Local government professional services need training, in cooperation with the Ministry of Construction, Transport and Infrastructure and the Ministry of State Administration and Local Self-Government, with a view to removing

spatial restraints for the construction and installation of mobile telecommunications infrastructure.

- In line with the comparative practices of developed EU countries such as Germany and Finland, but also of some countries in the region (e.g. Croatia), we propose that mobile telecommunications facilities should be excluded from Schedule 2 of the Regulation establishing a list of projects subject to mandatory impact assessment and the list of projects for which an environmental impact assessment may be required, so that, rather than carrying out an environmental impact assessment for each individual base station, it would be sufficient to provide the local government with a notice of the base station setup including the relevant measurements, prior to its commissioning, whereby local government will have the possibility to carry out inspection.
- Amendment of the Rulebook determining fees for the provision of services within the competence of RATEL with a view to reducing disproportionate costs for operators by applying the cost principle for determining the amount of charges for issuing individual licenses.
- Continuation of market liberalization by applying the CLL technology in accordance with the effects achieved so far and the need to increase competitiveness.
- The NBS needs to issue a positive opinion on the provision of Direct Carrier Billing services according to the EU model, with a view to facilitating the direct payment of digital content on Google Play and Apple Store through telecom operators under the EU model.

DIGITALIZATION AND E-COMMERCE 1.60

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2018			√
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.	2017	√		
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 a facilitated use 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.	2017		√	

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2017			√
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.	2018			√

CURRENT SITUATION

The current regulatory framework provides possibilities for business entities to develop digital sales channels, as well as to protect consumer rights within the online environment. However, insufficient awareness and prejudices result in the fact that this type of purchase is not yet developed enough. Although this type of trade has been growing steadily, electronic commerce still has a great potential for growth. According to the Statistical Office of Serbia, in 2018, 45% of citizens had never purchased goods or services online. However, only seven years earlier, in 2011, this percentage was as high as 87%, showing that this branch of business was growing constantly.

According to the National Bank of Serbia (NBS), the number of e-commerce transactions in 2018 was 7.6 million, and the total turnover was EUR 176 million. An average of just EUR 23 per transaction shows that there is still enough room for improvement. For example, an average consumer transaction related to purchases through digital channels goes from EUR 41 in Bulgaria to EUR 633 euros in Russia to over the EUR 1,800 in the European Union (EU). Increasing the volume and average value of transactions can be achieved through constant education in order to provide assurances to citizens that their rights are guaranteed both during purchases and during distance contracting.

Since the Government proclaimed digitalization as one of its key priorities, most regulatory initiatives have recognized the significance of digital operations and e-procedures. An "e-paper" project is under way with the goal to simplify, optimize and digitalize administrative procedures. A database of nearly 2,500 administrative procedures has been created, with plans prepared for the optimization or cancelation for 600 procedures. By the end of the year, the digitization of the first 30 procedures is planned. The joint work of the Republic and the Province continues with inventoring and streamlining procedures in the Autonomous Province of Vojvodina, with the ultimate goal of developing a more efficient, safer and more transparent business environment.

On the other hand, electronic procedures are not sufficiently present on the ground, and administrative authorities often insist on the use of paper documents. An amendment to the Law on Companies has abolished the use of seals for business entities, scrapping provisions in 10 laws and 107 by-laws in which seal is mentioned. After the adoption of this amendment, no institution, bank or organization has the right to demand a seal from businesses or entrepreneurs.

The IT and e-Government Office of the Serbian Government is the central authority for the coordination of e-Gov related activities, managing the public IT infrastructure and providing information security. The Coordination Council for e-Government has been established, gathering representatives of different ministries under the auspices of the Prime Minister of the Republic of Serbia. This year, the focus is on the e-Government development programme for the next three years.

In July 2019, the construction of a data centre in Kragujevac has started. The goal of the project is the centralization of all relevant data in order to simplify activities in the field of e-Government digitalization. There are also plans to create a metaregister and a catalogue of all services.

The secondary benefit of this data centre could be the renting of infrastructure and content to corporations, which would be an excellent way of monetization and a source of funding for further improvements of the centre.

The key remaining challenges are the creation of a register of citizens and a register of addresses. Also, the eGovernment portal has not yet been optimized for mobile phones and tablets.

In June 2019, the Protocol on Cooperation, "e-Serbia," was signed between the Serbian Government and the National Bank of Serbia (NBS), with the aim of further improving digitalization in Serbia. The protocol also aims to achieve a better quality of services for citizens. The signing of the protocol was an important precondition for activities that would enable a more comprehensive digitalization in Serbia.

POSITIVE DEVELOPMENTS

The adoption of the new Trade Law and amendments to the Law on e-Commerce are positive signs towards a further development of e-commerce as a new business model which has introduced the electronic store, the electronic platform and dropshipping.

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. Although most other laws require 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. Therefore, 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 very important.

Concerning the by-laws that ensure a full implementation of this Law, sixteen have been passed, and they regulate common criteria applicable to trust services, and technical standards for qualified electronic signature creation devices. 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 have brought some progress in the e-payment segment. Among others, receipt of foreign currency donations for humanitarian purposes was made possible via online payment services, such as PayPal. Some major progress has been registered in the online software sale segment, which has now been included in the list of exemptions from the rule that only RSD payments are acceptable, also including mutual transactions between residents. Thus, domestic IT companies were enabled to display prices in foreign currency and sell their services without fear of committing a violation if the buyer is a resident of Serbia.

Still, although this exception is limited to software and digital services only, 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.

In October 2018, an instant payment system operated by the NBS started working - IPS NBS system. As participants in this system, banks have enabled their customers to transfer money in RSD in the branches, whereby the transaction is immediately realized.

Users can perform real-time transactions 24/7/365, up to the amount of RSD 300,000 per transaction. The banks have also enabled the instant payment option on their digital channels.

Additional channels for instant payment were introduced in the second phase of this national project, by using the QR code. Users (individuals and legal entities) will be able to make payments at selling point by generating a QR code in a mobile application to be scanned by the trader. This also includes payment at points of sale (POS) and e-stores and paying bills by scanning a QR code displayed on a POS terminal, mobile merchant application, e-store or publisher accounts.

The Law on e-Government was adopted in April 2018, as an umbrella regulation to uniformly regulate terms and conditions for the use of information technologies (IT) by the public administration, both at the state and at the local government level. The purpose of the Law is to enable interoperability between 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.

Major progress has been made in the domain of electronic payments on the eGovernment portal, where card payments are enabled, so now, for example, vehicle registration can be paid in this way. Payment by payment card as well as the integration with the electronic services of individual banks for services on the eGovernment portal is a significant improvement. In this way, one of the basic assumptions of the electronic administration has been realized, because it is not possible to obtain some of the most important services without electronic payments, wheraes switching to physical payment channels had defeated the purpose and eliminated the advantages of electronic services in the past.

In January 2019, the information system e-Inspector was introduced with four pilot inspections. The goal of this system is to digitalize all 41 inspectorates in the Republic of Serbia in order to coordinate inspections better, to automate the work of inspectorates and better control their efficiency. Also, the "e-Kindergarten" service has been enabled.

Activities to develop an electronic register of education, which will contain all available data and will review information on the institutions, staff and educational profiles, will also provide the possibility of further analyzing and developing new educational programs, as well as monitoring the employment of graduated students.

The Law on Protection of Financial Service Users in at Distance Contracting was adopted in June 2018. This Law for the first time transparently mentions two-factor authentications (2F) referring to on-distance contracting for contracts in the value up to RSD 600,000 without the use of the user's qualified electronic signature, if the user has agreed to conclude the contract using at least two elements ("One Time Password").

This Law brought innovation to the financial market. However, when the Law was adopted there was still no regulation on the identification of the user at distance, therefore it could only be applied to existing users.

The Law on Prevention of Money Laundering and Financing of Terrorism regulates user identification in establishing each business relationship with entities which are subject to this Law. The identification process is done in direct contact with the client, which prevents any digital contracting process. Bearing in mind this obstacle, the NBS adopted a Decision in March 2019 to regulate the identification of users remotely (the Decision on the Conditions and Manner of Establishing and Verifying the Identity of Individuals Using Electronic Communications). With the adoption of this Decision, Serbia became one of the few countries in the region to regulate this area and provide legal preconditions for purchasing financial services from home.

NBS enabled video identification, signing a contract through two-factor authentication, and instant payment. This created the conditions for crediting, as well as other banking services to be offered by electronic means. The remaining point is how to get a bill of exchange which must be signed, as collateral and as a compulsory and integral part of a client's credit file. Bill of exchange as collateral in paper form is issued by the Institute for Manufacturing Banknotes and Coins. Digitization of the bill of exchange is not important only from the aspect of banking business, but also for the economy in general.

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.

REMAINING ISSUES

Although certain progress was made in 2018 by adopting the Law on Protection of Financial Service Users in 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. 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, sets 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.

Regarding the digital agenda of the Serbian Government, the remaining step is the establishment of a national register of citizens and a register of address. The register of business entities exists within the Serbian Business Registers Agency (SBRA), and it is expected that registers will be developed also for individuals in the way to allow connecting with other state institutions.

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. It is also necessary to provide training and guidance for users, and to instruct them how they can exercise their rights in electronic purchasing.

Besides that, 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 continue. 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 necessary to develop a single approach that will strike a balance between the development of innovative business models and the protection of the state's fiscal interests, also bearing in mind that models for which there is no single approach yet are changing and developing in order to satisfy users' needs.

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

The remaining challenge is to strengthen the focus of the e-Government on citizens, that is on "running errands from home," since the bulk of initiatives and activities aimed at optimizing the procedures within the state authorities so they would last shorter and citizens would be able to complete their adminisitrative errands much faster, are still at counters.

FIC RECOMMENDATIONS

- Following a discussion between the state and businesses, formulate a single approach to regulating relations between traditional and digital business models, considering the needs of the digital economy development and the state's fiscal interests.
- 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.
- 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 and by allowing transactions between residents and through foreign services, such as PayPal.
- It is necessary to regulate the "digital bill of exchange" in order to be registered in a single registry of bills of exchange, singed in electronic form.

REAL ESTATE AND CONSTRUCTION

1.44

According to the latest statistics of the World Bank, Serbia is ranked 9th when it comes to obtaining building permits, which is an exceptional leap compared to the 152nd place that Serbia occupied just a few years ago.

Conversion: 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. 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, so that restitution claims do not block the conversion process.

Law on the Registration Procedure with the Cadastre of Real Estate and Utilities: By adopting the new Law on the Registration Procedure with the Cadastre of Real Estate and Utilities, some progress has been made in the operations of real estate cadastre, which is primarily reflected in the implementation of information technologies in almost every segment of cadastral operations, which contributes to increased promptness, customers' time savings and simpler and faster registration procedures. In principle, the implementation of the Law can be assessed as positive, but there is still plenty of room for improvement.

Restitution: The issue of the freedom of the assessment of proofs in restitution procedures has not been resolved. Claimants in restitution procedures who are not able to obtain the legally prescribed specific proof – the document on confiscation – will not be granted restitution rights regardless of the existence of other proofs that the seizing of the property did occur.

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Construction land and development				
The implementation of the latest version of the Planning and Construction Law should be monitored by all relevant stakeholders.	2015		√	
It is necessary that all competent authorities are clearly and precisely trained to implement the Planning and Construction Law.	2018		√	
The implementation of the new Law on the Legalization of Buildings should be monitored by all relevant stakeholders.	2014		√	
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.	2016			√
Dialogue, communication, and long-term co-operation should be established between the state, relevant ministries, local authorities and all other relevant institutions on the one hand, and the FIC with its Real Estate Committee and other 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.	2009		√	
Restitution				
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.	2015			√
State authorities should ensure that the acquired rights of foreign investors are protected in accordance with the law.	2015			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2018		√	
Mortgages and Real Estate Financial Leasing				
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.	2009			√
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.	2018			√
The rights of the tenant in the case of extrajudicial enforcement should be specified.	2018			√
Cadastral Procedures				
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.	2012			√
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.	2012			√
The formation of the utility cadastre should be finalized.	2015		√	
The State Geodetic Authority should ensure the 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.	2015			√
The State Geodetic Authority should resolve all unresolved second-instance cases as soon as possible.	2018			√
Software maintenance and improvement practice must reach a higher level.	2018		√	
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.	2018		√	

CONSTRUCTION LAND AND DEVELOPMENT 1.80

CURRENT SITUATION

The focus of the Foreign Investors Council (FIC) remains on the implementation of the Planning and Construction Law, and in particular the permitting procedure, construction land status and legalization of buildings. New investments, obtaining the necessary permits in the integrated procedure and the follow-up of the adopted legislation remain the FIC's main areas of interest.

Construction Land and Development

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:

- entities which were privatized under the laws governing privatization, bankruptcy and enforcement proceedings, as well as their universal successors;
- companies that acquired the right of use over state-owned undeveloped land which was acquired for development before 13 May 2013 or based on a 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") prescribes conditions for the conversion of the right of use to ownership over publicly-owned 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 (the most notable reduction is in the case of developed land, where the fee is not payable for land under a building and for a regular use of a building). State aid clearance applies to reductions (to the extent applicable).

The Law on Conversion for a Fee allows for concluding a 99-year lease agreement with the owner of construction land until conversion. In this way, the lessee can obtain a construction permit before paying the conversion fee.

During the preparation of this edition of the White Book, the Ministry of Construction, Transport and Infrastructure published the Draft Law on Amendments to the Law on Conversion for a Fee. The final text of the amendments to the Law is not yet known, so the effects will be seen after their adoption and implementation.

Construction

The Planning and Construction Law was amended several times in 2018 and 2019.The amendments may be generally considered as positive because their goal was to facilitate the procedures and to make clarifications, as well as to improve the regulatory framework.

Some of the most significant amendments are as follows:

- a construction permit ceases to be valid if the commencement of works is not notified within three years from the day when the decision on the construction permit becomes final, instead of the previously prescribed two-year period.
- instead of the Serbian Chamber of Engineers, the Ministry competent for construction and spatial and urban planning issues licenses to the responsible planner, responsible urbanist, responsible designer and responsible contractor. The Ministry shall check whether foreign citizens meet the requirements to provide these services.
- the Central Registry of Energy Passports (CREP) has been established. It contains a database of authorized organizations which qualify for the certificate issuance, of responsible engineers for energy efficiency who are employed at such organisations, and of issued certificates on energy characteristics of building.
- Instead of being held jointly responsible with the investor for all liabilities against third parties, the financier is responsible for liabilities towards third parties which are consequences of activities performed by it in accordance with its authorisations.

Legalization

The legislators tried to cope with legalization issue by enacting various regulations, but none of these attempts were deemed successful. The Legalization Law from 2015 stipulates only two options for illegally built facilities – demolition or full legalization. This law was significantly amended in 2018, with the prohibition of disposal on illegal buildings and the 2023 deadline for the completion of the legalization process being the significant amendments.

POSITIVE DEVELOPMENTS

Conversion of the right of use to ownership of construction land

Some improvement was made regarding conversion procedures. The authorities are becoming more cooperative in this regard.

Construction

As for the number of issued construction permits, one may note an increase in the number of issued construction permits since the unified procedure was introduced.

According to the World Bank's recent global Doing Business ranking, Serbia is in 9th place in terms of obtaining construction permits, which represents an exceptional leap compared to 152nd place only a few years ago. In addition, the World Bank noted that reforms are being undertaken to facilitate business in this area.

Legalization

For facilities used without a use permit, the respective permit is to be obtained in a regular procedure, in accordance with the law governing the construction of buildings, unless, in the course of construction, deviations from the construction permit were such that an amendment to the construction permit cannot be obtained. Exceptionally, only in cases when a construction permit was issued in a previous legalization procedure, but no use 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, and the Law specifies what is considered evidence of title.

Properties for which an earlier application for legalization was already denied cannot re-apply for legalization, unless the planning document was amended or the request was denied for reasons which are otherwise stipulated in the Legalization Law, and which are more favourable for the owner of the illegally constructed building.

The law stipulates for a fixed legalization fee determined using 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 produced in 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

Conversion of the right of use to ownership of construction land

A large number of conversion cases have been suspended, mainly on the 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 shall be immediately suspended by the competent authority if it is established that the plot of land is subject to restitution, until the final completion of the restitution process.

However, Article 9 of the Law on Property Restitution and Compensation 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 a majority state-owned capital and cooperatives, including enterprises and cooperatives in the process of bankruptcy or liquidation) is obliged to return nationalized property, and that restitution in kind is not possible in all other cases. Consequently, a 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 a 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.

Also, although the amendments to the Planning and Construction Law have to a certain extent clarified the dilemma regarding cases when the conversion is carried out with a fee, there are still hesitations and uncertainties of the competent authorities present in practice when resolving conversion requests, especially in cases where the buildings were transferred after the completion of privatization, bankruptcy or enforcement proceedings, or when assets (buildings with associated usage right on the land) and not legal entities are being purchased in these proceedings. In that sense, it would be necessary to make legal texts more precise and, in the meantime, for competent authorities to take a consistent position for the purpose of efficiency in these proceedings.

Construction

The implementation of the integrated procedure and the latest version of the Planning and Construction Law should be monitored by all relevant stakeholders in order to timely identify and remove the problems that arise in practice. It is also necessary to improve software solutions and capacities to facilitate and speed up the procedure of electronic submission of documentation.

It is necessary to continue with the education of authorities in charge of the law's implementation. It is often a case in practice that certain applicable regulations are not applied by authorities in a uniform way.

Also, it is required that the competent authority in the integrated procedure issues permits with the appropriate content which will, in accordance with the relevant legislation, enable the investors to register ownership rights at the newly constructed building(s) (especially when it is related to a complex with several buildings and lines/pipelines), and without being exposed to an additional consumption of resources and time in order to obtain some special documentation (evaluation reports and etc.) by which it will be confirmed what building/s the construction and usage permits are related to (comparing the permits and projects based on which the permits have been issued). It is necessary that permits be forwarded without delay and in accordance with the official duty to the competent cadastre authority of immovable properties i.e. the office for the utility network cadastre (if it is related to the constructed pipelines).

The latest version of the law introduces amendments in relation to the issuance of construction, upgrade or reconstruction permits for utility infrastructure and line infrastructure and energy power facilities by providing, as proof of settled property-legal relations on the land, inter alia, the investor's statement that it will settle property-legal relations prior to issuing use permit. The idea of the legislator is to issue a construction permit for the whole project, and to start works on parts of the project on parcels where the property-legal situation has been resolved, all in order to accelerate the start of construction. However, this solution has no visible effect in practice, because the previous legal solution already envisaged that the notification of the commencement of works cannot be made before obtaining evidence on resolved property-legal relations.

Additionally, it is necessary to make the legal definition of evidence on settled property-legal relations from Article 69, paragraph 9 of the Law more precise. The current formulation leads to an illogical legal solution because Article 148, paragraph 5 of the Law prescribes that (if the construction permit was issued on the basis of the investor's statement that it will resolve property-legal relations before the issuance of a use permit) notification of the commencement of works may be submitted only for the part of the building for which the investor has submitted evidence on the resolved property-legal relations. In this way, the statement would at the same time be the basis for the issuance of construction permit, and evidence of settled property-legal relations on the basis of which the works may be notified, which is not in accordance with the spirit of the law.

Subcontractor's license

The lack of precision regarding the obligation to obtain a license for contractors and subcontractors leads to uneven and unclear practice. The question arises as to whether subcontractors are obliged to obtain the license or if it is sufficient for the contractor to hold the license and vice versa. The answer to this question does not only affect the existence of the obligation to initiate the process of acquiring the license, but also other aspects of the subcontractor's and contractor's business, especially if it is a foreign entity.

Legalization

Prohibition on disposal has created a problem when the title holder of an illegal building and the title holder of the land

are not the same person. The Law should be amended in order to enable the legalization of such buildings when there is consent of both sides. Also, given the huge number of illegal buildings in Serbia, it is necessary to reconsider whether the prohibition on the disposal of illegal buildings should be limited to buildings that cannot be legalized because in practice, the existing prohibition significantly complicates legal transactions in situations where legalization is possible and hence such prohibition is not justified. Also, prescribing the deadline for legalization which results in the rejection of a request for legalization is a principle that should be changed, because the procedure is conducted ex officio and does not depend on the will of the party, and therefore the owner of an illegal building should not bear consequences of the administration's inefficiency.

The Law is ambiguous on the issue of whether a decision on legalization substitutes a construction permit and a use permit, as can be concluded from Article 12, paragraph 1 of the Law. Namely, a decision on the legalization of a building is issued by the Ministry of Construction, i.e. the competent authority of the autonomous province i.e. the local authority (hereinafter referred to as the Competent Body) upon the performed procedure, when it will be determined whether an illegally constructed building fulfils the stipulated conditions for use and other conditions defined by the Law. However, the practice has shown that a decision on legalization does not constitute, pursuant to the opinion of the competent institutions, a valid legal base for issuing an energy licence, which is why the energy licencing procedure requires performing a special technical acceptance procedure for buildings which have been subject to legalization, i.e. obtaining a special technical examination commission report in which it will be clearly stated that the building is fit for use in accordance with its purpose even though for such a building the purpose is stated in the decision (for example: a tank for euro diesel with a capacity of Xm3). Furthermore, the owners of the buildings are exposed to additional expenses and are put into an unequal position compare to the owners of other buildings with different purposes for which it is not required to obtain an energy licence.

FIC RECOMMENDATIONS

- The implementation of the Planning and Construction Law should be monitored by all relevant stakeholders.
- All competent authorities should be clearly and precisely trained to implement the Planning and Construction Law.
- The implementation of the Legalization Law should be monitored by all relevant stakeholders. It is necessary to amend this Law in order to limit the prohibition of disposal to buildings that cannot be legalized, as well as to delete the provision that provides for rejecting a request for legalization if the legalization is not completed by 2023. Moreover, it is necessary that the Decision on legalization has the power of a construction permit and a use permit, which will be prescribed by the appropriate content of the decision (without an additional technical examination /obtaining of a special permit to use).
- Article 11(6) of the Law on Conversion for a Fee should be confined to cases where the conversion applicant is a company with majority public or state-owned capital. Also, it is necessary to clarify when the conversion is carried out with the fee and when not.
- Communication and co-operation should be improved between the authorities on the one hand, and the FIC 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 all.
- Definition of evidence on the settlement of ownership rights in Articles 69(9) and Article 148(5) should be clarified, to avoid the interpretation that the investor's statement stating its intent to settle ownership of the real estate before the issuance of a use permit is also proof that ownership rights were settled.
- The obligation of subcontractors engaged by a contractor to hold licenses which are already held by the contractor and vice versa should be clarified.

MORTGAGES AND REAL ESTATE FINANCIAL LEASING 1.00

CURRENT SITUATION

The Law on Mortgage, adopted at the end of 2005, was last amended in 2015.

We have to point out again 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.

Notwithstanding the fact that the Law on Mortgage has not been subject to amendments recently, the procedure on mortgage registration in the cadastre has been significantly amended by the adoption of the Law on the Registration Procedure with the Cadastre of Real Estate and Utilities in 2018, which reflected not only on the procedure for mortgage registration, but on the implementation of certain provisions of the Law on Mortgage as well.

The financial leasing of real estate, introduced by amendments to the Law on Financial Leasing in May 2011, is not yet operational in practice.

POSITIVE DEVELOPMENTS

On the whole, the Law on Mortgage from 2015 introduced significant improvements 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.

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

Regulating the time frames within which cadastral authorities must decide on requests for the registration of relevant annotations has resulted in an increased efficiency of the cadastral authorities in terms of registration. Furthermore, the introduction of the principle of officiality under the Law on the Registration Procedure with the Cadastre of Real Estate and Utilities, which provides for the public notary's obligation to submit the certified document within 24 hours of certification of the document, has additionally contributed to the acceleration of the registration procedure.

One of the positive changes is also the resolution of the issue of which procedure is applicable when a foreclosure is initiated on the basis of both the Law on Mortgage and the Law on Enforcement and Security.

REMAINING ISSUES

A situation that is not uncommon in practice, i.e., the registration of one mortgage as collateral securing multiple claims on different grounds and also by multiple creditors has not yet been explicitly regulated. Issues related to setting up 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 a "third party" (in effect "the security agent") is a positive step, but the existing 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 mortgage creditors before the competent authorities.

The form of the mortgage document has not been regulated in a satisfactory manner yet. Bearing in mind 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 a 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 provide 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 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 the Law on Contracts and Torts are in many cases interpreted incorrectly, which leads to an inconsistent application of these two laws.

Bearing in mind the principle of officiality introduced by the Law on the Registration Procedure with the Cadastre of Real Estate and Utilities, it remains unclear how the provision under Article 53 of the Law on Mortgage, which provides for the disposal of an unreleased mortgage, will be implemented. Specifically, the disposal of an unreleased mortgage is subject to the provision of evidence that the secured claim has ceased to exist, i.e., to the issuance of a deed of release by the previous mortgage creditor in the form of a notary deed or a document solemnized by a public notary. Hence, it is unclear how the mortgage debtor who wants to dispose of the subject unreleased mortgage will prevent its release in case of the notarization of a deed of release, when a public notary is obliged to submit the subject deed of release to the competent cadastre registry within a 24-hour deadline. On the other hand, without a notarized deed of release, the owner of mortgaged real estate will not be able to dispose of the unreleased mortgage.

Finally, the Law on Mortgage has not explicitly stipulated 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.

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 the Registration Procedure with the Cadastre of Real Estate and Utilities. 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 1.43

CURRENT SITUATION

By adopting the new Law on the Registration Procedure with the Cadastre of Real Estate and Utilities, some progress has been made in the work of the real estate cadastre, which is primarily reflected in the implementation of information technologies (IT) in almost every segment of cadastral operations and which contributes to increased promptness, clients' time savings and simpler and faster registration procedures. The implementation of regulations can generally be assessed positively, but obviously there is still plenty of room for improvement.

The new Law on the Registration Procedure with the cadastre of Real Estate and Utilities introduced important novelties which are primarily reflected in the manner of submitting requests and documentation to the cadastre, relations between the cadastre and other public authorities, as well as deadlines for procedures. The law should further expedite cadastral procedures by introducing the obligation of public notaries, courts, public enforcement officers and other state authorities to send their records electronically in shorter time. By introducing the electronic counter, the aim of this law is for written cadastral procedures to be gradually converted to electronic ones as well as to improve cadastral procedures. However, the drawback of the law is an even more strict treatment, reflected in the reduction of one of the most important principles of procedural law - helping the uneducated clients. The effective implementation of this law is a challenge that is ahead of us.

POSITIVE DEVELOPMENTS

The new Law on the Registration Procedure with the Cadastre of Real Estate and Utilities provides visible results in terms of the acceleration of processes, as well as clearer and more efficient cadastral procedures. It is expected that the newly adopted law will strengthen this trend by simplifying the complicated cadastral procedures and shortening the deadlines.

One of the key novelties introduced by the law is the obligation of public notaries, courts, public enforcement officers and administrative authorities to submit ex officio documents that represent a legal basis for registering in the cadastre, for the purpose of implementing the change. With this novelty, the entire process has been significantly shortened because the real estate cadastre will no longer have to check the legality of submitted documents, because the legality of a document is under examination in the process of its adoption, compiling or confirmation, so it is not necessary for the same documents to be examined by the authority for registration in the cadastre. With this novelty, the arbitrariness of the authority for registration in the cadastre is reduced to a certain extent because the assessment of legality has been transferred to other authorities, which have shown greater preparedness for the harmonization of their work and transparency in decision making.

An important novelty is that if registration is done by a notary public, one can also, at the client's request, submit a tax application for determining the tax on the transfer of absolute rights or inheritance and gift taxes, as well as a tax application for determining property tax, after which the cadastre can forward it to the competent tax authority.

In addition to the fact that the new law shortened the deadlines for submitting registration requests to the real estate cadastre, the deadlines for their realization are also shortened. It is envisaged that if the documents for registration are submitted by public notaries, courts or other competent authorities, the cadastre will render its decision within 5 business days, while if the requests for registration are submitted by a natural person, cadastre will render its decision within 15 business days, except in the case of mortgage registration or the registration of mortgage sales, as well as in simpler administrative matters, where the deadline is also 5 business days.

For the purpose of the reliability and accuracy of information about immovable property that are available in the real estate cadastre, the new law stipulates that for each immovable property a unique registration number shall be determined and entered, that prenotation of facilties and separate units of a facility that are under construction shall be recorded without the limitation of prenotation duration, the recording of new annotations –annotation of an appeal of a first-instance decision, annotation of the existence of a Concession Agreement, annotation that during the commissioning process the commission established the change of the title holder on a plot of land, and annotation that the document with which registration in the cadastre has been made has been delivered to the authority which is competent to initiate ex officio an appropriate procedure for its annulment, i.e. termination, as well as delivered to the public prosecutor.

Finally, although there is a tendency to replace paper form applications with electronic ones, clients are still left with the possibility to submit requests and all necessary documentation in paper form, while the cadastre will accept such requests until the end of 2020. Public notaries, public enforcement officers, and local government units shall submit documents to the real estate cadastre exclusively by electronic means, via e-counters, and the same obligation will be imposed on courts from 1 January, 2020.

Recently, the Geodetic Authority presented a new website, http://upisnepokretnosti.rs, which improved the availability of information on how to register in the cadastre, on competent public notaries, the status of cadastral subjects, statistics of solved claims, as well as other relevant information related to the procedure of cadastral registration.

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 the 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 in 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 issuing the decision, 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 within 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 conscienceless investors are protected. To avert such situations, either the practice of the cadastre authority should be changed, or the law needs to be changed in order to create the obligation 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. when entire floors are constructed on top of the existing buildings.

In addition, the legislature should define what is considered the principal thing and what its accessory, given the collision of the mortgage with the gage on movable items that ceased to be movable once they became incorporated into the immovable property (e.g. air conditioning, various installations).

The biggest problem that remains are the deadlines for deciding on the requests of the parties for registration in the cadastre register that are regularly exceeded due to work overload of the cadastre offices. Although some progress has been made, a large number of unresolved cases from the past have remained, some of which are more than several years old. Also, the Geodetic Authority should organize work on second-instance cases in a way to ensure a greater efficiency and speed of resolution, since decision-making in second-instance cases often lasts for several years.

Digitization and arrangement of cadastral plans have not been completed, and in practice, there is a lack of harmonization of the data contained in the cadastral operation and the corresponding cadastral plan, which is slowing down investments that as an object have large surfaces of land.

Software problems that prevent the implementation of regulations must be addressed and resolved quickly, rather than keeping them unresolved for a long period of time.

The data available through the e-Cadastre are not always reliable, because the updating of the data is not frequent enough.

In practice, there is also an inability to complete the so-called notarial requests, i.e. cases that are formed on the basis of requests and documents for registration that a notary public submits ex officio, to the cadastre. The only way to complete such subjects is through an appeal to the decision on suspending the procedure of the real estate cadastre office, which additionally complicates the entire procedure (for example, in case the Agreement on sale and purchase is certified before the entry into force of the new Law on the Registration Procedure with the Cadastre of Real Estate and Utilities, and clausula intabulandi after that date).

After number of legal changes, there is still ability to abuse the institute of annotation of an initiated dispute with direct effect on factual possibility of immovable property disposal. The law issues the registration possibility of annotation of an initiated dispute in itemized listed situations so the third party can be informed that a specific real estate title is the subject of a dispute, and that there is conditional possibility of changing the current state. Despite the legal framework, when a submitted demand for annotation request evidently does not fulfil legally settled criteria, competent authorities are taking part in making decisions that are made by their own merits, that can last for a long time, in which period the owners have difficulty with disposal of their immovable property (for example the existence of annotation discourages potential buyers of the immovable property). New legal solutions introduced the mechanism to help speed up decision making by the authority in this situation, but implementation in practice is inconsistent and depends on cadastre office.

Also, the fact that the notary public is obliged to submit notarized documents to cadastre within 24 hours, creates problems in practice when the parties want to postpone the submission in order to simultaneously perform some other actions (for example, a buyer is ready to pay the price to the seller from which the mortgage creditor registered on the object of the sale will be settled if he is sure that he will get a mortgage release permission). On the other hand, the mortgage creditor would be willing to issue such permission that would be held by a third party until he receives money. This scenario protects all three parties, but with the existing legal regulation this is not possible because the public notary would immediately forward the mortgage release permission to the cadastre, which would endanger the interest of the mortgage creditor.

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. A particular problem is the current work organization of the Geodetic Authority related to the registration of lines/utility networks and their rights. Namely, registration in the registry of the utility network cadastre upon request of the third party is performed by a small number of utility offices in the utility network cadastre (established in one centre – an office in charge of several municipalities), for which reason the work procedure has been additionally delayed, not only in the process of resolving cases before the utility network cadastre but also with respect to issuing copies of plans for already drawn/registered utility networks/lines even in comparison to the previous period (before the establishment of the subject office). Moreover, there is no possibility to lodge an electronic complaint regarding the work of the utility network cadastre office as a special organizational unit, via the website of the Geodetic Authority.

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 possible to made on the spot.
- It is necessary to establish an even more efficient system of resolving requests of clients and to simplify the

way to complete the so-called notarial subjects or introduce the obligation of the public notary to attach the documents required for the registration.

- Forming electronic database for the Utilities cadastre that will be available to the public or registered users in the way that has already been done with the real estate cadastre, with the possibility of issuing a certificate from the utility network cadastre (corresponding to a certificate from the immovable property cadastre).
- Creating the legal possibility that the public notary should not be obliged to submit the notarized documents to the cadastre immediately if the clients wish so.
- It is necessary to register all utilities in the utilities cadastre without delay.
- The Geodetic Authority should ensure a harmonization of administrative practices among all cadastral offices / the utility network cadastre office, increase control over their operations, ensure more availability to clients for consultations, and handle complaints more efficiently, i.e. to enable electronic complaints about the work of the utility network cadastre office, through the website of the Republic Geodetic Authority.
- It is necessary to prescribe urgency when resolving clients' requests for entry/deletion of the annotation of a dispute at all stages of decision making, as well as a consistent implementation of the law.
- The 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 1.33

CURRENT SITUATION

The urgency of restitution is grounded in its tremendous potential for promoting the security of property 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 some 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 a property, which may be subject of restitution, is not in private ownership. 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), as well as other stakeholders including the Constitutional Court, have taken a rigid position, particularly with respect to foreign nationals. This is reflected in an inadequate application of the principle of dis-

cretionary 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 problem is a result of the deficiencies in the law itself which prevent the stakeholder to apply the principle of free assessment of the evidence, and there are also discrepancies between regulations in the field restitution.

Agricultural Land

Starting from 1 September 2017, EU citizens may acquire the ownership over agricultural land of a surface area up to 2 hectares, 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 a misinterpretation of provisions of the Law on Agricultural Land.

The Law on Co-operatives adopted in 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

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.

EU citizens may acquire ownership over agricultural land.

Restitution

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.

With amendments of by-laws, the restitution of agricultural land by substitution was made possible. This means that, in some cases, it is possible to acquire the right to restitution of agricultural land of the same type and quality as the seized agricultural land, but on the territory of a different self-government unit.

REMAINING ISSUES

Restitution

Ambiguities and inconsistencies in the Law have led to divergent 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.

The question of the freedom of the assessment of proofs in restitution procedures has not been resolved. Claimants in restitution procedures who are not able to obtain the legally prescribed specific proof – the document on seizing – will not be granted the restitution right regardless of the existence of other proofs that the seizing of the property did occur. Unfortunately, the Constitutional Court of the RoS has taken the position that lawmakers are allowed to

exactly specify the proofs that must be submitted in the procedures for proving a certain fact, as well as that lawmakers are entitled to detremine that all the other means of proving are "insufficient and unreliable," so the initiative for determining the constitutionality and legality of the respective provision of the law has been rejected.

Agricultural Land

State bodies, namely the Ministry of Finance, have maintained the position that has been taken in a number of previous decision - 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. Namely, as it has been pointed out in decisions of the Ministry of Finance, administrative bodies are not competent to decide on requests of co-operatives related to privately-owned 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.
- Foreign nationals should be allowed 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, specifically 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 1.21

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 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	2008-2009			√
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.	2016			√
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	2018			√
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	2018			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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	2018			√
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	2016			√
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	2017			√
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 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:				

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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	2016			√
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	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			√
Employment of Foreign Nationals				
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.	2009		√	
The labour market test should be excluded in the case of hiring high-ranking managers	2015			√
The Central Registry's certificate regarding whether an employer, prior to filing a request for a work permit, had dismissed employees as redundant should contain the exact job title of the redundant employee	2015			√
Secondment of employees abroad				
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	2016			√
Allow secondment abroad for the purpose of vocational training also to entities which are not necessarily related to the employer by equity or control	2018			√
Allow the secondment abroad of employees under the age of 18	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 the relationship between the employer and an individual, the employer and the service user, the employee and the 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		√	

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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, 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 labor legislation underwent significant reforms during the pre-2014 cycle, but in the period that followed no extensive amendments were made to the Labor Law (RS Official Nos. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017, 113/2017 and 95/2018; hereinafter: Labor Law or Law).

In November 2016 the Constitutional Court rendered a decision on the unconstitutionality of the Labor 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 Labor 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. 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 Labor 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.

At the end of 2018 the National Assembly adopted an authentic interpretation confirming that, in case a status change or other change of the employer results in registration of the successor employer as a newly established legal entity, the duration of a fixed-term employment with the newly established employer shall not accumulate the duration of a fixed-term employment with a predecessor employer. This means that the successor employer can, within one year following the date of its registration, enter new employment contracts with new employees, as well as employees taken over from the predecessor employer, for a fixed term of up to 36 months.

POSITIVE DEVELOPMENTS

In the previous year we have not seen improvements in this area, although we expect them, not only through amendments to the law but also in courts' decision-making, especially since the law allows the court to adjudicate the equivalent amount of up to 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 Labor Law.

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

REMAINING ISSUES

Certain provisions of the Labor 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. – Salary structure in the Labor Law is quite complicated and regulated by imperative norms. Therefore, the international companies which are doing business in Serbia do not have the possibility to calculate salary for their employees as elsewhere in the world

where they operate, so they are practically forced to apply complicated salary structure and calculation in Serbia. Besides that, although the new Law on Health Insurance introduced certain novelties regarding the salary compensation during sick leave, there remains a problem that salary compensation is equivalent to the average salary in the previous 12-month period, the same as with salary compensation during national holidays, annual leave, paid leave, etc. This leads to a situation where salary compensation is higher (mostly due to bonuses) than the salary employee would get if he had worked. The direct consequence of this is inability to plan companies' budgets.

- On-the-job Training – When it comes to engaging persons outside employment for the purpose of professional development, the Labor Law in Article 201 envisages the possibility of engaging persons through a contract on vocational training or a contract on professional development. Given that for the conclusion of a contract on vocational training it is necessary that the law or a rulebook require passing an internship or a professional exam, while for the conclusion of the professional development contract it is necessary that a special regulation envisages professional training for work in the profession or specialization, the application of both of these contracts in practice is limited, especially when it comes to the private sector. In this way, along with the above-mentioned restrictions, work practices or engagement of students and graduate students who want to improve and acquire certain practical knowledge and skills for easier future employment, remain outside the scope of the Labor Law.
- 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.
- Suspension from work, disciplinary procedure and termination of employment - The Labor Law does not clearly regulate: (a) the rules for a temporary suspension of an employee from work, in the event of violation of work duty and disrespect of work discipline, (b) a procedure in case of unsatisfactory work performance of an employee (c) a procedure in the event of the termination of an employment agreement before the expiration of probation work. As for the termination of an employment agreement before the expiry of the probation work, it is not quite clear whether the employer should submit to the employee a warning letter when the reason for termination is a breach of work duties or work discipline. Also, the subjective and objective statute of limitations of the termination of an employment agreement – six months from the date of fact finding / one year after the date of the occurrence of the facts, is too short, which particularly affects employers with a large number of employees, complex structures and processes, as well as those employers who can initiate the termination of employment agreement only after internal control determine the entire factual situation. For the aforementioned reasons, in complex cases, the legal deadlines are often missed, and there are situations where employees who have grossly violated their work duties or who did not respect work discipline remain in employment. As far as the termination of employment and the notice period, in practice, the problem is the inability to contract a notice period of more than 30 days in case of the termination of an employment agreement by an employee. This is especially relevant in the case of the termination of an employment agreement by a director or another management member, because it is very difficult to find an adequate replacement in such a short time.
- Digitalization in labour regulations – New information technologies have brought changes to all segments of life which inevitably affects the very essence of work and labour relations (virtual and online employers, digital employees, work at distance and on platforms, e-nomads, agile work, etc.) and which the existing labor legislation doesn't fully recognize. Having in mind that digitalization is an inevitability and that it is already applied or can have a wide application in labour relations, and since there is both a law regulating electronic documents and a major breakthrough in the Law on the General Administrative

Procedure, it is of great importance for all companies looking to invest in the digitalization of their business operations to amend the labour regulations by defining an alternative way of conducting formal communications between the employer and employees electronically and using electronic documents. Along with the change in relevant provisions of the Labor Law, we also consider it necessary to amend the Law on Labour-Related Records and adjust the obsolete regulation to contemporary digitalization processes, by introducing the possibility of keeping documents in electronic form and adjusting the safekeeping periods for documents. If work on digitalization is intensified, positive effects on the business would be multiple, primarily through the improvement of business efficiency, cost savings, but also with significant ecological effects (minimum use of paper).

FIC RECOMMENDATIONS

- We suggest to prescribe that employee performance is only an option and not the mandatory part of salary. We also suggest the base for salary compensation during leave from work to be equal to the base salary increased for seniority. That would be a great relief to all employers to manage salaries and to have more flexibility when contracting a salary, but also regarding budget planning, while salary structure itself would be much more comprehensible.

- We propose amendments to the Labor Law in the part regulating vocational training and development. This law should provide for modalities for the engagement of students and other persons without an employment contract (both in and outside the area of education) in order to acquire practical knowledge and experience in a real working environment, career development and easier future employment. The existing provisions on vocational training and development should further remove the conditions limiting the possibility of such engagement regardless of the activity of the employer and whether it is the public or private sector. The competent ministry may determine all necessary mechanisms to prevent the misuse of this institute, if this was the reason for imposing restrictions in Article 201.

- 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 the employer's premises. Work organization flexibility needs to be expanded to include the possibility of introducing overtime, not only in connection with unforeseen circumstances and emergencies. The employer and employees should be free 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.

- It is necessary to: (a) more clearly regulate the cases of unsatisfactory work performance of an employee and define the shortest appropriate period for the employee to improve performance, (b) extend the statute of limitation periods for the conduct of proceedings (the subjective period of 6 months to be extended to at least one year and the objective period to 3 years), (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 should have 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, (f) it is necessary to amend the Labor Law in the part referring to Article 36, paragraph 4 so as to define more precisely the procedure for terminating an employment agreement before the expiry of the probation period, in such a way that the employer is not obligated to conduct the procedure from Article 180 of the Labor Law even in the case when the reason for termination is a breach of work duty or work discipline.

- For the purpose of keeping pace with trends, solutions and possibilities that the digitalization process entails, it is necessary to amend the Labor Law so as to define an alternative way of conducting formal communications between the employer and employees electronically and using electronic documents, the electronic signature, electronic delivery, the electronic bulletin board, electronic record keeping, etc. Also, we consider it important to amend the Law on Labour-Related Records as regards three key items: 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.

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 to overcome.

POSITIVE DEVELOPMENTS

There were no changes in the field of PwD employment and inclusion 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 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 1.33

CURRENT SITUATION

Employment of foreigners is primarily regulated by the Law on the Employment of Foreigners from 2014 and the Law on Foreigners from 2018, both of which were last amended in April 2019.

The employment (via an employment contract and on other basis) and self-employment of foreigners in Serbia is subject to obtaining a work permit, except in cases specifically listed in the Law on the Employment of Foreigners.

The Law on the Employment of Foreigners envisages two types of permits to work: (i) personal work permit, enabling foreign nationals who have a permanent residence permit, as well as refugees and other special categories of foreign nationals, to work, be self-employed, and exercise unemployment rights in Serbia; and (ii) work permit which is further classified as: work permit for employment, work permit for self-employment, and work permit for special cases of employment (seconded employees, movement within the company, independent professionals and professional training). A personal work permit is issued at the personal request of a foreign national, whilst a work permit (except for a work permit for self-employment) is granted at the request of the employer.

For a given time period, a foreign national who seeks employment in Serbia may be granted only one type of permit to work, and a foreign national may only conduct the business activity for which he/she was issued the work permit. A requirement for obtaining a work permit is holding a temporary residence permit in Serbia, or visa for longer stay issued on the grounds of employment (type D visa), and a work permit is issued for the period of validity of the temporary residence/type D visa. All of the abovementioned types of work permits have specific requirements with regard to the necessary documentation and conditions that have to be fulfilled for their issuance.

POSITIVE DEVELOPMENTS

Amendments to the Law on the Employment of Foreigners

from 2017 and 2018, as well as the new Law on Foreigners adopted in 2018, have contributed to the creation of more favourable conditions for the employment of foreigners. Amendments to both laws from April 2019 are aimed in the same direction, as their main goals are to simplify and accelerate the procedure for the employment of foreigners, as well as to better position Serbia to attract more investments and create a more favourable business environment.

These amendments include, inter alia, the following significant changes:

- possibility of applying for a work permit on the basis of a type D visa issued on the grounds of employment. The permit is issued for the period of validity of such type D visa (maximum of 180 days). To extend the work permit, the foreigner will have to apply for a temporary residence permit;
- possibility for a Serbian employer to apply for a work permit on behalf of the foreigner, while the procedure of obtaining type D visa is still in progress. This will enable the foreigner to start working for the Serbian employer as soon as he/she enters the country;
- possibility of electronic application for issuance/extension of temporary residence permit, even from abroad;
- possibility for a foreigner to apply for issuance/extension of both a temporary residence permit and a work permit in a single procedure before the competent authority. The possibility of applying electronically has also been introduced; and
- introduction of the National Employment Service's (NES) obligation to obtain ex-officio the opinion and consent of the competent ministries, which are necessary for the issuance of a work permit for seconded persons and a work permit for movement within the company.

If administered properly, these changes should simplify and accelerate the employment of foreigners in Serbia.

The provisions pertaining to type D visa as an additional basis for the issuance of work permits and the possibility of electronic application for temporary residence permits shall apply as of 1 January 2020, whereas the provisions regulating the possibility of filing a single application for a temporary residence permit and a work permit shall apply as of 1 December 2020.

REMAINING ISSUES

Despite the benefits provided by the latest amendments to the Law on Employment of Foreigners and the Law on Foreigners, certain restrictions for employers imposed by the Law on Employment of Foreigners still create problems in practice, and it is safe to assume they will continue to do so in the future. This particularly refers to the provisions prescribing that a work permit will only be issued to an employer if that employer had not dismissed employees as redundant prior to filing a request for a work permit. A labour market test is still required for all situations of obtaining a work permit for employment, which creates problems in practice when it comes to hiring senior management. Also, the issue of the maximum period of validity of residence and work permits (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 makes the procedure for obtaining a work permit significantly more difficult, given that obtaining a temporary residence permit is an excessively complex 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 length of the procedure for obtaining work permits, as well as the costs. Under amendments to immigration laws from April 2019, an application for the extension of a work permit for seconded persons and for movement within the company is to be submitted to NES at least 60 days before the expiration of the previous work permit, while prior to these amendments it was possible to file for extension within 30 days before the permit has expired.

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 labour market test should be excluded in the case of hiring high-ranking managers.
- The Central Registry's certificate regarding whether an employer, prior to filing a request for a work permit, had dismissed employees as redundant should contain the exact job title 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 the secondment (the mandatory elements of the annex are prescribed by the Secondment Law). 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 Law (such as during pregnancy). The initial duration of secondment is limited to 12 months, with the possibility of extension. In case of a secondment of definite-term employees, the duration of such 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.

The 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.

With amendments to the Secondment Law that have been in force since 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.

POSITIVE DEVELOPMENTS

There were no positive developments in this area in the past period, with regard to the previous edition of the White Book.

REMAINING ISSUES

Limiting secondment abroad for the purpose of vocational training only to the employer's business units 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 train-

ing 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 constrained.

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 on end, 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 under the age of 18.

STAFF LEASING 2.00

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 several years have passed since then, Serbia still does not have a law on staff leasing.

POSITIVE DEVELOPMENTS

In late 2018 the Ministry of Labour, Employment, Veteran and Social Affairs published the first draft of the Law on Temporary Agency Employment, followed by public consultations on the draft where stakeholders provided numerous remarks and suggestions. However, as the social partners could not agree on certain key provisions of the first draft of the law (for example on quotas of leased employees, on the possible introduction of an agency deposit, as well as on the definition of the term comparable employee), it was returned for revision to the Ministry. After further consultation between the social partners and the competent ministry, on 1 August 2019, the final text of the Bill on Temporary Agency Employment was adopted by the Government of the Republic of Serbia. According to the position of the Government, this area will be finally regulated in line with international standards of the International Labor Organization (ILO) and the European Union (EU), and the so-called agency employees will be protected to the maximum. Namely, agency employees will be guaranteed equal salary and other working conditions (working hours, absences, vacations), safety and health at work and other working conditions applicable to employees directly employed by the employer. The Bill on Temporary Agency Employment has been in parliamentary procedure since 2 August 2019, but a final text of the law has not yet been passed by MPs.

The competent ministry, while preparing a final draft of the law, only partially took into consideration the FIC's suggestions for the improvement of the draft law obtained during the public consultation process. Among others, the following recommendations of the FIC were accepted (partially):

- The definition of the Comparable Employee was partially accepted.
- Restrictions on the conclusion of agreements on the assigning of employees - the maximum number of employees that can be assigned to the employer-user has been determined, but only if they are fixed-term employees, while there are no restrictions for permanent employees.

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. This means that, formally, employers could be sanctioned for misdemeanour because leased employees do not have an employment contract with the company by which they are leased. Also, there is a risk (some cases have been 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 that company – this mostly happens in cases when their work engagement ceases due to the termination of business cooperation between the staffing agency and the company using its services.

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

Most of the FIC recommendations have not been accepted by the Bill on Temporary Agency Employment, including, inter alia, the following:

- Recommendations regarding the provisions of the law prohibiting the conclusion of an agreement on the assigning of employees were not accepted (Article 13).
- Duration of the assignment - the fiction of the transformation of permanent employment is related to the employer-user (Article 13).
- Termination of the employment agreement - for reasons arising from the employer-user: new rules are introduced in the field of the initiation of a labor dispute, although this is already regulated by the Labor Law (Article 23).
- Provisions for compensation of loss - subsidiary liability of the agency, instead of joint and several liability (Article 32).
- The prescribed amounts of fines for misdemeanors are too high (Article 35).
- Implementation of the law as of 1 March 2020 (Article 41).

FIC RECOMMENDATIONS

- The concept of staff leasing should be regulated by a separate regulation, which would govern all important issues with respect thereto and be aligned with accepted international standards (primarily ILO and EU documents), as well as with the legislation of the Republic of Serbia (i.e. Labor Law).
- Article 2, paragraph 5 of the Bill on Agency Employment is unclear, and needs to be specified, reformulated or deleted, bearing in mind that it is unclear what happens in a situation where an employer has a large number of employees with the same level of education, that is, the level of qualification.
- The Law on Temporary Agency Employment should not establish quotas for leased employees, i.e. maximum number of leased employees in relation to the total number of employees, regardless of the type of employment relationship (fixed-term or permanent), as such a concept has no grounds in the EU Directive 2008/104/EC, ILO documents, or legislative practice in a majority of EU countries.
- The fiction of the transformation of permanent employment should be related to the agency, as the employer of the employee.

- Initiation of a labor dispute - the possibility of initiating a labor dispute and the content of a claim in such a dispute are regulated by the provisions of the Labor Law. There is no need to introduce new rules in this area, especially given that this would differentiate between employees and assigned employees, and the primary objective of this law is to equalize the rights of these two categories of employees.
- There is no basis for subsidiary liability of the agency for the compensation of loss of the assigned employee, but solely and exclusively for joint and several liability.
- Reduce the amounts of fines for misdemeanors, or divide misdemeanors into several groups by the amount of the fine imposed (as done in the Labor Law).
- Having in mind the impact that the Law on Temporary Agency Employment has on the economy, the Law should provide for a long enough vacatio legis period so that companies may adequately prepare for its implementation, and depending on the date of entering into force, we consider it necessary to delay the application of the law for at least 6 (six) months from the date of entering into force.

HUMAN CAPITAL AND DUAL VOCATIONAL EDUCATION 1.25

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Human Capital				
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 the 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	2008		√	
Define the legal framework for the employer-student relation to simplify the implementation of vocational internships in parallel with regular education	2017			√
Define the legal framework for preparing persons with high education profiles to work independently in their profession, regardless of whether they meet the requirements for taking an expert exam and/or conducting an internship program	2017			√
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	2017			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Design a human capital internal migration plan for Serbia to evenly develop underdeveloped regions and lessen the gap in the economic needs of 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	2018			√
Dual Vocational Education				
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	2018		√	
A sustainable dual education funding model and possible incentives to attract companies in Serbia to join this system should be defined	2016			√
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 performance-based compensation system	2017			√

HUMAN CAPITAL 1.20

CURRENT SITUATION

The state of the labour market has slightly changed in comparison to the previous year. The unemployment rate in Serbia is 12.8% according to the data of the Statistical Office of Serbia, which is a decrease against last year's 14.8%. The unemployment rate varies across Serbia, reflecting to a great extent 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 recruiting and selecting adequate staff.

By amending the law in the area of labour relations and employment, the state is trying to strike a balance between budget revenues and the economy's needs, creating an environment conducive to new investments and employees' rights. By decreasing the rate of contribution for unemployment on salaries, the government has made an effort in that direction.

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

The introduction of dual education is expected to yield qualified staff capable of working independently in their profession immediately upon completing their formal education, but effects of these changes will only be seen in the long term. Moreover, with the introduction of the National Qualifications Framework, the educational system has proved its readiness to adapt to market conditions and 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

Since the Law on Dual Education and the National Qualifications Framework were adopted in the previous year, their effects are yet to be seen, which means that there has been no significant improvements in this area.

REMAINING ISSUES

Despite the many efforts of the Government and legislators 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 address. Unfair competition, the uneven 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 improving 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 of different parts of the country. The decision of foreign investors to enter a certain market is conditioned by the quality and structure of 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 the 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 the 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 meet the requirements for taking an expert exam and/or taking part in an 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 evenly develop underdeveloped regions and lessen the gap in the economic needs of 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 1.33

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, the material and financial security of students, and other issues relevant for the dual education system. The Law is envisaged to 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 cur-

riculum 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 concluded 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 concluded between the employer on the one side, and the parent or legal guardian of a student under the age of majority, or an 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 undergone the appropriate training and has acquired a relevant licence issued by the Serbian Chamber of Commerce. In addition, there are other conditions the employer has to fulfil in order to take part in the on-the-job training system, such as: conducting a business activity that enables on-the-job training; having the appropriate work space and equipment; ensuring the implementation of measures for health and safety at work; no bankruptcy or liquidation proceedings against the employer, etc.
- The employer will provide the students with personal protective equipment at work, compensation for actual costs of transport 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 shall not be discriminated against, or subjected to physical, psychological, social, sexual, digital, or any other form of violence, abuse and neglect.
- The share of on-the-job training in the total number of classes 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.

POSITIVE DEVELOPMENTS

A positive development compared to the previous edition of the White Book is the adoption of by-laws envisaged by the Law:

- By-law on the organization, composition and method of work of the Commission for determining the fulfillment of conditions for the performance of learning through work with the employer ("Official Gazette of the Republic of Serbia" No. 46/2018), adopted by the Serbian Chamber of Commerce and effective from 23 June 2018.
- By-law on the training program, detailed conditions and other matters of relevance for passing the instructor's exam ("Official Gazette of Republic of Serbia" No. 70/2018), adopted by the Ministry of Education, Science and Technological Development and effective from 29 September 2018.
- By-law on the method of assigning students for learning through work ("Official Gazette of the Republic of Serbia" No. 102/2018), adopted by the Ministry of Education, Science and Technological Development and effective from 29 December 2018.
- By-law on the detailed conditions, method of work, activities and composition of a career guidance and counselling team in a secondary school providing educational profiles in dual education ("Official Gazette of the Republic of Serbia" No. 2/2019), adopted by the Ministry of Education, Science and technological development and effective from 24 January 2019.

The Serbian Government adopted a bill on dual education in higher education on 13 June 2019.

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

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 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 law envisages remuneration for 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 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.
- 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 performance-based compensation system.

top

LEGAL FRAMEWORK

The year 2018 was marked by the adoption of, i.e. changes and/or amendments to, a large number of systemic laws, and therefore in that respect 2019 cannot be compared with the previous year with regards to legislative activity. However, what is characteristic of 2019 is the commencement of the enforcement of laws adopted in the previous year, or the adoption of laws, which are aimed at solving problems of individuals, as well as those aimed at protecting citizens and their civil rights.

Having said that, as the most important novelties introduced into the legal system of the Republic of Serbia, we may point out the following:

- **Law on the Central Records of Beneficial Owners** - The Central Records of Beneficial Owners was established at the Serbian Business Registers Agency on 31 December 2018, while the authorized persons in legal entities and other entities established by 31 December 2018 were obliged to file information with the Central Records not later than 31 January 2019. The commencement of the enforcement of this law has enabled insight into all flaws in its enforcement, problems in connection with the very procedure for registering the respective data, as well as sanctions prescribed by this law in the case where the authorized persons in legal entities and other entities do not act in accordance with this law, which are the main reasons why the Ministry of Economy has decided to form a working group tasked with working on amendments to this law. In parallel with finalising of this White Book edition, the Government has adopted Proposal of Amendments to the named Law, which will be analysed in the next edition of the White Book.

- Law on Personal Data Protection – Although it was adopted in 2018, this Law came into force on August 21, 2019. Basically, it represents a translation of the General Data Protection Regulation 2016/79 (GDPR), with certain specifics reflecting features of the legal system of the Republic of Serbia. The new law has clarified numerous ambiguities which existed in the previous Law on Personal Data Protection, while introducing new additional legal grounds for personal data processing and new legal institutes, such as the obligation for controllers and processors to appoint a Data Protection Officer. Having in mind the foregoing, this law may be described as a small step towards harmonizing the legislation of the Republic of Serbia with the European Union (EU) legislation, especially because it regulates such a delicate matter as personal data.

- Law on the Conversion of Housing Loans Indexed to Swiss francs – This Law was adopted and came into force in May 2019 and it represents an attempt by the authorities to create a legal framework in order to solve the problem of loans indexed to Swiss francs in an uniform manner, i.e. an attempt by the authorities to solve the problem which courts have been dealing with in the past years in a systemic way. Since this Law applies only to natural persons who have concluded an agreement with a bank on a housing loan indexed to Swiss francs, it represents an important part of the legislation aimed at protecting users of financial services.

- Law on Amendments to the Law on Payment Services – Changes and amendments which were adopted in 2018 took effect in March 2019, after the respective by-laws necessary for its enforcement were adopted at the end of 2018. This law and its latest changes and amendments are aimed at promoting the transparency of charges for payment services provided by their providers and keeping users of payment services informed, especially in the pre-contracting phase, which should contribute the protection of users of payment services.

top

LAW ON BUSINESS COMPANIES

1.17

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 harmonized with the provisions of the Law on Contracts and Torts.	2011			√
Common practical issues should be resolved, such as regulating members' additional payments, the reduction of the value of the share, etc.	2018		√	
Clearly defining reasons for lifting the corporate veil.	2018			√
Corrections of technical flaws in the Company Law should be made to eliminate inconsistencies and provide clear procedures and competencies.	2013			√
The increase in the share capital through debt-to-equity swap (conversion) should be clearly regulated.	2016			√

CURRENT SITUATION

The Law on Companies (RS Official Gazette Nos 36/2011, 99/2011, 83/2014, 5/2015, 44/2018 and 95/2018) (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 the 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 the EU acquis in the area of the Company Law.

Now, after more than seven years of the 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 have been 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 came into force on 10 December 2018. This time the Company Law in its latest provisions defines and explains in a more precise manner that all documents (e.g. all kinds of legal transactions, agreements/contracts that are carried out or concluded by a company) are valid and cannot not be made null and void or objected to in court proceedings if a company's stamp was not used or put on them. In addition, in order to foster good corporate governance, the Company Law introduces a new article which only applies in the case of an open joint-stock company. Thus, an open joint-stock company is obliged to make available on the company's website the following accurate and up-to-date information: the profession and previous positions of the members of a board of directors/supervisory board and the information regarding their current membership in other boards or positions they may have in other companies as well.

At the moment of publishing of this text, the public consultations on the amendments to the Company Law were completed and those amendments propose the introduction of a new financial instrument - the right to acquire a share issued by a limited liability company and a reserved own share, as a new legal institute, for the purposes of issuing this financial instrument.

This is a special form of stimulation and motivation, by giving employees, management and third parties (investors,

consultants, etc.) the opportunity to gain participation in the capital of a company.

The new financial instrument is non-transferable, issued by the limited liability company, and gives the consenting holder the right to acquire a share on a particular day at a certain price.

It was also suggested that employees of limited liability company and joint stock companies participate in the distribution of profits, as well as to increase the percentage of own shares that the company can distribute to employees and members from 3% to 5%.

However, as these amendments have not yet entered into force, we will be able to comment on them in the next edition of the White Book.

POSITIVE DEVELOPMENTS

The Company Law introduced a number of 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 share capital, with respect to closed joint stock companies, while that threshold is 10% of their share capital for an open joint stock company. These are just some of the changes which have 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 a 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 a 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.

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, the SBRA's practice on this matter is not uniform.

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, endeavours 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 harmonized 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 share capital of a single-member limited liability company, 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

1.67

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2015		√	
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.	2015		√	
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.	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.

Also, in October 2019, prior to the publication of this year's White Book, the Law on Open Investment Funds with a Public Offering and the Law on Alternative Investment Funds were adopted, which bring further harmonization with EU regulations in the field of investment funds. The Foreign Investors Council will analyse these regulations in detail in the next White Book edition, bearing in mind that implementation of these regulations has not yet begun.

In June 2018 the Law on Financial Collaterals was adopted with the aim of creating a legal framework for the establishment and enforcement of collaterals for securing the performance of financial obligations, and the implementation of this long-awaited piece of legislation started 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 the regulatory framework has yet to be tested in practice, so all the potential flaws of the reforms implemented 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 regulatory reforms alone are not enough to stimulate its growth.

POSITIVE DEVELOPMENTS

As the most important new development we highlight the adoption and start of implementation of the Law on Financial Collaterals and the most recent amendments to the Law on Bankruptcy aimed at harmonizing the insolvency regulations with the regulatory framework for financial collaterals. The implementation of both laws commenced in 2019. In addition to regulating the establishment and realization 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 under financial collateral agreements, but also under other financial agreements, including agreements on financial derivatives (which should have a positive impact on the financial derivative market, including in relation to the International Swaps and Derivatives Association (ISDA) and other standardized agreements). Although the law allows only certain types of parties to enter agreements on financial collaterals (especially as it is not applicable to corporations in general), we commend the fact that this piece of legislation has been finally adopted and we hope that its practical implementation will not be problematic.

A very significant event was the issuing of RSD 2.5 billion worth of dinar bonds by the European Bank for Reconstruction and Development (EBRD) in December 2016. The issuance of these bonds significantly boosted investors' confidence in Serbia's capital market and facilitated the further "dinarization" of the domestic economy.

We also commend the most recent changes in the Operating Rules of the Belgrade Stock Exchange made in 2018, including, among other, the liberalization of conditions for the performance of block transactions. Also, we 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). 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 the adoption of the Law on Alternative Investment Funds and the Law on Investment Funds. The Law on Alternative Investment Funds (which is based on the relevant EU legislation) sets out a new type of more "flexible" funds – venture capital funds and private equity funds that should positively affect micro, small and medium enterprises especially in innovative business areas.

The legal framework for trade in financial derivatives took 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. In connection therewith, we commend the most recent amendments to the Law on Public Debt, however, the Government should specify detailed conditions regulating transactions in financial derivatives of the Republic of Serbia.

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 the required by-laws and issuing relevant opinions. In this context, we commend the Securities Commission for inviting a discussion on the regulation of crypto property rights in Serbia in March 2019.

REMAINING ISSUES

We have to note that identifying all of the remaining legislative issues related to the capital market is still very difficult as the capital market in Serbia is rather underdeveloped, i.e. shallow 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). The same applies for corporate bonds. On the other hand, the regulatory framework should be improved to enable transactions with more complex financial instruments, including the regulatory framework governing securitization in Serbia.

Despite some positive developments in this field, the regulatory framework and practice still seem to be insufficiently precise and underdeveloped for performing financial derivative operations in accordance with the International Swaps and Derivatives Association's (ISDA) master agreement. Also, it is our opinion that further liberalization is needed regarding the possibility of natural persons resident in Serbia to invest in securities on foreign markets, including the full range of bonds, derivatives, structural products, structural deposits, ETFs and investment funds, all in accordance with the European laws 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 and issuance of corporate bonds in the private sector should be encouraged.
- The general legal framework for performing operations with financial derivatives and more complex financial instruments should be improved.
- 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 1.20

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			√
Enactment of new amendments to the Law on Civil Procedure in order to assure flexibility of the timeframe and deadlines for certain actions.	2011			√
Concepts that allow for delay of procedure, such as postponement and restitution in integrum, have to be restrictively interpreted and implemented.	2016			√
Consensus on the cases arising under Article 204 of the Law on Civil Procedure.	2018		√	

CURRENT SITUATION

During 2018 and in the first quarter of 2019 the legal framework for judicial proceedings was not significantly changed, nor were there 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 organizational scheme of courts, and the regulation of the right to a trial within a reasonable time, have already been legally established and are 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 and 87/2018) 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 latest amendments to the Law on Civil Procedure, adopted in 2018, concerned exclusively paragraphs 2 and 3 of Article 204 of the Law on Civil Procedure (the article of the law that regulates the disposal of assets or rights under litigation), while other provisions of the Law on Civil Procedure were not amended in any way.

The Law on Enforcement and Security (RS Official Gazette No 106/2015 and 106/2016 - authentic interpretation and 113/2017- authentic interpretation) has firstly been changed with a new authentic interpretation of the National Assembly was issued at the end of 2017, clarifying the application of the disputed Article 48 of the Law and explaining the meaning and purpose of the concept of "transfer" of claims. More substantive amendments of the Law on Enforcement and Security were introduced in the second half of 2019 when the Law on amendment of Law on Enforcement and Security ("RS Official Gazette", no. 54/2019) came into force although most of its provisions will become applicable only on 01 January 2020 (while the provisions on electronic public bidding will only becoming applicable in March/ September 2020). Envisaged amendments of the Law on Enforcement and Security are numerous and are intended to remove irregularities that occur in practice of enforcement proceedings, accelerate the enforcement procedure and introduce further possibilities for voluntary execution of the obligations.

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 basic courts, 44 misdemeanour courts, 25 high 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 that courts are still overburdened with cases, especially in civil litigation, which often leads to breaches of adjudication 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 par-

ties in proceedings, and the reduction of the threshold for the submission of a review, were all met with positive reactions from courts and parties, and their application in practice is widespread. On the other hand, some of the solutions envisaged by this law have not been applied in practice even after several years of its implementation. Thus, subpoenas and other information are still not delivered by 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 deciding 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 either fail to comply with the set timeframes or 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. Ever since its establishment the Bar Academy has organized seminars only sporadically, but in the past year it has intensified its activities, primarily by organizing lectures and professional trainings for lawyers and law graduates, and today we can say that the situation has significantly improved.

POSITIVE DEVELOPMENTS

All courts in 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 will be introduced again.

Dispute Resolution

The Law on Civil Procedure was last substantially amended in 2014, when significant developments were introduced, such as the expansion of the possibility of filing a request for a revision as an extraordinary legal remedy by prescribing new situations where a 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).

Enforcement

The new authentic interpretation of Article 48 of the Law on Enforcement and Security, issued by the National Assembly at the end of 2017, is 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 legal 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 when the succession took place, during the legal entity's existence or after it has ceased to exist. Therefore, the "transfer" of a claim or obligation should be proven by 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 that used to buy claims, and subsequently initiate enforced collection proceedings, 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.

Furthermore, the newly enacted Law on Amendments to the Law on Enforcement and Security ("RS Official Gazette", no. 54/2019) represents a regulation that was drafted with consultation of the legal practice and with the aim of allowing greater efficiency of the enforcement proceedings. Time will tell whether the application of the new provisions will indeed improve the conduct of the enforcement procedure.

REMAINING ISSUES

The specialization of the portfolio of judges should be introduced in an efficient and definitive manner. Also, case files should be made more accessible to all interested parties 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 length of appellate proceedings in practice should be aligned with legal provisions.

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.

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 a progressive stance of the jurisprudence regarding the reversal 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 jurisprudence in jurisdictions that have similar provisions in their legislation. Finally, even though Article 204was amended with the latest amendments of the Law on Civil Procedure, only time will show whether the envisaged amendments will lead to the resolution of the above-mentioned problem in the jurisprudence.

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.

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

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 litigation will not postpone enforcement, it is a further procedural burden on the enforcement creditor.

As mentioned before, the concept of postponement has been restored to the enforcement procedure. Although the postponement of enforcement upon the request of the enforcement debtor is possible only once, it opens the door for malpractice as the criteria for the assessment of legal grounds for postponement is too broadly set, and there is a possibility that, in theory, the postponement could last 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 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
The relationship between bankruptcy and arbitration proceedings should be clarified in the Bankruptcy Law.	2018		√	
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			√

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 juris-

diction 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

1.57

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 the adoption of a prepackaged reorganization plan, in order to prevent bankruptcy debtors from averting an enforcement settlement over an indefinite period of time and without the support of a majority of creditors through multiple consecutive bankruptcy filings.	2016		√	
Regulate the procedure of personal insolvency either by amendments to the current Law on Bankruptcy or the adoption of a separate law.	2016			√
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.	2016			√
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.	2017		√	
Stipulate the possibility and procedure for amending the adopted reorganization plan.	2016		√	
Regulate the issue of delivery in bankruptcy proceedings in a way to make it faster and more effcient 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 begins to be implemented.	2016		√	

CURRENT SITUATION

In December 2018, the National Assembly adopted new amendments to the Law on Bankruptcy. The Amendments entered into force on 8 December 2018 (RS Official Gazette No 104/2009, 113/2017, 44/2018, 95/2018). These were the fourth amendments to this Law since its entry into force in early 2010 and the second amendments to this Law made in 2018.

The main goal of the Amendments to the Law on Bankruptcy, as was the case with the earlier amendments, is to make the procedure more efficient and more transparent.

According to data available on the website of the Bankruptcy Supervision Agency, as of 3 June 2019 there were a total of 2,075 pending bankruptcy proceedings under way in the Republic of Serbia, with the exception of bankruptcy proceedings conducted under the Law on Enforced Collection, Bankruptcy, and Liquidation (SFRY Official Gazette Nos. 84/89, SRY 37/93, and 28/96) and bankruptcy proceedings conducted against banks, which are within the jurisdiction of the Deposit Insurance Agency. The average duration of the procedures is about 2 years and 8 months.

In the first five months of 2019 there were 181 bankruptcy proceedings initiated, and 98 bankruptcy proceedings terminated. This means that 36 bankruptcy proceedings were initiated per month. Compared to 2018, when the monthly average was 33 bankruptcy proceedings, the stability in the number of initiated bankruptcy proceedings is noticeable. 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 been de facto insolvent for a long period of time still, within the limits that their economic power and legal status allow, operate in the Republic of Serbia, which has a negative impact on economic flows and is unsustainable in the long term.

Most of the latest amendments are expected to improve the quality of the procedure, but actual results of the amendments will be seen in court practice in the following period.

POSITIVE DEVELOPMENTS

Due to the fact that the last Amendments to the Law on Bankruptcy came into force in December 2018, we are able to point out certain positive regulatory developments, which have yet to be confirmed in practice.

Examples of regulatory developments that are worth mentioning as positive are as follows:

Increasing the transparency of the procedure

The latest changes in the principle of publicity and information should improve the transparency of the procedure, since all creditors are now enabled by an explicit provision to request and receive from the bankruptcy manager all the information related to the bankruptcy debtor, the course of bankruptcy proceedings, the assets and management of the assets of the bankruptcy debtor in due time. In this way, the right of insight into the files of the court case has been amended, because now all creditors have the right to obtain from the bankruptcy manager all information on the procedure directly, which the bankruptcy manager is obliged to provide in due time. The law does not stipulate the deadline for the submission of this information, so a timely response by bankruptcy managers to such requests will be established in practice.

Selection and change of the bankruptcy manager and the enhanced role of the creditors' assembly

The legislature has intervened again with the latest amendments regarding the possibility of choosing and changing the bankruptcy manager. Now, in the case when bankruptcy proceedings are initiated on the proposal of the creditor, the proposal for opening a bankruptcy may also contain a proposal for appointing a bankruptcy manager from the list of active bankruptcy managers for the jurisdiction of the competent court. Therefore, the creditor proposing the opening of a procedure may propose the appointment of a specific bankruptcy manager, which the court will decide on in the context of the decision on the proposal for opening a bankruptcy proceeding.

Regardless of whether the court accepts the creditor's proposal regarding the specific person to be appointed as bankruptcy manager or if the bankruptcy manager is appointed by random selection, at the first creditor hearing, as one of the compulsory issues decided upon by the creditors' assembly, which provides for the approval of the appointment of the bankruptcy manager, and if consent is not granted, the assembly proposes the dismissal of the appointed bankruptcy manager and simultaneous appointment of a new one.

In addition, the provision stating that the creditors' board can replace the bankruptcy manager and appoint a new one with a three-quarter majority decision at any stage of the proceedings has been amended. The creditors' board continues to have this authority, which is now conditional on the consent of the creditors' assembly.

Thus, the creditors' assembly, as the most transparent body in bankruptcy proceedings, consisting of the persons most interested in the outcome of the proceedings, has been given the opportunity to appoint as bankruptcy manager a person trusted by a majority of creditors in the broadest creditor body.

Precisely defined ranges of the amount of advance costs of bankruptcy proceedings

The most recent amendments to the Law precisely sets the ranges of the amounts for determining the advance costs, depending on how the legal entity against which bankruptcy is opened is classified in accordance with the regulations governing the criteria for classifying legal entities. For micro legal entities, the amount of 50,000 dinars was kept, for small legal entities up to 200,000 dinars, for medium legal entities up to 600,000 dinars and for large legal entities up to 1,000,000 dinars.

This amendment represents a positive change, since it removes the possibility of discretionary decisions of bankruptcy judges regarding the amount of the advance costs, with the reservation that practice will show whether so determined amounts of the advance are sufficient to cover the costs of the bankruptcy proceedings.

REMAINING ISSUES

As mentioned in the previous editions of the White Book, it seems that the scope of the latest amendments did not solve the long-standing problem of the possible abuse of legal loopholes by bankruptcy debtors, especially in the reorganization procedure on the basis of a prepackaged reorganization plan.

Even after previous amendments, relating to the abolition of the ban on enforcement against pledged assets, and changes in connection with the reorganization procedure, the Law on Bankruptcy contains a provision that the bankruptcy judge will not render a decision on revoking the ban on enforcement if the bankruptcy manager proves that secured assets are of critical importance for the reorganization of the debtor or for the sale of the bankruptcy debtor as a legal entity. This wording provides the bankruptcy manager with the possibility to avoid revoking the ban on enforcement because it seems that the bankruptcy manager could easily prove that some assets are necessary for the reorganization or the sale of legal entity, while the secured creditor could hardly prove the opposite.

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

However, despite restrictions with respect to the duration of the prohibition of enforcement against the bankruptcy debtor's property (a stay cannot exceed six months), and despite the ban on submitting such a proposal more than once in the same bankruptcy proceedings, the practice has shown that bankruptcy debtors usually avoid such restrictions in practice and that they usually withdraw their bankruptcy application based on a prepackaged reorganization plan, and then almost simultaneously submit a new bankruptcy petition based on a virtually unchanged prepackaged 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. Although the issuance of such a measure depends on the bankruptcy judge's decision, the practice has shown that judges, as a rule, issue such a measure, thereby removing the only barrier against abuse of the Law. In practice, there are cases in which bankruptcy debtors avoid enforcement against their property for years, in this or similar ways. The latest amendments reduced the options to abuse the reorganization proceedings, but if there is no creditor interested to file for opening of bankruptcy proceedings, the said possibilities for abuse still remain.

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

It often happens in practice that it is necessary to change a reorganization plan which has already been confirmed by a court, but the current legislation does not allow it. This poses a serious problem, because it may happen that a bankruptcy debtor's business activity is not on the expected level after the adoption of the plan and therefore the debtor cannot comply with the payment dynamic envisaged in the adopted plan, whereas 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 control by 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 available to them is an objection to the work of the bankruptcy administrator

as decided by the bankruptcy judge of first instance, and no appeal is allowed against this decision of the court. The legal solution which envisages the right to appeal for unsecured creditors may seem unfair, while secured and pledge creditors are not only deprived of a second-instance review of the legality of the decision of the bankruptcy administrator, but also of a first-instance review.

According to current legislation, the opening of bankruptcy proceedings produces effects as of the date on which a 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 companies that have been insolvent for a long time hinders economic development, so although the Constitutional Court of the Republic of Serbia has declared automatic bankruptcy unconstitutional per its decision in 2012, we consider it reasonable to find the appropriate legal solution which would enable a kind of automatic bankruptcy proceedings in the case of permanent insolvency.

One of the outstanding issues where no progress was seen is that of personal insolvency. Specifically, we believe that the resolution of this issue would benefit both creditors and insolvent debtors. The existing options available to 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 with over-indebted natural persons. In that sense, we consider that the introduction of the concept of personal insolvency would ensure creditors higher settlement amounts, while at the same time protecting the integrity and basic needs of overindebted individuals.

Finally, many other questions arise with regard to improving and clarifying corresponding regulations in practice, such as the possibility and method of enjoying secured-creditor rights based on a pledge on claims; insufficiently precise definitions of entities to which Article 123, paragraph 2 of the Law refers, the ability to dispose of the subject of an exclusion request during a dispute regarding such a request; and others.

Some of the expectations presented in the previous editions of the White Book regarding comprehensive amendments to the Law on Bankruptcy have been met, but many other insufficiencies of legal solutions have not yet been fixed, and we sincerely hope to see at least concrete proposals of 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 the adoption of a prepackaged 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 of creditors through multiple consecutive bankruptcy filings.
- Regulate the procedure of personal insolvency either by amendments to the current Law on Bankruptcy or the adoption of a separate law.
- Regulate additionally the position of secured and pledged creditors in a way that provides the two-instance procedure 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 the adopted reorganization plan.
- Regulate the issue of delivery in bankruptcy proceedings in a way to make it faster and more efficient and to specify the provisions related to the finality date and starting date for the implementation of the reorganization plan so that all participants can know with certainty when the adopted plan begins to be implemented.

INTELLECTUAL PROPERTY

1.67

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		√	
Adoption of a new Copyright Law introducing a more effective enforcement of collective rights.	2018		√	
Amendments to the Criminal proceedings law and related legislation with regards to cybercrime.	2018			√

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 and 2018);
- The Law on Geographical Indications (2010, amended in 2018);
- The Law on Copyright and Related Rights (2009, amended in 2011, 2012, 2016 and 2019);
- The Law on Legal Protection of Industrial Design (2009, amended in 2015 and 2018);
- The Law on the Protection of Topographies of Semiconductor Products (2013);
- The Law on Patents (2011, amended in 2017 and 2018);
- 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 the 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 the 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, 2014,2016 and 2019);
- 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 will mark the end of aligning of the local legislation with the EU acquis communautaire. An important step in that direction is made through the latest amendments of the Law on Patents, which harmonize the respective law with the Directive 98/44/EC on the legal protection of biotechnological inventions and Directive 2004/48/EC on the enforcement of intellectual property rights and also eliminate the hindrances identified in practice during the implementation of the respective law, improving the efficiency of the legal protection of holders of relevant 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 up to a year on average. Newest amendments to the Law on Copyright and Related Rights in more detailed manner regulate the protection of the rights on the computer programs, i.e. databases, with the aim to keep up the pace with the development of IT sector in Serbia.

The court specialization will also facilitate the standardization of judicial practice in the field of intellectual property rights. It is also expected that the newest amendments to the Law on Copyright and Related Rights envisaging the possibility of securing the evidence on infringement of the relevant rights, without waiting for the reply of the sued party, will improve the efficiency of protection of the intellectual property rights.

REMAINING ISSUES

Despite the fact that the relevant intellectual property legislation has already been in place in Serbia for several years, and that the newest amendments additionally improve the existing legislative framework, it remains to be seen whether the efficiency of its enforcement will reach a satisfactory level, which has not been the case so far. 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 Inspectorate with the Business Software Alliance. This type of co-operation would help raise consumer awareness regarding the rights holders' efforts to protect their rights, as well as result in a noticeable decrease in various 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.
- Amendments to the Criminal Proceedings Law and related legislation with regards to cybercrime.

PROTECTION OF COMPETITION

1.33

COMPETITION LAW

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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 on proposed documents.	2010		√	
The Commission should publish issued opinions and decisions on individual exemptions.	2018		√	
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.	2010			√
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.	2017			√
The fees in the Tariff Rules should be decreased to a reasonable sum, especially in the area of merger control.	2009			√
The Commission should issue publications of the relevant definitions of product markets grouped by industries every six months, with the aim of harmonizing practice.	2018			√

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 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 authorized proposer, and the Commission began drafting a 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 2018, out of 166 resolved mergers, 158 were cleared in summary proceedings, 1 was cleared with conditions, 1 was terminated, while in 6 cases the notifications were rejected. Therefore, still 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 2018, the Commission decided on 294 cases and transferred 50 cases to the period

that followed (2019). The Commission issued 70 opinions concerning the interpretation of competition regulations and their application. In the previous period, the Commission used to a greater extent some of the more complex competencies at its disposal under the Law, which included significantly relying on dawn raids for the purpose of collecting evidence, while there is a noticeable decrease in use of certain other procedural powers such as the suspension of the antitrust proceeding upon accepting the commitments proposal by a party to the proceeding. The Commission terminated certain antitrust proceedings in cases where it determined that there was no significant infringement of competition in the market, but also imposed penalties in other cases in which a violation was established. In the one case of merger control that was subject to investigation, the Commission imposed conduct measures as conditions for carrying out the transaction.

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 not been any significant progress with regards to previous year, given the fact that there was no adoption of several other by-laws, 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. The relevant by-laws addressing the exemptions of restrictive agreements in the abovementioned sectors were drafted back in 2017 – however, in 2018, none of these by-laws was adopted, probably due to intensified work on the adoption of the new competition law. The work on the new competition law is entering its finishing stages, with the FIC actively participating by providing extensive comments on the proposed draft. In the latest publicly available version of the draft law, approximately 60% of the FIC's comments were adopted either fully or partially.

In 2018, the results of sector inquiries in the retail sale of petroleum products, the market for replacement tires, the production and sale of cement and the wholesale and retail sale of baby equipment were published. Additionally, in mid-2018, the first phase of the analysis of retail trade was concluded, with the report published at the beginning of 2019, which shows significant progress in the development of the competition protection policy, i.e. monitoring of these markets by the Commission.

In 2018, 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. However, it is noticeable that the Commission does not publish all the decisions in relevant areas or that it publishes them with significant delays, which does not contribute to either transparency or legal certainty. 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 applies advanced economic analyses in inquiries into competition infringements and complex mergers. Also in 2018, the Commission started using new econometric software (e.g. STATA software) which should improve the quality of economic analyses in cases before the Commission.

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 at all since such decisions are not published on the Commission's website. The noticeable decrease in 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). Additionally, the Commission does not publish information on submitted initiatives, even after decisions on such initiatives have been made.

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. Additionally, over the past year, scheduling meetings with the Commission's representatives has become somewhat more difficult than in the previous period, which is a step back in the Commission's work. The Commission has on a few occasions rejected parties' meeting requests, in antitrust cases in which it is especially important to have continuous, clear and open communication with the Commission. The rejection of meeting requests, coupled with the rejection of access to case files, significantly hampers the parties' legitimate right to defence. Certain cases in the Commission's practice indicate potential concerns with regards to a privileged treatment of state companies in proceedings before the Commission, which was also pointed out by the European Commission in its annual progress report for Serbia.

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 each particular case, and further work is needed in improving the quality of reasoning behind the Commission's decisions. Over the past period, the Commission has evidently issued contradictory decisions with regards to its previous practice in certain cases, without proper reasoning for doing so.

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 parties in a 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 further appeal proceedings in cases when an extraordinary legal remedy is lodged. A detailed reasoning of 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 an additional education of its employees. However, the use of this institute is hardly noticeable in practice and is still fairly underdeveloped.

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, which still do not exist.

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. Additionally, the rather restrictive and formalistic approach of the Commission is more evident, as well as deviations from the comparative EU practice in the interpretation of certain procedural legal institutes, which is especially relevant in the procedures of individual exemptions. 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 EU abolished several years ago. In the last version of the draft law, the legal institute of self-assessment was introduced, whereby the system of individual exemptions was also retained, which was the proposal of Foreign Investors Council.

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 nor a proper reasoning, 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. In the last version of the draft law it was provided that penalties will be calculated based on the relevant turnover, i.e. turnover generated on the relevant market on which the competition infringement was made, which is a significant progress with regards to the previous situation.

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 on proposed documents.
- The fees in the Tariff Rules should be decreased to a reasonable sum, especially in the area of merger control.
- The Commission should publish issued opinions and decisions on individual exemptions, i.e. to altogether improve transparency and predictability of decisions.
- The Commission should issue publications of the relevant definitions of product markets grouped by industries every six months, with the aim of harmonizing practice.
- The Commission should be open to, in short term and based on a party's request, meet with parties for the purpose of providing clarifications, guidelines and necessary information, and allow access to case files within a reasonable term after requested, especially in antitrust cases.
- 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 must allow legitimately interested third parties to comment on procedures which affect their business, for the complete and correct determination of facts.
- 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 1.33

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Strengthening the independence and personnel capacities of the Commission for State Aid Control.	2009		√	
Effective state aid control – utilizing different mechanisms in order to monitor granted state aid, and also impose sanctions for non-compliant state aid.	2016			√
Consistent application of state aid rules (especially with regards to companies in restructuring and privatization), as well as EU standards and practice in the state aid control regime and the harmonization of the fiscal policy with the EU acquis.	2011			√

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 2017 and 2018 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 2017. In 2017, the total amount of state aid in Serbia was EUR 807 million, a 4% increase compared with 2016. In 2017, Serbia's state aid expenditure as a percentage of GDP was 2.15%, which was a decrease against 2016, when this percentage was 2.2%. By comparison, in 2017 EU Member States spent EUR 116.2 billion, or 0.76% of the EU's GDP, on state aid.

In 2017, 27.4% of the total state aid went to the agricultural sector and the remaining 72.6% to industry and services, a decrease compared with 2016, when this percentage was 75.1%. The largest chunk of the total aid to industry and services was horizontal aid (32.1%), followed by sectoral and regional aid, with 9.4% and 31.1%, respectively.

The share of subsidies in the total state aid continued to increase in 2017, reaching 66.8% (compared to 60.6% in 2016), while tax incentives accounted for 27%, soft loans 1.6% and guarantees 0.1%.

De minimis aid increased threefold in comparison to 2016, which had to do with the change of legislation regulating the financing of public information projects, which now treats all co-financing of public information projects as de minimis aid.

POSITIVE DEVELOPMENTS

According to the European Commission's Progress Report on Serbia for 2019 ("EC Progress Report"), there has been no progress in the harmonization of laws and enforcement rules on state aid, however, in October 2019 the National Assembly adopted a new Law on State Aid Control which has an aim to harmonize the local state aid control system with the EU acquis and address some of the concerns the European Commission repeatedly highlights in its progress reports. Bylaws that will regulate this area of law in more detail should be passed within one year from the adoption of the new Law.

The preparation of the new Law was supported by an EU-funded project for the capacity building of the (CSAC) officially started in March 2019. One of the most prominent changes brought about by the new Law is the foundation of a new CSAC which shall function as an independent and autonomous body, accountable for its work to the National Assembly. In this way, one of the major concerns surrounding the current state aid control system in Serbia – the fact that up until now CSAC operated as part of the Ministry of Finance which brought its independence into question, should be removed.

REMAINING ISSUES

According to the European Commission's Progress Report, a number of existing state aid schemes in Serbia, includ-

ing 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 the process of privatization from the rules for granting state aid. In addition, at the normative level, Serbia has not yet adopted regional state aid maps.

The trend of a lack of aid for research and development remains notable, whereas an increase in state aid granted for environmental protection is a positive sign (8.3% in 2017 compared to only 2.2% in 2016), but nevertheless leaves plenty of room for improvement.

Individual state aid (direct granting of state aid to individual enterprises) is principally 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 has a tendency of putting other market participants in an unequal position and also leads to imprudent spending of limited budgetary resources (i.e., taxpayers' contributions).

In 2017, the CSAC adopted 40 decisions on the permissibility of state aid – in 20 cases the CSAC found that the aid was compatible with state aid regulations, while in the same number of cases it launched a subsequent control, which is a visible improvement compared to previous years, when the proportion of subsequent controls was negligible. The CSAC has not yet ordered the return of granted state aid – although this is not entirely atypical for a relatively young authority in the pre-EU accession period, it could also bring the independence and integrity of the CSAC into question. From the institutional point of view, the fact that CSAC had the status of a governmental body primarily composed of representatives of different ministries, rather than an independent authority, brought 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 about the said policy, have to be adopted. Attracting investments in the development of underdeveloped regions, as well as pinpointing areas to strengthen competitiveness, are essential starting points for achieving a 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 2017, even though the deadline for the publication of annual reports is 30 June of the current year for the previous year until now (according to the new Law this deadline was moved to third quarter 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 general lack of transparency regarding contracts and negotiation procedures in relation to capital infrastructure investments enables a potential misallocation of budgetary funds and possible disruption of market competition and creates legal uncertainty regarding the role and responsibility of the state on the Serbian market. The new Law introduces mechanisms that should increase the level of transparency (yearly reports, registries of granted aid) and incentivize grantors to cooperate with the CSAC.

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 key for the realization of these goals.

FIC RECOMMENDATIONS

- Strengthening the independence and personnel capacities of the Commission for State Aid Control (CSAC) esp. through adequate application of the new Law on State Aid Control.

- Effective state aid control – utilizing different mechanisms in order to monitor granted state aid, and also impose measures for non-compliant state aid.
- Consistent application of state aid rules (especially with regards to companies in the process of privatization), as well as EU standards and practice in the state aid control regime and the harmonization of the fiscal schemes with the EU acquis.

CONSUMER PROTECTION AND PROTECTION OF USERS OF FINANCIAL SERVICES

CONSUMER PROTECTION 2.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Building the capacity, expertise, and role of consumer NGOs.	2014		√	
Continue work on consumer education and the implementation of topics related to consumer protection in the primary and secondary schools curricula.	2014		√	
Promotion of consumer protection rights and interests on the local government level.	2013		√	

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 compared to the previous legislative solutions. The Law was changed to a lesser extent in 2016, when the provision of Article 11 of the Law ceased to be valid due to the implementation of the Law on Advertising as well as during 2018, when certain provisions ceased to apply due to the beginning of the implementation of the Law on Protection of Financial Services Users in Distance Contracts.

The starting point for the adoption of the Law was the 2013-2018 Consumer Protection Strategy. Apart from elements of the EU acquis communautaire, the provisions of the Law are inspired by and based upon Article 78 of the Stabilization and Association Agreement (SAA), 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

Compared to the previous year, there have been certain improvements in the expansion of the scope of activities undertaken by consumer protection associations, including: educating consumers about their rights, organizing 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 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 1,459 consumer complaints in 2018 over a toll-free phone number, while the regional consumer councils received a total of 26,823 consumer complaints (which is a significant increase compared to 16,928 consumer complaints in 2017). A large majority of complaints received (around 80%) concerned the supply of goods (mostly footwear, mobile phones, IT equipment and appliances), while the remaining around 20% were connected with the supply of services (most often public utilities and telecommunication services). Compared to the report from 2016, there are no major oscillations, either in the number of complaints or their structure.

Although improvements in terms of consumer education and raising consumers' awareness of 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 consumers' 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 on the protection of consumers of financial services with international and EU principles.	2012		√	
Further education of users of financial services regarding their rights.	2014		√	
Harmonization of the announced legislation with the existing legislation already in force.	2016		√	

CURRENT SITUATION

The rights of users of financial services provided by banks, financial leasing providers and traders, as well as the terms, conditions, and manners of exercising and protecting such rights, are regulated by the Law on the Protection of Consumers of Financial Services (hereinafter: the LPCFS), with the latest implemented changes from 2015.

In order to protect the rights of users of financial services in the right way, the National Bank of Serbia (NBS), has adopted a set of decisions, in particular the Decision on Handling Complaints of Financial Service Consumers. This Decision prescribes the manner of filing complaints by users of financial services to the provider of financial services and to the NBS, as well as their handling of these complaints. Financial service providers are obliged, inter alia, to issue a receipt certificate of the complaint, to enable the consumer to access the form for filing a complaint on its website and to post a clear and easy-to-spot notice with information on the procedure for the protection of rights of users of financial services.

In order to create a legal framework for a uniform solution to the problem of loans indexed to Swiss francs, the Law on the Conversion of Housing Loans Indexed to Swiss francs (hereinafter: the Law) has been adopted, and it came into force in May 2019. The Law applies only to natural persons who have executed a housing loan agreement with a bank indexed to Swiss francs (CHF) and does not apply to debtors who have already converted their debt into euros under one of the earlier models. In accordance with the Law, Banks had a deadline of 30 days from the entry into force of the Law to submit to debtors a proposal to convert loans from Swiss francs into euros, with a capital write-off of 38% and a new interest rate valid on 31 March 2019, which, according to some unofficial estimates, was accepted by about 90% of debtors. The Law provides that this kind of debt write-off will not be treated as personal income and will be tax free. Supervision over the implementation of the Law is carried out by the NBS, in accordance with the Law on Banks, through the procedure of direct and indirect control, and if the NBS determines irregularities, it may order banks to eliminate them against all users, regardless of whether a conversion agreement has been concluded.

POSITIVE DEVELOPMENTS

In order to further protect users of financial services, the NBS rendered a Decision on Detailed Conditions of Financial Services Advertising, which prescribes general and specific conditions for advertising financial services, as well as the obligations and responsibilities of the financial services providers related to this advertising. In accordance with the decision, the NBS will control how financial service providers advertise, whether they act in accordance with the Decision, whether an ad message lasts long enough for the average user to be able to read and/or hear it appropriately, whether the appropriate text font is used depending on the advertising method, etc.

General technological development and the increasing importance of e-business in modern society have contributed to the development of new ways to offer and advertise financial services, which has led to the need to further regulate the rights of financial services users in the situation when agreements regarding financial services are executed by means of distance communication, and the conditions and manner of exercising and protecting those rights. Recognizing this need, as well as the need for the harmonization of domestic legislation with EU law, the Law

on the Protection of Consumers of Financial Services with Respect to Distance Contracts was adopted and became applicable in September 2018. Users are protected from being provided with and charged for services they have not requested, since it is explicitly prescribed they are to be exempt from any obligation regarding services they have not ordered. The benefits of this regulation, inter alia, are strengthening the confidence of users of financial services in distance contracting, reducing expenses for financial services providers, as well as establishing a single legal framework for the protection of users of financial services in distance contracting.

According to the Report of the Department for Financial Consumer Protection , the NBS received 655 premature complaints for 2018, which was less than the average number of premature complaints in the last ten years.

REMAINING ISSUES

The Report of the NBS reveals that premature complaints still account for a significant share of the total number of complaints in 2018, which indicates that many users of financial services are still not familiar with the complaints procedure. In this respect, continuous education of consumers of financial services about their rights and the way to exercise those rights is still needed.

Despite the fact that LPCFS allows contracting for charges and fees paid by the borrower, and despite the opinion of the Supreme Court of Cassation of Serbia (hereinafter: SCC) that the right to collect fees and charges for banking services based on credit operations is not excluded by law, a large number of lawsuits for the annulment of clauses relating to the said fees creates pressure on the court system, while inconsistent court practice leads to legal uncertainty for users of financial services.

Prior to the adoption of the Law, the SCC took a stance that the clause on the indexation of loans to CHF is null and void, unless it is based on reliable written proof that the bank obtained the lent assets in Serbian dinars (RSD) through its own debiting in that currency and that before the contract conclusion the bank had delivered to the client complete written information about all the business risks and economic and financial consequences that would occur in case of applying the clause. In its legal position, the SCC does not specify on which legal regulations its expressed views are based, so this legal position creates legal uncertainty. It is unclear what happens with loans already repaid and what is the impact of the execution of a conversion agreement on an ongoing dispute between the debtor and the bank - this will be determined by a court in each individual case, depending on all the circumstances of that particular case. Given that according to the law of the Republic of Serbia, legal positions taken by the SCC are not binding to lower courts, it remains unclear whether such courts will respect the legal position of the SCC and order loan conversion, which is also not stipulated in any regulation, or accept lawsuits and pass judgments for the termination of loan contracts due to changed circumstances, or whether users who do not agree to conversion will initiate new disputes by referring to the SCC's legal position that the CHF indexation clause is null and void. Although the Law covered over 17,000 users and 15 banks, all of the above shows that certain categories of debtors were left out and, taking into account the adopted legal position of the SCC, the impression is that many issues remain unresolved and open to further consideration.

FIC RECOMMENDATIONS

- Further education of users of financial services regarding their rights.
- Harmonization of court practices with new regulations in force.
- Clear and unambiguous definition, in the regulations, of the possibilities for contracting for fees of financial service providers.

PUBLIC PROCUREMENT

1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Urgent adoption of the new Law, harmonized with the EU Directive 2014/24	2018			√
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.	2013			√
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).	2014			√
Active cooperation between the PPO, the Ministry of Finance, the Ministry of Economy, the Anti-Corruption Agency, the budget inspectorate, the State Audit Institution and the Government of Serbia in the implementation of the Public Procurement Law and the Memorandum on Cooperation of 15 April 2014.	2015			√

CURRENT SITUATION

The general impression is that the new Public Procurement Law (RS Official Gazette No 124/2012, hereinafter: the Law), which has been in application since 1 April 2013, improved the legal framework for reforms in this area. The systematic application of the new Law's favourable solutions 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 stakeholders.

In August 2015 the National Assembly adopted the Amendments to Law, which have been applied since 12 August 2015. These amendments introduced changes in respect of reducing formalities and increasing the number of documents posted 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 comes to the fulfilment of its statutory obligation to provide an opinion on the interpretation and application of the Law, envisaged under Article 136, paragraph 1, item 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 for 2018, the share of public procurements conducted in an open procedure is nearly identical to that of the previous year – 91%. The share of negotiated procurements, without invitation to bid, in the structure of public procurement value amounted to 3% in 2018, i.e. remained the same as in the previous year. The average number of bids submitted in a public procurement procedure is 2.5, the lowest so far.

POSITIVE DEVELOPMENTS

In 2018, the PPO adopted model tender documents for the procurement of motor vehicle servicing and maintenance services and the procurement of insurance services for property, persons and vehicles. In addition to a model of tender documentation, the PPO has also issued certain analytical documents aimed at improving the quality of the preparation and implementation of public procurement plans, such as analysis and recommendations for the further improvement of competitiveness, market research methodology, methodology for determining the estimated value of public procurement, analysis and recommendations for improving the monitoring function of the PPO, guidelines for the calculation of life cycle costs.

REMAINING ISSUES

In the previous year, no progress was made in the field of fight against corruption in public procurement or in the sanctioning of criminal offences in the field of public procurement. There is no evidence of the 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 an "unusually low bid." The official position of the Commission for the Protection of Rights in Public Procurement Procedures is that the contracting authority has the discretionary right to assess whether a bid is unusually low, i.e. whether a 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. Bidders who suspect that a contract has been awarded to an unusually low bid have an opportunity to protect their rights before the Commission, however, the Commission has regularly refused such requests so far.

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 of 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 2018, there was a reduced share of exemptions 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. The share was 10% in 2018 in comparison to 27% in 2017. Intergovernmental agreements with third countries continue to violate the principle of equal treatment of bidders, the prohibition of discrimination, transparency and the protection of competition. Also, the implementation of these agreements is often inconsistent with the adopted solutions in both domestic and EU law.

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 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.

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 a 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.

At the end of September 2019, the Government of the Republic of Serbia adopted the Proposal of the Law on Public Procurement, which is a significant step forward in harmonization of domestic legislation with the acquis i.e. EU Directive 2014/24. The new law is expected to simplify public procurement procedures, reduce administrative burdens, especially participation costs for SMEs. Also, new procedure is being introduced - the Innovation Partnership, this is to enable the development of innovative goods while, on the other hand, the qualification and low value procurement procedures are abolished. Finally, the Proposal of the Law proposes a rule that all communication and exchange of data in the public procurement process will be conducted by electronic means with the Public Procurement Portal. The Proposal of the Law on Public Procurement is currently in parliamentary procedure and by the time the White Book was published, it was not adopted. FIC will make final estimation on the new Law on Public Procurement in the next edition of the White Book.

FIC RECOMMENDATIONS

- Active cooperation between the PPO, the Ministry of Finance, the Ministry of Economy, the Anti-Corruption Agency, the budget inspectorate, the State Audit 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.
- Strengthening 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

1.40

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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)	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			√
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			√
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 is historically in need of investments directed towards public infrastructure, investments concerning projects of public interest and those pertaining to the provision of services of public interest. The magnitude and complexities of these types of investments call for establishing legal certainty and transparency in the delivery of a public-private partnership (hereinafter: "PPP") project. To facilitate progress in this respect and a step in a forward-looking direction, the Law on Public-Private Partnership and Concessions (hereinafter: the "PPP Law") was adopted in 2011, introducing the concept of PPPs into the Serbian legal system for the first time.

Despite the PPP Law having been adopted in 2011, its practical implementation has mostly been seen in the past several years, in relation to which it is noted that the Public Private Partnership Commission has to date approved 112[1] public private partnerships, signalling that there appears to be quite a sizeable appetite towards opting for a PPP project structure in implementing investments into public infrastructure, projects of public interest and procurement of services of public interest.

The number of PPP projects that have been approved to date appears to confirm that a properly structured PPP can facilitate a return on investment that would be greater than the value that would have been obtained by using the traditional public investment model through a classic public procurement (i.e. funding from the budget). Aside from the return on investment, historically the public sector has not shown to be best placed to manage the complexities of developing, managing and operating public infrastructure investments or providing services of public interest to a satisfactory level.

Despite the high number of approved PPP projects, based on 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,

1 List of approved public private partnership projects available on the website of the Public Private Partnership Commission of the Republic of Serbia at: http://jpp.gov.rs/koncesijevesti/spisak

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

Whilst the larger portion of PPPs that have been implemented in Serbia to date are of a smaller scale, two that are noteworthy in terms of their complexity, importance and magnitude are the PPP project for waste management services in the City of Belgrade and the concession project for the airport Nikola Tesla.

POSITIVE DEVELOPMENTS

Since its adoption, several amendments to the PPP Law have been implemented, recognising the need to adjust the legislative framework to the changing market and trends in this respect. Notably, amendments to a large extent addressed conflicting provisions of the PPP Law and Public Procurement Law (the latter applying to the tender procedure for PPPs without elements of a concession).

Undoubtedly, the above referenced large-scale PPP projects represent the first of this scale to have reached commercial close in Serbia, which is a success in itself. As far as existing practices are concerned, the commercial and financial close of the concession project for the airport Nikola Tesla and the commercial close (and pending financial close) of the PPP project for waste management services in Belgrade overall represent progress towards establishing uniform best practices reflecting international standards with which the wider international community is familiar when it comes to PPPs.

REMAINING ISSUES

Whilst notable progress is palpable in the area of PPPs, achieving progress in several aspects that are outlined below would highly contribute to the further development of PPPs and their appeal in Serbia, as well as convey an inviting message to potential investors.

In terms of the legislative framework, the PPP Law and the Public Procurement Law are in need for improvement, thus the alignment with the legislative framework of the European Union (EU) is requisite, as the alignment promotes an investor-friendly climate and legal certainty and will likely contribute in alleviating concerns associated with investing in Serbia. Aside from the PPP Law, which is the key law to regulate this area, intrinsic to a PPP project are the way in which public services are dealt with, public companies, public debt provisions and other sectoral laws and regulations which are not aligned amongst themselves, which ultimately raises the level of legal uncertainty associated with a PPP project.

Accounting for the fact that launching a PPP project requires large resources as well as specific know-how to successfully launch, tender and deliver, focus should be drawn to the methodology development related to approving a PPP project proposal and equipping the public sector with the required know how. Currently the legislative framework is lacking in this respect, and the public sector is not sufficiently experienced to apply a tool set to identify which PPP project proposal provides for the best "value for money."

Due to the lack of sufficient market practice in implementing PPP projects, there is no agreed outline of key contracting principles that could be used as a starting point for any PPP project. Furthermore, the provisions of the PPP Law regarding the submission of the self-initiative proposal by a potential private partner creates dilemmas and perplexities with regards to the vaguely defined mandatory content of such a proposal. In addition, the self-initiative proposal assumes that the proposer, a potential private partner, submits a business plan and financial analysis in advance, which consequently, in commercial terms, disrupts its competitive position. All these issues distance away potential private partners from formally initiating PPPs, thereby practically limiting pro-activity on the private sector side. Therefore, in light of the foregoing, the amendments of the PPP Law provisions in order to precisely specify the content and procedure of self-initiative proposal in a way that eliminates the abovementioned deficiencies, is indispensable.

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, which 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. Moreover, the relevant provisions of the LGAP significantly limit certain rights

of private parties, especially 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).

Lastly, it is worth noting that a PPP will involve a public debt provisioning to a larger or smaller extent depending on the size of the specific PPP project, which currently is not properly accounted for under Serbian budgetary and public debt legislation. Recognising the long-term nature and financial implications of a PPP (whichever way structured), further legislative fine tuning should be considered to ensure proper financial planning on the side of the public partner. This is of crucial importance in setting up the notion of bankability for any PPP project and providing comfort to any potential private partner, and by extension financiers wishing to participate in the delivery of a PPP project which will rarely be implemented without heavy external financing.

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, as well as investing resources in training public sector partners to successfully navigate a PPP project from inception to realization.
- Amending the rules of the LGAP so as to exclude or limit the applicability of its provisions relating to "administrative contracts" to PPP contracts. Further amendments to key legislation to align with legislation of the EU. And the legal framework has to be amended in order to eliminate identified deficiencies in relation to the self-initiated proposal and consequently, in order to make room for more pro-active approach of the private sector in initiating PPPs.
- 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

1.33

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			√

CURRENT SITUATION

The Law on Trade occupies a central place among the rules governing trade in goods and services. Having in mind that since the beginning of 2013 there have been no significant improvements in this area, ahead of us is a period in which amendments to the legal framework are expected. The first step in that direction is the adoption of a new Law on Trade.

As regards the import of food of animal origin, in the importation stage we are still facing the problem of certificates issued in most countries of the European Union (EU), which do not correspond to certificates required for certain groups of products in Serbia. In addition, veterinary certificates are harmonized for certain product categories, but the problem in practice is the unavailability of an online form of these certificates for download.

Serbian regulations stipulate that packaging 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

Further, considering that the biggest challenges in the past were related with the provisions of the Law on Trade governing the sale incentives, the new Law on Trade regulates this matter in detail, enabling traders to increase their volumes of sale.

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, a legal entity whose business reputation has 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. The new Law on Trade is harmonized with the Law on Inspection Oversight and the rules regulating the obligations of a trader and consequences for their breach will be unified in one piece of legislation.

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. Certain import and sanitary procedures are not even adequately regulated by the law in terms of the documentation (including its content) which is necessary to be submitted during the importation procedure, whereas importers are forced to rely on the general instructions published on the web pages of the competent authorities or obtained through direct contact with the officers of the respective authorities. 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 initiatives sent to legislator 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.

Besides the passage of a new Law on Trade, additional efforts should be invested into the adoption of by-laws in order to enable a smooth implementation of the respective law. Inspection check-lists published on the web pages of the relevant inspection authorities have been used so far in practice by traders for the identification of documentation which must be held at retail points of sale and related legal conditions which must be met. However, this system fails to provide an adequate level of legal certainty and has led to situations where inspectorates in different parts of the country have applied different criteria in controlling and disciplining traders, due to lack of uniformity in their interpretation of regulations.

FIC RECOMMENDATIONS

- Devote more attention to by-laws because the lack of by-laws made the previous Trade Law largely inapplicable in practice.
- Harmonization with EU regulations and standards is further needed.
- Simplification of the importation procedure.

ILLICIT TRADE PREVENTION AND INSPECTION OVERSIGHT

1.71

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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:				
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	2018		√	
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 practices of prosecutors' offices in dealing with criminal offenses with elements of the grey economy, as well as improving the coordination of activities of inspectorates and prosecutors' offices in combating crimes in the field of the grey economy	2015			√
Amendments to the Law on Inspection Oversight and full alignment of other laws with the Law on Inspection Oversight	2018		√	
Control of persons performing unregistered activity by all competent bodies involved in the work of the Coordination Body for combating the grey economy	2018		√	
Improvement of the fiscal system, which entails the reduction of the number of parafiscal charges, enabling legitimate businesses to make savings relative to the existing system, and exchange of information on single sales with a summary of data for risk analysis in inspection oversight	2018		√	
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	2017		√	
Alignment of database management systems between applicants and courts and prosecutors, so as to adequately monitor the application processing efficiency	2015			√

CURRENT SITUATION

Countering illicit trade and further modernizing the inspections remain important topics in the Republic of Serbia. Governmental authorities were predominantly implementing measures prescribed in the National Programme for Countering the Shadow Economy and its associated Action Plan for 2017/2018. Their efforts towards diminishing illicit trade and improving the inspection oversight system were noticeable in 2018, and the work of inspection authorities is becoming more effective with the ongoing application of the Law on Inspection Oversight. Results of these activities, combined with improved macroeconomic indicators, led to an increased budget revenue collection and resulted in higher-than-planned fiscal revenues and a state budget surplus at the end of 2018. The Coordination Commission for Inspection Oversight spearheaded continuous reforms of the inspection system in 2018 and continues to do so in 2019 as well.

Although a significant amount of work has been completed, there are still a number of open issues to be addressed in the upcoming period. The focus on illicit trade prevention must not diminish in either the short or the long term, in order to maintain and expand the achieved results as well as ensure a more even playing field for all businesses.

POSITIVE DEVELOPMENTS

Carrying out the Action Plan 2017/2018 for the implementation of the National Programme for Countering the Shadow Economy was an ongoing effort, with the focus on further improving the inspection oversight system. Moreover, an Action Plan for the 2019/2021 period was adopted during 2019, ensuring the continuity of the National Programme implementation in the future.

The Coordination Commission for Inspection Oversight, together with its internal support unit, was active in adopting guidelines for inspection controls and related analyses with the aim of increasing the efficiency of controls and penalties imposed.

Special attention was given by the Coordination Commission, its subordinate Working Group for the Prevention of Illegal Trade, and individual inspection authorities to the adoption and implementation of flowcharts for the control of specific goods and sectors. Apart from prescribing a stricter control over key excise and other products of interest to the grey market, a new control of illegal trade over the internet was also introduced. It should be noted that the flowcharts were prepared and adopted in close coordination with the business community. The implementation of the flowcharts solidified mandatory controls of inspections authorities and had a significant financial impact on the state's revenues, especially through the prevention of unnecessary imports of base oils and their illegal blending into diesel fuel.

The Coordination Commission completed a functional analysis of the inspections' capacities in 2019. The analysis is to serve as a basis for identifying the needs for human and material resources of all inspections in the country. The findings of the analysis confirmed the urgent need for increasing the number of inspectors as well as strengthening their technical capacities.

Other activities of importance for inspection oversight in 2018 included the start of the implementation of "e-Inspektor," an integrated information system for inspection oversight, with four pilot inspectorates being networked for testing. In addition to this, a significant number of training sessions for inspectors were also held in 2018 and continued in 2019 as well.

The Customs Administration has started using electronic locators for tracking cargo vehicles in transit, enabling the automatic monitoring of their whereabouts in the country.

The enactment of the Law on Simplified Employment on Seasonal Jobs in Specific Business Activities enabled fast and easy electronic registration of seasonal workers in agriculture, improving the status of seasonal workers and decreasing the level of grey economy due to unregistered workers.

The Law on Fees for the Use of Public Resources has been adopted, increasing the reliability of business environment by prohibiting the introduction of new parafiscal charges for the use of public resources.

REMAINING ISSUES

The Law on Inspection Oversight has not yet been fully implemented because the sectoral laws have not been harmonized with the umbrella law. The Government of the Republic of Serbia has adopted a Conclusion envisaging the harmonization of 78 laws. At the end of 2018, there were 67 laws not yet harmonized. Furthermore, a full implementation of the "e-Inspektor" IT system should be carried out as soon as possible.

There is still an urgent need to strengthen the human and technical capacities of the inspectorates and increase the remuneration of inspectors, as well as to create an adequate performance evaluation system, in accordance with the results of the functional analysis of inspections. Furthermore, an action plan for hiring young inspectors for the 2019/2012 period should be adopted.

A system of regular control and reporting on the implementation of adopted flowcharts should also be created and implemented. The adoption of new flowcharts should also be continued, including a flowchart for the control of LPG in the re-export procedure.

The management of misdemeanor and felony complaints in the area of illicit trade by prosecutors and courts remains a problem in terms of inefficient processing and an overly lenient penal policy. Therefore, deterrents to illicit trade activities remain inadequate. Gains from illicit trade activities still outweigh the potential penalties.

Alleviating fiscal pressure is of high importance for starting new businesses and discouraging the grey economy. An electronic registry and a portal listing applicable fees for the use of public resources should be established, as a pre-condition for controlling the possible introduction of new parafiscal charges.

In order to increase the efficiency of controls and seizure of illegal goods, it is necessary to have in place a more efficient system for storing seized goods, whether in the investigation stage or during court proceedings. Business entities that are obligated to store seized goods should be able to regulate storing conditions with the competent institutions in a short time. Moreover, lack of capacities for the storage of seized goods is often a discouraging factor to the control authorities to increase pressure on illicit trade.

Lastly, with the development of IT and mobile technologies, additional options for increasing the share of non-cash payments in the economy are becoming feasible. Reducing the use of cash in monetary transactions and switching to non-cash payments contributes significantly to curbing illicit trade. Trends in mobile phone use have opened a possibility for customers to pay for goods and services via phone applications supplied by businesses. However, the use of payment applications needs to be supported by appropriate governmental regulations.

An additional measure to increase non-cash payments in the economy is the introduction of online fiscal cash registers. Although the deployment of online fiscal registers is already envisioned by the governmental authorities, it is necessary to prioritize this measure and begin its implementation as soon as possible.

FIC RECOMMENDATIONS

- Continue with the implementation of the National Programme for Countering the Shadow Economy and its associated Action Plan for 2019/2020.
- Create a system of reporting on measures and effects of flowcharts, and continue with the adoption of a new flowchart for the control of LPG as well as other products of interest.
- In order to increase the efficiency of the punishment system in the field of illicit trade, introduce the specialization of judges for misdemeanor offences in business.
- Improve the level of fiscal burden on businesses operating in the Republic of Serbia with further regulation of parafiscal charges by creating a registry of fees payable by businesses.
- Prescribe and implement a prompt and effective procedure of regulating the storage of seized goods between the public and private sector.
- Enable the introduction of innovative non-cash payment systems based on applications used by the private sector.
- Introduce online fiscal cash registers.

CUSTOMS

1.40

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
It is necessary that the planned liberalization of customs preferences be transparently communicated to the interested industry and that the industry's consent be ensured, based on an assessment of the positive impact on the relevant sector, at least 12 months prior to the commencement of the preference	2018			√
We propose the following changes to the time limit in customs declarations: (1) the period of payment of a customs duty of 30 days from the date of the invoice; (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.	2018			√
A significant number of legal provisions require further specification through by-laws as well as alignment with other relevant laws, such as: (1) the VAT Law, regarding the treatment of a foreign legal entity 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 activity. We suggest that, based on risk assessment, authorities should decrease the sampling frequency and start accepting analyses of accredited overseas laboratories relating to products that are regularly imported	2018			√
Increasing efficiency at all levels of administration: deciding 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	2018		√	
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, when conducting a subsequent control and establishing a different tariff classification, this should not be considered as a customs offence, as the customs declaration has been accepted (approved) by the customs authorities	2018		√	

CURRENT SITUATION

The 2018 amendments to the Customs Law significantly aligned customs procedure with EU customs law, in particular for legal entities that link the simplified customs procedure to the process of an Authorized Economic Operator ("AEO"). The instructions are publicly available on the Customs Administration's website.

The Customs Tariff is harmonized with the EU nomenclature each year in November.

The Free Trade Agreements (FTA) have positive effects on economic growth enabling legal entities in Serbia to increase the volume of production and, in turn, competitiveness in the regional market, in particular with EU and CEFTA members.

POSITIVE DEVELOPMENTS

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

- Further alignment with the EU regulations.
- The introduction of AEO authorization in the Law and the adoption of Protocol 5 of the CEFTA Agreement is in line with EU practices. Acquiring this status will be a precondition for the simplified customs procedure. The ultimate outcome of the AEO is simplified communi-

cation and exchange of documents with the Customs Administration.
- Applicability of CEFTA Decision No 3/2015, which allows its members to use the full accumulation of origin materials. Full preferential origin accumulation will be used within CEFTA members by adding all production phases. The final product will have the status of preferential origin in the country where the last production process is completed. This will have a positive impact on the import customs procedure and, in particular, it is a good opportunity for future foreign investments in production facilities in Serbia.

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 the continuity of operations 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 a significant customs duty relief was abolished for the import of new equipment not produced in the country for the purpose of expanding and modernizing existing production. We believe that duties for equipment, prescribed by the Law on Customs Tariff should be revised and reduced or abolished for products which are not produced in Serbia. Generally, duty relief can be a crucial driver for business expansion and further investments.
- Foreign entities have no access to easy registration and participation in a customs procedure, in particular with regard to completing the customs declaration. This issue has become particularly relevant now that foreign entities can register as VAT taxpayers through a VAT proxy. This has a direct impact on VAT treatment, since in practice the Tax Administration determines the right to deduct input VAT, i.e. tax exemption for exports, primarily on the basis of the customs declaration.
- The Customs Law stipulates that the maturity period of a customs debt may not exceed 8 days, which is too short for taxpayers who process a lot of customs documents on a daily basis. We suggest that customs authorities should enable the debtor to pay the customs debt within a period not exceeding 31 days. We believe that this would allow flexibility in customs clearance, resulting in a reduced number of errors in the processing of customs documents.
- 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 the inventory relative to the quantity reflected in the customs documents. Such omissions are mainly unintentional and occur 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 the case of regular importers.
- In the customs clearance process, technical obstacles are being encountered on a daily basis slowing down and complicating 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.
- The Decree on Customs Procedures and Customs Formalities prescribes that when considering a request for a binding information, if it is necessary to carry out the examination of goods that cannot be performed in the competent customs laboratory, the Customs Administration (CA) will obtain the offer of the organization or the person who will perform the analyses, and the person who submitted the request is obliged to pay the costs of those analyses. Considering that in accordance with the new Customs Law, the administrative fee for the analyses service should be payed to the CA, it would be appropriate that the applicant should pay only the statutory administrative fee, while the fee for the service of the authorized laboratory should be paid by the CA.
- The new Customs Law stipulates that economic operators may be authorized to use a comprehensive guarantee with a reduced amount for customs debt and other charges, or to have a guarantee waiver. This right is restricted by Article 141 of the Regulation on Customs Procedures and Customs Formalities, which only prescribes the possibility of reducing the reference amount by 50%.
- The Decree on Customs Procedures and Customs Formalities provides that, until the date of deployment of

electronic systems the movement of goods between the temporary storage facilities shall be effected by applying the transit procedure. This restricts the rights of holders of the AEO authorization.
- The current application of the locator has narrowed down the rights of authorized economic operators (AEO), especially the rights of authorized consignors and consignees, as well as the rights of persons engaged in the transit procedure under the TIR Convention. Although the Decree on Customs Procedures and Customs Formalities does not prescribe the possibility of placing locators on means of transport, as measures for identification of goods, it is not clear weather this practice will be changed.
- The Foreign Exchange Law, stipulates that the middle exchange rate of the Dinar used for the calculation of the customs duties is determined on the last day of the week preceding the week in which the duties are levied. Consequently, the period for lodging the supplementary declarations is limited to only 10 days, even though this deadline could be extended up to 31 days, having in mind that the goods released to one person during the period which may not exceed 31 days, may be covered by a single entry into accounts at the end of that period and the opportunity can be given to a debtor to pay duties globally after the period of aggregation.
- The fee for the parking at the terminals where the customs formalities are performed, in the amount of RSD 1,200, is determined by the act of the Minister of Finance. The new Customs Law stipulates that the customs authorities do not charge fees for carrying out customs controls, which should include the possibility of access to the customs premises at no extra cost.

Free Trade Agreements ("FTA")

FTAs are applied without major difficulties, but documents of origin should be issued and processed more efficiently, by, for instance, shortening the time for the issuance of binding information on goods origin "BTI" also in cases when the EUR1 certificate is supported by all evidence of origin but is rejected for a missing seal in box No. 12.

FIC RECOMMENDATIONS

The FIC proposes the following improvements of the efficiency and transparency of the customs clearance procedure:

- Transparently communicate the planned liberalization of customs preferences with the interested industries and ensure the industry's consent at least 12 months prior to the commencement of the preference.
- We propose the following changes to customs declarations: (1) the date of issue of the customs invoice - it is recommended that the date of issue of the customs invoice should be the final date of clearance of goods and not the date of the acceptance of a declaration; (2) allow the use of a comprehensive guarantee with a reduced reference amount for several customs procedures, as well as relief from the obligation to provide the guarantee, in the manner prescribed for the transit procedure.
- 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 of customs procedure with VAT Law, regarding the treatment of a foreign legal entity in a customs procedure; (2) decrease the frequency of sample-taking for core products and accept the analysis of accredited foreign laboratories.
- Increase the efficiency at all levels of administration: efficient handling of requests that are in the administrative procedure; a better on-line information system available to all parties involved in customs process; introducing a simplified correction of a customs document based on the correction of the quantity of goods cleared.
- Align the Decree on Customs Procedures and Customs Formalities with the new Customs Law, in such a way that the additional costs of the laboratory analysis are not borne by the applicant for the issuance of a binding information and abolish the fee for using customs terminals.

PAYMENT SERVICES

1.33

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Establishing a common platform for the exchange of information in the process of changing the account and opening and maintaining accounts with basic services	2018		√	
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	2018			√
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	2015			√

CURRENT SITUATION

Almost three years after the beginning of the application of the Payment Services Law (hereinafter: the Law), on 8 June 2018, a law on amendments to the Law was approved (in force as of 17 March 2019). 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 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.

At the end of 2018, a set of by-laws were adopted to closely regulate the field of payment services and payment systems, including issues related to the fees of payment service providers (their transparency, the manner of their publication and delivery), a list of representative services, the payment system rules (including the instant payment system - IPS), the monitoring of payment systems, etc.

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. 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

The amendments to the Law have reduced the liability of the payer for losses due to unauthorized payment transactions with stolen or misused payment instruments, from RSD 15,000 to RSD 3,000, 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 is 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.

On 22 October 2019 an IPS system was launched. The NBS operates the IPS system, in which payment service providers can execute individual instant credit transfers (instant

payments) 24/7/365, i.e. at any time each day in the year and almost instantaneously, i.e. within a few seconds only.

Instant Payments Serbia, an instant payment system (IPS) operated by the National Bank of Serbia (NBS), was launched on 22 October 2019. This is a contemporary payment system, operational 24/7, 365 days a year, enabling payment service providers to execute individual instant credit transfers (instant payments) almost instantaneously, i.e. within a few seconds.

An instant credit transfer in the IPS system is made based on participants' transfer orders in gross amount immediately after fulfilling the conditions for the execution of these orders. The value of an individual transfer order carried out in the IPS system cannot exceed RSD 300,000. Instant payments can currently be initiated via electronic banking, mobile banking and by submitting payment orders at tellers of payment service providers in accordance with regulations. Banks are obligated to provide clients with at least one channel for instant credit transfers (e.g. a mobile phone or e-banking app), and as of 1 April 2019 they have to enable instant payments through all available channels for initiating payment transactions. Additionally, as of 1 April 2019, banks which allow the issuance and acceptance of payment instruments to clients at points-of-sale are also obligated to enable the instant payment service at all brick-and-mortar and virtual points-of-sale. Buyers will be able to make a payment using a QR code. One way to do this is for the buyer to generate a QR code on their mobile phone, which the retailer then scans, and the other way is to have the retailer generate a QR code at its point-of-sale, which the buyer then scans, completing the payment. In addition to making the payment process faster, instant payments will be a true competitor to card payments, particularly as they make funds instantly available to the retailer on its account, whereas with card payments this takes a few days.

REMAINING ISSUES

According to data published by the NBS, there are 13 companies in the Payment Institutions Register, and only 2 electronic money institutions, 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 consequently leads to an increase in operating costs.

Despite the constant increase in the number of IPS transactions, their volume is still not significant in relation to the total number of payment transactions, since not all payment service providers are included in the IPS system (for various reasons prescribed in the NBS decision, the number of banks are excluded from the implementation of the IPS system). Furthermore, a number of banks have been unable to implement the IPS QR code so that the implementation of instant payment at points-of-sale is overdue in relation to the envisaged deadlines.

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
- Longer deadlines for the implementation of regulations that require systemic solutions by payment service providers (including complex technical solutions).
- Amending the Law on Multilateral Interchange Fees and Special Operating Rules for Card-Based Payment Transactions, in the manner that the issuance of cards with domestic payment transactions not processed in the Republic of Serbia would not be conditioned by the previous issuance of a payment card for the execution of domestic payment transactions

NON-PERFORMING LOANS

1.67

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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 the assignment of NPLs between a Serbian bank and a Serbian borrower to non-residents regardless of whether they are in a syndicated loan or not.	2017			√
Eliminating the impediments to loan write-offs by banks.	2016	√		

CURRENT SITUATION

The share of non-performing loans (hereinafter: NPLs) in overall credits of the banking sector has been posting a constant decreasing trend, remaining within single digits. According to the latest figures, the share of NPLs is currently below 7%.

The Strategy for resolving NPLs (hereinafter: Strategy) adopted by the Government of the Republic of Serbia in August 2015 in order to define a solution for NPLs includes two action plans for its implementation: the Government Action Plan (of line ministries and other state institutions) and the Action Plan adopted by the National Bank of Serbia (hereinafter: NBS).

Among other things, the NBS Action Plan envisages the preparation of new and amendments to exiting legislation and supporting documentation related to: bank supervision, accounting standards and practices, the disclosure of data and information by banks, the valuation of collaterals, as well as a timeline for its completion (2015-2016).

In that sense, the NBS has enacted amendments to: the Decision on Reporting by Banks, Decision on the Classification of Bank Balance Sheet Assets and Off-Balance Sheet Items; Decision on Risk Management by Banks; Decision on Capital Adequacy of banks, Decision on Liquidity Risk Management by Banks, etc., thereby acting as a regulator and helping increase awareness and responsibility in banks' actions.

However, the real effect on banks' financial statements burdened by NPLs was achieved only after the enactment of the NBS Decision on the Accounting Write-Off of Bank Balance Sheet Assets, which has been in force since 30 September 2017. This Decision affected the enactment of amendments to tax regulations, which contributed to a positive resolution of the NPL issue at the end of 2017 and during 2018.

POSITIVE DEVELOPMENTS

The foregoing NBS Decision on the accounting write-off of bank balance sheet assets has enabled banks to proceed to accounting write-offs of NPLs by transferring balance sheet assets to off-balance items, when the calculated amount of impairment of a loan recorded by the bank in favour of allowances for impairment equals 100% of its gross book value.

Following this transfer of NPLs to off-balance, banks were given the opportunity to "clean" their financial balance. At the time of the actual write-off of NPLs from off-balance, the banks had no tax obligations that had existed under earlier legislation, which contributed to a considerable unburdening of banks. From the aspect of risk, this Decision allowed banks to proceed to the reduction of provisions if the NPL portfolio is lower than 10%. Since the beginning of this year, obligations related to allocating provisions have been fully abolished, despite the fact that the Decision on the classification of bank balance sheet assets and off-balance sheet items still provides the categorization of receivables (including NPLs), but this does not affect banks' liabilities regarding provisioning, i.e. the burdening of capital.

At the end of December 2018, the Government adopted the Programme of Resolution of Non-Performing Loans for the 2018-2020 period (hereinafter: Programme) with a related Action Plan for its implementation, which specified all activities implemented until then aimed at implementing the Strategy and which specified the adopted/amended regulations such as: the Corporate Profit

Tax Law and the Personal Income Tax Law, the Law on Enforcement and Security Interest, the Mortgage Law, the Law on Bankruptcy, the Law on Civil Proceeding as well as adoption of the Authentic Interpretation of Article 48 of the Law on Enforcement and Security Interest by the National Parliament in December 2017, initiated by the Foreign Investors Council.

In addition to resolving NPLs of state financial creditors and improving the bankruptcy framework, the Programme envisages activities aimed at preventing the occurrence of NPLs, which represents an improvement whose actual effects will be visible upon the expiry of the Programme.

In view of the fact that the adoption of the Decision on the accounting write-off of bank balance sheet assets had been overdue by more than a year, and that it had missed the deadlines provided under the NBS Action Plan as per the previous Strategy, a timely and compliant fulfillment of tasks foreseen by the Programme by all participants should be ensured as a prerequisite for the success of the Programme.

REMAINING ISSUES

Although the legal framework for voluntary financial restructuring was established with the adoption of the Law on Voluntary Financial Restructuring in 2015, the mechanism that it envisages has not yet been put in practice. During the process of resolving NPLs, banks and borrowers shall conclude Standstill Agreements, but when there are joint proposals for restructuring, parties rarely conclude a framework Standstill Agreement that involves all participants in the process, as they mostly proceed to conclude bilateral agreements. This suggests that there is room for additional improvements in the sense of mobilizing competent institutions in the application of this Law, which would contribute to efficient voluntary restructuring.

The lack of new financing sources remains a major obstacle in implementing out-of-court restructuring plans, because providers of fresh money are currently protected only in the case of bankruptcy.

The next potential obstacle for resolving financial difficulties may also come from inability to assign performing corporate loans outside the banking sector, which may prevent an efficient resolution of large groups of debtors encountering financial difficulties in business under restructuring.

Despite the fact that that the Law on Enforcement and Security Interest has been in force since July 2016, the extended periods of enforcement remain problematic in the context of the collection of receivables in practice.

Furthermore, Article 85a of the Law on Tax Procedure and Tax Administration envisages that, in order to ensuring tax collection, the Tax Administration may issue a Decision to enforce measures for ensuring tax collection, namely: a ban on the disposal of financial assets, a ban on the disposal, sale and encumbering of movables, a ban on the disposal, sale and encumbering of real estate or title to immovable property registered in public books, as well as a ban on enforcement by third parties. A Decision on establishing prior measures of securing tax collection becomes effective upon delivery, and the prior measure of collection is valid until the issue of a decision on enforced collection from the taxpayer's financial assets and the entry into the register of blocked accounts kept by the competent organization, the entry of lien into the register of movables, and/or register of real estate, and/or until a full collection of the taxes. Appealing this decision does not postpone enforcement. Thus, receivables related to taxes are not only privileged in relation to receivables of other creditors, which thereby may prevent the latter from implementing enforcement over an extended period of time, but this is also in direct collision with the provisions of the Mortgage Law as a "lex specialis" which stipulate the priority right of the mortgagee to settle receivables from the value of real estate under mortgage if the mortgage is registered before the Decision of the Tax Administration.

Article 18 of the Law on Foreign Exchange Operations allows resident banks to buy or sell receivables from a non-resident to a non-resident creditor – a participant in a syndicated loan, but that receivables under NPLs regarding loan contracts concluded between a resident bank and a resident, may not be assigned to a non-resident. Also, a resident borrower is obliged to notify the NBS of the conclusion of a loan contract abroad, so as to ensure the transfer of financial assets to or from Serbia, as well as any change of foreign creditor, and this may create certain problems in practice, such as disrupting the assignment of cross border loans by borrowers.

In the Q&A section available on its website, the NBS published an interpretation related to provisions of the Law on Banks pertaining to exceptions to keeping banking secrets. The NBS clarified that the formulation "other persons who,

due to the nature of their work, may have access to data considered a banking secret" should be interpreted so as to include investors in NPLs, as well as their legal and financial advisers into the transaction. This NBS interpretation provides a positive impetus to the NPL market, but the issue of banking secret must be resolved either by an amendment to the Law on Banks or through an authentic interpretation by the National Assembly of the Republic of Serbia.

Regulating synthetic sale arrangements would be helpful, especially from the aspect of tax legislation.

Finally, strengthening the institutional framework for speeding up procedures before the registers of pledges and the real estate cadastre is important for shortening the time needed to re-register mortgages and pledges under the name of new creditors.

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 the assignment of NPLs between a Serbian bank and a Serbian borrower to non-residents, regardless of whether they are in a syndicated loan or not.
- Eliminating the impediments for the assignment of performing receivables of legal entities from banks to other legal entities, and not just to banks.

FOREIGN EXCHANGE OPERATIONS

1.14

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2017			√
Ensure a better public availability of opinions of state authorities in charge of forex operations, in particular the 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 with responses to questions on the website, etc.).	2016			√
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.	2017			√
Simplify the set-off rules for all types of current and capital transactions and allow cash pooling between affiliated parties.	2012			√
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.	2013			√
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.).	2018		√	
Further liberalization of foreign deposit transactions of residents, especially for companies subject to project financing by foreign banks and international financial institutions.	2018			√

CURRENT SITUATION

Since 28 April 2018, when 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, no significant changes in the field of foreign exchange regulations have occurred. However, the adoption of last year's amendments of the Law brought Serbia closer to the fulfilment of its obligations under the Stabilisation and Association Agreement (SAA) in the area of movement of capital towards member states of the European Union (EU) and alignment with international standards in the prevention of money laundering and terrorism financing. Additionally, these amendments tend to 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.

Since the last edition of the White Book, only several by-laws have been adopted and amended. The most significant change relates to the takeover of foreign exchange supervision by the National Bank of Serbia (NBS) from the Ministry of Finance – Tax Administration over 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. To fully implement this taking over of the supervision, the NBS rendered a Decision on Detailed Conditions and Manner of Conducting Supervision of Foreign Exchange Operations, which prescribes the conditions of two forms of supervision powers granted to the NBS – indirect and direct – and a relatively broad scope of actions which can be undertaken by the NBS.

Certain other changes to the NBS by-laws have been made during the year, such as in the field of financial derivatives operations and the foreign exchange market, however, none of them are of particular significance.

Certain recommendations from previous White Book editions have been adopted, with their results observed in practice during the last year, such as enabling (under cer-

tain 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 liberalizing rules concerning the possibility for residents - natural persons to trade in securities abroad.

In conclusion, although improvements in the field of foreign exchange operations are becoming more and more visible in practice, there is still room for further liberalization of the Law in order to increase the attractiveness of investing in Serbia.

POSITIVE DEVELOPMENTS

Apart from the adoption and amendments to the aforesaid by-laws, unlike the previous year, during the past year there have been no material changes to the Law and/or the by-laws, and thus significant steps forward in this area have not been made.

REMAINING ISSUES

Despite the partial liberalization 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 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 the liberalization 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 the 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 'realized' 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 realized 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, in relation to Article 6 of the Law and the relevant by-laws, 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 liberalize 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 to realize a foreign cash inflow, a resident 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 liberalization, 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.

By amendments to the Article 23 of the Law and the adoption of the relevant by-law in 2018, the Law envisaged possibilities of granting financial loans by a resident – legal entity to non-residents, as well as providing guarantees and collaterals by a resident – legal entity for obligations of non-resident under a credit transaction between two non-residents, for certain categories of non-residents (if they are from EU member states or a non-resident debtor is majority owned by a resident). These amendments led to certain ambiguity as to intentions of the legislator. It is not clear why the intention of the legislator was limited only to the granting of guarantees and collaterals by residents only for credit transactions between non-residents, and not for guarantee transactions in terms of Article 26 of the Law, in relation to which a further liberalization of the Law is still required.

Additionally, in practice the manner of granting collaterals pursuant to Article 23 of the Law is performed in the way that granting a loan to a non-resident by a resident bank or the issuance of a guarantee to a non-resident bank, upon instruction of the non-resident (under a credit transaction between two non-residents), resident banks are obliged to obtain collaterals from a non-resident borrower or non-resident client, which are often of lower quality compared to collaterals which resident banks could obtain from a resident/owner of a specific non-resident, which has an undoubtable legal interest to provide collaterals for a transaction of its subsidiary.

Therefore the next amendments to the Law should include a liberalization of this article in terms of enabling resident banks to obtain collaterals from resident/owner of non-resident under guarantee transactions between two non-residents.

Also, a resident bank finances a non-resident abroad for which it is obliged to obtain adequate collateral under the Law. In accordance with the Decision on conditions and manner under which a resident may grant financial loans to non-residents and grant guarantees and other collaterals under cross-border credit transactions and credit transactions between non-residents, a resident/owner of non-resident in this case is not entitled to provide any collateral, given that the Law enables collateralization by a resident only in credit transactions between two non-residents, but not in the case of crediting a non-resident by a resident bank. In this way resident banks are put into a disadvantaged position against non-resident banks financing a non-resident.

Moreover, with amendments to Article 23 and the adoption of a new by-law of the NBS, only the conditions for granting financial loans to non-residents - debtors from EU member states have been liberalized. 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 have not been 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, with amendments to Article 32, 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 ("RS Official Gazette" 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 authorized to conduct international payment operations). For this reason, it is necessary to harmonize 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.

Also, we would suggest defining names and rules for two types of contract known in international practice as the Funded / Unfunded Risk Participation Agreement (hereinafter FRPA/ URPA). In the case of FRPA, a resident bank, as a form of collateral, makes a deposit into the account of a non-resident creditor before receivables are due in the amount of the claim that the non-resident creditor has against a debtor-resident. When it comes to URPA, a resident bank guarantees making a deposit into the account of a non-resident creditor in the case that a debtor-resident fails to pay on the maturity of the claim.

In both cases, the mentioned deposits are a form of guarantee on the basis of which the non-resident creditor will be reimbursed in the event that the debtor - resident fails to fulfill his due obligation. In an FRPA arrangement, the non-resident creditor undertakes the obligation to repay given funds to the resident bank when it is collected from the resident debtor, and the same obligation exists in an URP arrangement, when the non-resident creditor subsequently collects its claims from the resident debtor. In order to enable a proper contracting of these types of Risk Participation Agreement, it would be necessary to define and regulate them by the Law.

Therefore, the policy in the area of forex operations should be directed towards the further liberalization of current and capital transactions in order to harmonize 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 a better public availability of opinions of state authorities in charge of forex operations, in particular the 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 with responses to questions on the website, etc.).
- Reconsider the wide scope of the 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, as envisaged by the by-law of the NBS which was adopted last year in parallel with amendments to the Law under the amended Article 23.
- Simplify the set-off rules from Article 6 of the Law (and relevant by-laws) for all types of current and capital transactions and allow cash pooling between affiliated entities.
- 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, as currently envisaged by by-laws governing cross-border cash inflow and outflow, subject to the condition (if necessary) for such notification to be made subsequently and electronically at certain time intervals (e.g. monthly, quarterly, etc.).
- Further liberalization 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

2.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Develop a system to enable better communication between the Administration for the Prevention of Money Laundering and entities subject to the Law, 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 a more decisive and efficient action against money laundering and the financing of terrorism.	2009		√	
Continue organizing appropriate seminars and workshops to train entities subject to the Law, with a view to increasing the effectiveness of its implementation.	2011		√	

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, the 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 the 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 to the existing clients as well, which caused a lot of problems in the implementation of these requirements to taxpayers who do not have continuous contact with their old clients with whom they had established a business relationship years earlier.

The new Law (including a large number of by-laws that have been adopted in the meantime) 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 entities subject to the Law, and a more accurate definition of their obligations, (lawyers, public notaries, virtual currency operators). It extends the mandatory risk analysis (risk assessment at several levels – state level, liable party level, client level, business relationship or transaction). In addition, it clarifies the obligation to identify the ultimate beneficial owner and collect data on the origin of assets in cases of high-risk clients, 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 entity subject to the Law 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 of Terrorism, while the drafting of a new National Strategy in the field, with the accompanying implementing Action Plan, is under way.

In addition, amendments have been 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 flagged 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 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, provide the required documentation and 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.

After identifying Serbia as a jurisdiction with a flawed anti-money laundering and terrorist financing system in February 2018, the Financial Action Task Force (FATF) made a decision at a session held on 21 June 2019 to remove Serbia from this list.

Prior to the entry of the White Book into print, the Government of the RS adopted the Proposal of Amendments to the Law on Prevention of Money Laundering and Financing of Terrorism aiming to be harmonized with EU acquis. The new legal solution, if and when adopted, will be analysed in the next edition of the White Book.

POSITIVE DEVELOPMENTS

In 2018 and 2019, the competent authorities intensified the adoption of all necessary regulations, and to some extent they also took into account the comments made by the entities subject to the Law and the interested public on the previous draft law. At the same time, there is also stepped up activity in the field of enforcement (according to information from the Ministry of Internal Affairs, a total of 15 money laundering related judgments were passed between 20 December 2018 and 10 April 2019).

The new Law, as well as other regulations in the field of the 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 thoroughly monitoring the implementation of all adopted regulations and cooperating 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 was 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 entities subject to the Law to be able to plan their activities in a timely manner and especially considering that the new Law introduced significant new obligations to the business sector with regards to the implementation of the Law.

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 (EU) 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 entities subject to the Law, as well as the government, and better cooperation with the Ministry of Foreign Affairs and the courts with the aim of improving the implementation of regulations in this field.
- 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.

- Adopt initiatives of professional associations to exclude certain business relationships from the obligations prescribed by the Law (e.g. risk insurance)
- Continue organizing appropriate seminars and workshops to train entities subject to the Law, with a view to increasing the effectiveness of its implementation.

LAW ON THE CENTRAL REGISTER OF BENEFICIAL OWNERS 2.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2018	√		
The sanctions prescribed by the Law should be reduced.	2018			√

CURRENT SITUATION

The Law on Central Register of Beneficial Owners (hereinafter referred to as: Law) came into force on 8 June 2018, and since then there have been no amendments. Two rulebooks have been adopted: Rulebook on the Content of Central Register of Beneficial Owners for Purpose of Registration of Ultimate Beneficial Owners of Registered Entity and Rulebook on Manner and Conditions for Electronic Exchange of Data between Business Registers Agency (hereinafter referred to as: BRA), other State Authorities and the National Bank of Serbia (NBS) in order to register Beneficial Owners. Both rulebooks began to apply on 15 December 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 (hereinafter referred to as: Central Register).

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. Also, the Law does not apply to entrepreneurs.

Central Register is a public, unique, electronic and centralised 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). Central Register was established on 31 December 2018.

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 other changes on the basis of which compliance with the conditions for acquiring the capacity of beneficial owner can be assessed.

The beneficial owner of a registered entity is: (i) a natural person who directly or indirectly holds 25% or more of inter-

est, 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.

BRA keeps data permanently, while the registered entity has and maintains adequate, accurate and up-to-date data and documents based on 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.

At the moment of publishing of this text, the public consultations on the amendments to the Law, which amendments stipulate that the BRA will check if the registered entities have completed the registration of the beneficial owner data in Central Register by January 31, 2020 and file a request for the initiation of misdemeanour proceedings if the registered entity has not fulfilled the obligation of registration within the statutory deadline. However, as these amendments have not yet entered into force, we will be able to comment on them in the next edition of the White Book.

Failure to comply with this Law is a criminal offence 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

Regarding the problems highlighted in White Book 2018, it is important to emphasize that in the meantime the Central Register has been established, as well as that in the meantime rulebooks defining the manner in which the basis of registration is determined have been adopted. Also, the Ministry of Economy issued a Guide for Registration of the Beneficial Owner of a Registered Entity in the Central Register, which explains in more detail what documentation is needed in order to prove the beneficial ownership. Additionally, the BRA has published a Guide for Using Application for Registration of Beneficial Owners in which the registration process is explained to users in a detailed manner.

REMAINING ISSUES

When the basis for registration is the establishment of a registered entity, it is necessary to register the data in the Central Register using the qualified electronic signature certificate (hereinafter referred to as: certificate) of a legal representative of a registered entity, not later than 15 days upon the establishment of a registered entity. This means that in cases when the legal representative is a foreign citizen, who does not have a residency address on the territory of Serbia, his/her visit to Serbia is required, since the takeover of the certificate from an authorized body for issuing qualified electronic signature certificates (hereinafter referred to as: authorized body) has to be performed exclusively by the personal presence of the legal representative, which may represent an additional logistical challenge for potential investors.

So far, the Serbian Chamber of Commerce (CCIS), as one of the authorized bodies for the issuance of the certificates, has allowed singing the application for registration of the respective data to proxies of the legal representatives, using the certificate of the legal representative on the business premises of the CCIS (without the right to take the certificate out of the business premises of the CCIS). Based on the information obtained from the officers of the CCIS, this will be not possible as of 1 July 2019.

In addition, the last remaining issue are the strict sanctions prescribed for failure to comply with the provisions of the Law, which are completely disproportionate to the actions and consequences of the sanctioned action.

FIC RECOMMENDATIONS

- Significant changes should be made to the procedure of registration of the respective data in the Central Register using the certificate.
- The sanctions prescribed by the Law should be reduced.

LAW ON PERSONAL DATA PROTECTION

1.33

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Enact a new data protection law as soon as possible, reinstating the initial provision on legitimate interest and regulating specific forms of data processing.	2017	√		
Provide the Commissioner with better working conditions, equipment and staff to ensure an effective implementation of the new law.	2009			√
Determine supervisory bodies that will monitor the implementation of the data protection law in co-operation with the Commissioner.	2009			√
Issue precise instructions and standardized forms necessary to enable an effective implementation of the existing Data Protection Law until the adoption of a new one, especially with regard to the procedure for obtaining data transfer approvals and processing sensitive data.	2009			√
Establish better communication between the Commissioner and other state institutions, especially the Ministry of Justice, NGOs and international organizations.	2010			√
Conduct workshops and seminars to educate citizens and raise their awareness of the protection of their rights.	2009			√

CURRENT SITUATION

The Parliament of the Republic of Serbia enacted a new Law on Personal Data Protection,(RS Official Gazette No 87/2018), (hereinafter: "the new Law") on November 13, 2018. The new Law entered into force on 21 November 2018, to be applied in nine months from the day of entering into force, i.e. on 21 August 2019. The new Law represents a translation of the General Data Protection Regulation 2016/679 (GDPR), without its recitals and with minor specifics reflecting features of the legal system of the Republic of Serbia. Although the new Law has been assessed as a robust document, which does not take into account specifics of Serbia's legal system, the FIC is of the opinion that it may serve as solid legal ground for the promotion of European values in Serbia.

Legal solutions in the new Law clarify ambiguities, which existed in the previous Law on Personal Data Protection. A requirement that consent to the processing of personal data must be provided in writing, which made giving consent on a website impossible, has now been now changed. According to the new Law, consent is defined as any freely given, specific, informed and unambiguous indication of the data subject's wishes by which he or she, by a statement or by a clear affirmative act, signifies agreement to the processing of personal data relating to him or her. This provision enables lawful processing of personal data on websites.

The new Law provides for additional legitimate grounds for processing personal data such as the legitimate interest controller or a third party. This legal institute covers situations in which no specific law provides a basis for processing and there are no legitimate reasons to require the data controller to obtain consent from the data subject. What is missing is an official interpretation by the legislator as to what can be considered a legitimate interest, especially because the recitals from GDPR explaining this legal ground for data processing are not incorporated into the new Law.

New rights have been recognised to data subjects such as the right to data portability and the right to objection, while the list of cases where the right to erasure (the right to be forgotten) can be exercised have been expanded. The new Law introduces new obligations to the controller with the aim to protect personal data, such as the obligation to comply with the privacy by design or privacy by default principle and the obligation to perform, in certain situations, data privacy impact assessment and in certain situations the obligation for controllers and processors to appoint data protection officers. Not only controllers, but also processors are responsible for the implementation of organizational and technical measures to secure personal data.

The legal regime applying to the transfer of personal data is now more liberal. Personal data can be transferred to countries which have not ratified the Council of Europe Convention

for the Protection of Individuals with Regard to Automatic Processing of Personal Data and to countries which the European Union (EU) considers to provide an appropriate level of personal data protection (third countries) on the ground of contractual clauses approved by the Commissioner for Information of Public Importance and Personal Data Protection ("the Commissioner"). New legal grounds for the transfer of personal data to third countries are codes of conduct and certificates issued by certification bodies. In addition, personal data can be transferred to companies belonging to multinational companies and having registered seats on the territory of third countries, based on binding corporate rules. The new Law introduces the possibility of setting up certification bodies authorized to verify the level of compliance of companies with the new Law and to issue certificates of compliance.

The new Law has abolished the provision of the still applicable law prescribing that the provisions of the Law on Personal Data Protection do not apply to data that are available to everyone and published in public media and various other publications... as well as data that a person capable of caring for his/hers interests, has published about himself/herself. The above should improve data protection regarding telesales (a form of sales widely present in Serbia), so vendors of such companies will no longer be able to contact persons whose data is publicly disclosed on websites or in different publications for the purpose of concluding various types of contracts and selling various types of goods. A data subject can now be contacted for marketing purposes in cases where it can be reasonably expected, due to an existing relationship with data controllers, that they may be contacted (legitimate interest of controllers or third parties) or when a data subject, in the course of establishing a business relationship, gives consent for personal data collection for marketing purposes.

The Commissioner has not yet issued guidance on legitimate interest. The application of the new Law will start soon, while, on the other hand, data controllers might take several months to evaluate the lawfulness of processing based on legitimate interest. It shall be clarified by the Commissioner whether controllers, in the course of evaluating the lawfulness of processing based on legitimate interest shall rely on GDPR recitals, opinions of other European supervisory authorities and opinions of the European Data Protection Board or whether they should expect that the Commissioner shall issue guidance for data controllers in regard to legitimate interest. In addition, the Commissioner shall issue an explanation whether and to what extent it takes into account the practice of European legislators when interpreting the new Law, particularly bearing in mind that there has been no practice in Serbia so far.

POSITIVE DEVELOPMENTS

In 2019, the Commissioner undertook numerous activities to inform citizens about the importance of personal data protection. On 17 and 18 April 17 2019, the Commissioner organized an international conference dedicated to GDPR. The Commissioner has enacted several by-laws defining certain issues in a more detailed manner such as: the content of the notification form in case of data breach, the content of records of processing activities, the content of complaints and types of processing activities for which a data privacy impact assessment and his opinion are required. The Commissioner has continued issuing publications expressing its positions and opinion on the application of the new Law.

The new Law introduces the concept of joint controllers - if two or more controllers jointly determine the purpose and method of personal data processing, they are considered joint controllers. The joint controllers referred to in Article 43 of the new Law should determine in a transparent manner the responsibility of each of them for the fulfilment of the obligations prescribed by the new Law, and in particular the obligation regarding the exercise of the rights of data subjects and the fulfilment of their obligations to provide that person with the relevant information on data processing prescribed by the new Law. A data subject may exercise his or her rights prescribed by the new Law by reaching any of the joint controllers.

REMAINING ISSUES

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, released by the Government of Serbia in September 2015, proclaiming the strengthening of the Commissioner's resources as its goal.

The other important issue is whether and to which extent the state has the intent to promote values proclaimed in the new Law. The state should put much more efforts in raising data subjects' awareness of the significance of the abovementioned values by organizing broadcast public debates or public conferences where data subjects can learn more about their rights contained in the new Law. In addition, the state should exercise its authorities to implement the new Law at state bodies and to align the work of

state bodies with measures imposed by the Commissioner.

The new Law does not regulate specific forms of personal data processing, such as video surveillance, processing employees' personal data, and processing for the purpose of scientific and historical research and for statistical purposes. The absence of regulations creates legal uncertainty for controllers that will significantly hamper their ability to conduct business.

Article 65, paragraph 2, item 2, governing the transfer of personal data to third countries with the application of appropriate safeguards without a specific authorization from the Commissioner prescribes that appropriate safeguards may be provided by standard contractual clauses drafted by the Commissioner, in accordance with Article 45 of the new Law, defining in whole the relationship between the controller and the processor. Reference to Article 45 is not appropriate because GDPR recitals 79 and 81 and Articles 26 and 28 of GDPR do not prescribe that personal data can be transferred to third countries on the ground of contracts whose content is defined by the said articles. Moreover, Article 65, paragraph 2, item 2 does not prescribe possibility for controllers registered in Serbia to transfer personal data to controllers in third countries on the basis of standard contractual clauses drafted by the Commissioner and without requiring any specific authorization from the Commissioner. This condition is not in line with Article 46, paragraph 2, item c) of GDPR, which prescribes that the appropriate safeguards may be provided for, without requiring any specific authorization from a supervisory authority, with standard data protection clauses adopted by the Commissioner in accordance with the examination procedure referred to in Article 93 of GDPR. The European Commission adopted decisions in 2001, 2004 and 2010, providing for standard contractual clauses as grounds for the transfer personal data from controllers to controllers and from controllers to processors in third countries without requiring any specific authorization from a supervisory authority. Regardless of the fact that Serbia is not part of the EU and cannot apply EU standard contractual clauses rendered by the European Commission automatically, the new Law must implement the provision laid down in Article 46, paragraph 2, item c of GDPR and establish the same legal regime of the transfer of personal data to third countries as in the EU. In particular, the new Law must provide for the possibility of transferring personal data to third countries on the basis of standard contractual clauses - controller to controller and controller to processor - drafted by the Commissioner without any specific authorization from the Commissioner. The content of these standard contractual clauses shall correspond to the European practice. In addition, Article 77 of the new Law does not provide for the obligation of the Commissioner to draft standard contractual clauses enabling the transfer of personal data to third countries without authorization of the Commissioner, but only the obligation to draft standard contractual clauses from Article 45 of the new Law, which regulates the transfer of personal data between controllers and processors in Serbia. The FIC expresses concerns in regard to the latest statement of the Commissioner that drafting standard contractual clauses is not its priority. The Commissioner expressed concerns because EU standard contractual clauses are subject to reference for a preliminary ruling from the High Court (Ireland) made on 9 May 2018 – Data Protection Commissioner v Facebook Ireland Limited, Maximillian Schrems (Case C-311/18). Standard contractual clauses are still a valid ground for the transfer from EU Member States to third countries designed by the European Commission to facilitate a substantial increase in cross-border flows of personal data, while, on the other side, providing appropriate safeguards for the protection of personal data. On the other hand, a decision of the European Court of Justice in Case C-311/18 has not yet been rendered; a decision is expected to be rendered by the end of 2019 or at the beginning of 2020. Regardless the ambiguities in the new Law concerning wording in Article 65 paragraph 2 item 2, legal authorisation of the Commissioner to draft standard contractual clauses defining data transfer from a controller to a processor is indisputable. Therefore, the FIC believes that the Commissioner should exercise its powers stipulated by the new Law as soon as possible and enable the implementation of standard contractual clauses by Serbian data controllers in order to be able to conduct business with third countries. In case the European Court of Justice invalidates the standard contractual clauses, the Commissioner may put drafted standard contractual clauses out of force and lawmakers can amend the new Law accordingly.

By the time this edition of the White Book was closed, the Commissioner had not yet drafted standard contractual clauses that could be used by controllers to transfer personal data to third countries. The same applies to the Commissioner's authority to prescribe conditions for the issuance of licences to certification bodies.

Article 55, paragraph 10 of the new Law has not been aligned with Article 36, paragraph 5 of GDPR. Concerning the obligation of a data controller to request an opinion of the supervisory authority regarding data privacy impact assessment, Article 36, paragraph 5 of GDPR prescribes that EU Member states may require controllers to consult with, and obtain prior authorisation from the supervisory authority in relation to

processing by a controller for the performance of a task carried out in the public interest, including processing in relation to social protection and public health. On the other side, Article 55 paragraph, 10 of the new Law prescribes that the Commissioner may draft and publish on its website a list of processing activities for which its opinion must be requested. Based on authorities provided in Article 55, paragraph 10 of the new Law, the Commissioner has rendered the Decision on processing activities for which data privacy impact assessment must be performed and the opinion of the Commissioner requested (RS Official Gazette RS 45/2019).

GDPR limits the authority of Member States to prescribe cases in which controllers, with regard to data privacy impact assessment, shall consult with, and obtain prior authorization from, the supervisory authority. The cases are limited in relation to processing by a controller for the performance of a task carried out in the public interest, including processing in relation to social protection and public health. The new Law authorizes the Commissioner to determine processing activities for which its opinion must be requested. As a result of the broad authority of the Commissioner to determine processing activities in relation to which its opinion about data privacy impact assessment must be requested, the Commissioner has prescribed that its opinion is required for all processing activities for which data privacy impact assessment is obligatory.

The FIC is of the opinion that such broad legal authorities of the Commissioner and the list of activities in relation to which its opinion about data privacy impact assessment must be requested are not in line with the intent of GDPR to limit Member States' capacities to define the types of processing activities in relation to which an opinion of the supervisory authority about data privacy impact assessment must be requested.

FIC RECOMMENDATIONS

- Provide the Commissioner with better working conditions, equipment and staff to ensure an effective implementation of the new Law.
- Render/amend laws governing specific forms of personal data processing, such as video surveillance, processing employees' personal data, and processing for the purpose of scientific and historical research and for statistical purposes.
- Harmonize Article 55 paragraph 10 of the new Law with Article 36, paragraph 5 of GDPR.
- Amend Article 65, paragraph 2 of the new Law in line with Article 46, paragraph 2, item c of GDPR providing for the possibility to transfer personal data from a controller to a controller and a controller to a processor registered in third countries without authorization from the Commissioner on the basis of standard contractual clauses drafted by the Commissioner.
- Amend Article 77 of the new Law and provide for the obligation of the Commissioner to draft standard contractual clauses for the transfer of personal data from controllers in Serbia to controllers in third countries.
- Provide an official interpretation of the legislator as to what can be considered a legitimate interest and provide other interpretations for all other issues closely explained in the recitals of GDPR
- Draft contractual clauses for the transfer of personal data from controllers in Serbia to processors in third countries and enact conditions for the issuance of licences to certification bodies by the Commissioner.
- 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 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.	2015			√
It is necessary to regulate liability for entering incorrect data into the 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 (Official Gazette of the Republic of Serbia No. 112/2015), which came into force on 7 January 2016 (hereinafter: the Law).

The Law envisages the establishment of a single 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 National Bank of Serbia (NBS) and the Ministry of Interior) takes place ex officio, in the sense of a timely exchange of data on business entities and their shareholders and bodies, resulting in an increase 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 have been 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 its 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 2017, the Central Register also contains information on enforced collection provided by the NBS.

According to SBRA's data, there are almost 500,000 registered measures against more than 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 scope 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 temporary restriction due to the fact that Article 5 only prescribes that they last during the validation period in the manner prescribed in Article 3 of the Law.

The Law should contain appropriate solutions regarding the liability for entering incorrect data, especially in a situation where there was no fraudulent intent. We emphasize this, keeping in mind the automated registration process, the public registry, and the weight of potential consequences resulting from the application of the provisions stipulated by the Law.

One of the issues, which existed during the drafting and adoption of the Law, is a situation where an over-indebted business entity opens a new company to which the 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

1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The concept of "authorized body" and the relationship between internal and external whistleblowing should be specified.	2015			√
Criminal offences in connection with whistleblowing, as well as any special penal responsibility for the grave violations of the rights of whistleblowers should be appropriately envisaged.	2015			√
Introduce rules on remuneration of whistleblowers to effectuate the purposes of this Law.	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 labelled as a whistleblower, holders of public office, and persons seeking information regarding a specific whistleblowing case. The Law also envisages the 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 disclosed information, within their authority.

The Law requires employers to notify all employees in writing about their rights under the Law, and to appoint a person authorized to receive information from whistleblowers and conduct 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 the receipt of the information. They are obliged to inform the whistleblower about the outcome thereof, within 15 days after the 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. A 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 has 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 the 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 assigning 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

Since the enactment of the Law, there has been an increase in the number of filed lawsuits and reports, while courts have been issuing interim measures significantly faster than the prescribed legal time limit. Also, the first final verdicts in this field have been delivered, and two verdicts of the Supreme Court of Cassation, as an extraordinary legal remedy. The Court of Appeal in Novi Sad in the verdict Gž Uz 7/2017(2) from June 20, 2017 compensated non-pecuniary damage for mental anguish for offended reputation and honour and for fear suffered. The foregoing shows that judges and other responsible persons understand the importance of enforcing the Law and of the urgency of action. It is obvious that progress has been made in the education of judges, attorneys, prosecutors and individuals subject to the Law and that they are familiar with their rights and obligations.

In addition, regarding the strengthening of the institutional framework in relation to the fight against corruption, we also note that the new Law on Organization and Jurisdiction of Government Authorities in Suppresion of Organized Crime, Terrorism and Corruption started to apply as of 1 March 2018, when the special court departments and prosecutor's offices started to work. The training of staff was conducted by the Judicial Academy, covering 610 judges, police officers, prosecutors, and financial forensic experts who will make up the task forces against corruption. Concrete results are yet to be seen.

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 or incomprehensible, so 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 offences in connection with whistleblowing, or specific offences in cases of serious violations of the rights of whistleblowers and other persons entitled to the same protection. Furthermore, the Criminal Code has not been amended, as an alternative to the aforementioned option, to include the prescription of such criminal offences. 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 explicit 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.

However, to date, there have been no changes in the legislative framework in this area, including by-laws.

FIC RECOMMENDATIONS

- The concept of "authorized body" and the relationship between internal and external whistleblowing should be specified.
- Criminal offences 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 PUBLIC NOTARIES 2.67

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Appointment of public notaries in eight underdeveloped cities in Serbia.	2018	√		
Further reducing charges for services provided by public notaries, and their harmonization with the purchasing power of companies and natural persons.	2017		√	
Public notaries should hire more staff, and rent more spacious offices to reduce queues.	2017	√		

CURRENT SITUATION

The Law on Public Notaries (RS Official Gazette 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 the notarization of various types of contracts in the area of corporate law, torts and obligations, inheritance and family law, lien mortgage statements and other statements establishing, changing or terminating a 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, the notarization of signatures, transcripts and writs has become a part of the services provided by public notaries. This 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 courts. These are primarily probate proceedings, the assignment of which has 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, art objects, jewellery, and other valuables, except those prohibited by law. When receiving a valuable to be kept in a safe, a public notary is required to issue a notarial deposit certificate.
- Notaries are the so-called "reporting entities," meaning that they are obliged to send each relevant document which is the subject of the notarization to the relevant cadastre.

POSITIVE DEVELOPMENTS

With the adoption of the Law on the Procedure of Registration in Real Estate and Public Utility infrastructure Cadastres (RS Official Gazette No 41/18 and 31/19) and the Law on Electronic Documents, Electronic Identification and Confidential Services in Electronic Transactions (RS Official Gazette No 94/2017), public notaries have faced new challenges. In fact, from 1 July 2018, public notaries became the 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 estate or cadastre of public utility infrastructure, public notaries are required to send a copy of that document to the cadastre within 24 hours 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, a public notary is obliged to deliver such a contract to the cadastre as well, for the purpose of filing it in the records. Additionally, a public notary is also required to deliver copies of tax returns to the cadastre, for the purpose of determining the amount of 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 taxpayer 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 and forwards the document which is the basis for change of ownership over real estate to the public utility bill collection company. Additionally, starting from 31 Decem-

ber 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 the legal security of real estate-related rights and aligning the factual situation with the situation in public real estate registers. A big step has also been made in the process of digitization and interconnection of the public administration and interconnection between the public administration and public notaries. Namely, 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 the notarization, the registration of a document in the cadastre, the submission of the tax returns and the notification of the public utilities company.

As an improvement, we also emphasize that in the past period, the Ministry of Justice has appointed more than ten new public notaries and that they have started working, some of them in the less developed and less populated parts of Serbia.

REMAINING ISSUES

The prices of public notary services remain an acute problem in this area. We note 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 as high as several thousand euros. The fee for the notarization of a signature for legal entities is also higher than it used to be.

It is necessary to continue the process of digitization and networking of public notaries with the state administration. Namely, there are still no technical capabilities for notaries to carry out some of their legally established competences. For example, the cadastre of lines ("katastar vodova") has not been properly established, and it is not possible to electronically send a document notarized by a public notary to the cadastre. Also, new legal solutions have created a problem in practice, so when the delivery of a document is carried out by a public notary ex officio, the client on whose behalf the registration is made, in practice, is no longer in a position to dispose of the request or to withdraw it or modify, or to postpone the sending of a certified document (for example, the client does not have a possibility to use a release statement as a necessary document for the disposal of an unreleased mortgage).

FIC RECOMMENDATIONS

- Appointment of public notaries in eight underdeveloped cities in Serbia. Continue with the process of digitization and networking of the state administration with public notaries, in order to enable the implementation of all legal competencies of public notaries.
- Enable the disposition of clients' requests toward the cadastre in situations when the delivery of the document is carried out by a public notary ex officio.
- Further reducing charges for services provided by public notaries, and their harmonization with the purchasing power of companies and natural persons.

TAX

1.36

Some progress was made in the previous period in the implementation of the Foreign Investors Council's recommendations in the area of taxation. The removal of restrictions on corporate income tax deductibility of advertising expenses, new tax depreciation rules, the tax exemption for expenses related to employees' recreational activities (team-building) are among the most positive developments in this field. The Law on Charges for the Use of Public Goods was adopted, integrating various local charges and fees, previously regulated by a number of different laws and by-laws, into a single piece of legislation, which will contribute to increasing transparency and ease of application. New tax incentives were introduced under the Corporate Income Tax Law for research and development activities, and for income from use and sale of intellectual property. Further alignment of the Customs Law with EU customs regulations and practice is also commendable.

That said, most of the problems related to tax laws and their application remain unresolved. One of the remaining important issues is the lack of clarity and detailed rules in the tax law to regulate certain situations and transactions, which leads to differing interpretations and, consequently, t problems for taxpayers in practice. Some of the recent opinions issued by the Ministry of Finance provoked strong reactions from the business community, causing uncertainty and difficulties in their practical application, in particular the controversial opinion on tax deductibility of employees' commuting expenses, and the application of the fair value concept for property tax purposes. The proper classification and tax depreciation of specific categories of assets (oil rigs, windmills, reservoirs, hotels, shopping malls etc.) should be specified in detail in the respective by-laws, so that their tax depreciation reflects the actual economic and useful life of the assets. Also, the issue of the tax treatment of property measured at fair value remains unresolved. It The VAT treatment of supplies of goods and services in the area of construction should be improved, 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 to 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. Finally, the inability to print or export to Excel the tax returns submitted electronically is a significant obstacle for taxpayers.

A. CORPORATE INCOME TAX (CIT)

1.57

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Supplement the CIT Law with provisions that will regulate the taxation of company reorganisations, 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 regarding 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.	2010 - 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	√		
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). Introduce monthly, quarterly or annual filing of the tax returns for withholding tax on services, in accordance with customary international practice, instead of filing a tax return for each taxable transaction separately.	2012 / 2016			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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			√
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. 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.	2015 / 2016 / 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. 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 non-deductible impairment, so that increases and decreases of fair value are treated in an equitable way.	2017			√

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 2018 (RS Official Gazette No 95/2018). 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 latest amendments to the CIT introduced three new tax incentives:

1. double tax deduction on R & D expenditures incurred in Serbia,
2. exemption of 80% of revenues from exploitation of intellectual property rights, as well as capital gains from sale of these rights from the tax base,
3. a tax credit in the amount of 30% of equity investments in innovative start-ups, up to a maximum of RSD 100,000,000.

Other positive developments include the abolition of the limits for tax deductibility of advertising costs, as well as the introduction of a tax credit for resident taxpayers in the amount of the tax on capital gains incurred in a foreign country from the sale of immovable property in that country.

Also, an important change relates to new rules for calculating tax depreciation. The new rules will apply to fixed assets acquired after 1 January 2019. Assets acquired before 2019 will be amortized using old rules until 2028. It is expected that the Ministry of Finance will enact a by-law in 2019to regulate in detail the method of calculating tax depreciation according to the new rules.

REMAINING ISSUES

- In early 2019, the Ministry of Finance issued a controversial opinion on the tax treatment and documentation of reimbursement of employees' commuting expenses that caused a negative backlash from the business community and legal uncertainty among taxpayers. The opinion aims to introduce cumbersome requirements for documenting these expenses, which is contrary to labour and tax laws, to the stance taken by the Supreme Court of Cassation and some previous opinions of the Ministry of Finance. As such, this opinion should be immediately cancelled or amended.
- The lack of regulations or their vagueness with respect to certain situations and issues lead to different interpretations consequently causing 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 governing the treatment of losses arising from the liquidation or bankruptcy estate surplus. Consistent interpretation and application of the domestic tax law to transactions with a foreign element and of double tax treaties is increasingly important considering the ratification of the Multilateral Convention.
- 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. This leads to legal uncertainty and increases the 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 income subject to withholding tax is an administrative burden for businesses. Finally, the procedure for obtaining confirmation of paid withholding tax should be simplified and streamlined.
- New rules on tax depreciation were introduced for newly acquired non-current assets from 1 January 2019. Detailed rules and classification of assets are yet to be regulated by relevant by-laws. However, tax depreciation rules applicable to non-current assets acquired before 2019 remained largely unchanged since 2004, and their application in the contemporary business environment causes many difficulties and problems. Properly regulating the classification and depreciation of specific assets (e.g. windmills, oil rigs, returnable packaging etc.), and improving definitions of certain asset types (e.g. electronic equipment, office furniture, air conditioning systems etc.) is particularly important.
- Provisions of the law pertaining to the method for calculating tax depreciation continuously create 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 that 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 beginning of 2013, and whose individual value was below the average gross salary at that time.
- During 2015 and the first half of 2016, the Ministry of Fi-

nance 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 the filing of a bankruptcy petition. 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 realized.
- The CIT Law does not 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.
- The new accounting standard IFRS 16 Leases introduces a new accounting treatment of leases, which require lessees to recognize right-of-use assets in its balance sheet. The CIT Law lacks rules to provide for the proper and clear treatment of related expenses.

FIC RECOMMENDATIONS

- Cancel or amend the controversial opinion of the Ministry of Finance on the tax treatment and documenting of reimbursement of employees' commuting expenses.
- Amend the CIT Law so that expenses related to the right of use of a leased asset, recognized in accordance with IFRS 16, are recognized as tax-deductible over the lease period in accordance with the accounting treatment. Alternatively, prescribe that lease fees are tax-deductible when paid (on cash basis).
- 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, and through by-laws, provide guidelines on taxation of permanent establishments. Consistent interpretation and application of the domestic tax law and provisions of the international tax treaties on transactions with a foreign element should be ensured.
- 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. Also, confirmation on paid withholding tax should be automatically generated in the Tax Administration's system and obtained upon filing and payment of withholding tax, rather than through a separate procedure.
- 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.

- Introduce detailed tax depreciation rules which will allow for the proper classification and depreciation of specific assets such as windmills, oil rigs, returnable packaging etc. in accordance with their economic and useful life. Improve definitions of certain asset types such as electronic equipment, office furniture, air conditioning systems etc.

- 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 to resolve the following issues:
  - Tax depreciation expenses should be recognized for fixed assets acquired before 2013 (present in the accounting records on 1 January 2013) 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 costs for the first group of fixed assets, as at 31 December 2003 that caused numerous dilemmas and controversial interpretations in practice.
  - In case of acquisition of a bankruptcy debtor as a legal entity, tax depreciation should be calculated based on a proportionate share of the purchase price allocated to relevant assets.

- Prescribe that the historical cost model should apply for taxation purposes to assets for which the IFRS provides a free choice between historical cost and fair value accounting, irrespective of the chosen accounting method, to ensure the 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 in the fair value of assets accounted for under the fair value model are not a non-deductible impairment, and so that fair value increases and decreases are treated equitably.

B. PERSONAL INCOME TAX 1.33

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2008			√
It is strongly recommended that the appropriate by-law be passed to regulate in detail the calculation of per diems during business trips and the reimbursement and calculation of costs for the use of a private vehicle for business purposes.	2017			√
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.	2017			√
We strongly advise revising the stand regarding "team building" and adjusting it to its economic purpose.	2017	√		

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 coordinate joint activities on the proper interpretation of 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.	2017			√
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.	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 (the 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-assessment.

The most recent amendments to the Law came into force on 1 January 2019, introducing the following changes: (i) "team building" is not taxable, (ii) tax exemption for own shares and shares received by the employee from the employer or from the employer-related parties under certain conditions, (iii) the capital gains tax exemption is not applied in cases when the company acquires its own shares, (iv) regulation of tax treatment of income from hospitality services.

The Law on Conversion of Housing Loans indexed in Swiss francs provides tax exemption for the beneficiaries-individuals' income obtained through the conversion. Contrary to Article 1 of the Law on Personal Income Tax, taxation of individuals and tax exemption is regulated by another non-tax law, which gives rise to legal uncertainty for both parties to the conversion. We note that non-tax regulation governs the taxation of individuals based on loans in Swiss francs.

POSITIVE DEVELOPMENTS

Recent amendments to the Law brought certain positive developments.

The tax treatment of "team building" is now regulated. In fact, contrary to the earlier controversial standpoint of the Ministry of Finance, taken in one of its previously issued opinions, the Law now stipulates that no personal income tax should be paid on employer's costs incurred with the aim of creating and maintaining the conditions for the recreation of employees in the workplace, and envisages the reimbursement of costs of collective recreation of employees, i.e. sports events and activities designed to improve the health of employees and/or building better workplace relationships (provided that such activities are regulated by the general act of the employer and are available to all employees). The Ministry is expected to issue a by-law to regulate the matter in detail.

Amendments to the Law prescribe a tax exemption on employee income from own shares, options on own shares or own shares of the employer/employer-related parties. Exceptionally, personal income tax should be paid: (i) in the event of disposal of own shares before the expiration of two years from the date of acquisition of the right to dispose of those shares, at the moment of disposal of the shares, (ii) if the employer or a related party purchase its own shares from the employee – the taxable moment is the moment of purchase and (iii) in case of termination of employment of the employee before the expiration of two years from the date of acquiring the right to dispose of own shares (except in cases when the employ-

ment relationship is terminated independently of the employee's and employer's will) - this would be considered as income paid on the last day of employment.

The provisions on real estate revenues have been clarified - a new paragraph was added, which defines that anyone who earns income from renting rooms and apartments for a period longer than 30 days, and who does not provide hospitality services, in the meaning of the laws regulating hospitality and tourism, is also subject to real estate income tax.

With regard to the above, a distinction was made between taxpayers whose income is recognized as income from immovable property (therefore, in cases where apartments and rooms are rented for a period longer than 30 days) and those who generate income from providing hospitality services (rental of accommodation capacities up to 30 days). The introduction of the aforesaid type of income into the tax system of Serbia contributed to increasing legal security in this area.

REMAINING ISSUES

The Law has yet to define the rules on reimbursement of expenses to employees for business trips abroad as no adequate rulebook has been passed yet to regulate this area, nor were the Law or the Labour Law changed to resolve this problem. 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 to the implementation the Regulation on the reimbursement of costs and severance pays of state officials and employees or some other by-law that has yet to be introduced. Consequently, tax inspectors conducting tax audits often apply this Regulation, despite the fact that it is only mandatory for the public sector. 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.

The tax treatment of compensation for unused annual leave paid to an employee who did not use paid leave in the course of employment has not changed - such compensation is still treated as income. Although the Labour Law stipulates that this is a compensation for damages, it is unclear why the Ministry of Finance has opted for such tax treatment. This shows the lack of cooperation and coordination between the two competent bodies.

The problem with the social security registration of Serbian nationals employed with a foreign employer but working in Serbia, has not been solved either. 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. The Law on Pension and Disability Insurance and the Health Insurance Law also recognize this type of engagement, 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 insurance is mandatory, while on the other hand registering for insurance is not possible. Consequently, taxpayers are in a situation that they cannot exercise any rights from social security, or pay contributions. Consequently, the social insurance fund receives less money, while private individuals and legal entities are exposed to legal uncertainty.

Due to the manner in which the law defines taxable net income for the purposes of calculating annual personal income tax, taxpayers who have already paid taxes for income earned in a foreign country, are not able to use this tax as a tax credit in its entirety, and are subject to double taxation. This is due to the fact that the tax paid abroad, for the purposes of determining the annual income tax on individuals, is recognized only as a deductible item, and cannot be used as a tax credit. This is contrary to Article 12 of the Law, as well as the provisions of the double taxation treaty relating to the avoidance of double taxation and the application of a tax credit, thereby violating the rights of taxpayers.

This is extremely disadvantageous and deterring for taxpayers who earn income and pay taxes abroad. These are mostly experts who are sought after abroad and can conclude business arrangements with foreign employers, who bear the burden of double taxation for the same type of income, because of their desire to continue living and working in Serbia.

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 that a by-law be passed 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.
- Although significant progress has been made in the field of tax treatment of "team building", we believe that the Ministry of Finance should adopt the accompanying by-laws as soon as possible, in order to eliminate any uncertainties regarding the interpretation of the relevant provisions.
- 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.
- Bearing in mind that social security rights are basic social and economic rights of workers, we consider it necessary that regulations be harmonized to allow foreign nationals posted to Serbia (without entering employment) and Serbian nationals employed with foreign employers in Serbia to register for mandatory social security. In addition, Serbia needs to expand the network of international agreements that regulate the issue of social security, with the aim of avoiding double payment of contributions.
- The provisions of the Law, related by-laws and tax return forms related to determining the annual personal income tax for citizens should be amended so that they comply with Article 12 of the Law (the right to tax credit) and agreements on the avoidance of double taxation, that is, to enable taxpayers to use the tax credit.

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			√
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 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 the 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.	2014			√
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.	2015			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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. In fact, in the EU Member States, 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			√
With respect to VAT records and the preparation of the summary VAT calculation we believe that it is necessary to reconsider the adopted Rulebook and user manual, especially with respect to content of the POPDV form and manner of presentation of particular transactions such as advance and final invoices.	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, meaning that the initiation of a tax audit cannot constitute grounds for delaying 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 comply with it.	2017			√

CURRENT SITUATION

Value-added tax (VAT) is governed by the Law on Value-Added Tax (RS Official Gazette 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, 30/2018, 4/2019 and 72/2019; hereinafter: the "VAT Law").

The latest amendments to the VAT Law were adopted by the National Assembly of the Republic of Serbia at its session held on October 7, 2019 and entered into force on October 15, 2019. These changes relate to:

- The introduction of the concept of a value voucher and distinguishing between the VAT treatment of single-purpose and multi-purpose value vouchers (a taxpayer who transfers a single-purpose value voucher in his own name is obliged to calculate VAT at the moment of transfer and not at the moment of delivery or service to which the value voucher applies),
- It is specified that the obligation of a foreign person to appoint a tax proxy and to register for VAT also exists in the case when the foreign person trades goods / services for which a tax exemption is prescribed, with the right to deduct the previous tax,
- Changes were made to the rules regarding the place of the supply of goods and services on a ship or in an aircraft or train,

- The conditions were created for a more detailed regulation of the place of provision of telecommunication, radio and television broadcasting services and services provided electronically,
- An extension of the application of the special rule that the tax liability arises on the day of invoicing,
- The introduction of a new exemption for supply/import within the framework of highway construction infrastructure projects for which a special law establishes a public interest,
- Conditions for VAT refunds to foreign passengers were liberalized,
- The exemption for import of goods is envisaged on the basis of repair within the warranty period,
- The rules for calculating the proportional tax deduction were changed.

Apart from the above, certain VAT by-laws have been amended since September 2018, specifically:

- the Rulebook on the Manner and Procedure of Obtaining VAT Exemptions with the Right to Input VAT Deduction – in the part that regulates tax exemption for goods that foreign travelers carry in their personal luggage for non-commercial use, the submission of applications/documentation and delivery of confirmations in procedures related to tax exemptions based on donations, loans/credits or other international contracts (submitted in electronic form as of 1 January 2019), and a more accurate definition of when and how VAT is calculated on the export of goods; and
- the Rulebook on the Procedure of Exercising the Right to VAT Recovery and on the VAT Rebate and Refund Procedure – in the part that relates to defining more precisely the right to tax credit for the settlement of liabilities from previous VAT periods, regulating the submission of requests for VAT refund in electronic form, and the harmonization with provisions of the VAT Law with respect to VAT refund to foreign taxpayers.

The respective amendments were made for the purpose of aligning the by-laws with previous changes to the VAT Law.

POSITIVE DEVELOPMENTS

The latest amendments to the VAT Law have made certain refinements to the existing rules and more precisely regulated certain situations.

The VAT by-laws were amended to align them with earlier amendments of the VAT Law and enable its adequate application. In addition, for a number of situations, it is possible to submit applications/documentation and receive tax assessments in electronic form, making it easier for taxpayers to exercise their rights. Moreover, the amendments specify that the tax credit can be used for the settlement of the tax liability for previous VAT periods, thus increasing the efficiency of tax credit usage. In addition, changes of User Instructions for the Presentation of Data in the VAT Calculation Review (the POPDV Form) additionally clarify how to fill out the POPDV Form in certain situations. Furthermore, these changes somewhat limit the presentation of data in the POPDV Form on the basis of purchase value assessments.

REMAINING ISSUES

Instead of being integrated into a single piece of legislation, the relevant rules for applying the VAT Law are still dispersed throughout various by-laws (currently 29 rulebooks and 3 by-laws), frequently insufficiently detailed, and fail to provide adequate explanations for the application of specific provisions of the law. Although there were several announcements related to the adoption of an integrated 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 an 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 Rulebook on the Form, Content, and Method of Keeping VAT Records and the Form and Content of the VAT Calculation Review (RS Official Gazette 90/2017, 119/2017, 48/2018 and 60/2018) prescribes the method of keeping VAT records and the preparation of VAT calculation review (POPDV Form). Since the harmonization of accounting programmes with new requirements is financially- and time-demanding, a significant share of VAT payers is preparing VAT records and POPDV Forms manually. This considerably increases the VAT payers' costs. According to an internal survey conducted within the FIC, the introduction of this method, the VAT liability calculation and reporting take three to five times longer to complete. In addition, due to a significant number of categories, the risk of error in categorizing invoices is high (even if VAT treatment is correctly determined), giving rise to the question of the informative value of this data for the Tax Administration. Having in mind the limited value of data provided in particular fields of the POPDV form and the significant expenses of VAT payers related to preparation of the POPDV form, it is recommendable to reconsider simplifying the POPDV form and its filling procedure (presentation of certain types of transactions). The user manual published on the website of the Tax Administration has succeeded in facilitating the application of the new rules by providing a number of examples and clarifications. On the other side, it introduced some additional requests that are difficult to implement in practice, e.g. displaying the final invoice issued after the advance payment invoice so that the final invoice states the full amount of the VAT base and the difference in VAT stated on the final and advance payment invoice. Generating data from the accounting records in this manner is extremely demanding so that, as a rule, even those VAT payers who have adjusted their accounting programmes to the new method of keeping VAT records, generate/enter these data manually. In addition, the informative value of showing the full amount of the base and the difference of VAT for the Tax Administration is questionable since it is not possible to reconcile the advance payment invoice with the final invoice from 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, a VAT refund audit is not prescribed as a precondition for VAT refund, the Tax Administration has a right to audit VAT regardless of an executed VAT refund until the expiration of the 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 the above, in the 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 has 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 VAT calculation reviews, we believe it is necessary that the adopted Rulebook and User manual be reconsidered, and especially the requirements with regard to the POPDV form contents and the method for presenting certain transactions, such as the final invoice and invoice for an advance payment.
- 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, meaning that the initiation of a tax audit cannot constitute grounds for delaying 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 comply with it.

D. PROPERTY TAX 1.20

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			√
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.	2014			√
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.	2018		√	
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.	2018			√
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.	2018			√

CURRENT SITUATION

In accordance with the current version of the Law on Property Taxes (hereinafter: the Law), companies that keep accounting records determine the tax base for property tax based on the real estate's market value (except in special cases prescribed by the Law). The market value of a piece of real estate represents the fair value stated in the accounting records for taxpayers using the fair value method according to the International Accounting Standards (IAS), the International Financial Reporting Standards (IFRS), and their accounting policy.

The introduction of the concept of the market value of real estate as a basis for the calculation of property taxes has

been followed by different interpretations over the years, primarily for taxpayers who can apply this valuation concept. The different interpretations were due to the fact that no official opinion of the Ministry of Finance on this topic had been published until a few months ago. The opinions of the Ministry of Finance, published in the last few months, express in a completely unambiguous manner the ministry's position regarding the possibility for small and medium-size enterprises to use the fair value of real estate, stated in accordance with IFRS for small and medium-size legal entities (SMEs), on the last day of the taxpayer's business year. Although the publication of the opinions in question was intended to clarify the issue, to the best of our knowledge, they have raised additional feelings of legal uncertainty and doubt as to whether the opinions will be applied by the competent authorities, and whether their implementation will be binding only on future property tax calculation or their enforcement will be retroactive.

Taxpayers in the manufacturing industries still face significant administrative costs and practical difficulties in categorizing different buildings in the factory compound – production plants, administrative buildings, warehouses, other real estate property for specific purposes – for the purpose of determining the property tax base, especially in splitting and determining the usable area of each unit of a single facility.

POSITIVE DEVELOPMENTS

Improvements can be seen in terms of clearly defining certain provisions that may have an impact on determining the property tax base (for example: defining specific taxable object – paths, parking, etc.). Also, provisions regarding the creation and expiry of property tax liabilities have been more clearly defined, and Law articles regarding the deadlines for registration of newly acquired real estate have been harmonized.

Starting from 1 January 2019, property tax returns are filed electronically, which is an improvement, however, due to certain technical flaws, administrative difficulties and expenses for taxpayers have not decreased.

We support the intention of the legislator to introduce improvements and technically simplify the process of calculating taxes, which is a common goal of the business sector and the Ministry of Finance. For the purpose of accelerating positive developments, the most relevant remaining issues that need to be resolved are listed below.

REMAINING ISSUES

We would like to point out the inconsistent implementation of the concept of the market value of a property, as well as certain gaps related to determining the tax base for entities that apply fair value appraisal in accordance with IFRS for SMEs instead of IAS/IFRS fair value for real estate assets for accounting purposes.

The Law on Accounting prescribes that SMEs apply IFRS for SMEs, but that they may opt to apply IFRS for the recognition, valuation, presentation and disclosure for positions in financial statements, and that micro-entities may choose to apply the above standards. Small, medium-size and micro-entities applying or opting to apply IFRS for SMEs are not covered by Article 7 of the Law. Considering the aforementioned opinions of the Ministry of Finance, which take the rigid view that there is no basis for legal entities applying IFRS for SMEs to determine the property tax base using the fair value method, the question of the uneven application of the fair value concept to determine the property tax base leads to legal uncertainty in the application and harmonization of accounting and tax rules, not only for future but also for prior tax periods. Therefore, it would be appropriate to further clarify the provisions of Article 7 of the Law and thus eliminate legal uncertainty for taxpayers, which has increased following the published opinions of the Ministry of Finance regarding the interpretation of Article 7 of the Law.

When determining the property tax base by applying the average prices published by local municipalities, one of the basic parameters is the property's zoning category, determined by local municipalities. The local administrations have discretionary zoning powers, applied predominantly on the basis of how public areas are developed. However, the procedure of assessing a public area's development level is insufficiently transparent and 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 is significantly older, but of the same surface area within the same zone, can be the same.

As a result, the market values of properties assessed by certified appraisers significantly differ from their market values calculated by using the average prices published by local tax authorities. Therefore, 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 related costs are caused by the Rulebook on property tax return forms. In line with the Rulebook, taxpayers are obliged to file data to the Tax Authorities Integrated Information System Portal (hereinafter: the Portal) every year, even when no changes are made in comparison to the previous year. The taxpayer fills a tax return PPI – 1 form for each municipality where it has property subject to tax, and annexes for each cadastral parcel and sub-annexes for each building on a parcel, as well as one sub-annex for the land itself. Additionally, FIC members concluded that the implementation of the electronic filing of tax returns has failed to provide a technical improvement in efficiency, especially for the taxpayers owning properties in different local municipalities, which can lead to filing hundreds of tax returns in electronic form.

Also, we draw the attention to an issue that arises in the case of properties leased for a period exceeding 183 days over 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 and, consequently, the land plot under a leased building may be double taxed.

The tax authorities have been given exclusive rights to determine the property transfer tax base. In practice, the tax base is determined in accordance with internally determined market prices on the territory of a specific unit of local self-government (the so-called parities), unknown to taxpayers, so in most cases 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, which states that the absolute rights transfers on which VAT is paid are exempt from the payment of the transfer tax. The term ''paid'' is not appropriate in this case because VAT is calculated and reported in a VAT return. Moreover, certain transactions subject to VAT under the VAT Law may be exempted from VAT for reasons prescribed by this Law.

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 IAS/IFRS for SMEs and accounting policies.
- To ensure the adequate calculation of the market value of immovable property, it is necessary to harmonize the zoning criteria of local municipalities; prescribe corrective factors to differentiate between immovable properties in terms of quality, year of construction, purpose and characteristics; consider the adequacy of the methodology used for calculating the average prices of immovable property.
- It is advisable that the property tax return form and supporting documents be simplified by linking the Portal with the Cadastre and the storing of such data enabled. Also, it should be possible to list more than one cadastral parcel in a single municipality in Annex 1 on the territory of a specific local municipality and to summarize all facilities of the same type in a single sub-annex (e.g. all taxpayer's warehouses in the territory of a particular local municipality). In line with the above, make appropriate improvements within the Portal, and make technical adjustments after which it would be possible, based on the data saved from the Cadastre, to automatically fill in the appropriate forms (PPI-1, Annex 1, sub-annex), for the purpose of filing property tax returns for each year.
- Rephrasing provisions regulating: a) 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. b) eliminate double taxation of land beneath the leased building.
- Enable public access to data used by the tax authorities to determine whether the contractual price of an absolute rights transfer is in line with the market price.

E. TAX PROCEDURE 1.00

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. 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	2014			√
Amending Article 147(1) of the PTA Law, so as to read that an appeal suspends the tax collection	2016			√
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	2017			√
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	2017			√
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	2014			√
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	2014			√
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	2018			√

CURRENT SITUATION

The regulatory framework for the tax procedure in Serbia is shaped by four principal laws:

- The Law on Tax Procedure and Tax Administration (PTA Law)
- The Law on General Administrative Procedure (GAP Law)
- The Law on Administrative Disputes (AD Law)
- The Law on Inspection Oversight (LIO Law).

The tax procedure is a special type of administrative procedure governed primarily by the PTA Law (lex specialis), which regulates in detail the organization and functioning of the Tax Administration, as well as the procedures for the assessment, control, and collection of taxes. 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 LIO 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 twice in 2018. The most important amendments by far relate to the transfer of the competencies to the National Bank of Serbia (NBS) in foreign currency transactions and games of chance; the prohibition of strike-off or registration of other business data changes by the Serbian Business Registers Agency (SBRA) at the time when the Tax Police is taking certain actions, as well as in situations of a temporary withdrawal of the TIN; the obligation to report data on warehouses; the continuation of the tax procedure digitization; the introduction of new measures for securing tax collection and amendments to provisions related to tax offences and new offences envisaged for banks.

The amendments also introduced the ne bis in idem principle (that no legal action can be instituted twice for the same cause of action) prescribing that tax inspectors may not initiate tax misdemeanour proceedings if the Tax Police has already filed criminal charges against the taxpayer for the same offence.

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, while no possibility is envisaged of changing the chosen option of VAT refund by filing an amended tax return.

POSITIVE DEVELOPMENTS

In parallel with further digitization, the Tax Administration continued the implementation of the previous year's plan and of strategic goals. The tax procedure was potentially accelerated by enabling the electronic delivery of tax administrative acts to the taxpayer's e-mail. Additionally, property tax returns are filed electronically as well, starting from 1 January 2019.

Amendments that already apply also regulate in slightly more detail the deferral of the payment of tax liabilities and the possibility to submit a request for deferral electronically. Taxpayers may now be granted a 12-month grace period (exceptionally 24 months) before they start repaying the deferred tax liability. However, a detailed regulation of requirements for deferral is still missing.

Additionally, the concept of "tax services" was introduced with the intent to improve the advisory function of the Tax Administration.

REMAINING ISSUES

- The existing regulatory framework governing the tax procedure still does not provide sufficient protection for taxpayers against discretionary decisions of tax authorities.
- Rules on tax-related criminal offences still do not take into consideration the size and volume of taxable activities of taxpayers and apply the same threshold to both small businesses and large corporations in 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 based on submitted appeals.
- 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 the 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 against a tax assessment issued by the Tax Administration). 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 for opinions for more than a year. Such uncertainties are additionally aggravated by binding opinions that the Tax Administration applies but fails to publicly disclose despite its legal obligation to publish them on its own website and the website of the Ministry of Finance. Therefore, these opinions are unavailable to taxpayers, i.e. to all parties in a public-legal relationship.
- Limiting the filing of amended tax returns to two times is not justified. In fact, in most cases mistakes are made unintentionally, or are technical, especially in the 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, abolishing this restriction would not create an additional burden for the Tax Administration. Quite the contrary, it would help increase the efficiency of tax collection and encourage taxpayers' co-operation, con-

sequently reducing the scope of tax audits.

- During a tax audit, as well as during the period in which a taxpayer's tax identification number (TIN) is temporarily withdrawn, and until it is reinstated, the SBRA cannot erase a taxpayer from the register, register status changes, or change any of the registered data. In addition, 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. Additionally, taxpayers are unable to register changes that may even enable tax payment (capital increase, registration of a change of legal representative, etc.).
- Digital services of the Tax Administration should be further improved and developed to enable taxpayers to download all tax returns in a user-friendly form, as well as to enable all taxpayers to obtain tax identification numbers and all tax certificates electronically.
- The PTA amendments introduced the possibility for the Tax Administration to secure the collection of a tax liability that is not due, but for which an audit procedure has been initiated, even though criteria or conditions for the implementation of this measure have not been prescribed, which is not in line with the legality principle. As a consequence, tax resolutions that impose the measure do not contain valid reasons why the Tax Administration considers that there is risk in tax collection.
- Amendments to the PTA Law abolished the function of administrative supervision within the Tax Administration. According to the amended text of the PTA Law, the Tax Administration has exclusive competencies to perform the function of internal control. The Ministry of Finance has not established supervision as a separate function, from the moment of the abolition of the function of administrative supervision within the Tax Administration.
- The PTA Law should be further aligned with provisions of the 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 a 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 refunds of lower value in real terms. In addition, courts almost never decide on the merits of a case.

FIC RECOMMENDATIONS

- Eliminate legal uncertainty in the process of issuing of opinions of the Ministry of Finance by amending Article 80 of the Law on State Administration with regard to whether the ministry's opinions are legally binding if so prescribed by a separate law; amending the PTA Law to prescribe that the ministry's opinions are binding only if they are published or available to all parties in a public-legal relationship; defining a 30-day deadline for issuing an opinion defining the consequences in a situation where previously issued opinions are changed or disregarded; amending the PTA Law to prescribe that opinions of the Tax Administration sent by email are binding for the Tax Administration, and 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.
- The PTA Law should specify misdemeanours of Tax Administration staff members who do not comply with the laws (or higher-instance decisions) in their work, and in particular for failing to act within the deadlines prescribed by the PTA, and for failing to implement decisions of the second-instance authority.
- Amending Article 147(1) of the PTA Law, so as to read that an appeal suspends the enforcement of the decision.
- 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 or procedures undertaken by the Tax Police.

- Establishing the function of administrative supervision within the Ministry of Finance that will provide an effective mechanism for controlling legal compliance of the work of the Tax Administration's organizational units.
- 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)

2.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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	2015	√		
Adoption of the Law on Charges 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	2014	√		
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	2013		√	
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.)	2014			√
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	2016			√

CURRENT SITUATION

The World Bank's Doing Business 2019 report ranks Serbia 48th out of 190 economies. In the area of tax payment Serbia's position slightly improved compared to the 2018 report, and the country is now ranked 79th. Tax payment, together with obtaining electricity access and protecting interests of minority investors, is still within the three worst-ranked areas.

The FIC is of the view that Serbia's tax system is getting significant negative reviews, inter alia, because of the many parafiscal charges that exist 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 an adequate proportion) a specific service, right, or good in return.

The authorities recognize this fact, which is why a parafiscal reform was carried out in late 2012, abolishing 138 parafiscal levies. The reform continued in 2013, with a first draft of the Law on Fees for the Use of Public Resources and the adoption of the final version of the Law at the end of 2018. The reform process is still ongoing, whereas in 2018 the process was marked by stagnation and the introduction of new parafiscal levies (e.g. the 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 decisions of the Tax Administration. The same applies to all parafiscal charges collected by authorities that enforce the Law on Tax Procedure and Tax Administration. This provision became effective as of 1 July 2017.

The process of the Tax Administration's modernization and a shift towards e-governance continued throughout 2017 and 2018, which is of benefit to all taxpayers.

The Law on Fees for the Use of Public Goods was adopted at the end of 2018, and applied as of 1 January 2019, the main improvements being: a) a single law regulates all charges, instead of 18 laws previously and b) the amounts of all but one charge are regulated by the Law, instead of being predominantly regulated by by-laws, as was the case before. The one charge whose level remains regulated by a by-law is the local environmental charge. However, the base for the charge is defined by the Law as the quantity of pollution, transforming it from a parafiscal charge into a fee. Hence, the adoption of the Law increased both the transparency and predictability of the non-tax revenue system.

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

The reform of non-tax revenues has not been completed yet. The remaining issue is related to fees that should be paid for a public service proportionally to the costs of its provision. Currently, only a part of the fees are regulated by the Law on State Administrative Fees, while numerous laws and by-laws have introduced levies that are by their fiscal nature fees, but which come under different names (charge, compensation, etc.). In addition, it is questionable whether the Rulebook on Methodology for Determining Costs of Public Service (Methodology) was applied when setting the levels of all these fees.

A particular problem that we deem should be highlighted 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 was changed. The overall liability of a business entity for business signage has 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 inconsistencies between 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 the 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 the non-tax revenue system, 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 that should regulate all fees paid for a public service, while setting their level in line with Methodology 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 an 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 the sole jurisdiction to handle tax disputes.

ENVIRONMENTAL REGULATIONS

1.83

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The introduction of economic incentives for investment in environmental protection (clean production, pollution reduction, energy efficiency, waste reduction, eco-innovation, etc.) and active operation of Green Fund	2010		√	
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	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	√		
Continue developing local and regional waste management plans.	2009		√	
Accelerate the adoption of laws and by-laws to ensure a proper implementation of changes to regulations in the field of environmental protection	2018		√	

CURRENT SITUATION

Last year, 2019 was anticipated to be a milestone year for environmental protection in Serbia, since the country seemed to have achieved a high level of alignment with the EU acquis.

There was no progress made on adopting and implementing the Environmental Liability Directive 2004/35/EC, a basic preventive tool for environmental protection.

The capacity of the environmental inspectorate should be strengthened in order for the Serbian state to create a level playing field for competition among industrial producers.

In addition, changes to the Law on Environmental Protection have been adopted, creating a formal-legal framework for agricultural producers to obtain funds from the EU's instrument for pre-accession assistance for rural development (IPARD). The purpose of the changes was to support owners of family farms, entrepreneurs, and companies, but also agricultural cooperatives, to meet requirements for applying for the funds. The Law prescribes that funds from the Green Fund of the Republic of Serbia shall be granted for the purpose of financing the protection and improvement of the environment, based on a public invitation announced by the Ministry of Environmental Protection. Funds can be granted without a contest for financing emergency measures in case of environmental incidents.

The Green Fund - as a fund financed form the budget established with the purpose of keeping a record of resources intended to finance the preparation of the implementation and development of programs, projects, and other activities in the field of the preservation, sustainable use, protection, and improvement of the environment, as well as a better and more efficient payment of ecological fees - started operating and issued an invitation in 2018 for those funds, based on the by-law on more precise conditions to be fulfilled by beneficiaries, as well as conditions and the way of the distribution of funds. Funds from the Green Fund are distributed, among others, to support the recycling and use of waste as raw material, forestation, and permanent waste disposal. Nevertheless, the Green Fund is still not fully operational even though legislation on financing has been adopted, while the level of funding remains low. Serbia needs to try harder in order to achieve higher transparency regarding both the collection of green taxes and the way in which the funds are allocated and utilized. More specifically, there are numerous examples of EU countries with collective take-back schemes for all special streams of wastes which are achieving high recycling performance and fund efficiency at the same time, but without affecting the national budget.

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. By introducing the pay-

ment system for plastic bags, significant improvement has been made and consumption was reduced by 80%.

With the adoption of the Law on the Use of Public Resources, the amount, base and method of calculation of pollution charges, as well as charges for environmental protection and improvement, have been defined.

Towards the end of 2018, a negotiation position was prepared for Chapter 27 – Environmental Protection - one of the most demanding and most expensive chapters within accession negotiations with the EU.

No by-laws have been adopted in the fields of "end of waste" and "by-product."

The existing regulations related to end-of-life vehicles are not applied and there are deficiencies, since it is not required to hand over the vehicle to the operator of hazardous waste in order to carry out deregistration at the Ministry of Interior.

For WEEE (waste from electronics and electrical equipment), a special stream of waste, "extended producer responsibility" should be introduced, the same principle which has already shown good results in the packaging waste stream.

In the import and export of non-hazardous waste, it is necessary to speed up the adoption of the EU's Regulation No 1013/2006 on shipments of waste in order to streamline the process of cross-border waste exchange.

The problem of hazardous waste treatment and permanent disposal is still present. New facilities for hazardous waste treatment are necessary, given that an EU directive stipulates that starting from 2020, it will no longer be possible to export semi-treated hazardous materials.

Furthermore, in the coming years Serbia should try and create a stronger environmental impact with actions such as closing non-compliant landfills, investing in waste reduction, separation and recycling, reinforcing air quality monitoring, advancing river basin management and preparing for Natura 2000. The growing problems created by urban waste landfills (fire, emissions, etc.) require a systematic resolution of this field as well as the development of public-private partnerships where municipalities, in cooperation with world-renowned companies in this field, would create conditions for investing through this partnership in solving problems at landfills, permanent waste disposal, and the construction of recycling centers. The share of recycled waste in overall waste management remains small. The problem of illegal open-pit waste dumps still exists, and the process of their closure is progressing slowly. There is no progress in terms of medical waste.

In terms of climate change, Serbia has achieved a certain level of preparedness, but implementation is at an early stage and a national strategy for climate change is currently under development. Work has begun to solve the problem of greenhouse gas emissions in land use, land rezoning, and forestry. More active measures should be elaborated in implementing the Paris Agreement on the protection of the environment and the natural resources, focusing on preparing the country for aligning with the EU 2030 framework for climate and energy policies.

POSITIVE DEVELOPMENTS

Significant improvements have been made in establishing a system for wastewater treatment and communal waste management, while illegal dumps have been reclaimed with funds set aside by the Ministry in the amount of over RSD 450 million for support to local communities to compile design-technical documentation; the overall surface area under protection in Serbia has been increased, as well as the number of protected areas, while the process of rezoning protected areas has been launched in line with global criteria and standards; intensive international collaboration and the strengthening of Serbia's partnership role in regional and global initiatives related to environmental protection and nature conservation; the creation of conditions for solving long-term problems and implementing significant projects.

Initiatives have been launched to prohibit the import of used cars with a Euro 3 engine starting next year and to create conditions and exemptions to increase the use of electric and hybrid cars, where Serbia significantly lags behind compared to other European countries.

Starting 1 January 2019, the online platform for Integrated Register of Chemicals (e-IRH) has gone live, which will significantly improve and make cheaper administrative procedures for companies registering chemicals in accordance with the law.

Procedures have been initiated for public-private partnership in the field of municipal waste management and permanent disposal.

In some cities, the sorting of household communal waste has begun, and local communities have created conditions for collecting and disposing of such waste.

The Law on Fees for the Use of Public Resources has been adopted, defining also fees in the field of environmental protection and waste management.

The number of Integrated Permits for the operation of facilities for operators who are obliged to obtain one is increasing.

The Law on National Spatial Data Infrastructure, transposing the INSPIRE Directive, entered into force in 2018.

REMAINING ISSUES

The monitoring and reporting system is not sufficiently developed to enable the completion of the national and local register of pollution sources.

Even with the establishment of the Green Fund, the system of incentives for investing in environmental protection remains underdeveloped (clean production, pollution reduction, energy efficiency, waste reduction, environmental investments, recycling, etc.). Serbia should further enhance administrative capacities of the central and local administration, including the Environmental Protection Agency.

The success and speed of the introduction of new technologies is closely related to the assessment of the environmental impact of base radio stations, that is, regulations in the field of protection against non-ionizing radiation. Both the legislation that introduces significantly more rigorous restrictions and its different interpretations at the local government level 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.

A large number of illegal waste dumps in Serbia still exist, and investment in waste sorting and recycling is still not at a satisfactory level, which could be considerably improved through an active role of the Green Fund. Funding based on the "polluter pays" principle is needed to increase investment in this sector and initiate the financing of these projects by the Green Fund.

The problem of the level of air pollution in some of the largest cities in Serbia is still present, and currently there are only three air quality plans: in Bor, Belgrade and Pancevo.

FIC RECOMMENDATIONS

- 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;
- Re-examine the idea of introducing producers' responsibility for collective take-back schemes for the recycling of all special waste streams (packaging, WEEE, ELV's, tyres, etc.).
- Stimulate investments into the treatment of animal waste and ensure adequate solutions for such waste;
- Solving the problems of waste management and wastewater treatment, strengthening the financial and personnel capacities of local governments, which are responsible for carrying out the abovementioned tasks.
- Improving the regulations in the field of electronic communications and implementing the regulations in the field of environmental protection and protection against non-ionizing radiation in order to ensure a smooth implementation of 4G technology and create preconditions for the implementation of 5G technology
- Speed up the process of adopting laws and by-laws in order to ensure a proper implementation of regulations related to environmental protection.

SECTOR SPECIFIC

top

FOOD AND AGRICULTURE

1.29

The long-expected amendments to the Food Safety Law and the Plant Protection Products Law were enacted last year. The amendments to the Food Safety Law reorganized the division of responsibilities between the competent inspectorates of the Ministry of Agriculture and the Ministry of Health. It is crucial that these two very important laws, directly related to food safety and quality, be harmonized with EU regulations to ensure consumer rights protection 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 an even greater challenge. Although several regulations were enacted covering quality areas of certain categories of food, only a part of these are the result of the process of harmonization with EU regulations, while the rest of the regulations are largely a result of the need to modernize outdated national regulations. Although improved, as national regulations, they can present a barrier to trade and somewhat restrict local manufacturers in applying innovative processes and products. By announcing amendments to the Regulation on Nutritional and Health Statements, the Ministry of Health extended the deadline for compliance with its requirements, recognizing the need of the economy to plan and reduce the inevitable costs incurred a result of changing regulations and ensure better implementation to protect consumer interests.

The newest amendments to the Food Safety Law have introduced Reference Laboratories, entrusted with part of the tasks belonging to the National Reference Laboratory. The activity progress report of the Expert Risk Assessment Council, established in June 2017, as well as the activities of this Council are yet to be disclosed to the public concerned.

There is still room for improvement, both in terms of improving the regulatory framework to ensure high standards of food quality control as well as applying a uniform approach to controlling 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, the national reference laboratory, and the consistent application and improvement of the risk-based approach.

A. FOOD SAFETY

1. FOOD SAFETY LAW

1.33

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Align the Food Safety Law and all its by-laws with the EU acquis (178/2002/EC and all its by-laws)	2017		√	
Clearly define responsibilities and separation of jurisdictions of inspectorates and their operating procedures	2014		√	
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	2018			√
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	2017			√
Establish a system of risk analysis in all inspection services	2015		√	

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Accept the results of product tests performed by foreign accredited laboratories	2015			√

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. Amendments to the Law that had been announced several times were finally published in Official Gazette RS, No. 17/2019 and applied from 4 April 2019.

The amendments to the Law introduced the separation of jurisdictions between the Ministry of Agriculture and the Ministry of Health. The competence of the Ministry of Agriculture's Inspection is more closely defined with the adoption of the Rulebook on the type of food and the manner of carrying out official controls, as well as the list of mixed foods and the manner of control of this food in April 2019.

The National Reference Laboratory (NRL) was opened in 2015. New amendments to the Law predefined its jurisdiction and introduced Reference Laboratories, which were entrusted with part of the work performed by the National Reference Laboratory.

The Ministry of Agriculture established the Working Group on Milk in 2015, but as of mid-2019 there was still no harmonization of the current legislation on milk safety. According to the latest amendment to the legislation, enacted in November 2018, application of the maximum permitted aflatoxin M1 content in raw milk of 0.25 µg/kg was prolonged and this provision will apply until 30 November 2019. The extension of the validity of the provision benefits 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, which, according to the current regulation, also enters into force in Serbia from 1 December 2019. At the same time, these measures currently 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 in the interest of food safety, 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.

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.

With amendments to the Law, Article 71 is changed so that the payment of fees for laboratory analyses is no longer stipulated by this Law. Instead, the obligation to pay charges for performed official controls was introduced. In practice, the charge for official control at import had been paid even before the adoption of the amendments to the Law, while the costs of analyses, due to the lack of harmonization of the Food Safety Law with the Law on Sanitary Oversight and the different inspection procedures applied at certain border crossings, had in most cases been borne by importers from which the sample had been taken, regardless of whether the sample was in compliance with the requirements of the regulation or not. It is now clearly defined that the cost of laboratory analyses is no longer covered with funds allocated in the budget, even if the sample corresponds to the prescribed characteristics, in what has aligned this Law with Article 16 of the Law on Sanitary Oversight.

It is also expected that a new Regulation on the amount of fees for official controls will be adopted, after which the economy will have a clearer picture of the actual effects of this change.

POSITIVE DEVELOPMENTS

In 2018 and 2019 some improvements were detected in areas that are under the competence of the agricultural inspectorate at the Ministry of Agriculture, Forestry and

Water Management. With the amendments to the Law and the adoption of the Regulation defining the area of competence of inspections, retail control is granted to the Agricultural Inspectorate. By publishing the Regulations on the special elements of risk assessment from the competence of the sanitary inspection and from the competence of the agricultural inspection at the end of 2018, a framework for initiating the risk assessment process was created.

REMAINING ISSUES

The unfavourable position of importers of food and raw materials for the food industry relative to domestic producers:

- 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, the number of samples, and the type and number of analyses.

No improvement or coordination was noted in the application of risk assessment and analysis methods:

- Positive developments in the field of risk analysis envisaged by the Law that the establishment of the Expert Council was expected to bring did not materialize.
- 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 through a faster issuance of documents and reduced number of samples taken at import.
- Risk analysis would reduce the inspectorates' workload, saving their limited resources, which would be directed mainly to inspections of high-risk products.

The official report on the work of the Expert Council for Risk Assessment and the Council's activities are still unknown to the public concerned.

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 inspectorates' 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.
- Define 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.

2. SANITARY AND PHYTOSANITARY INSPECTIONS 1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Adopt a new Law on Sanitary Oversight	2018			√
Adopt enforcement regulations on sanitary and phytosanitary inspection in line with the Law on Inspection Oversight and the EU acquis	2017			√
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	2017			√
Ensure the implementation of uniform rules in the procedures of inspection services, in terms of costs, deadlines, fieldwork mechanisms, the number of samples, and the type and number of analyses	2018			√
Clearly define the time limits for the completion of import procedures for all types of food	2018			√

CURRENT SITUATION

Under a new division of competencies following the adoption of amendments to the Food Safety Law, the Phytosanitary Inspectorate of the Ministry of Agriculture, Forestry and Water Management retained its existing competencies for foods of plant origin. In the import and export stage, the border phytosanitary inspectorate is responsible for controlling food of plant and mixed origin, together with the border veterinary inspectorate. The Sanitary Inspectorate of the Ministry of Health is responsible for the control of new food, food for specific population groups, dietary supplements, food with altered nutritional composition, salts for human nutrition, additives, flavourings, non-animal enzyme preparations and non-animal processing aids, as well as all types of drinking water.

The work of inspection services is regulated by the Law on Inspection Oversight, which entered into force in April 2015 and has been in application since April 2016. Some inspection services are developing 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 Oversight since 2016, which would regulate in more detail sanitary oversight activities.

POSITIVE DEVELOPMENTS

Amendments to the Food Safety Law resulted in a reorganization of the division of jurisdiction within the competent inspectorates of both ministries. At the end of 2018, rulebooks on special elements of risk assessment under the remit of the sanitary inspection and the agricultural inspection ware published, creating a framework for initiating risk assessment.

REMAINING ISSUES

Inspectors still have broad authorities, and insufficiently clear guidelines.

The competent inspectorates do not allow the use of raw materials in production before a 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: a rulebook on the amount of fees for performed official controls, a rulebook 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; criteria for

determining deadlines for conducting official controls and reporting on performed official controls, and a rulebook 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 the implementation of uniform rules in the procedures of inspection services, in terms of costs, deadlines, fieldwork mechanisms, the 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 1.33

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2017		√	
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.	2018			√
Define institutional responsibilities for the interpretation of food safety regulations and ensure mandatory implementation of the official Ministry positioning for all stakeholders.	2016			√

CURRENT SITUATION

The Regulation on Food Labelling, Marketing and Advertising (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 European Union (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 are 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 producers in countries in the region and the EU. The choice of raw materials for production is limited, 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 quality rulebooks even though they meet the health and safety requirements. Often, due to obsolete rulebooks, 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 under these rulebooks.

POSITIVE DEVELOPMENTS

In June 2018, the Ministry of Agriculture published a Guide to Food Labelling, Marketing and Advertising, which should enable a uniform approach and interpretation of the provisions of the Regulation for both business entities and control bodies, along with a high level of protection of consumers' interests and better availability of information on products.

In July 2018, the Rulebook on Nutrition and Health Claims was published, and manufacturers were given an 18-month deadline to comply. In December the Regulation was amended to extend this deadline until after January 2020.

The new Rulebook on Fruit Juices Quality, the Rulebook on Cocoa and Chocolate Products Quality, and the Rulebook on Chocolate-Related Products Quality have been published. There is also intensive work on changes to the existing Rulebook on Fruit and Vegetable Products Quality, as well as on the Rulebook on Vegetable Oils and Fats Quality. In this way the Group for Quality at the Ministry of Agriculture has shown understanding for the needs of the economy.

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. The 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 creates difficulties for food business operators and major constraints in long-term business planning. This is particularly the case with the interpretation of regulations in the area of labelling, where despite the existence of the Guide there are different approaches and interpretations of its provisions.

Given that the Rulebook's application section is fully harmonized with the EU regulation, the Guide on its application should have resolved the disputed application issues. Although the Guide largely relies on questions and answers that published by the European Commission in "Questions and Answers on the application of the Regulation (EU) N° 1169/2011 on the provision of food information to consumers," it still did not take over all the questions and answers from that document.

Although Article 3 of the Rulebook defines the application of the Rulebook on food intended for end consumers and public catering establishments, the competent inspectorate requires that the raw materials and intermediate products intended for further processing be declared under the Rulebook.

Amendments to the Law on Food Safety stipulate a 12-month deadline for the adoption of executive regulations for the implementation of this Law on Amendments. The most important regulations that need to be adopted to accompany this Law are:

- a rulebook on food quality requirements;
- a 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.

FIC RECOMMENDATIONS

- Adopt enforcement regulations under the Food Safety Law and harmonize them with EU regulations, such as a rulebook on food with altered nutritional composition.

- Adopt a rulebook on food quality requirements and a 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 Ministry's official positions for all stakeholders
- Ensure a uniform interpretation and application of the Rules and Guidelines on food labelling and advertising.

B. LIVESTOCK PRODUCTION 1.50

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2018			√
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	2018		√	

CURRENT CONDITION

In 2018, the value of realized livestock production in Serbia was estimated at USD 1.794 billion, with a 31.4% share in the overall value of agricultural production.

POSITIVE DEVELOPMENTS

It is estimated that RSD 51.7 billion will be spent on agriculture in 2019, which is RSD 7.6 billion more compared with the previous year. Also, the budget available for subsidies has been increased by RSD 7.2 billion,to RSD 36.2 billion.

In 2019, cattle breeders should get RSD 5,000 more per head of livestock – RSD 15.000, instead of RSD 10.000, as they have received for many years. The increase in incentives is justified by the fact that Serbia has fulfilled the quota for duty-free exports of beef to Turkey and by the signing of an agreement with China on exports of pork and dairy products.

REMAINING ISSUES

- The dairy industry in Serbia is the single biggest budget beneficiary, but the measures either fail to target the most significant problems or they fail to address them properly.
- Lack of education and familiarity with modern trends in cattle production. Technological innovations which help enhance performance in production are very poorly accepted by traditional cattle producers.
- Insufficient and belated support to livestock producers from the agricultural budget.
- Market insecurity, feed price hikes.
- High centralization of state governance and limitation of local governments in the implementation of rural development projects.

FIC RECOMMENDATIONS

- Organic cattle breeding implies a process of sustainable development of rural areas in accordance with available resources, tradition, and the biodegradable potentials of habitats, and represents rounded and integrated approach to farm, crop and cattle production, which includes the preservation and renewal of natural resources, as well as return to the traditional values and know-how.
- Subsidies and state aid – which would help improve the quality of milk and meat, increase livestock numbers, increase the engagement of members of livestock breeding households, expand the product range with new products, improve product branding, and raise living standards in rural areas.

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 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 a change of the entire legal framework, the FIC supports limited amendments of the Tobacco Law, currently being drafted	2014		√	
The Foreign Investors Council strongly supports 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 Tobacco Products Directive (2014/40/EU) 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	2015		√	

CURRENT SITUATION

The tobacco industry is consistently one of the strongest and most robust sectors of the Serbian economy. Export revenues from tobacco and tobacco products are constantly at high levels, reaching almost EUR 255 million in 2018. At the same time, fiscal revenues from the sale of tobacco products contributed more than 10% of total budget revenues in Serbia in the previous year (projected revenues from excise tax on tobacco products amount to more than RSD 102.1 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 exceeding 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 20 million, so far.

Considering Serbia's aspirations toward European Union (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.

It is important to underline that projections in the Serbian budget for 2019 indicate that the tobacco market will drop by 3%, which is a significant indicator that the sector with such an important contribution to Serbia's GDP needs to be provided with predictable and transparent business climate and enabled to take an active part in the process of developing related legislation and regulations. On the illegal market, the share of illegal cut tobacco is still more or less constant, while the share of illegal cigarettes is on the rise.

POSITIVE DEVELOPMENTS

As it was referred in the previous edition of the White Book, 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 Directive (2011/64/EU). Open dialogue with all stakeholders is of crucial importance given the significance of the tax policy in the field of tobacco and its predictability for both state revenues and the tobacco industry.

The current Law on Advertising contains very restrictive provisions on the advertising of tobacco products, even in comparison to many countries of the EU. 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 (FIC) encourages the efficient application of the Law on Advertising, which will enable a level playing field for all market participants.

In December 2018 significant amendments to the Tobacco Law were enacted, providing a stronger regulatory framework for all participants in the tobacco sector's supply chain. There are novelties such as: defining tobacco processors, enabling the outsourcing of tobacco processing as well as allowing trade in tobacco products between wholesalers.

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 illegal cigarettes. 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 trend of rising revenues from excise tax on tobacco and tobacco products, registered in previous years, is continuing. 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, as well as employment and GDP, which are directly affected by the tobacco products supply 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 Ministry of Interior's data, 21 metric tons of fine cut tobacco and 175,000 cartons of illegal cigarettes were seized in 2018. Also, the number of procedures initiated by the Ministry of Interior against various offenders in the illicit trade of tobacco and tobacco products has increased, reflecting a more serious approach in this field. However, there still is a clear lack of adequate reaction from prosecutors and courts.

Recent amendments to the Law on Tobacco introduced a new category of tobacco processors, which requires a strict implementation of control mechanisms, as stipulated in the law itself.

FIC RECOMMENDATIONS

- It is necessary for all relevant public institutions, led by the working group for combating tobacco smuggling, to continue to focus on an 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 product market. The Foreign Investors Council strongly supports this kind of dialogue, based on the principles of participation, transparency, accountability, effectiveness, and coherence.

- Timely organized dialogue between the tobacco industry and relevant state institutions about the new excise calendar.

- Efficient implementation of the Law on Advertising. The Council believes that the regulator must ensure an efficient implementation of the rules in the field of advertising of tobacco products that would create a level playing field for all market participants.

- Current tobacco regulation and legislation is mostly in line with relevant EU directives, while in some cases, such as the advertising of tobacco products, the regulation is even more rigorous than in the EU. Therefore, in the process of further harmonization with the EU framework the Council would suggest the introduction of a transitional period for the introduction of new regulations taking into account market specifics. This transitional period was enabled in a majority of EU member states given the complexities of the Directive itself and requirements for an adequate level of administrative capacities for its implementation.

INSURANCE SECTOR

1.09

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
INSURANCE COVERAGE FOR NATURAL DISASTERS AND OTHER ACTS OF NATURE				
We believe it is 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 the 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.	2015			√
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.	2018			√
LAW ON PERSONAL INCOME TAX				
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	2015			√
AUTO INSURANCE MARKET				
Liberalization of AI prices (erasure 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.	2013		√	
Insurance companies should be allowed to register cars at their own premises.	2013			√
INSURANCE LAW				
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			√
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.	2018			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
NEW LAW ON PREVENTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM				
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.	2018			√
Amend Articles 30-33 of the Law and clearly define who the third parties are, and then consider granting mediators and agents special treatment.	2018			√
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	2018			√
Obligation from Article 124 is not envisaged by European regulations (only in Croatia and Serbia); hence, two alternatives should be provided: 1. erasing the provision under Article 124, paragraph 1, of the Law, or 2. 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.	2018			√

OVERVIEW OF THE INSURANCE MARKET

CURRENT SITUATION

There are 20 insurance companies in Serbia, 16 of which 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, while six companies deal exclusively in non-life insurance and six in both life and non-life insurance.

The market is still very concentrated: i) the market leader, Dunav, holds a 27.6% share by GWP criteria; ii) the three largest insurers together hold 60.9% of the market; and iii) the five leading insurance companies control 78.4% of the market.

Majority foreign-owned companies (15 out of 20) undoubtedly dominate the market, accounting for 77.6% of total assets (62% in non-life insurance premiums and 90.7% in life insurance premiums).

Based on the data for 2018, the insurance market recorded a premium of RSD 99.9 billion (EUR 845 million), which is a nominal and real increase of 7.3% and 5.2%, respectively.

The following changes were observed in 2018 relative to the previous year:

- the insurance sector's revenues increased by 9.8% to RSD 279 billion;
- capital increased by 13.9% to RSD 61.5 billion;
- technical reserves increased by 22.8% to RSD 197.3 billion. Compared to the previous year, the structure of investing of these assets changed to a certain extent in 2018. Even though state securities posted an increase of the absolute amount, compared to 2017, in the investment structure their share declined due to a significant increase in technical reserves at the expense of the co-insurers, reinsurers and retro-assignors, as a result of great damages, which increased their share in the investment of assets in technical reserves;
- the total premium reached the level of RSD 99.9 billion, with a growth rate of 7.3%;
- the share of non-life insurance in total premium was still dominant, at 76.2%; the non-life insurance premium recorded a 6.6% growth, while the motor vehicle liability

insurance, property insurance and full coverage motor vehicle insurance ("kasko") also recorded growth;
- the share of life insurance in the total premium decreased from 24.4% to 23.8%;
- the number of insurance companies decreased from 21 to 20, while the number of employees, of 10,566, dropped by 2.3%.

The founding of insurance companies and their activities are regulated and managed according to the new Insurance Law from December 2014, and relevant by-laws of the National Bank of Serbia (NBS).

Other significant legal sources are the Law on Compulsory Traffic Insurance, the Law on Health Insurance, the Law on the Protection of Financial Service Consumers in Distance Contracts, and the Law on Contracts and Torts. 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 alone). 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. The year 2019 is not an exception, since it also brought a significant number of floods and bad weather conditions, but the number of sold policies has not changed significantly.

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 beis transferred to the insurance company. Avoiding new charges on existing contracts is important, as these 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.

- 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 Law on Personal Income Tax. 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 in the event of death of an employee due to illness, 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, which at the same time diminishes the state's obligation to care for these persons.

AUTO INSURANCE MARKET 1.50

CURRENT SITUATION

Auto Insurance (AI) is by far the most important segment of the insurance market in Serbia (34.4% of the 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 the gross insurance premium. This provision of the law has been ignored by the market for a long time, with noticeable differences in the practices of individual companies, which pay the commission rates of up to 50% despite the legal prohibition. This, despite the increase in the minimum rate (up to 45% since 1 July 2014), which provided the market with the "necessary oxygen" in terms of cash flow and profitability, has put into question the sustainability and predictability of the overall insurance market.

Moreover, the AI market has deteriorated in the period from 2013 – 2017 as a consequence of the new approach by the Tax Administration, in the distribution of AI, in connection with the payment of lease for 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, and they charged high subsequently calculated taxes to some companies, which responded by taking legal 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.

POSITIVE DEVELOPMENTS

However, in Q3 of 2018, there was a great shift at the initiative and by order of the supervisory authority (NBS), so in the final quarter of 2018 and Q1 of 2019, insurance companies largely adjusted their operations on the AI market (contracts with agencies, etc.) with the legal frameworks and with the respect of the maximum commission rates for the sale of policies of compulsory insurance against motor liability. In Q2 and Q3, the NBS launched a detailed and comprehensive control of business operations of insurance companies in this segment.

FIC RECOMMENDATIONS

- Insurance companies should be allowed to register cars at their own premises.
- Allow the issuance of compulsory insurance motor liability policies in electronic form.
- Increase the supervision of operations of insurance companies on the AI market.

INSURANCE LAW 1.00

REMAINING ISSUES

I. Article 62, paragraphs 5 and 6 of the Law, require 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 at an insurance company.

Upon analyzing 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. The Law now permits representation in insurance operations at a company for representation in insurance, and mediation in insurance at a mediation company to be performed by persons who have the authorization of the NBS based on employment or engagement outside of employment.

Subject to the prior consent of the NBS, insurance representation may be performed as a supplementary activity by the following:

- a bank headquartered in the Republic of Serbia, incorporated in accordance with the law governing banks;
- a financial leasing provider headquartered in the Republic of Serbia, incorporated in accordance with the law governing financial leasing;
- a public postal operator headquartered in the Republic of Serbia, incorporated 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 NBS. 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' bills. 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' bills. Bearing in mind a 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 insurance to the average user, it seems that amendments to the Law on Insur-

ance 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 a merger between companies that conduct 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 specifically regulate insurance brokerage agreements and insurance agency agreements, as well as co-insurance contracts or reinsurance contracts. Also, the LCT provisions that govern the insurance contract have certain deficiencies that have emerged through practice in the application of the Law in these 39 years. Primarily in relation to liability insurance that is regulated by only one article. Also, changed social circumstances, technological changes and modern supranational regulations (EU) necessitate the implementation of certain amendments to LCT provisions.

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 National Bank of Serbia.

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 (the 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 client designates it, by collecting information about the name of the policyholder
- the obligation to verify the identity of the insurance beneficiary at the moment of payment of the insured sum,
- the obligation to determine whether the policyholder is a holder of a public office, and if so, take measures envisaged under Article 38 of the Law

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 had established a business relationship before this Law entered into force within one year of the entry into force thereof, which created a number of problems in the application of this provision, especially at insurance companies with multi-year contracts with the insured with whom they are not in continuous contact.

REMAINING ISSUES

As regards Article 8, bearing in mind the legal nature of such contracts which provide coverage for biometric risks (death and disability) only, 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 the 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.

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 the payment of a single premium does not exceed the equivalent of EUR 2,500 in dinars;

- Adopt the initiative of insurance companies for amending Article 8 of the Law, to exclude taxpayers from the implementation of actions and measures prescribed by the Law when it comes to a contract on life insurance in the event of death (the so-called "risk insurance").

LEASING

1.14

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. Regulate operating leases by law and enable financial lease providers to offer operating lease services as well.	2016			√
The Law on compulsory traffic insurance 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.	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. Given that financial 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 forms 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			√
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			√
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.	2018			√

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 17 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 decline in the future. This will help further affirm the quality and high standards of leasing services offered by market leaders so far.

POSITIVE DEVELOPMENTS

In 2018 there were no improvements with respect to the remaining issues. In the meantime, the position of leasing companies has been further compromised due to the inadequate legal protection of leasing companies' assets, an issue that has not yet been resolved. The National Bank of Serbia has not initiated the adoption of changes of the Law on Financial Leasing.

REMAINING ISSUES

1. Interest in financial leasing is taxable

The 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 treatments 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 exercise of rights and obligations under the lease itself (the object of an operating lease). Therefore, operating leases are not subject to supervision by regulatory bodies in charge of financial leasing. 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, the way of financing fixed assets, marketing strategies, etc.), is much closer to financial leasing than to classic short-term rent (rent-a-car). Concrete legal solutions for operating leasing in Serbia are needed, first and foremost 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 finan-

cial 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 activities 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 depository institutions, and they invest their own capital and the entire business.

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 Compulsory Traffic Insurance, 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 vehcile for the amount paid for damages, plus interest and costs.

The Law on Compulsory Traffic Insurance 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, which, according to the definition of the rules of liability for the use of leased assets, is in contravention of the existing rule on the Guarantee Fund's right to file a recourse claim against the owner of the vehicle. The Law completely disregards 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 vehicles in traffic without stipulating an agreement on compulsory insurance, as long as the lessee is in possession of the leased asset.

Currently, leasing companies are facing recourse requests by the Guarantee Fund of the Association of Serbian Insurers, which they can reject on the grounds of the Law on Financial Leasing. On the other hand, despite understanding the essence of the dispute, the Guarantee Fund has no legal means to subrogate against any other person, apart from the owner, and possibly the driver, of the vehicle, 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 fixed 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 of the fixed asset acquired with the use of incentives within a specified time period. 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 enterprises to purchase equipment. This programme included leasing companies along with 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 courts, and subsequently adopts a decision to write off the irrecoverable debt, that company is still obliged to pay a 20% personal income tax 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 their 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 2.4 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 supervision 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 an adequate and complete protection of leasing companies' assets. However, in addition to other obstacles facing the leasing industry in Serbia, a new obstacle has arisen recently, threatening to quash financial leasing in Serbia - the lack of full legal protection of 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 a 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 misguided position, 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 property protection. Furthermore, the aforementioned Decision of the Supreme Court could lead to a huge increase in the number of criminal offenses.

8. During the duration of a leasing contract, when registering the vehicle, the lessee each year must obtain a special authorization from the leasing company for holding and using the leased object.

This document is a prerequisite without which the lessee cannot register the vehicle with the Ministry of Interior. When obtaining this document, both the lessee and the leasing company are exposed to additional costs, as well as to spending resources and time. Also, in practice, there have been abuses and cases of counterfeiting this authorization.

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 Law on Compulsory Traffic Insurance 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 compulsory 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. Given the fact that financial leases are also a suitable form of financing, 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 the inadequate legal protection of leased assets. There should be a 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.

- It is necessary, through the Serbian Business Registers Agency (SBRA), to allow leasing companies to supply the Ministry of Interior with the necessary data by automated means (e.g. web service), and in this way the lessee would be relieved of the obligation to obtain once a year a written authorization for vehicle registration when registering a vehicle. In addition to the above, the proposed solution would put a stop to abuses occurring in practice with the filing of counterfeits of these authorizations.

OIL AND GAS SECTOR

2.20

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
In order to increase the legal certainty for companies, it is vital to continue the reform of parafiscal charges by enacting the Law on Fees for the Use of Public Resources, as well as avoid the introduction of new or increases of existing parafiscal charges	2015	√		
The need to increase the predictability of doing business still exists, and this should be done by engaging 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 through activities of competent authorities and institutions	2015		√	
Having proven to be a successful approach to fighting illicit trade, intensive controls 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 through the further implementation of the flowchart of activities for inspection control in the area of illicit trade of base oils	2013		√	
It is still necessary to enact a 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	2014			√
Control of base oil imports and use should be maintained with the implementation of the flowchart of activities for inspection control in the area of illicit trade of base oils	2016	√		

CURRENT SITUATION

Crude oil prices continued to increase in 2018. The average price was around USD 72 per barrel for Brent crude (generally accepted as the world crude oil price benchmark), peaking at USD 86 per barrel on 3 October and, with a downward trend until the end of the year, falling to USD 50 per barrel on 24 December. However, in the first half of 2019 the price again recovered to an average USD 71.32 per barrel in May. Short-term prices in the future will be heavily affected by the growth of the global economy and the consequent demand for oil as well as measures of joint control of production by OPEC and the Russian Federation.

According to the Energy Balance of the Republic of Serbia, the country's consumption of oil products in in 2018 was estimated at around 3.54 million tons, an increase of around 19% compared with 2017. An estimated 3.84 million metric tons of oil products was produced locally, with an additional 0.99 million metric tons imported, and 0.79 million metric tons exported. The projected natural gas consumption in 2018 was around 2,483.07 million cubic metres, down 9% compared to the previous year, with 440.89 million cubic metres produced locally and 2,042.18 million cubic metres imported.

The oil product market has improved significantly, due to the elimination of illegal blending of base oils in diesel fuel. It is estimated that in 2017 over 14,000 metric tons of imported base oils was blended and sold as diesel fuel, generating an annual loss to the state budget of over EUR 9 million in unpaid excise duties and VAT. Imports of base oils significantly decreased in 2018, and were in line with the current needs for lubricant production in the country (where base oils are the main raw material). It should also be noted that the aforementioned trend is continuing in 2019 as well.

On the other hand, the LPG market remains under pressure from fiscal duties, which are the highest in the Balkan region and the neighbouring Austria and Hungary. Negative trends also affecting the LPG market are illicit trade activities.

Market inspectors have also continued marking and monitoring the quality of oil products. In 2018, market inspectors collected 5,608 fuel samples, and found 91 samples with an insufficient concentration of markers, or 1.62% of

the total number of samples. Of all collected samples, 4,897 were taken from petrol stations, 132 from wholesale facilities, and 461 from end-users, while 118 were taken in cooperation with the Ministry of Interior. Additionally, 3,320 fuel samples were taken for the purpose of quality control, of which 254 samples from wholesale facilities and 3,066 from petrol stations. Of that number, 61 samples, or 1.99%, all from petrol stations, were found not to comply with quality requirements. Market inspectors pulled from the market over 25.2 metric tons of diesel fuel, around 2.5 metric tons of gasoline, 51.6 metric tons of fuel oil and 410 litres of LPG.

Furthermore, market inspectors carried out 26 controls of base oil importers, and issued 25 pre-emptive measures, thus applying strong pressure on the illegal import and blending of base oils.

Lastly, market inspectors continued their control of energy companies and the requirements for holding licences for the storage, wholesale and retail sale of oil and oil products. In 2018 a total of 339 inspections were carried out: 295 petrol stations, 21 wholesale facilities, 9 warehouses, 3 CNG filling stations, 10 gas cylinder filling stations and 1 facility for the production, distribution and management of heating distribution systems; in 302 cases it was established that minimum requirements were met, while 23 cases were not within the inspectorate's jurisdiction.

POSITIVE DEVELOPMENTS

In line with the Government of Serbia's commitment to press ahead with tackling illicit trade, continuous efforts were made towards implementing the National Program for the suppression of illicit trade. Apart from the measures aimed at decreasing the overall volume of the shadow economy in the country, we should particularly point out a consistent adoption of flowcharts for the inspection of certain products, including the flowchart for the control of base oil trading, which is crucial for the oil and gas sector. The adoption of the aforementioned flowchart by the Coordination Commission for inspection oversight of the Ministry of Public Administration and Local Self-Governance has ensured the regularity of base oil control over a longer period, and eliminated the most acute illicit trade issue in the oil product market.

By the end of 2018, the Law on Fees for the Use of Public Goods was adopted by the National Assembly of the Republic of Serbia. This was a major step in the process of regulating parafiscal charges, which are of importance not only for the Oil and Sector, but for all other business sectors as well. The law has clearly identified the existing fees for the use of public goods and put a stop to the introduction of new parafiscal charges. Within the jurisdiction of this law, activities of governmental authorities have continued in 2019 as well. We should point out that the adoption of the Decree on the Criteria and Calculation of Fees for Environmental Protection and Improvement, as a by-law to the aforementioned law, has also defined criteria for identifying business activities that affect the environment according to generated pollution as well as the amounts of the related fees for the protection of the environment.

The Ministry of Mining and Energy has launched activities to regulate operational reserves of oil products as prescribed by the Law on Energy, by forming a working group with the aim of adopting appropriate by-laws.

REMAINING ISSUES

The consistent focus on curbing illicit trade in the sector should be kept since there is a constant and significant interest for smuggling oil products, as well as for their illegal trade and use. The import and illegal blending of base oils has been eliminated, but it is still necessary to intensively implement the flowchart for the control of base oil trading.

However, there was no progress in initiating and implementing inspections of oil products imported into the country for the purpose of re-export. A draft flowchart of activities for the control of LPG re-export was prepared in 2018, but as of this day it is still under review by the Coordination Commission.

In the judicial proceedings where market inspectors have seized certain quantities of fuel suspecting criminal offences, and public prosecutors have issued orders to energy companies to store those quantities pending court verdicts, there is an urgent need to speed up the process of concluding related storage agreements between the Directorate for the Management of Confiscated Property and energy companies, with prior agreements between public prosecutors' offices and the Directorate for the Management of Confiscated Property.

In order to facilitate the acquisition of energy licences for legalized energy facilities, it is necessary to harmonize the Law on Legalization of Buildings with the Law on Energy.

It is still necessary to develop new regulations for the production and trade of explosives and other hazardous substances.

FIC RECOMMENDATIONS

- Inspection of oil products imported into the country for the purpose of re-export should be reinforced through coordinated actions of the relevant authorities, in view of abuses to which such goods declared for this purpose are subject.
- Promptly conclude agreements on storage of confiscated oil derivatives between the Directorate for the Management of Confiscated Property and energy companies.
- Enact by-laws necessary for the creation of operational reserves, in accordance with the Law on Energy.
- Resolve the discrepancies between the Law on Legalization of Buildings and the Law on Energy relating to the documentation needed for the acquisition of energy licences for legalized energy facilities.
- It is still necessary to enact a 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.

PHARMACEUTICAL INDUSTRY

1.65

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
ALIMS should:				
Respect the existing timelines prescribed by the Law on Medicines regarding new registrations, renewals and variations of the Marketing Authorization	2017		√	
Adopt a digitalization strategy to enable the electronic submission of all requests that currently involve extensive unnecessary paperwork	2017		√	
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	2017			√
The Government should:				
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	2018			√
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	2013	√		
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	2017		√	
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	2017	√		
The NHIF should:				
Determine the amount of funds necessary for the introduction of new medicines to the reimbursement list	2018	√		
Ensure the predictability of the decision-making process, with clear time frames and a transparent consultations process with the representatives of the industry	2013		√	
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	2017		√	
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	2013			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The Ministry of Health should:				
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)	2018	√		
Abolish the practice of determining medicines' maximum wholesale price	2017			√
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	2013			√
The Ministry of Finance should:				
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	2018			√
Equalize custom duties for finished medicinal products and raw materials for medicines' production	2013			√
Ensure the same tax treatment of the whole pharmaceutical sector, in the field of import of finished products and raw material	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			√
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	2014			√

CURRENT SITUATION

The health of the nation is one of the key factors, if not the most important factor, of productivity and economic growth in society, directly related to investments into the healthcare system. At the same time, ensuring the supply of medicines and the availability of the latest therapies are among the key preconditions for positive results of the healthcare system of any country. In addition to the unhampered supply of medicines and availability of the latest therapies, the normal functioning of a healthcare system requires a systematically regulated and functionally efficient link between the three pillars supporting the medical treatment of the population: manufacturers, pharmaceutical wholesalers and healthcare institutions (private and state-owned).

The share of healthcare in the distribution of the gross national product in Serbia stands at approximately 10%. It is important to note that state/public resources account for only 60% of this amount (the National Health Insurance Fund (NHIF), the Ministry of Health and local governments), while the remaining 40% are private payments by citizens (the so-called out-of-pocket payments). This means that a significant burden of financing healthcare has been shifted to the patients. This is certainly not a positive attribute, having in mind the importance of the social role of the state in the provision of healthcare services. By comparison, in the European Union (EU), Member States finance between 70 and 80% of the total healthcare needs of the population from public sources.

Of the total public healthcare budget, 18% is allocated for medicines. Despite considerable steps forward in improving the availability of advanced therapies compared to the preceding period, this progress is not sufficient. Further strategic thinking and actions regarding the management of funds in the healthcare budget are important, having in mind the degree and character of the vulnerability of the health of the

population, i.e. the need for modern therapies for all, even the most severe diseases. The overall population mortality rate is approximately 46% higher than the EU average (14.2/1000 compared to 9.7/1000). The average life expectancy in Serbia is also considerably below the EU average (74.7 compared to 80.2). The greatest risks for the health and life of the population of Serbia are caused by coronary and vascular system diseases, malignant diseases, diabetes and chronic obstructive pulmonary diseases. For example, the gravity and complexity of this problem is best illustrated by the discrepancy between the cancer incidence rate, where Serbia is 18th in Europe, and cancer mortality rate, where it holds 2nd place. Bearing in mind the discrepancy in the cancer incidence rate and mortality rate in Serbia and the EU, the availability of oncological, as well as innovative medicines from other fields of therapy is clearly insufficient, while at the same time being crucial for reducing the high mortality rate of the population.

Achieving this goal requires further progress in the adoption of the legal framework, which is still incomplete and not fully harmonized with the EU acquis, consequently making decision-making procedures at various levels insufficiently transparent, including Government and NHIF decisions, and the laws difficult to apply in practice. Another problem is that time frames for important decisions are often too long and, even so, typically not observed. Furthermore, because their nature differs so much from other goods on the market, medicines, as the subject of various regulations and procedures, must be treated separately (example: the Law on Public Procurement). The participation of representatives of the pharmaceutical sector in the drafting of all relevant acts is necessary, and significant progress can already be seen in this field.

POSITIVE DEVELOPMENTS

1. The positive trend of negotiations and the signing of special agreements between the NHIF and pharmaceutical companies has continued in 2018 and the first half of 2019. However, the budget allocated for these purposes is significantly lower compared to 2016 (13 new innovative medicines have been placed on the Reimbursement List through the above process).

2. An important step forward was made regarding the quantification of funds required to place new medicines on the Reimbursement List. Namely, a common list of priorities was produced, covering all areas of therapy by the Central Medicines Commission, and/or competent national expert commissions. Based on this, the NHIF has produced an assessment of the funds required for this purpose, amounting to approximately EUR 80 million, with the calculation including significant concessions that pharmaceutical companies with prioritized medicines would commit to. The entire process unfolded with the support of the Ministry of Health and the Ministry of Finance, whose representatives in multiple meetings clearly expressed the position that the availability of medicines is one of the key priorities for both ministries, emphasizing that they will invest maximum effort to continuously allocate significant funds for this purpose.

3. Considerable improvements have been made in the communication and joint work of industry representatives (The Chamber of Commerce, Inovia and Genezis) and the Ministry of Health in drafting regulations of importance for doing business. The procedure for issuing licences under the remit of the Ministry of Health has also been accelerated.

4. Important improvements can be noticed in a part of the process of the normative resolution of the issue of debts owed by part of the state institutions, i.e. the definition of the time frame and the payer, as well as the introduction of direct payment for medicines to suppliers as per the Central Public Procurement by the NHIF, thus preventing the creation of new debts by hospitals and health centres and ensuring a continuous supply of medicines.

5. The Law on Medical Devices was adopted in December 2018, followed by the adoption of by-laws. The system for the electronic submission of documentation for medical devices has also been introduced by the Medicines and Medical Devices Agency of Serbia (ALIMS).

6. Amendments were adopted to the Rulebook on registration, in order to implement the provision of the applicable Law on Medicines introducing the issuance of permanent Marketing Authorizations (MAs) for medicines.

7. The procedure of determining the maximum price of medicines was made significantly shorter, with the option of continuous communication with representatives of the Ministry of Health and the Ministry of Trade throughout the process.

REMAINING ISSUES

1. Shortcomings in the process of including medicines on the NHIF Reimbursement List

The Rulebook on criteria for including/removing medicines 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 system. Although certain progress is already visible, each individual procedure for the placement of a medicine on the Reimbursement List should be even more transparent and with a mandatory explanation of the final decision, and the right to appeal.

2. The "duality" of medicine prices

The pricing of medicines is subject to strict administrative control, and involves a two-tier pricing procedure, by the Ministry of Health and by the NHIF.

Article 30 of the Rulebook on criteria for the inclusion of medicines on the Reimbursement List from April 2014 envisages that the difference in price between the original and generic A-list medicine 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 often cannot fit into such a limited price range, and thus cannot be found on the Reimbursement List. Given that this difference in price does not represent a financial burden for the NHIF, an option allowing a price difference up to the maximum approved price would ensure a better availability of original and branded generic medicines.

3. Illiquidity of state healthcare institutions

Private healthcare institutions are successful, liquid and more or less profitable hospitals, health centres and pharmacies. However, the majority of healthcare institutions are state-owned, with a far more unfavourable financial performance, a total public procurement debt of RSD 12 billion, and a due debt towards pharmaceutical wholesalers of over RSD 4.4 billion that they cannot pay off on their own. The debts of hospitals that were partially resolved during the past period are once again a current issue. All of the above poses a serious threat to the liquidity of pharmaceutical wholesalers and the continuous supply of medicines to state healthcare institutions.

The lack of a systemic solution for the sustainability of state-owned pharmacies is a specific and burning issue that affects all beneficiaries of the healthcare system and affects both the manufacturers of medicines, as well as pharmaceutical wholesalers and pharmacies. In this regard, 12% retail margins for medicines are unsustainably low. This is far below the comparable margins and fees for issuing medicines in pharmacies in other countries, and there is no business acumen that can make up for this.

The pharmaceutical wholesalers' claims from state-owned public health institutions under public contracts for the supply of medicines and medical devices are in excess of EUR 36 million (of which approximately EUR 22 million is owed by pharmacies and health centres). State-owned public health institutions are not capable of repaying this debt, or even the smallest fraction of it, since total claims of wholesalers from state public health institutions currently exceed RSD 100 million.

The burden sustained by pharmaceutical wholesalers and other drug suppliers in financing the state healthcare system debts is enormous, limiting their ability to regularly supply pharmacies and hospitals in the future. This situation is not sustainable, and if the liquidity of pharmaceutical wholesalers is endangered, there will be consequences for all other participants in the pharmaceutical sector - medicine manufacturers, importers, and, ultimately, healthcare institutions and the healthcare system.

4. Administrative procedures and the issuing of MAs for medicines

ALIMS is still not adhering to the time frames prescribed by the Law on Medicines and Medical Devices and is slow to issue MAs, which are important for business.

ALIMS had an extremely large number of delays in 2018 in issuing renewed MAs for medicines, leading to an interruption in the continuity of the market supply for many medicines. Average delays were around 6 months after the expiry of the MA for a medicine, with the situation only stabilizing in October 2018 after the adoption of an amendment to the Rulebook on issuing a MA for a medicine which extended the validity of a MA for a 6-month period. The time frames for issuing renewals were reduced during Q1 2019, although the time frames prescribed by the Law on Medicines and Medical Devices are still not being adhered to.

ALIMS is applying new, significantly higher fees for its services as of 1 January 2018, thus the costs of acquiring new MAs, their renewal and amendments (variations), and the

newly introduced pharmacovigilance fees, have led to a doubling in the regulatory expenses for MAHs of medicine , creating a further burden on the pharmaceutical industry. However, this has not led to increased efficiency in the work of the ALIMS regarding adherence to time frames, since no additional staff has been hired for the relevant jobs. The price of certain other services, such as the documentation quality control for a imported batched medicines has been increased 3-5 times, even though such a service requires no additional use of materials or equipment by the National Control Laboratory in ALIMS (since the work is document-based, not laboratory-based), yet it represents a significant increase in the expenses of importers of foreign medicines, since it does not apply to domestic manufacturers of medicines.

In addition to new registrations and MAs renewals, ALIMS is still considerably tardy when it comes to approving amendments to licences (variations). Such delays regarding new indications and variations in medicine safety have a considerable impact on the availability of the latest information on medicines both for the health care professionals and for patients.

FIC RECOMMENDATIONS

- ALIMS should:
  - Adhere to the existing time frames established by the Law on Medicines regarding new registrations, renewals and variations of MAs.
  - Simplify procedures, so that ALIMS would complete regulatory activities within the time frames prescribed by the Law on Medicines and Medical Devices.
  - Provide for electronic submissions of all submissions for medicines (new registrations, renewals and variations).
  - Revise and harmonize the amount of certain tariffs; PV tariffs based on the INN; reduce the amount of tariff for the documentation of quality control for each imported batches of a medicine.
- The Government should:
  - Provide steady funding for innovative medicines and generic medicines while expanding the indications through a special-purpose transfer of budget funds to NHIF, thus compensating for the clear lack thereof in the financial plan of NHIF.
  - Take a position regarding the future of its healthcare institutions, primarily pharmacies. If state pharmacies have a future as such, a strong recommendation is to entrust them to a private partner in accordance with the law, with the key law being that on public-private partnership, and in accordance with the model respecting the specifics originating from the status and business operations of publicly-owned pharmacies undergoing PPPs. This guarantees the legality of the procedure, transparency and the maximization of benefit for everyone involved.
  - Urgently start resolving the issue of settling old debts of state healthcare institutions towards pharmaceutical wholesalers for already delivered medicines and medical devices, to ensure further continued supply for the institutions.
- The NHIF should:
  - Ensure the acquisition of the funds required from the central budget for introducing new medicines on the Reimbursement List.

- Continue the positive trend of ensuring the predictability of the decision-making process, with clear time frames and a transparent consultation process with industry representatives.

- Ensure greater flexibility regarding models for specific agreements, since every medicine has its own specific details that need to be incorporated into the agreement. Perhaps most importantly, and as a first step, it is necessary to introduce a model of a special agreement that would make it possible for the MAH of a medicine to commit to reducing the price of a medicine in a public procurement procedure, without changing the "visible" or published price on the Reimbursement List of NHIF.

- The Ministry of Health should:

  - Work continuously, together with the Ministry of Finance and the NHIF, on securing additional funds from the budget of the Republic of Serbia with the aim of including new therapies on the NHIF Reimbursement List.

  - With the aim of accelerating patients' access to medicines, allow the submission of required documentation for obtaining the highest price of medicines for use in human medicine to competent ministries as of the moment the MAH receives a Report from ALIMS following a session of the Commission for the Placement of Human Medicines on the Market. Enabling parallel processes for finalizing the licensing procedure for a medicine and for obtaining its maximum price would considerably reduce the time frame for placing each individual medicine on the market. Therefore, the proposal is to enable two processes to take place in parallel: obtaining a MA from ALIMS for placing a medicine on the market, and obtaining published maximum price of the medicine in a Decision on the highest prices of medicines for use in human medicine from the Ministry of Health.

  - Urgently draft a new Law on Medicines in cooperation with industry representatives.

  - Eliminate from the new Law on Medicines the issuing of permissions by ALIMS for the use of promotional materials and other documentation regarding the advertising of Prescription only medicines and/or promotional materials and other documentation intended for the health care professionals.

- The Ministry of Finance should:

  - Make a positive decision on a reasoned request by the Ministry of Health for a special-purpose transfer of NHIF funds for new medicines.

  - Ensure an equal tax and customs treatment of raw materials and finished medicines.

  - Abolish VAT on donations of medicines and medical devices to health institutions.

PRIVATE SECURITY INDUSTRY

1.67

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, and 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.	2009		√	
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 a primary school education 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 security clearance. Prescribe the express obligation of the Ministry of Interior (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 officer's ID is issued upon request of the employer's company and is returned to the MoI in case of employment termination.	2017		√	
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.	2016			√

CURRENT SITUATION

After being the only country in the region and in Europe without a law regulating this sector of the economy, Serbia finally 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. Amendments to this Law were adopted again in November 2018, introducing significant changes.

Despite the changes, 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) and after the latest changes from 2018.

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 position. Positive practice examples from the region (Bosnia and Herzegovina, Croatia, and Slovenia) showed that restrictions in terms of 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 stakeholders. Having recognized the benefits (an 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 streamlining, 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 the transport of money by special vehicles. The applicable law on Private Security in Serbia stipulates a minimum number of crew members and work methods that are 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 unambiguously determine any attempt of theft, removal of or attack on the vehicle while the vehicle is unattended, which allows for a much greater efficiency and productivity of the transport service, with lower costs and ultimately lower prices for end-users. Also, there is no reason not to allow a driver to be the only crew member on board a special vehicle for the transport of money - in the case of armoured vehicles or vehicles equipped with electrochemical protection.

POSITIVE DEVELOPMENTS

The Ministry of Interior (MoI) has opened channels of communication with the industry, which is of the utmost importance. Finally, after more than a decade of attempts by stakeholders to influence the adoption of the Law, state authorities have realized the importance of bilateral communication, and formed an Expert Council for the improvement of private security, private investigator activities, and public-private partnerships in the security sector. Also, new opportunities have been opened for the engagement of persons performing these tasks and, in addition to the Employment Contract, the Law recognizes the Temporary Occasional Employment Contract. Amendments to the Law have also made it easier to obtain a license for certain categories of persons with appropriate qualifications, but the timeframes for obtaining a license are slightly shortened, which continues to be an insurmountable challenge in practice. With the adoption of by-laws this year, the powers of security officers are more clearly defined, which is a significant improvement in practice.

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 an initiative by the members of the Association for Private Security of the Serbian Chamber of Commerce for amending some of the articles of the 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;
- partial non-conformity with other laws and secondary legislation related to work and employment relations; the administrative procedure for issuing private security licenses; providing security at public gatherings (i.e. sports events); handling firearms, etc.;
- the process of undergoing training and obtaining licences for individuals is too lengthy, taking three months on average. During this time, such persons cannot perform private security activities, while companies providing security services have difficulties engaging licenced 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 a licence, or whether their licences 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, and 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 such a way that all forms of employment arrangements that are permitted by the Labor Law are treated equally as options available to the employer unless they are in conflict with the nature of the institute provided for by the Labor Law. In the conditions for attending training and obtaining a licence, the

professional qualification requirement should be amended to allow persons with a primary school education to obtain a security officer licence. Security clearance is another precondition for obtaining a licence, prior to the commencement of the training programme, to avoid unnecessary administrative problems and unreasonable expenses related to persons who do not pass security clearance. Prescribe the express obligation of the MoI to inform the employer about any changes in the status of an individual's licence, especially bearing in mind the fact that a security officer's 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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