WHITE BOOK

Proposals for improvement of the business environment in Serbia

2022

Foreign Investors Council

FOREIGN INVESTORS COUNCIL

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Proposals for improvement
of the business environment in Serbia

Editors:
Prof. Miroljub Labus
and Foreign Investors Council

2022

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

https://fic.org.rs/WhiteBook2022.pdf

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FOREWORD

Dear Reader,

I wish you a warm welcome to the latest edition of the White Book. The main purpose of the 2022 edition is no different from previous years: a platform for an active dialogue with all relevant stakeholders.

But for those of us in the FIC, this year has been a huge milestone, marking twenty years of our work. For two decades, we have been actively advocating and developing a predictable, competitive, and sustainable business environment. If we look back, the numbers speak for themselves.

In 2003, FIC members had €150 million invested and 3,160 employees, whereas today they have over €36 billion and more than 100,000 employees. We have brought investments and jobs by introducing new technologies and facilitating innovation. Our members have been promoting highly ethical business conduct and local communities could count on our support when it was most needed. Our White Book Task Force is the keeper and guardian of the pick of the recommendations, making sure that everybody is doing their part of the job.

But the White Book remains our greatest achievement. It has been, and still is, the most frequently upgraded guide on how the business environment in Serbia can be improved and I am deeply grateful to the experts from more than 120 member companies and the FIC Executive office staff for their dedication and hard work.

These days, we are facing the most serious socio-economic and health crisis of recent times. Economies around the world have been hit by a range of factors, including the pandemic, inflation, military conflicts, climate changes and market shifts. The latest events will force many governments to think about energy prices, to diversify energy sources and to increase efficiency wherever possible. We will be there, to support, advice, recommend, as we have been for the past two decades.

When it comes to Serbia, there are things we can do and improve, regardless of the circumstances. The country needs stable economic growth enabled by sustainable fiscal consolidation and implementation of deep structural reforms. Privatisation and corporatisation of public enterprises and reform of public administration will have a significant impact on the overall macroeconomic indicators.

It goes without saying that all our concrete proposals and activities are aimed at the harmonization of domestic and EU legislation. EU integration must be our key priority. Digitalisation, labour, infrastructure and construction, tax administration and healthcare are just some of the areas in which we share common interests, and we can learn a lot from the EU.

And let's not forget young people and their role. The current young generation has the potential to create a paradigm shift in sustainable development. We need to make sure that they can contribute to the advancement of society and the economy.

The times may appear challenging, but I am an optimist.

Enjoy reading and stay safe and healthy.

Mike Michel
FIC President

FOREWORD EU

Dear reader,

It is my great pleasure to author this prestigious edition of the Foreign Investors Council for the second time.

My compliments go to the FIC for its 20th anniversary and its impressive growth from 14 member companies in 2002 to over 120 in 2022. The EU remains an important partner of the FIC, given that 70% of all companies are headquartered in the EU.

In this year's foreword to the White Book, I would like to shed light on three topics that are of utmost importance to decision makers and businesses alike these days: Serbia's EU accession process, energy security and diversification of supply sources as well as the Green Agenda.

The EU works together with Serbia in accelerating the EU accession process to the benefit of the Serbian citizens, the country's economy and society as a whole. Economic integration and adoption of EU standards are a catalyst for the transformation of the country. We support this transformation through a variety of EU-funded projects in numerous sectors. Our message to Serbia is clear. The people of the Western Balkans are part of the European family, their future is in the European Union and the Union is simply not complete without them. In other words, our support for integration has remained unequivocal and unambiguous.

When Serbia makes progress, the EU stands ready to recognise it. The progress made by Serbia during 2021, including in terms of constitutional amendments, allowed us to open Cluster IV encompassing important chapters around the Green agenda and sustainable connectivity in December 2021. The EU and our Member States recognised the clear progress made and acted.

However, as of the 24th of February of this year, we live in a different world. Russia's brutal and unprovoked invasion of Ukraine has changed Europe in many ways. Naturally, this also has had an effect on the way the EU accession process is looked upon in Brussels and capitals across the EU. It has become more urgent to integrate our neighbours into the European structures, to reinforce our shared prosperity and security and to continue united by common values. The EU has therefore acted. In June this year, the European Council gave Moldova and Ukraine candidate status and a European perspective to Georgia with candidate status to be granted once Georgia addresses some key priorities. In July, the EU opened accession negotiations with Albania and North Macedonia.

What does this mean for Serbia? Serbia has applied for and is negotiating membership of the EU. Serbia's decision implies that the country aligns with the EU, including in terms of foreign policy. The European Union wants to count on Serbia as a reliable European partner for common principles, values, security and prosperity. The European Union has been crystal clear amongst all Member States and with our partners, including candidate countries such as Serbia: relations with Russia cannot be business as usual with Putin's regime and in the shadow of Russia's unprovoked and unjustified invasion of Ukraine. The EU calls on the Serbian leadership to ensure, as part of its accession process, stronger coherence between its foreign policy initiatives and its support for international values and Ukraine's independence, sovereignty and territorial integrity within its internationally recognised borders.

In parallel, the EU works together with Serbia in diversifying energy supply sources specifically in substituting fossil fuels from Russia, accelerating implementation of green energy technologies and reducing demand for energy. Support of the European Union to Serbia's energy sector is worth more than 830 million EUR for the period from 2000 until today. The energy sector is in our focus due to its obvious impact on the economy in the current circumstances.

Russia cannot be trusted to be a reliable partner for energy supply. Getting out of the current dependence on Russian gas is therefore crucial for both the EU and Serbia. We are currently building the Serbia-Bulgaria gas interconnector, which will allow for gas deliveries from the Caspian basin and elsewhere, thereby reducing Serbia's dependence on Russian gas. We are also exploring other connections, such as an interconnector with North Macedonia and other countries in the region. Renewables represent an obvious solution at hand with further economic growth potential facilitated by EU assistance. The current energy crisis showed us again the need for building more resilient and diversified energy systems. Serbia has many opportunities and resources for a fast transition to more renewable energy.

In order to accelerate integration of renewable energy, it is of outmost importance to create regulatory and administrative environments that will de-risk investments into renewables. For instance, many investors in big wind and solar farms are waiting for wind power auctions to be launched in order to unlock new investments.

Greening Serbia's energy sector is vital if Serbia is to stay competitive, ensure better health for its citizens and meet its obligations under the Energy Community Treaty, its EU membership ambitions, and ensure the sustainability and profitability of the sector.

The EU's Economic and Investment Plan sets out a 9 billion EUR investment package for the Western Balkan region that is expected to leverage another EUR 20 billion of investments. Being in the heart of all economies, Cluster IV will bring new investments, increased employment and will boost local markets. The EU support to Serbia in decarbonising the energy sector is expanding, bringing new opportunities such as budgetary guarantees.

The EU works together with Serbia in implementing the actions defined in the Green Agenda for the Western Balkans, in particular through policy support that includes development of the new national environmental strategy and financing pilot projects for the five Green Agenda pillars (decarbonisation, pollution, biodiversity, bio-food and circular economy).

The Green Agenda for the Western Balkans, as part of the EU's new development strategy named the Green Deal, includes climate action, decarbonisation, energy and mobility, circular economy, biodiversity, fighting pollution of air, water and soil and finally sustainable food systems and rural areas.

The EU is unlocking investments for environmental protection and green transition in Serbia, while providing expertise to support innovation and improving the legal framework. Green is the key word for growth, jobs and health. Investing in environment and climate change is an investment for the future because the cost of non-action is much higher.

In addition, the EU is continuously providing support in numerous other sectors that will help Serbia make the right decisions. For instance, we are supporting reconstruction of the railway Corridor 10 (Belgrade-Nis-Presevo) and the Peace Highway (Nis-Merdare), both corridors being vital for enhancing regional connectivity. The EU also provides grants and favourable loans for SMEs to help them improve their equipment and business operations so they can integrate in European and global value chains. We provide funding and support for digitalisation, innovation, healthcare reform and the building of new hospitals. The list goes on and on, with this being just a glimpse of our pre-accession assistance, which amounts to around €200 million each year in grants.

In conclusion, let us not forget that Serbia's economy has remained closely integrated with the EU in these difficult times. The EU remains Serbia's most important trading partner, accounting for 60.3% of Serbia's total trade in 2021. Moreover, the EU is by far Serbia's biggest source of foreign direct investments (FDI). The EU investors remain undisputed leaders in Serbia accounting for 63.6% of total FDI, reaching a total of €19.1 billion-worth of investments in the period 2010-2021.

These companies support the EU in economic and social transformation of Serbia. Their presence in the country creates jobs, but also brings best practises, integrates Serbia in global value chains and spurs innovation, research and development. Through modern management practises, environmental standards, corporate social responsibility and diverse employment policies these companies help us in promoting European values.

Let us jointly continue promoting these values and help Serbia along its EU accession path!

Sincerely,

Emanuele Giaufret
Ambassador of the European Union to the Republic of Serbia

FIC INDEX FOR 2022

TABLE 1: RANKING BY PROGRESS IN IMPLEMENTING RECOMMENDATIONS IN 2022

2022	Scores						Rating			
Recommendations	Average score in 2022	Average score in 2021	Change of scores in 2022	Significant progress in 2022	Certain progress in 2022	No progress in 2022	Rating in 2022	Rating in 2021	2022 Average time of delayed recommendations	Change of delayed time in 2022
Sectors										
E-commerce and digitalization	2.57	2.60	-0.03	4	3	0	1	1	1.14	-0.26
Energy sector	2.50	1.75	0.75	4	4	0	2	20	3.00	0.50
Consumer protection	2.00	2.25	-0.25	0	3	0	3	3	5.67	0.17
Law on payment transactions	1.80	1.33	0.47	1	2	2	4	39	2.20	0.20
Real estate: Cadastral procedures	1.73	1.70	0.03	0	8	3	5	9	2.64	-1.36
Pharmaceuticals	1.71	1.67	0.04	4	7	10	6	11	4.33	1.09
Public-private partnerships	1.58	1.25	0.33	0	7	5	7	30	3.67	1.00
Telecommunications	1.57	1.78	-0.21	1	2	4	8	6	1.71	-0.29
State aid	1.57	2.60	-1.03	1	2	4	9	2	4.86	-0.94
Illicit trade prevention and inspection oversight	1.57	2.00	-0.43	0	4	3	10	4	1.71	-0.15
Protection of users of financial services	1.50	1.33	0.17	2	0	6	11	24	2.38	-2.62
Capital market trends	1.50	1.75	-0.25	0	2	2	12	7	5.00	0.75
Central registry of beneficial owners	1.50	1.00	0.50	0	1	1	13	41	2.33	0.08
Environmental regulations	1.43	1.56	-0.13	0	3	4	14	12	1.00	1.00
Foreign exchange operations	1.38	1.44	-0.06	1	1	6	15	17	4.38	0.38
Protection of competition	1.33	1.44	-0.11	0	3	6	16	15	5.78	0.45
Public procurement	1.33	2.00	-0.67	0	1	2	17	5	3.00	-3.00
Dual education	1.33			0	1	2	18		2.00	
Prevention of money laundering	1.25	1.50	-0.25	0	1	3	19	13	7.25	1.00
Food & Agriculture: Declarations on food products	1.25	1.29	-0.04	0	1	2	20	31	4.25	1.00
Arbitration proceedings	1.25	1.25	0.00	0	1	3	21	29	5.75	-0.58
Law on bankruptcy	1.22	1.44	-0.22	1	0	8	22	14	5.00	1.00
Oil and gas sector	1.22	1.67	-0.45	0	0	5	23	10	2.33	-0.34
Investment and business climate	1.20	1.40	-0.20	0	1	4	24	19	5.00	0.40
Customs	1.20	1.40	-0.20	0	1	4	25	20	3.20	0.40
Real estate: Construction land and development	1.18	1.43	-0.25	0	2	9	26	18	1.00	-1.71
Private security industry	1.17	1.00	0.17	0	1	5	27	42	5.00	1.00
Human capital	1.17	1.33	-0.16	0	1	5	28	27	5.67	1.00
Company law	1.17	1.00	0.17	0	1	5	29	44	7.17	1.00
Food& Agriculture: Food safety law	1.14	1.29	-0.15	0	1	6	30	28	4.29	1.00
Taxes: Tax procedure	1.11	1.13	-0.02	0	1	8	31	37	5.78	0.45
Leasing	1.10	1.44	-0.34	0	1	8	32	16	5.56	0.36
Law on notaries	1.00	1.20	-0.20	0	0	5	33	33	2.60	0.93

2022	Scores						Rating			
Recommendations	Average score in 2022	Average score in 2021	Change of scores in 2022	Significant progress in 2022	Certain progress in 2022	No progress in 2022	Rating in 2022	Rating in 2021	2022 Average time of delayed recommendations	Change of delayed time in 2022
Sectors										
Taxes: Parafiscal charges	1.00	1.17	-0.17	0	0	6	34	36	6.67	1.67
Labour legislation: Staff leasing	1.00	1.00	0.00	0	0	3	35	40	2.00	1.00
Taxes: Corporate income tax	1.00	1.38	-0.38	0	0	8	36	22	5.88	1.00
Insurance: Motor third party liability	1.00	1.00	0.00	0	0	4	37	43	6.00	1.00
Real estate: Restitution	1.00	1.33	-0.33	0	0	3	38	25	5.00	-1.00
Taxes: Personal income tax	1.00	1.25	-0.25	0	0	10	39	22	4.30	-0.22
Intellectual property	1.00	1.20	-0.20	0	0	6	40	34	2.17	-1.23
Labour legislation: Employment of foreigners	1.00	1.33	-0.33	0	0	3	41	26	5.00	-3.00
Law on personal data protection	1.00	1.08	-0.08	0	0	12	42	38	2.50	-0.28
Taxes: Property tax	1.00	1.40	-0.40	0	0	5	43	21	4.48	0.08
Judicial proceedings	1.00	1.20	-0.20	0	0	5	44	35	8.40	1.00
Taxes: Value added tax	1.00	1.38	-0.38	0	0	7	45	23	5.86	-0.14
Food&Agriculture: Sanitary and phytosanitary inspections	1.00	1.00	0.00	0	0	6	46	45	3.67	1.33
Insurance: Related legislation	1.00	1.00	0.00	0	0	8	47	46	1.00	-2.00
Labour regulations: Secondment abroad	1.00	1.00	0.00	0	0	3	48	47	5.33	1.00
Insurance: Natural disasters and shared services	1.00	1.00	0.00	0	0	4	49	48	3.25	0.75
Labour legislation: The Labour Law	1.00	1.00	0.00	0	0	5	50	49	4.20	1.06
Law on whistleblowers	1.00	1.00	0.00	0	0	3	51	50	6.33	1.00
Insurance: Law	1.00	1.00	0.00	0	0	4	52	51	1.00	-2.50
Law on Central Register of Temporary Restriction of Rights	1.00	1.00	0.00	0	0	3	53	52	6.50	1.00
Real estate: Mortgages and real estate financial leasing	1.00	1.00	0.00	0	0	3	54	53	5.50	-0.50
Labour legislation: Employment of disabled persons	1.00	1.00	0.00	0	0	3	55	54	10.67	1.00
Safety and health at work	1.00			0	0	5	56	55		1.00
AVERAGE / TOTAL	1.30	1.42	-0.11	19	67	259			4.22	0.26
Groups										
Real Estate and Construction	1.36	1.66	-0.22	0	10	18			2.91	-1.77
Human capital	1.22	1.57	-0.32	0	2	7			3.84	1.50
Food & Agriculture	1.13	1.24	0.05	0	2	13			4.18	1.11
Taxes	1.04	1.15	-1.15	0	2	47			3.82	2.56
Labour law	1.00	1.05	0.29	0	0	23			5.44	0.21
Insurance	1.00	1.00	0.09	0	0	20			2.81	1.31

RANKING METODOLOGY

Starting with the White Book for 2017, we have included in our annual report a ranking of economic sectors according to the progress made in implementing the FIC recommendations for improving the business climate and regulations in Serbia. Foundations for the ranking methodology were laid down in the White Book for 2011, which provided first tables with scorecards assessing the progress achieved in the previous year. Based on that, we proceed this 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 assessments has advantages and disadvantages. The advantage is that qualitative data can be reduced to a small number of numerical 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 one and which sectors should be credited the most.

Ranking problems, on the other hand, are multiple. As FIC members are treated equally, each sector has the same weight in compiling the outcome. It is true that the FIC singled out several 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 particular recommendations. Moreover, 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, nor a predefined questionnaire with possible recommendations, evaluated by FIC members and published by the White Book. Therefore, we have adopted the principle that weighted averages determine scores to reduce some of these problems.

Of course, the mean value of scores suppresses some of the information that matters and, above all, the variability of progress in the recommendations. In this edition of the White Book, we will approximate this variability by the number of recommendations without progress, which can easily be compared with the total number of recommendations. We will use this as an ancillary criterion for assessing sector progress. It did matter when the proposals were first suggested and how much time elapsed before they were adopted. The longer the waiting period, the less valuable their progress will be, as it produces a positive effect later. We still do not use this criterion in the ranking procedure, but we list it in the table as additional information.

Each heading of the White Book, beside the label, has the score size. Additional to individual sectors, there are six 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 comprise each area. The six cross-cutting areas are listed in the bottom section of Table 1 in a separate bracket.

In this report for 2022, there is a total of 56 sectors and 351 recommendations. There were 319 recommendations in the previous year. The average score in 2021 was 1.42; this year, it was 1.30. That is a large increase in the number of recommendations and a substantial reduction in achievements. However, the average waiting time changed slightly by only 0.26 years.

FIC OVERVIEW

In 2022, Foreign Investors Council proudly marks two decades of its existence and consistent work on improving the business conditions in Serbia. Our journey together towards a better business environment began in July 2002, when 14 companies, with the support of the OECD, founded the Foreign Investors Council. We are among the oldest associations with the main goal to improve the business climate and business ethics. We can proudly state that, during the two decades of our work, we have remained committed to our main goal, achieved a large increase in membership and significant results, while at the same time successfully adapting to the evolving and often challenging economic circumstances. One year after our establishment, the total investments of our members in Serbia amounted to €150 million and 3,160 employees, compared to almost 120 members with a total of €36 billion and 100,000 jobs today. This indicates that our members came to Serbia with long-term plans, coupled with an interest to contribute to increasing economic growth and competitiveness, as well as their full commitment to that aim. Foreign Investors Council is an association that allows the voice of business to be heard directly. Our partners and interlocutors have recognized the value and reliability of our work. We cultivate special relations with key partners for the achievement of our goals: we are the only business association with an institutional framework for cooperation with the Government of the Republic of Serbia through the Working Group for the implementation of the recommendations from the "White Book", chaired by the Prime Minister, whose permanent, institutional members of the Board of Directors include the European Investment Bank (EIB) and the European Bank for Reconstruction and Development (EBRD). In addition, the Council gathers bilateral chambers of commerce.

NEW CHALLENGES

This year has brought new challenges. In 2022, we expected the final end of the Covid-19 virus pandemic, marked with an acceleration of economic growth, restored supply chains and a return to global economic cooperation. However, a conflict in Europe and the economic and political divisions pushed all other topics into the background, calling into question the expected acceleration of economic growth both globally and in Serbia.

LONG-TERM COMMITMENT TO DIGITALIZATION

For years, Foreign Investors Council members have been advocating for "paperless work", accelerated digitalization of society and digital transformation of business, as key elements in addressing a number of challenges faced by Serbia's economy. The pandemic furhter highlighted the need for such development and accelerated these processes. The contribution of our members to initiatives already implemented or to be implemented in the near future has been quite significant. Some of the major initiatives implemented to date include bill of exchange digitalization, video identification and signature in the cloud. Particularly noteworthy is the extensive initiative for the digitalization of financial services, launched in 2020, which is still ongoing. Its goal is to provide as many financial services as possible electronically and make them available to the clients, thereby removing the so-called 'bottlenecks' in companies' business operations and simplify numerous transactions for citizens. The Council also participates in the work of the Coordination Body for Healthcare System Digitalization. Given its overall commitment to digitalization in all areas of work and business, the Council dedicates its capacities and work to digitalization in the area of the Labor Law and harmonization of the Labor Law with the laws on electronic document and electronic signature. Furthermore, capacity-building of the Tax Administration portal, as well as streamlining procedures through digitalization in this area, is also among the key segments of improving business climate in Serbia which is in the Council's focus.

COMMITTEES AS THE BACKBONE OF OUR WORK

Foreign Investors Council has nine working committees, which form the backbone of our work. Participating in the committees' wokr are experts interested in the particular committee's focus area. The committees are the very core of the Council's work, serving for exchange of knowledge and views, analysing policies, regulations and their drafts and drafting proposals for the improvement of regulations and thus also business and investment climate. The committees are a living system that evolves and adapts to the circumstances and the members' needs. In 2022, one new committee was established, so Foreign Investors Council now has a total of nine working committees: Anti-Illicit Trade & Food Committee, Financial Services Committee, Human Resources Committee, Infrastructure & Construction Committee, Legal Committee, Pharma Industry Committee, Taxation Committee, Telecommunications & Digital Economy Committee and the new Tourism & Hospitality Committee.

MAIN PRINCIPLES – GUARANTEES OF STABILITY AND SUCCESS

Over the two decades of work, Foreign Investors Council has been changing, adapting to the new circumstances and anticipating changes. However, its main principles have remained unchanged, standing the test of time and reflecting the stability and continuity of our work. Our main principles are independence, expertise, best practices, cooperation and European integration.

INDEPENDENCE

Foreign Investors Council advocates for the general interests of the business community. Its independence and self-sustainability are crucial in fulfilling that mission. Two-level decision-making is a further guarantee of the equality of our members. The first decision is made within the working committees, with the equal participation of interested members without any restrictions and with the aim of reaching full consensus by agreement. As a second step, the Council Board of Directors considers the proposed decisions of the working committees and decides upon them.

EXPERTISE

The White Book before you would not have been possible without the huge professional knowledge, practical experience and dedication of our members. The White Book is our main platform for dialogue on improving regulations and business climate. Thanks to the expertise of our members, it has become an important source of information and is used by the European Commission in preparing its annual report on Serbia's progress on its path to the European Union. Drawing on experience, over the years we have developed a unique methodology for measuring the results achieved and progress made in the implementation of recommendations from the White Book. It is the White Book Index, which provides a comparison and ranking of progress in all its focus areas, based on the implementation of recommendations from previous years. An additional criterion is the time elapsed from when the recommendation was first published in the White Book to its adoption. In this way, the pace of business climate improvement is also measured, which can have a significant impact on decisions to invest.

BEST PRACTICES

Foreign investors bring not only investments and jobs, but also high ethical and business standards, business ethics, the concept of sustainability and application of new technologies. We can proudly say that our members are good employers, who take care of their employees and the local community through various socially responsible projects. When it comes to commitment to the the green agenda and waste management, our members, following policies of their parent companies which are mostly in the EU, are carbon neutral.

COOPERATION

Cooperation is one of the main backbones of our activities and achievements. The Government of Serbia and regulatory bodies are our natural partners, as they are responsible for passing relevant regulations and their implementation. Notably, the existing institutional framework for the Council's cooperation with the Government of the Republic of Serbia, the Working Group for Improvement and Implementation of the White Book recommendations, ensures a more efficient and successful implementation of the White Book recommendations. We are honored to be the regular interlocutor and partner of the European Union, as well as of other relevant actors such as the diplomatic corps, international financial institutions, development agencies, the academic community and other business and public-private associations.

EUROPEAN INTEGRATION

From its beginnings, the Foreign Investors Council has been committed to European integration. The Council has no doubts whether the EU membership is the path that Serbia should follow. We believe that this path is even more important in challenging times, considering Serbia's geographic position and its deep ties with the European Union. We are also aware that close international cooperation is necessary in order to address regional or global-scale crises. We believe that, in terms of our knowledge and experience, we are among the best-placed organizations to provide support to European integration, with more than 70% of our members coming from the European Union and the majority of others operating on the European market. In light of this, we actively advocate for the harmonization of Serbian legislation with the European Union's regulations and support the intensification of accession negotiations. The strong European action context is also reflected in our partnership with the EU Commission, the European Investment Bank (EIB) and the European Bank for Reconstruction and Development (EBRD).

EXECUTIVE OFFICE

The Council's Executive Office is a small team whose efficiency, knowledge and dedication ensure the smooth functioning of the association and easy communication with the Council members, affiliates and partners. Its task is to implement the decisons of the Council bodies, as well as to improve cooperation between members through daily communication. As such, it plays an indispensable role in the mechanism which, though complex, has proved successful.

Key characteristics and values of FIC

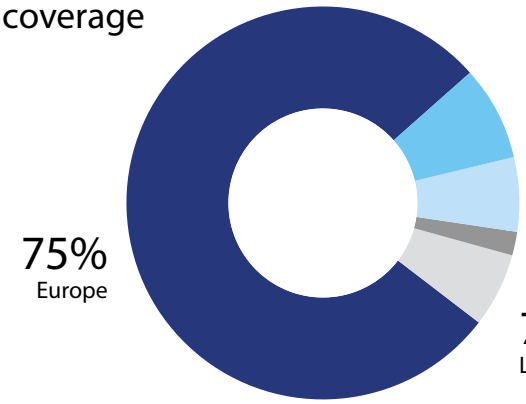
Independence	Regulatory expertise	Consistency
Best Practices	EU promotion	Cooperation

Key FIC figures

20 years since establishment

116 members from **21** sectors

Geo coverage



> €36 bil. of investments by FIC members in Serbia

>100,000 directly employed by FIC members in Serbia

White Book 2022 in numbers

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.

In the last few years, investors have become much more focused on Environmental, Social, and Governance (ESG) standards when evaluating investment and sales decisions. As ESG standards become a more widely adopted investment assessment tool, the role of the corporate sector in the green transition becomes more tangible. At the same time, significant activity by regulators at the EU level already reshapes the markets. A set of public policies which have already been passed or are in the process of being adopted referring to sustainable financing, circular economy, responsibility in the supply chain, and climate action, set new demanding expectations in front of companies operating in the European market. Additionally, the adoption of the new Directive on Corporate Sustainability Due Diligence will foster sustainable and responsible corporate behaviour aiming to anchor human rights and environmental considerations in companies' operations and corporate governance. Moreover, the new Corporate Sustainability Reporting Directive will require companies with more than 250 employees to report in accordance with the new European set of standards for sustainability reporting becoming effective in 2024 for the 2023 financial year. In Serbia, disclosure of ESG information is fostered by the Law on Accounting which introduced non-financial reporting as an obligation for large companies with over 500 employees. Following the improvements introduced by the revised directive, it is also expected further alignment with the EU legislation in Serbia.

All these regulatory initiatives are to influence specifically capital and credit markets in terms of ESG risk assessment. Owing to the guarantees provided by international funds, some project-wise financing is already available in Serbia. However, greater availability of financing that is directly related to ESG performance is yet to be expected in the years to come.

Business leaders are largely aware of the risks that climate change carries for business and equate them with financial risk. From the 2,000 of the world's largest public companies, at least one-fifth (21%) committed to having net zero emissions by 2050. For a large number of companies, the issue of waste management is one of the key issues concerning the environment, while the focus is also on actions related to energy efficiency and improving the use of resources and water quality.

Although agreement on key environmental issues has crystallized faster than for social factors, in the years ahead it is expected that the same will happen with regard to the factors that are most relevant to social issues. Under stakeholder pressure, companies are expected to review the policies related to employees, as well as respect for labour and human rights along the entire supply chain.

Growing legal obligations, as well as changing business models, impose the need for professionals who are empowered to deal with topics related to sustainability. The transition to a greener economy could create 24 million new jobs worldwide by 2030, if the right policies are put in place, says the International Labour Organization (ILO). On the other hand, it would be precisely the lack of personnel with adequate skills and expertise that could the global economy cost billions of euros. In this regard, the education of future business leaders and sustainability professionals becomes crucial.

Ranked on 35th place on the Global SDG Index 2022 (although fell back by one place in comparison to the previous year), Serbia however, still faces significant challenges, especially those in the domain of environmental issues such as responsible consumption and production. These challenges imply a greater responsibility of the state itself in defining public policies that will foster a competitive economy based on sustainable and responsible principles in accordance with the UN Agenda 2030 and the European Green Deal. In order to bounce forward and build better societies, the impact of individual efforts made by companies and civil society organizations should be outlined in a clear vision and (Sustainable) Development Plan.

On the other side, it is encouraging that the dialogue on SDGs continued informally through the participation of the high-level state representatives in different dialogue formats. At the same time, a broad discussion among Serbia's non-state actors, including civil society, corporate sector, academic and research community, media, and the citizens, on aligning Serbia's development priorities within the objectives of the 2030 Agenda for Sustainable Development, has been taking place under the "SDGs for

All" Platform. The platform offers resources and support in understanding the SDGs, opportunities for dialogue and definition of policy recommendations.

It could be concluded that the complexity and sensitivity of certain social and environmental issues, imply the need for well-designed stakeholder engagement strategies and ongoing stakeholder dialogue. This also requires companies to determine material issues – in order to understand which ESG topics and why are the most important to stakeholders. Having put in place meaningful stakeholder engagement strategies and well-designed materiality analysis, the business is on the right track to being sustainable and thus, also contributing positively to the community.

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

1.20

The investment climate has changed since the last year's edition of the White Book. The world economy is approaching stagflation triggered by the war in Ukraine and adverse climate changes. Moreover, the international order is in a turbulent adjustment, which is great uncertainty for anyone, especially for small open economies like Serbia. As for the risks, IMF found three types of them on the downside: economic, geopolitical, and ecological. This report elaborates on the first one. Within that context, the Council of Foreign Investors evaluates the reform achievements in Serbia and proposes recommendations for further improvement.

WORLD ECONOMY

The Covid-19 virus pushed the world economy in 2020 into recession, from which it recovered relatively quickly in 2021. The American economy was in recession for only three quarters, and the European economy for two quarters longer. The decline in production and the rise in unemployment were due to the closure of the economy, the disruption of production chains and the slowing of foreign trade flows.

No one expected the return of recession in 2022. Many governments have meanwhile injected significant financial resources into their economies to boost demand, which, however, has not triggered adequate change on the supply side. That developed inflationary pressure imposing the fundamental dilemma of how much the central banks would tighten the monetary policy to keep inflation within the target framework. But nobody expected a recession.

Table 1: GDP Forecast

	IMF Forecast			FIC Forecast			
	2021	2022	2023	2022	2023	2024	2025
World	6.0	3.2	2.7				
Euro Area	5.2	3.1	0.5	3.0	0.1	0.3	1.0
Germany	2.6	1.5	-0.3				
Italy	6.6	3.2	-0.2				
USA	5.7	1.6	1.0	2.1	1.6	2.7	2.3
Russia	4.7	-3.4	-2.3				
China	8.1	3.2	4.4				
Serbia	7.4	2.5	2.3	2.7	2.5	2.2	2.8

Source: MMF, Belox

Then the war in Ukraine started, severe economic sanctions were imposed on Russia, the prices of energy products (oil, gas, and electricity) rose sharply, and in parallel with that, the prices of food and primary metals. Inflation has increased drastically, interest rates have started to grow, and with them, expectations of a new economic recession. Many discuss the possibility of re-entering the recession, but few dare to forecast it. Moreover, the latest IMF forecasts expect a slowdown in the world economy and an increase in inflation, but not a recession (see Table 1).

Nevertheless, Table 1 worries Serbia. A severe drop in GDP is expected for the Euro Area in 2023, with the recession in Germany and Italy, which are Serbia's key export markets. Moreover, no one knows what will happen this winter due to the energy crisis. The gas supply from Russia to Europe has been cut, driving natural gas prices even higher. In the meantime, the German economy entered a recession in Q3 this year (a GDP drop of -0.4%). Therefore, the IMF forecast based on data for Q2 2022 in Table 1 might be too optimistic.

Our forecast includes the possibility of a recession in the US and the EU. In Figure 1 (left), we provide a forecast for the US economy (based on a three-factor model: GDP, inflation, and unemployment). The model links disinflation to the recession but not to a dramatic deterioration in the labour market. Therefore, the slowdown would last longer than in the previous case but with a milder rate of decline in economic activity.

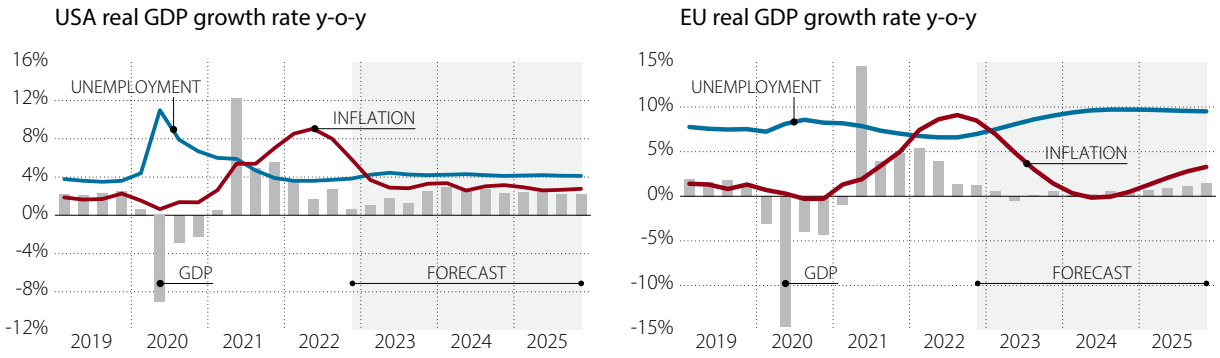
In Figure 1 (right), we provide a forecast for the EU, based on the same model, with the addition of a fourth growth factor: external demand based on the movement of GDP in the USA. In this case, too, disinflation would be associated with negative GDP growth rates, much stronger than in the case of the USA, and increased unemployment (2023-24). After two years of fighting inflation and recession, both economies will stabilize in 2025.

What does all this mean for investments? That is an atypical situation in which investments are not the driver of economic growth but an outcome of the economy's cyclical movement. We expect investments to regain their role as a growth factor only after stabilizing the world economy in 2025.

BUSINESS CYCLE IN SERBIA

The economy of Serbia depends on the economic trends in the EU. Our forecast is given in Table 1 (annually) and Figure 2 (quarterly). Serbia will also slow economic growth, but we do not expect a recession like the one in 2020. Inflation will grow until the end of the year, calm down afterwards and remain above the target corridor (3% +/- 1.5%). As for unemployment, it is structural and relatively insensitive to

FIGURE 1: BUSINESS CYCLES IN THE US AND THE EU



Source: FED, ECB, FIC

inflation and changes in GDP. Therefore, GDP growth will be slow and cyclical but positive and modest.

Long-term sustainable high GDP growth depends on investments. According to the Millennium Development Goals, countries such as Serbia should have at least a 25% share of investments in GDP, which would bring a sustainable GDP growth rate of 5% per year. However, figure 3 shows that the share of investments in GDP in Serbia is constantly below the target level. The underinvestment problem lies in the low level of private investments, which should increase from 3% to 4% of GDP.

On the other hand, public investments are growing and approaching 6% of GDP. That would be fine if this amount did not include unproductive investments in military equipment (between 0.6% and 1.0% of GDP). Also, IMF strongly recommends fiscal tightening in 2023, which might affect public investment.

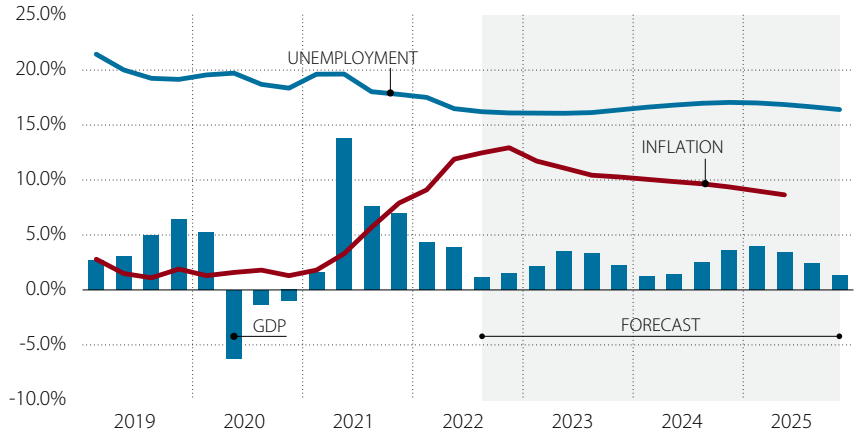
Foreign direct investment has recovered from the immediate negative effect of the Covid-19 crisis, recording 5% of GDP. However, it is uncertain what the further impact of the war in Ukraine will be on them. IMF issued warnings that capital outflow might hit emerging market economies in 2023.

EU ACCESSION

The economies of Serbia and the Eurozone are highly integrated. That fact can be proved not only by data on direct investments, exports and imports in Serbia but also by the phases of recession and expansion, which are synchronized with a shift of one quarter. In that sense, the expected recession in the EU can be a severe problem for Serbia. But not the only one.

In the Serbia 2022 Report, the EU Commission strongly underlined the need for Serbia to align with any of the EU's restrictive measures on Russia, including tough economic sanctions:

FIGURE 2: REAL GDP GROWTH IN SERBIA



Source: RZS, NBS, FIC

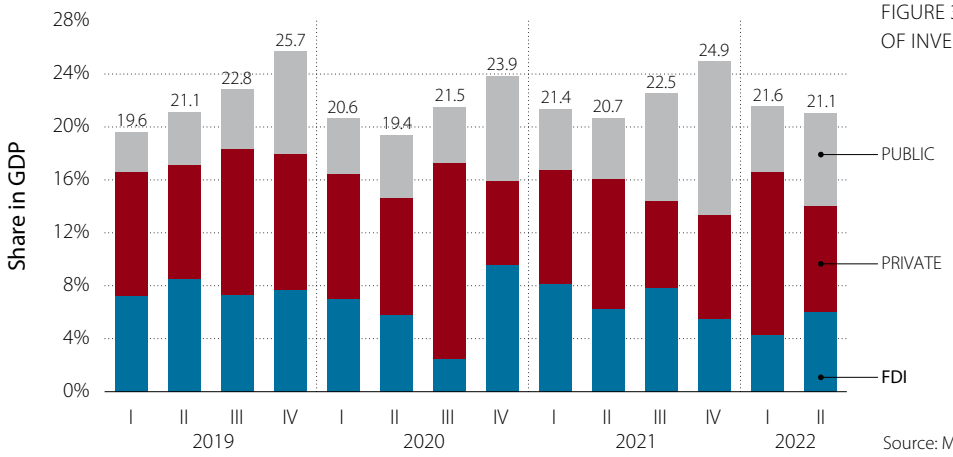


FIGURE 3: OWNERSHIP STRUCTURE OF INVESTMENTS IN SERBIA

Source: MinFin, NBS, Belox

"In the coming year, Serbia should, in particular, improve, as a matter of priority, its alignment with EU Common Foreign and Security Policy, including sanctions, and avoid actions and statements that go against EU positions on foreign policy".

The costs of this policy are already present. For example, Serbia will not be able to import cheap Russian oil, but the import of expensive natural gas is not forbidden, as the trade with Russia. Moreover, access to international financial institutions is still undisturbed. In addition, there are hidden effects of sanctions. Serbian banks and companies with the EU's founding capital will violate sanctions if they trade with or lend to Russia. Also, European citizens cannot be on their management boards if they do business with Russia, even though they work in Serbian business entities.

There is, however, a bigger problem than foreign policy harmonization. Serbia is highly integrated into the European market but not in the institutional set-up of the EU. Imposing sanctions on Russia will not solve that problem. The Stabilization and Association Agreement (SAA) between Serbia and the EU entered into force in September 2013, and Serbia's accession negotiations opened in January 2014. Since then, Serbia has continued implementing the SAA, although some compliance issues remain. The Serbian government has continued to declare EU membership its strategic goal, but the pace of reforms and membership progress slowed. Figure 4 reveals both paths: the accession progress (measured by the accession scores) and reforms towards EU standards (measured by the FIC scores of accepting its recommendations)[1].

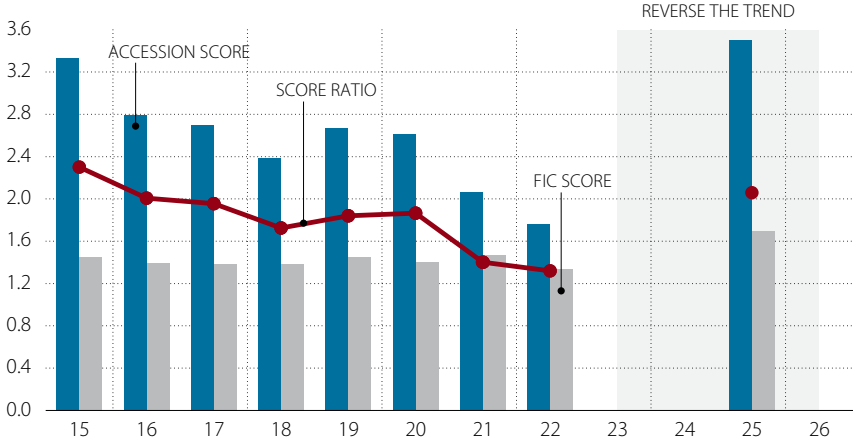


FIGURE 4: EU ACCESSION AND FIC RECOMMENDATIONS

1 For thirty-three chapters, we used the following grading scale equivalent of the EU Commission's verbal assessments of the Serbia's negotiation progress: no progress (0 points), limited progress (1 point), little progress (2 points), some progress (3 points), moderate progress (4 points) and good progress (5 points). For forty-five economic sectors, FIC scores compiling the acceptance rate of its recommendations are based on the similar approach: no progress (1 point), some progress (2 points) and good progress (3 points).

The all-time low of both processes coincided in 2022. That is a point of concern. The accession scores have a clear negative trend, while FIC scores stagnate with cyclical oscillations. The Council of Foreign Investors strongly encourages the Government of Serbia to reverse both trends, as proposed in the shaded part of Figure 4. The justification for that proposal is apparent. Members of the FIC mostly come from the EU, which market is the natural framework for their operations. On the other hand, accepting the EU standards widely coincided with the FIC proposals for improving the investment climate in Serbia.

FINANCIAL RISKS

The financial market reveals investment risks in Serbia by trading government bonds and comparing their yields with safe bond yields. Figure 5 shows the yields on government bonds in Serbia and Germany. Serbian government bond yields have risen significantly in the last six months (green line with dots versus lower red line). On ten-year bonds, yields rose to 7.9% (3% higher than in March). At the same time, Serbia's bond spread is between 4% and 6% compared to German's counterparts. Germany still has an AAA rating, even if yields on their government bonds are slowly rising (they were negative before the outbreak of the war in Ukraine).

Yields on Serbia's government bonds indicate the rising cost of borrowing and the expected deterioration of economic activity. Nevertheless, S&P and Fitch keep Serbia's credit rating at the BB+ level, with stable prospects for improvement. For Serbia to support such a credit rating, it has to conclude a new Stand-by arrangement with the IMF, which was already arranged in principle. Experience teaches us that every new arrangement with the IMF based on withdrawing funds implies a change in economic policy. That change will require, this time, a non-expansionary fiscal policy that balances restrictive monetary policy and support for the vulnerable part of the population and business. The indicators of such a policy are contained in the budget rebalance for 2022, which can be seen in Table 2.

MACROECONOMIC FORECAST

Table 2 shows the projection of the key macroeconomic aggregates the Ministry of Finance provided. The first column refers to the rebalancing of the budget for 2022, and the other columns are from the Fiscal Strategy. Immediate changes are indicated in the last column. We are highly curious about what will happen since the budget rebalances announced the new macroeconomic policy, which will revise the Fiscal Strategy. The new goal is to cover the rising current account deficit due to the increased cost of imported energy while holding the fiscal deficit under control. That will separate those two deficits that traditionally went hand in hand (so-called twin deficits) and propelled the issue of private savings deficit (with respect to private investment).

The Fiscal Strategy has rightly anticipated change in the growth strategy: investments should take over from consumption the role of the critical driver of growth, and industrial production from the provision of services. To illustrate the need for such a change, we have shown in Figure 6 the contributions to economic growth in the last five years on the supply side and final demand. Currently, private consumption (final demand), trade and services (supply) dominate. Such growth is unsustainable. The Council of Foreign Investors supports a new growth strategy based on investments and the production of goods (as a precondition to boost export). However, it seems that implementing such a strategy change is not on the horizon.

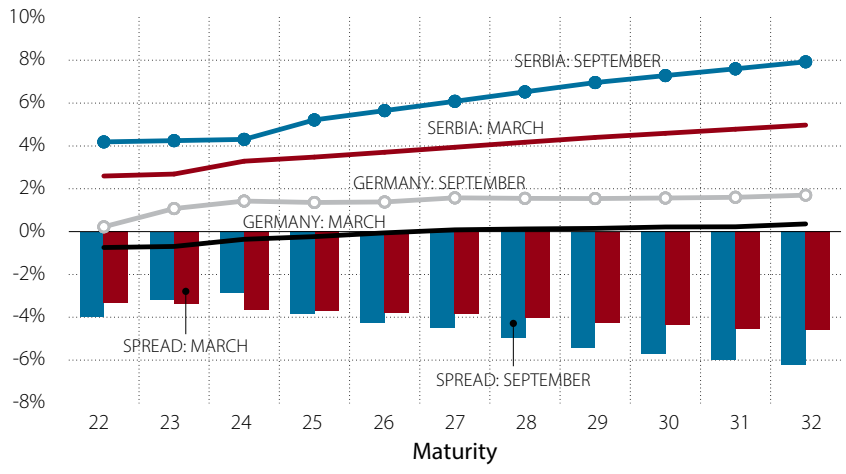


FIGURE 5: GOVERNMENT BONDS YIELDS

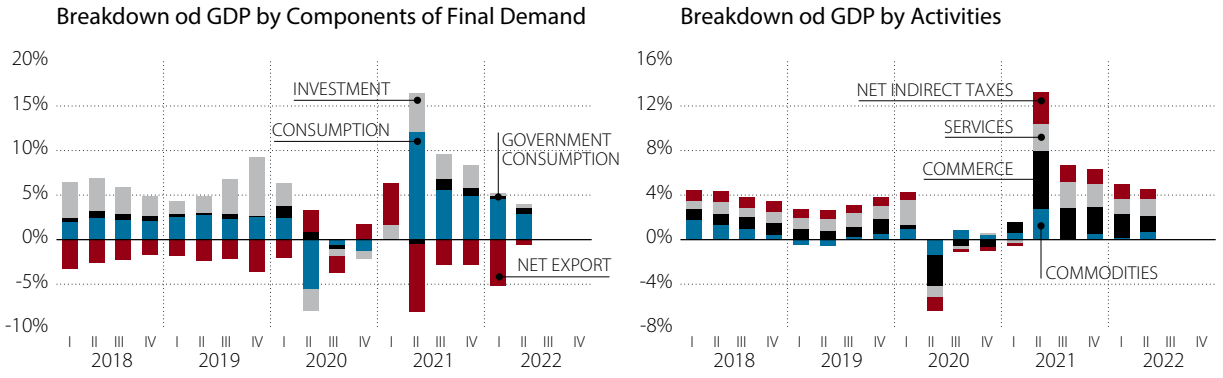
Source: www.worldgovernmentbonds.com

	Rebalance 2022	Fiscal strategy 2023	2024	2025	Adjustment effects	Our comments
GDP, %						
Real GDP growth rates	3.0	4.0	4.0	4.5	-0.5	Unsustainable
Consumers Price Index	11.6	5.3	3.0	3.0	2.4	Persistent
Breakdown od GDP components, %						
Consumption	3.9	3.8	3.0	3.0	0.8	Too optimistic
Public consumption	0.5	1.0	1.1	1.5	0.9	Stable
Investment	0.0	6.1	6.8	7.6	-3.0	Crisis indicator
Export	11.3	9.6	10.2	10.8	2.3	Stable
Import	12.7	8.0	8.4	8.9	4.1	Stable
Agriculture	-8.0	0.0	0.0	0.0	-8.5	Crisis
Industry	2.1	5.1	5.6	6.3	-1.6	Slowing down
Construction	-5,7	5,5	6,2	7,9	-7,1	Crisis indicator
Services	4.9	4.1	4.1	4.5	0.9	Engine of growth
Net Indirect Taxes (NIT)	4.7	3.8	3.0	3.0	0.7	High fiscal burden
Macroeconomic balances, % BDP						
Foreign trade balance	-13.0	-10.8	-10.1	-9.3	-2.3	Distortion
Current account balance	-9.0	-6.9	-6.4	-6.0	-2.3	Distortion
Fiscal deficit of general govt.	-3.9	-1.5	-1.0	-0.5	0.9	Squeezed
Public debt	55.5	53.1	52.0	50.7	0.9	Hardly sustainable

TABLE 2: PROJECTION OF MAIN MACROECONOMIC AGGREGATES

Source: Budget rebalance in 2022, Fiscal strategy 2023-25

FIGURE 1: BUSINESS CYCLES IN THE US AND THE EU



Source: RZS, Belox

FIC RECOMMENDATIONS

The Council of Foreign Investors changed its recommendations compared to the last year's White Book due to new circumstances:

- Intensify negotiations with the EU on membership status,
- Harmonize domestic regulations with European standards and reduce the risk for investments and foreign trade and
- Bring inflation back within the target corridor,
- Complete the restructuring of infrastructure companies, especially in the field of energy and
- Optimize the fiscal burden and public expenditures to prevent the country's public debt growth.

PILLARS OF DEVELOPMENT

ENERGY

This sector includes the generation and transmission of electricity, the market for renewable energy sources and energy efficiency. In 2021, Serbia supplemented the regulatory framework following the EU's Third Energy Package, and de jure liberalized the electricity market. In this regard, the year 2022 did not bring any regulatory novelties. However, the actual changes were dramatic. Due to the energy crisis in the world and economic sanctions, which interrupted the regular supply channels, Serbia faced significant challenges in ensuring a steady supply of all types of energy. In addition, the price shock due to the reduced supply of energy products and supply uncertainty was extremely strong, significantly increasing inflation and instability of the domestic market. The initial market liberalization hit the hurdle of increased costs for households and the economy, which is why the government introduced price controls.

Despite liberalization, the state-owned companies - Elektromreža Srbije, Elektroprivreda Srbije and EPS Distribucija - remain dominant players in this sector. However, the issue of their ownership transformation was relegated to the background. Instead, the point of their efficiency and ability to meet domestic demand came to the fore, which will be challenging to do without restructuring, changing business policy and improving management.

Coal remains the dominant source of electricity production – more than 60% of the annual output comes from coal-fired power plants. Coal mines are in relatively poor condition and need serious modernization to meet demand. Some of the largest thermal power plants will have to be phased out or overhauled. There is an increased import of coal to maintain production in thermal power plants. The transition to a "green" economy has been postponed for some time. There was a slight increase in the price of electricity, far below the prices at which this energy is imported. We do not know how it will be possible to avoid a new price increase, where sensitive customers must be protected.

In the case of renewable energy sources, a new legal framework and a package of incentive measures for producing electricity from these sources have been adopted, which foresees a competitive procedure for awarding incentives. That indicates prioritizing the sustainable production of electricity from renewable energy sources, which is extremely important in the long term to avoid paying high fees for CO2 emissions that will rise in the European Union in the coming years.

A new regulation was also adopted in the area of energy efficiency. The Directorate for Financing and Encouraging Energy Efficiency was established, the purpose of which is given by the very name of the institution, and new regulations were adopted that regulate the financing of measures to improve energy efficiency and the use of funds for the implementation of energy efficiency measures. As a result, many local governments have begun implementing projects on contracting energy performance in the field of public lighting. In contrast, the issue of public and private sector cooperation in public facilities remains open. Particular emphasis is placed on the energy efficiency of new buildings in public ownership.

The Council of Foreign Investors has given ten recommendations for improving this area's situation. For example, in the case of electricity production, it is proposed to abandon price regulation despite the energy crisis; in the case of energy efficiency, the adoption of a functional contract for public-private partnership, while in the case of renewable energy sources, clarification of the incentive system is requested. As a result, the Council of Foreign Investors highly rated the progress in 2022 with an index of 2.50.

TELECOMMUNICATIONS

Business in 2022 was marked by the global crisis caused by the third year of the COVID-19 pandemic and the European political and economic situation due to the current events in Ukraine. Because of this, there has been an increase in business costs and a worsening of the conditions for carrying out activities globally and in Serbia particularly. Nevertheless, despite these aggravating circumstances, electronic communications operators continued to improve the quality of their networks and the services they provide to their users. That is especially significant due to the rapid development of "online" trade services and remote work.

However, in 2022 there was still a postponement in organizing the radio frequency spectrum auction for the implementation and development of 5G networks in the Republic of Serbia. The Council of Foreign Investors expresses the expectation that the preparations for the maintenance, as well as the auction itself for the allocation of the right to use the radio frequency from the radio frequency bands 700 MHz, 900 MHz, 2100 MHz, 2600 MHz and 3500 MHz,

will be carried out transparently and efficiently as soon as possible. That would create optimal conditions for building and investing in 5G infrastructure throughout Serbia. Within those frameworks, removing barriers to the efficient construction of base stations is one of the critical assumptions. The obstacles are related to the inconsistent legal basis for implementing each base station's environmental impact assessment procedure and insufficiently precise provisions defining "source of non-ionizing radiation of special interest".

Improving the existing regulatory framework and harmonizing it with the needs of operators and users, along with harmonization with the regulatory practice of the European Union, is of key importance for the further development of the electronic communications market in the Republic of Serbia. That is why last year, the Council of Foreign Investors welcomed the start of work on the new Law on Electronic Communications, which has not yet been adopted. Also, the Council of Foreign Investors supports the joint construction of broadband communication infrastructure in rural areas of the Republic of Serbia.

We want to point out that the transition to a new model of e-fiscalization was carried out this year. It implies using an innovative hardware or software solution whereby fiscal invoices are issued with a QR code. Mobile operators made their visible contribution to facilitating the economy's transition to a new model of e-fiscalization by creating an offer of modern hardware and software solutions.

Not all changes improved the position of mobile operators this year. For example, after the change in the regulation on the payment of copyright and related rights for computers, tablets and smartphones, mobile operators, as importers of the devices above, became liable to pay another levy that has a parafiscal character.

The Council of Foreign Investors made nine specific recommendations for improving the situation in this area. If all changes are considered, he rated the progress in 2022 well, with an index of 1.57.

DIGITALIZATION AND ELECTRONIC BUSINESS

Digitization and electronic business represent the area that has progressed the most in 2022 from the point of view of adapting the business climate to the proposals of the Council of Foreign Investors. The FIC score was 2.57.

This sector includes electronic commerce, electronic identification, issuance of electronic documents, as well as the electronic business of administrative authorities, including the connection of public databases. Since last year, the whole world has started to adapt to the new situation caused by the emergence of the coronavirus and to turn to electronic business due to a completely changed way of life and business. Many positive changes have also taken place in Serbia. A large number of companies organized work "from home", many citizens began to use the e-Government portal services, numerous new services were developed, and unified data registers were formed.

However, instead of the end of the global pandemic and a return to accelerated economic growth, restoration of supply chains and recovery to international economic cooperation, there was a war on the soil of Europe and economic-political divisions that suppressed all other topics and threw the economy into crisis again. Unlike the previous health crisis, digitization and electronic business are not essential socio-economic tools for mitigating the adverse effects of the new crisis, but they have significantly contributed to maintaining the "new normality". That is why the trend of relying on information and communication technologies in everyday life and business has continued.

It all started with the introduction of the electronic administration service through which citizens applied for vaccinations. Then, that was extended to the issuance of a digital green vaccination certificate, which was made according to EU standards, and based on which Serbian citizens could travel abroad without having to have a negative PCR test. In the background of these changes, the development of infrastructure, technical and personnel capacities continued this year, which can offer new services in a short time and put them to the function of solving the current problems of citizens.

Citizens' awareness began to change, and thus their behaviour. As a result, we are witnessing a sharp increase in the number of transactions carried out electronically and a broader application of contactless payments using "digital wallets", which are available in many financial institutions. That almost doubled the number of transactions. At the same time, the number of dinar payment transactions realized by payment card via the Internet recorded an increase of over fifty per cent.

top

Citizens can receive a qualified electronic certificate in the cloud free of charge, which they can use in a simple and fast way via a mobile phone without the need to install special software or have a smart card. The solution involves personal identification through an ID card, which will suit the broadest range of citizens. In addition to the above, the eUverenje service was launched, enabling the submission of an electronic request to obtain an electronic certificate of settled liabilities based on property taxes and taxes from the domain of local self-government.

Changes in issuing electronic documents led to the introduction of a qualified signature in the cloud. On the other hand, qualified trusted services from providers from the European Union and registered electronic identification schemes from the EU are recognized. This way, legal representatives of foreign companies in Serbia can use personal certificates issued to them in their home countries based on electronic identification schemes from the EU without restrictions.

The Council of Foreign Investors points out that a great effort was made and significant progress was achieved to enable further digitization of the economy and the public sector in the past period and that the readiness of all state institutions to continue in this spirit in the coming period can be seen. For its part, the Council of Foreign Investors made six recommendations for further improvement of the situation in this area.

REAL ESTATE AND CONSTRUCTION

Real estate and construction achieved slightly lower progress in changing the business climate following the recommendations of the Council of Foreign Investors. As a result, the FIC progress index for 2022 was 1.36.

Due to foreign policy events that inevitably affect all market flows as the procurement of construction materials and raw materials for its production, the supply chain, as well as the employment of labour, the construction industry is facing challenges that may pose a threat to the growth and development of this sector. Therefore, it is necessary, by further improving procedures and legislative activity, to act preventively and give the required impulses so that the growth of this sector is not jeopardized.

Regarding real estate, the issue of land ownership and mixed forms of state and private ownership remains a significant obstacle to construction in Serbia. It is necessary to consider the possibility of changing the regulations that control the conversion of land use so that the fee as a concept is completely abandoned for specific categories of persons. The electronic business of the real estate cadastre and the cadastre of utilities is faced with numerous challenges, which require a system solution and must be overcome promptly.

The focus of the Council of Foreign Investors continues to be the implementation of the Law on Planning and Construction, the implementation of the unified procedure for obtaining construction documents, the legalization of existing buildings following the new regulations, the conversion of the right of use on construction land into the right of ownership, and the application of rules on cadastre and cadastral procedures.

The whole sector is not homogeneous; in 2022, its parts behaved differently. For example, in the area of mortgage and financial leasing, according to the assessment of the Council of Foreign Investors, there was no progress (FIC progress index 1.00); the same rating applies to the area of restitution (index 1.00); in the real estate and construction sector, modest progress was achieved compared to the pre-crisis period (index 1.18), but it increased in the domain of cadastre functioning and application of the new procedure (index 1.73).

Citizens and the economy could feel how important information security is during a cyber-attack on the digital infrastructure of the Republic Geodetic Institute. That resulted in the impossibility of selling real estate, registering mortgages, and realizing other real estate-related businesses. It was necessary to lock down the entire information system after the cyber-attack to protect data. Hence, citizens, banks, public notaries, and state institutions did not have access to the property register for several weeks.

WORKFORCE AND HUMAN CAPITAL

This year, there was no improvement in the application of labour legislation nor the court's decisions in labour law disputes. The coronavirus pandemic is still ongoing and, what is certain, has permanently changed the functioning of the labour market. Added to that was the energy crisis, inflation and uncertainty caused by the war in Ukraine. The Council of Foreign Investors assesses that there has been no progress in the labour-legal area (so the FIC index is 1.00), while slight progress has been made in the area of human capital (FIC index 1.22). At the same time, it states that the existing regu-

lations no longer correspond to the real needs of employers and employees and that they impose unnecessary administrative, organizational and financial burdens.

Specifically, everyday life in the field of labor relations requires changes to labor regulations that would enable the application of electronic documents and electronic signatures, with the aim of efficient and flexible administration of documents from labor relations; flexible working conditions outside the employer's premises, in order to efficiently organize work and optimize labor costs; flexible requirements for the engagement of pupils and students in practice, with the aim of easy and legally secure engagement of practitioners; more flexible and rational conditions for determining the length of annual leave; specification of the provisions governing changes to the employment contract (annex), in order to ensure legal certainty; rational salary structure, in order to simplify the calculation and protect the employer from the high cost that occurs when calculating the salary compensation; more flexible conditions and procedures for removal from work and termination of employment contracts, in order to relieve the employer's administration.

In this sense, the Council of Foreign Investors proposed several improvements. They refer to the introduction of more flexible forms of work, such as work from home and remote work, regulation of work practices when they are not part of the mandatory educational program, digitization and simplification of the strictly formal way of communication between employer and employee, and simplification of the complex salary structure and the way it is calculated.

In addition, specific changes are needed to the legal provisions that regulate the termination of the employment relationship, such as those that control the statute of limitations and the notice period, as well as a clear definition of the procedure for dealing with redundant employees. Finally, it is necessary to simplify further the process of hiring foreigners and the movement of the labour force in general, identifying activities that, due to their specificity, are subject to the limited possibility of employing people with disabilities and improving the hiring of labour and the work of temporary employment agencies.

According to official data, unemployment did not increase last year, but quite the opposite, an increase in formal employment was registered. However, companies that did not apply for state subsidies began with serious restructuring and optimization of the number of employees. The unemployment rate varies on the territory of the Republic of Serbia, which primarily reflects the state of the economy in different parts of the country. At the same time, the demand for highly qualified staff cannot be met, and people with low education go abroad to work. The problem of a grey economy and illegal work still exists.

The Council of Foreign Investors made six critical recommendations for improving the situation in the area of the labour market and labour relations (FIC progress index was 1.00); for the work of foreigners, four recommendations (index 1.00), also three recommendations for sending employees to temporary work abroad (index 1.0), for hiring labour three recommendations (index 1.00), for professional rehabilitation and employment of persons with disabilities three recommendations (index 1.00) and six recommendations for safety and health at work (index 1.00).

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INFRASTRUCTURE

ENERGY SECTOR 2.50

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2016		√	
Intra-day market to be introduced.	2020		√	
Consider introducing carbon pricing instruments.	2020		√	
Prescribe targeted energy savings, as required by Directive 2012/27/EC and its amendment 2018/2002/EC. The preparation of proposals for the revision of energy efficiency targets in terms of their increase is underway. It is also necessary to anticipate the reduction of "specific consumption" of energy, i.e. consumption per unit of product.	2021	√		
Introduce grid connection reservation security mechanism e.g. bank guarantee or cash collateral by developers in order to avoid existing grid queues holding up capacity	2020	√		
Renewables				
Bylaws which will regulate the incentives in more detail should be tailored to accelerate investments in the renewables sector and follow the EBRD and Energy Community policy guidelines.	2021	√		
Energy Effciency				
Adoption of a functional model contract to govern energy supply contracting.	2017	√		
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.	2017		√	

CURRENT SITUATION

Electricity

The legal framework for electricity in Serbia is set out under the 2014 Energy Law, with the latest amendments adopted in 2021, 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 (the "Ministry of Energy"); and (iii) the Energy Agency.

State-owned enterprises Elektromreža Srbije (EMS), Elektroprivreda Srbije (EPS) and EPS Distribution, company that was finally separated from EPS in the end of 2020, 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 ex 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 the

latest increase was in December 2020. The experts agree that this increase is insufficient and that new increases should be expected.

Despite the liberalisation, EPS remains the single most dominant supplier with around 98% of market participation.

The day-ahead market is operated by the joint-stock company South East European Power Exchange (SEEPEX). SEEPEX has not yet introduced intra-day market, however, they are actively working on it, and according to the announcements, it can be expected that it will be introduced during 2022.

Renewables

In April 2021, the Law on the Use of Renewable Energy Sources was adopted, which separated issues related to incentive measures for the production of electricity using renewable energy sources from the Law on Energy, that are now regulated by a separate law, until the end of 2021 and during 2022 several bylaws have been adopted, which regulate in more detail the procedure of obtaining the right on the market fee and the feed-in tariff, the content of the agreement on the market premium, the quotas on the wind farms, the status and the way of managing of the registry of the customers - manufacturers

Incentives are provided in the form of a market premium system and feed-in tariffs (only for small facilities). Both systems will be implemented through an auction process and refer to the price of electricity, taking on balance responsibility and the right to priority access to the system. In the premium system, the authorized contracting party will not purchase electricity, but will pay the premium if the realized price at the auction is higher than the reference market price (prices on the SEEPEX day-ahead market). Also, for an energy entity that produces electricity from renewable sources and which does not have the status of a temporary privileged producer in terms of market premium system, or the status of a privileged producer in terms of feed-in tariff, the possibility of obtaining a guarantee of origin and status of producer of electricity from renewable sources energy is envisaged.

By replacing the old system that rewarded everyone by order and introducing auctions, it will be possible to attract a new cycle of investments and achieve a competitive price for the purchase of electricity. As the bylaws that regulate the conditions and the procedure of obtaining the right for the incentives in detail have been adopted, it is expected that the first auctions will be organised by the end of 2022.

In order to harmonize the national regulations of the Republic of Serbia with the legal framework of European Union, the Law on RES introduces the status of consumer-producer for the first time. The consumer-producer is defined in the RES Law as the final customer who has connected his own facility for production of electricity from RES to the internal installations, whereby the produced electricity is used to supply own consumption, and the surplus produced electricity is delivered to the transmission system, distribution system, i.e. closed distribution system.

The "guaranteed supplier" (i.e. EPS) assumes balance responsibility for RES producers. Support is provided for the allowed percentage of balance deviation, which will be regulated by a bylaw. Balancing support for RES producers will exist until the establishment of an organized intra-day electricity market, as determined by the Energy Agency of the Republic of Serbia.

The Law on RES also introduces the concept of strategic partnership and provides the possibility of conducting a public call for the construction of power plants that produce energy from RES through the selection of a strategic partner. The Government may determine that the construction of a power plant using RES is a project of importance for the Republic of Serbia in terms of the law governing the construction of facilities, except for power plants in protected areas.

In order to reduce the use of fossil fuels and dependence on fuel imports, the Law on RES defines the status of biofuels, bio liquids and fuels from biomass. In the event that biofuels, bio liquids and biomass fuels that are not produced from waste meet the sustainability criteria and achieve savings in greenhouse gas emissions, energy produced from these fuels can be: a) taken into consideration for the purposes of calculating the share of energy from RES in gross final energy consumption and final energy consumption in all forms of transport (including fulfilment of obligations of fuel suppliers to achieve the share of RES), and b) subject to financial incentives, in accordance with the Law on RES, incentives for the use of innovative technologies and new sources of RE, such as renewable hydrogen, and incentives for the production of "advanced" biofuels). Regarding the use of RES in transport, the Law on RES determines for the first time the use of electricity from RES in the transport

sector, as well as the use of "green" hydrogen.

Energy Efficiency

In April 2021, a new Law on Energy Efficiency and Rational Use of Energy was adopted, the aim of which is to create a legal framework for measures that will increase the efficiency of use of energy and reduce energy consumption. The law upgraded the existing basis of the Law on Efficient Use of Energy with new energy policy goals whose foundations were established by European Union regulations (amended Energy Efficiency Directive and Directive on Energy Performance of Buildings, Directive on Eco-Design and relevant EC Regulations).

A Directorate for Financing and Encouraging Energy Efficiency within the Ministry of Mining and Energy, the purpose of which is to provide funds to meet the objectives of the law, and two new regulations have been brought which regulate the financing of the measures for upgrading the energy efficiency and using the resources for the appliance of the measures of energy efficiency

Similarly, as the previous law, it 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 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 developing. Energy performance contracting (EnPC) projects in the area of public lighting have been initiated in a significant number of local municipalities,.

The energy supply contracting (ESC) has also started functioning recently, primarily with public sector facilities such as schools and hospitals being the main point of interest.

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.

The energy efficiency of buildings is dealt with in a special chapter which prescribes obligations for publicly owned buildings, new buildings and buildings used for non-residential purposes. Publicly owned buildings with a total usable area of more than 250 m2 used by state administration bodies and other bodies and organizations of the public sector as well as public services are required to have a certificate of energy performance, and for buildings used by central government the obligation of energy rehabilitation. The obligations of investors in new buildings have also been specified with regards to the equipment with devices for regulation and measurement of the delivered amount of thermal energy, where there is also domestic hot water.

POSITIVE DEVELOPMENTS

Electricity

SEEPEX membership grew to 27 members.

Renewables

The legal framework for a new package of incentive measures for the production of electricity from renewable energy sources has been adopted, that envisages a competitive process for awarding incentives. The adoption of a completely new law indicates giving priority to sustainable production of electricity from renewable energy sources, which is extremely important in the long run in order to avoid paying high fees for the production of CO2 emissions that will increase in the European Union in the upcoming years.

Several bylaws have been adopted:

- Decree on market premium and feed-in tariff adopted by the Serbian government („Official Gazette of the RS". br.112/2021);
- Decree on the model of the agreement on the market

premium („Official Gazette of the RS".br.112/2021);

- Regulation on the quota in the market premium system for wind power plants ("Official Gazette No. 107/2021")
- Decree on the criteria, conditions and way of calculating the receivables and payables between the customers -manufacturers and the supplier („Official Gazette of the RS".br.83/2021 and 74/2022);
- Rulebook on the means of managing the registry of customers-manufacturers that are connected to the movable, distributive, enclosed system and methodology of assessment of the manufactured electric energy in the manufacturing facility of the customer-manufacturer(„Official Gazette of the RS".br.33/2021);

The Decree on the Conditions, Manner and Procedure Of Giving State-Owned Agricultural Land for Use for Non-Agricultural Purposes was adopted, which prescribes exceptions when it is possible to use state-owned agricultural land for non-agricultural purposes, in accordance with the Law on Agricultural Land. This decree enables a constructions of facilities for production of energy using renewable energy sources of wind and sun even on agricultural land, which creates an even more favourable environment for investors.

A strategy for the development of the energy sector of the Republic of Serbia is being developed and an draft of integrated energy and climate plan has been presented for public (expected to be adopted by the end of 2022), whereas these strategic documents are expected to solve the issue of introducing a CO2 tax.

A new Regulation on energy vulnerable customers is also being prepared, which will be the basis for moving away from price regulation, and an additional boost for energy transition, decarbonization and the development of renewable energy production. In addition to aiding in the procurement of electricity and gas, energy vulnerable customers in the field of heat supply will also be provided.

Energy Efficiency

A new Law on Energy Efficiency and Rational Use of Energy has been adopted.

With the adoption of the new Law on Energy Efficiency and Rational Use of Energy, the Ministry of Mining and Energy has also started work on the adoption of by-legal acts relating to the model of energy supply contracts. For these purposes, support is provided by the Regional Energy Efficiency Programme implemented by the EBRD and the Energy Community.

A review of the Energy Effect Contract Model (EnPC) is underway based on comments from representatives of ESKO companies, banks and local self-government units who have experience in implementing such projects. It is actively working on the preparation of a Model Energy Efficiency Contract (ESC) to increase investment in energy efficiency and enablethe transition to renewable fuels or low-emission greenhouse gas fuels, taking into account the public sector interest.

Experience with energy performance contracts has shown that the contract model has contributed to the development of the market and provided guidance and certainty for the public sector to use this innovative way to attract private investment in energy efficiency in the public sector.

REMAINING ISSUES

Electricity

Coal remains dominant resource for electricity generation – more than 70% 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

In addition to the adopted base law and by-laws, it is necessary to adopt remaining needed bylaws, among others on balance responsibility, on the basis of which tenders will be announced, investors will be attracted and, consequently, facilities for production of electric energy from renewables will be built.

In addition to the adopted by-laws, a work is underway on

five more bylaws that should complete the legal framework in the sphere of renewable energy sources.

The Decree on the Conditions, Manner and Procedure Of Giving State-Owned Agricultural Land for Use for Non-Agricultural Purposes was adopted, but it is limited only to agricultural land of 6, 7 and 8 classes.

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 regulated 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 further 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) The public sector is still overly careful in considering prospective projects,. 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.

The challenges ahead relating to both EnPC and ESC arrangements remain the same and require continuous work:

- 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.
- Intra-day market to be introduced.
- Consider introducing carbon pricing instruments.
- Prescribe targeted energy savings, as required by Directive 2012/27/EC and its amendment 2018/2002/EC. The preparation of proposals for the revision of energy efficiency targets in terms of their increase is underway. It is also necessary to anticipate the reduction of "specific consumption" of energy, i.e. consumption per unit of product.
- Introduce grid connection reservation security mechanism e.g. bank guarantee or cash collateral by developers in order to avoid existing grid queues holding up capacity;
- The regulations concerning the calculation of the VAT on invoices for prosumers should be amended.

Renewables

- Bylaws which will regulate the incentives in more detail should be tailored to accelerate investments in the renewables sector and follow the EBRD and Energy Community policy guidelines.

- Adjust the regulations and methodology for determining the maximum purchase price on auctions in order to reflect the effects of the market value of the electricity power.

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 1.57

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Joint cooperation between the state and industry in choosing the model and period of public bidding for radio frequency spectrum intended for the development of 5G technology - operators propose and advocate a simple auction model to sell the bands that are most needed from the perspective of technologies used and market demands, at a price that will enable the smooth development of new technology and its rapid implementation, in accordance with positive examples from the neighboring countries.	2021			√
Adoption of the new Law on Electronic Communications and adoption of key bylaws for further market development within the shortest possible period of time. The new law is expected to bring significant progress in the digitization of the process of using telecommunications services, especially regarding the conclusion of contracts and invoicing in digital form.	2021			√
Adoption of the new Law on Broadband Infrastructure (harmonized with Directive 2014/61 / EU on measures to reduce the cost of deploying high-speed electronic communications networks, as well as with Directive 2018/1972 on the European Electronic Communications Code) and Directive 2014/61 / EU on measures to reduce the cost of deploying high-speed electronic communications networks, which will define in detail the rights to use and access the infrastructure.	2021			√
Lifting of formal licenses for the use of radio frequencies within the licensed radio frequency spectrum (acquired through public bidding) relating to the fee for the issuance and renewal of an individual license for the use of radio frequencies for a radio base station in a particular electronic communications service.	2021			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Improvement of regulations and their interpretation in the field of construction of radio base stations and protection against non-ionizing radiation: a. Issuance of guidelines to local self-governments by the Ministry of Environmental Protection would contribute to the cessation of excessive reference and arbitrary interpretation of the principle of prohibition of exposure to non-ionizing radiation sources and the principle of proportionality referred to in the Law on Non-Ionizing Radiation Protection by local environmental secretariats; b. In cooperation with the Ministry of construction and infrastructure and Ministry of State Administration and Local Self-Government, it is necessary to provide education to departments in local self-governments, in order to remove spatial restrictions for the construction and installation of mobile telecommunications infrastructure; c. In accordance with the comparative practice of developed EU countries such as Germany and Finland and countries in the region (e.g. Croatia), we propose to exclude mobile telecommunications facilities from List 2 of the Regulation on establishing the List of Projects Requiring a Mandatory Impact Assessment and List of Projects that May Require an Environmental Impact Assessment, so that instead of making an environmental impact assessment for each individual base station, it would be sufficient to submit a notification on the installation of the base station together with the relevant measurement to the local self-government before its commissioning, where the local self-government has the possibility of inspection supervision. d. abolition of the term "sources of special interest", given that all sources require control measurement, so there is no reason to single out sources of special interest; e. abolition of restrictions for base stations (especially for the roof top type) from urban plans, in terms of the minimum required distance where base stations can be placed in relation to neighboring facilities, since there is no basis for this, neither scientifically nor in regulations which regulate the field of non-ionizing radiation protection. f. enable the transition from a complicated administrative system of issuing individual licenses for the use of radio frequencies for base stations to a system of recording (notification) through a single point of contact (so-called "single point of contact") in the form of a public portal under the jurisdiction of RATEL.	2021			√
When negotiating international agreements in the field of electronic communications, it is necessary to organize a process of public consultations and include industry representatives in order to consider the technical specifics, deadlines and financial implications, aimed at increasing business predictability.	2019			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
More active role of the Government aimed at suppressing of conspiracy theories and false news about 5G technology in order to prevent attacks and disruption of critical telecommunications infrastructure necessary for the provision of basic electronic communications services such as voice and Internet access.	2020			√
Amend Article 37 of the Law on Consumer Protection and abolish the obligation of operators provided for in this article.	2021			√
Involve the Foreign Investors Council in consultations for drafting bylaws for the implementation of Article 37 of the Law on Consumer Protection.	2021	√		
Issuance of a positive opinion of the National Bank of Serbia on the provision of Direct Carrier Billing service according to the EU model, in order to enable direct payment of digital content from Google Play and Apple Store via telecommunications operators according to the EU model (using the billing model of the parking service).	2019			√
Adoption of the Rulebook on Number Portability for Services Provided via Public Mobile Communication Networks and the Rulebook on Number Portability in Public Telephone Networks at a Fixed Location within the shortest possible period of time after the adoption of the new Law on Electronic Communications.	2021		√	
During the negotiation of international agreements for the implementation of the RLAH+ regime in the Western Balkans region, the representatives of the operators should be consulted in a timely manner.	2021		√	

Performing business activities in 2022 was affected by the global crisis resulted from the third year of the COVID-19 pandemic caused by the SARS-CoV-2 virus as well as from the political and economic crisis in Europe due to the current events in Ukraine, which led to an increase in costs and a deterioration of business situation at the global level. Despite these aggravating circumstances, electronic communication operators have continued to improve the quality of their networks and the services they provide to their customers.

The elections were called at the beginning of the year and for most of it the Government was in a technical mandate with a reduced scope of activities, which also affected the reform agenda in the field of electronic communications.

The National Assembly of the Republic of Serbia adopted amendments to the Law on Ministries on October 22, 2022, which stipulates that the Ministry of Information and Telecommunications is responsible for the field of telecommunications. The new government was formed on October 26, 2022 and Mihajlo Jovanović, PhD, was appointed the line minister.

CURRENT SITUATION

The improvement of the existing regulatory framework and its alignment with the needs of operators and customers, along with harmonization with the regulatory practice of the European Union is of key importance for the further development of the electronic communications market in the Republic of Serbia.

The Draft Law on Electronic Communications, after a public hearing conducted in the period from July 23 to August 23, 2021, in which electronic communication operators and the Foreign Investors Council took an active part, was not adopted as a Bill of law by the Government and did not enter the parliamentary procedure.

The activities that are a prerequisite for organizing the

radio- frequency spectrum auction for the implementation and development of 5G networks in the Republic of Serbia have been further postponed in 2022 as well.

The Foreign Investors Council expresses the expectation that the preparations for the auction and the auction itself will be carried out in a transparent and efficient manner in order to create the optimum conditions for sustainable construction and investment in 5G infrastructure throughout Serbia at the earliest possible time after the conclusion of the public bidding and obtaining of licenses.

The Council expects that in the future, a simple model of public bidding for radio-frequency spectrum intended for the development of 5G technology will be selected (rather than a combined auction that would include spectrum blocks of different bands), which will open up space for the necessary investments in network construction and the introduction of innovative business models.

During 2022, Ratel completed a new round of analyzes of markets that are subject to previous regulation, and in doing so the following market analyzes were performed:

1. Wholesale market for call termination in the public telephone network at a fixed location;

2. Wholesale market for call termination in the mobile network;

3. Wholesale market for local access to network elements provided at a fixed location,

4. Central access wholesale market provided at a fixed location for mass market products.

The expert group for reducing administrative barriers for installation of mobile radio base stations has started performing its activities. After a series of meetings, the members of this governmental body from the ranks of relevant ministries, local self-government, technical faculties, RATEL and electronic communication operators have not yet submitted a work report with a reform proposal to the Government. Based on the previous activities and dialogue with the institutions, there is no impression that the key decision-makers are willing to improve the conditions for setting up radio base stations for mobile telephony as a prerequisite for the implementation of 5G technology in the Republic of Serbia.

A new Rulebook on Number Portability for services provided via public mobile communication networks was adopted. The Rulebook was published in the "Official Gazette of the Republic of Serbia" No 13/2022 dated February 4, 2022, it entered into force on February 12, 2022, and is planned to be applied after the expiry of a six-month period from the date of its effectiveness. Meanwhile, the application of the rulebook was postponed for one-year period, hence its application will begin on August 1, 2023.

Ratel conducted public consultations on the Draft Rulebook on Number Portability for services provided through public fixed communication networks in March 2022. Rulebook on Number Portability for services provided via public communication networks at a fixed location was published in the "Official Gazette of the Republic of Serbia" No 101/22 dated September 14, 2022 that entered into force in 2013, and which begins to be applied as of August 1, 2023.

The Government adopted the Regulation on Amendments to the Regulation on Establishing the List of Devices and Objects and the Obligation to Pay Special Remuneration for the Use thereof to the Copyright and Related Rights Holders ("Official Gazette of the Republic of Serbia", No 49/2022) on April 24, 2022. After the adoption of the Regulation, the technical devices and objects for which there is an obligation to pay remuneration to the copyright and related rights holders include the following:

- devices with integrated hard disk (desktop computers, laptops, TV with hard disk, DVD player with recording capability and with hard disk, Blu-ray player with recording capability and with hard disk);
- tablets;
- smartphones.

In accordance with the above, mobile operators, as importers of devices that have been added to the List, have become liable to pay another levy that has a parafiscal character.

It should be noted that the amendments to the Regulation were made in a non-transparent manner, without participation and consultation with mobile operators and other relevant importers of equipment for which the obligation to pay a special remuneration is prescribed, which has a negative impact on the predictability of business on the market and the transparency of the process for defining the regulatory framework. Given that the amendment of the Regulation was brought about in a non-transparent manner, the

operators could present their cases only in the process of adopting the tariff, and that by directly addressing both the competent ministries and the Intellectual Property Office.

The Office for Information Technologies and Electronic Governance in 2022 continued its activities in terms of enabling the application of new technologies (such as a qualified electronic certificate and signature in the cloud) and digitization of state administration and the economy.

Pursuant to the Fiscalization Law ("Official Gazette of the Republic of Serbia", No 153/2020 and 96/2021), the transition to the new model of e-fiscalization took place on May 1, 2022, and it implies the use of a new hardware or software solution in which fiscal invoices are issued with a QR code. Mobile operators contributed to facilitating the transition of the economy to a new model of e-fiscalization by creating an offer of modern hardware and software solutions that enable business entities to operate in accordance with the new Fiscalization Law.

POSITIVE DEVELOPMENTS

Through the formation and activities of the Working Group for drafting the Law on Broadband Communication Infrastructure, a high degree of transparency and involvement of operators in the process of drafting the new law was ensured, and in this way it was possible for operators to contribute to the improvement of the legal framework, which will allow for a more efficient construction of electronic communication infrastructure that is necessary for the further digital transformation of the Republic of Serbia. Adoption of the Law on Broadband Infrastructure represents another step towards bringing closer and harmonizing business to European Union regulations, considering that this Law foresees, in one part, the harmonization of business with the Directive (2014/61/EU) on measures to reduce the costs of setting up high-speed electronic communication networks, as well as the Directive 2018/1972 establishing the European Electronic Communications Code.

The expert group for reducing administrative barriers for the installation of mobile radio base stations has started performing its activities and a series of meetings have been held. The Foreign Investors Council expects that the conclusions of the expert group will be implemented within the shortest possible period of time in order to create preconditions for the efficient construction of base stations necessary for the implementation of 5G technology.

In the new round of analysis of markets subject to previous regulation, which ended in 2022, it was determined that wholesale prices will be formed on the basis of the cost model (LRIC), which represents a significant improvement of conditions on the wholesale market.

The Foreign Investors Council welcomes the adoption of the new Rulebook on Number Portability for services provided through public mobile communication networks. The new Rulebook represents a significant improvement of regulations in this area and application thereof will ensure further market development and efficient implementation of the number porting process between operator networks. Postponing the application of the Rulebook to August 1, 2023 will slow down the positive effects of the new Rulebook on the electronic communications market, because a shorter period of time for the start of the rulebook's application would correspond to the needs of the market, bearing in mind that the total period of one year and a half for the implementation of this rulebook cannot be considered appropriate.

The formation of a working group for the adoption of regulations that will govern the "Do not call" register, which includes mobile operators and the Foreign Investors Council representatives, is a significant step forward in transparency and the involvement of mobile operators in finding the optimal solution for the implementation of the procedure for signing up and signing out of the register, all in order to comply with the Law on Consumer Protection. The Foreign Investors Council welcomes the readiness of the members of the working group to accept the operator's proposal that signing up and signing out process is conducted through a modern electronic procedure and expects that this model will be implemented in the final version of the text of the Rulebook.

REMAINING ISSUES

Considering the regulatory and legal barriers on the part of the EU for concluding roaming agreements between the EU and the Western Balkans region, there is a risk of introducing an obligation to unilaterally reduce prices for operators operating in the Western Balkans, without reciprocal implementation by EU operators.

It is necessary to continue the activities related to the adoption of the new Law on Electronic Communications as soon as possible. The adoption of the new Law on Electronic Com-

munications, which will be harmonized largely with the provisions of the EU Directive establishing the European Electronic Communications Code, is necessary for the further growth and development of the electronic communications market in the Republic of Serbia, given that the applicable Law on Electronic Communications was adopted in 2010, based on the EU regulatory framework from 2003.

The new Law on Electronic Communications should enable further digitization of processes in the electronic communications industry, particularly in respect of concluding contracts and invoicing in digital form.

It is needed to adopt a new Law on Broadband Infrastructure (which should be harmonized with Directive 2014/61/EU on measures to reduce the cost of deploying high-speed electronic communications networks, as well as with Directive 2018/1972 on the European Electronic Communications Code), which will specifically regulate issues such as facilitated procedure for obtaining all required permits, coordination of current and planned construction works and real-time publication of data on works through a single information point (public portal under the jurisdiction of public sector bodies); regulating the operators' access rights to publicly owned facilities and the conditions for using public facilities and public infrastructure for the needs of telecommunications infrastructure (e.g. wireless short-range access points (WAS/RLAN networks)), as well as defining in detail the rights to use and access infrastructure.

With the regard to the problem of setting-up radio base stations and applying environmental regulations, it is necessary to intensify activities based on the conclusions of the expert groups for reducing administrative barriers for deploying mobile radio base stations as well as to start the implementation of the reform in this area as soon as possible, which will enable more efficient deploying of base stations as a prerequisite for the implementation of 5G technology in the Republic of Serbia.

The obligation to pay a special remuneration to the copyright and related rights holders through the process of non-transparent amendments to the Regulation on Establishing the List of Devices and Objects and the Obligation to Pay Special Remuneration for the Use thereof to the Copyright and Related Rights Holders has multiple negative effects on the electronic communications market and represents an extremely negative example of defining regulatory framework contrary to the needs of the market and all its participants.

Unlike devices that were previously subject to the payment of a special fee, the sole purpose whereof is to reproduce copyright and related rights, the devices such as smartphones, desktop computers, laptops and tablets are primarily used for other purposes, which was not taken into consideration during the amendment of the Regulation and adding these devices to the list of devices for which there is an obligation to pay a special remuneration when importing them.

As a result of the above, there will inevitably be an increase in the price of smartphones, desktop computers, laptops and tablets bearing in mind that additional costs when importing devices or purchasing them at a wholesale level from other importers will be included in the retail price. In addition to a significant increase in the operating costs of mobile operators and other importers of this equipment, the increase in the retail prices of these devices can also lead to a slowdown in the digitization process and a reduction in the capability of citizens of the Republic of Serbia and small and medium-sized enterprises to have access to electronic communication services, electronic governance services and electronic commerce.

FIC RECOMMENDATIONS

- Improvement of regulations and their interpretation in the field of construction of radio base stations and protection against non-ionizing radiation:

    a) in cooperation with relevant ministries and RATEL, it is necessary to educate professional services in local self-governments about the impact of telecommunications devices on health and the environment as well as about the application of special regulations relevant to the construction of radio base stations;

b) in accordance with the comparative practice of developed EU countries such as Germany and Finland and countries in the region (e.g. Croatia), we propose to exclude mobile telecommunications facilities from List 2 of the Regulation on establishing the List of Projects Requiring a Mandatory Impact Assessment and List of Projects that May Require an Environmental Impact Assessment, so that instead of making an environmental impact assessment for each individual base station, it would be sufficient to provide the competent authority with a notification on the installation of the base station together with relevant technical data on the base station, as well as measurement after its commissioning, where the local self-government has the possibility of inspection supervision;

c) reexamination of the definition of the term "source of special interest", bearing in mind the negative interpretation unjustifiably related exclusively to radio base stations, yet they are not the only sources of radiation;

d) abolition of spatial restrictions for the construction and installation of mobile telecommunications infrastructure from spatial regulation plans, in terms of determining the minimum height of antennas and the minimum distance where base stations can be placed in relation to neighboring buildings, given that there is no comparative practice of EU countries for this, nor grounding in regulations and science;

e) enable the transition from a complicated administrative system of issuing the necessary permits, including individual permits for the use of radio frequencies for base stations, to a system of registration (notification) through a single point of contact (the so-called "single point of contact") in the form of a public portal;

f) through the portal, ensure efficiency, transparency, public availability via the Internet and data analysis for supervision, by establishing a unique electronic procedure for reporting the installation of RBS and confirming compliance with the prescribed conditions.

- Consultations between the state and industry in selecting the model and period of public bidding for radio-frequency spectrum intended for the development of 5G technology - operators propose and advocate a simple auction model to sell the bands that are most needed from the perspective of technologies used and market demands, at a price that will enable the smooth development of new technology and its rapid implementation, in accordance with positive examples from the neighboring countries.

- Adoption of the new Law on Electronic Communications and adoption of key bylaws for further market development within the shortest possible period of time. The new law is expected to bring significant progress in the digitization of the process of using telecommunications services, especially regarding the conclusion of contracts and invoicing in digital form.

- Adoption of the new Law on Broadband Infrastructure (harmonized with Directive 2014/61/ EU on measures to reduce the cost of deploying high-speed electronic communications networks, as well as with Directive 2018/1972 on the European Electronic Communications Code) and Directive 2014/61/EU on measures to reduce the cost of deploying high-speed electronic communications networks, which will define in detail the rights to use and access the infrastructure

- Lifting of individual licenses for the use of radio frequencies within the licensed radio frequency spectrum (acquired through public bidding) which assumes the fee for the issuance and renewal of an individual license for the use of radio frequencies for a radio base station in a particular electronic communications service.

- When negotiating international agreements in the field of electronic communications (particularly regarding roaming), it is necessary to organize a process of public consultations and include industry representatives in order to consider the technical specifics, deadlines and financial implications, aimed at increasing business predictability.
- Modify the Regulation on Establishing the List of Devices and Objects and the Obligation to Pay Special Remuneration for the Use thereof to the Copyright and Related Rights Holders, so that the list of devices does not include smartphones, desktop computers, laptops and tablets, but only the devices whose sole function is the reproduction of copyrighted works (photocopiers, DVD cutters, etc.) which was the case before the amendment of this Regulation.
- A more active role of the Government in order to change public opinion about 5G technology.
- The process of signing up and out of the "Do not call" register must be carried out electronically without additional costs on the part of the operator. It is necessary to consider the possibility of amending Article 37 of the Law on Consumer Protection so that the process of signing up and out of the "Do Not Call" register is done in an electronic form, directly, without the participation of electronic communication operators.

DIGITALIZATION AND E-COMMERCE 2.57

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Following the example of a large number of EU countries, it is extremely important to make use of centralized databases and enable data exchange between the Tax Administration and companies (primarily financial institutions), in order to provide data, primarily on citizens' income, with their consent, for online lending processes, which would significantly eliminate the need for paper documentation and allow the purchase of loan products to be done completely online.	2020	√		
It is important to facilitate the use of digital identities / signatures, so they become available to the largest number of citizens, in a simple way and without high costs. One of the ways to achieve this is to popularize the issuance of a national registered high and mid-level scheme, which should be applied in the conclusion of distance contracts, between businesses and citizens.	2021	√		
In order to improve the use of digital identity, and all other opportunities offered to citizens by digitalization in Serbia, citizens should be informed about all the possibilities, rights and benefits of available channels through educational campaigns.	2021	√		
It is necessary to enable the application of "digital bill of exchange" instrument, so that it can be registered as such in the unique register of bills of exchange, i.e., signed electronically.	2021		√	

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Amend the Decree on Electronic Identification Schemes, in such a way as to allow identification of customers remotely when issuing a high and mid-level electronic identification scheme, and not only in person as is the case today.	2021		√	
We propose that all constructive solutions from regulations governing the work of public administration that contribute to further digitalization, such as the Law on Electronic Government, be applied in regulations governing the work of the private sector.	2021		√	
Accelerate digitalisation of all administrative procedures for businesses listed in the recently launched Register of administrative procedures.	2021	√		

CURENT SITUATION

In the year in which the global pandemic was expected to finally end marking the beginning of accelerated economic growth, renewal of supply chains and return to global economic cooperation, a war erupted in Europe and the resulting economic and political divisions suppressed all other topics. Unlike the still ongoing public health crisis, the crisis we are facing now does not rely on digitalization and e-commerce as fundamental social and economic tools to mitigate the negative effects of the crisis, which is why there was less focus on this area in the course of the previous year.

Nevertheless, the trend of growth in the use and reliance on information and communication technologies in everyday life and business has continued. According to data obtained from the Statistical Office of the Republic of Serbia, the number of citizens using the Internet in Serbia in 2021 grew by 7% compared to the previous year and now stands at 81.2%[1]. When it comes to e-commerce, in 2021 61% of citizens[2] made purchases or orders online, which continued the trend of decreasing the number of citizens who did not participate in e-commerce at all by several percent per year.

In last year's edition of the White Book, we pointed out that the pandemic had a major impact on consumer behavior and in terms of increased volume of e-commerce. The National Bank of Serbia's data has shown that in 2020 the volume of online card payment transactions in dinar increased by more than 100% compared to 2019, while the value of these transactions during the same period was higher by about 80% .

A similar trend persisted in the previous year, so in 2021 the number of payment transactions made in dinars online by payment cards recorded an increase of 60% compared to 2020, while the value of these transactions increased by 57% compared to the previous year.

The key fact is that citizens' awareness has started to change, and the Government has started to act rapidly in accordance with these significant changes. We are witnessing a steep increase in number of transactions performed electronically, as well as wider application of contactless payment using digital "wallets", which are available in a large number of financial institutions.

The Government of the Republic of Serbia and the Office for IT and e-Government, as the central body competent for coordination of activities related to e-government, management of public IT Assets and information security, continue with the implementation of the digital agenda. In the early 2022, the Agreement on the establishment of the World Economic Forum (WEF) Centre for the Fourth Industrial Revolution in Serbia was signed in Geneva, being the third institution of that kind in Europe. The Centre is expected to make it possible for innovations and scientific research achievements to be rapidly implemented in order to create an economy based on knowledge and innovation. The development of biotechnology and artificial intelligence with a focus on research in the fields of molecular biology and medicine will be the priorities of the center's work, which is expected to improve the health sector and encourage the development of innovative companies in these fields. The construction of the BIO4 campus has been announced, which will unite 3 faculties, 8 scientific institutes and research and development centers at private companies. In this way, the Government of Serbia has been building on projects from previous years in the field of development of artificial intelli-

1 Use of ICT in the Republic of Serbia - https://publikacije.stat.gov.rs/G2021/Pdf/G202116016.pdf

2 Ibidem.

gence such as the establishment of the "Smart Serbia" platform, which should enable the improved creation of public policies and e-services based on the needs of citizens and designed based on mass data processing, which the Council wrote about in last year's text.

The extent to which information security is important could be felt by citizens and the economy as a result of cyber-attacks on the digital infrastructure of the Republic Geodetic Institute (RGZ), which made trading real estate, registering mortgages and other jobs related to real estate impossible. According to the RGZ, after the cyber-attack, the entire RGZ system was preventively locked in order to protect data, and all of the above resulted in citizens, banks, notaries and state institutions not having access to the real estate register for several weeks.

POSITIVE DEVELOPMENTS

After the great success of 2021 when a platform was established for easy application for vaccination and optimal distribution of 4 types of vaccine across the country, and in the previous year for improvements in the domain of digitalization the greatest merits go to the Office of IT and Electronic Administration and the Unit for implementation of strategic projects of the Public Administration Reform Team and eUprava (eAdministration) within the Prime Minister Cabinet. At the beginning of the year, the Office made it possible for citizens to obtain cloud-based qualified electronic certificates free of charge, which they can use in a simple and fast way via their mobile phones, without the need to install special software or possess hardware elements such as smart cards. The solution is based on the well-known mobile application Consent ID, whose issuance of user credentials is preceded by personal identification via ID. In this manner, one of the basic recommendations of the Council has been fulfilled, which implies enabling a simple and accessible digital identity for the widest circle of citizens. We hope that in the coming period, all state institutions will integrate with the Office for IT and Electronic Administration in such a way that signing with a qualified electronic signature in the cloud will be enabled on their portals. We also believe that there is room for improving the network of partners and credentials issuing sites for the Consent ID application. Guided by the positive example of private sector representatives involvement in issuing of Consent ID credentials, the impression is that there is greater scope for private sector involvement in issuing credentials for Consent ID, and thus greater coverage of citizens. In this regard, our proposal is to allow banks to become trusted service providers by amending regulation and that banking identity be recognized when issuing credit for Consent ID.

In addition to the above, the eUverenje (eCertificate) service was launched in the previous period, enabling electronic requests to be submitted in order to obtain an electronic certificate of settled debts based on property taxes and taxes from the domain of local self-governments. The possibility of electronic calculation and payment of taxes on the transfer of absolute rights when buying used vehicles was introduced, and individual procedures of several ministries were also digitized.

As part of the Open Balkans Regional Initiative, an Agreement on Linking Electronic Identification Schemes has been reached which aims to enable the unique use of schemes issued by Serbia, North Macedonia and Albania.

At the end of 2021, the National Assembly adopted the Law on Fiscalization, which replaced the previous Law on Fiscal Cash Registers, and whose implementation begun on 1 January 2022, with a transition period until 1 May 2022 for the economy to adjust. The most important novelty this law brought is a broader scope of fiscalization, then electronic recording of real-time transactions via the Internet connection between each fiscal device and the Tax Administration system, and unique electronic elements of each invoice that allow its verification. In addition, the state has allocated 3 billion dinars for implementation of the new fiscalization system, while the law itself brings technological neutrality in terms of devices used and combination of software and hardware that can be applied, which will save the businesses from high costs of digital, online fiscalization. Along with the usual challenges concerning adjustment, the new system has been successfully implemented and in the coming period it is expected to achieve the effects of increasing tax revenues, as well as a more effective control and risk analysis in order to prevent tax evasion.

We are witnessing major progress in the part of the legal framework that enables further digitalization of financial services, through a series of decisions that the regulator, the National Bank of Serbia, prescribed in the previous period. Thus, in addition to the possibility of video identification of natural persons, with the relevant Decision having been extended, the identification of legal entities has been made possible as well. After the implementation of these novelties, other ways of identifying the client should be

enabled, first and foremost the exchange of data between banks via the platform (open banking) with the key and central role of the National Bank of Serbia.

REMAINING ISSUES

After the successfully implemented project "Moji podaci za moju banku" (My Data for My Bank) based on the exchange of data between the public and private sectors, the Council for Telecommunications and Digital Economy sees an opportunity for further digitalization of business in new initiatives of this type.

Procedures in public administration have been significantly accelerated by connecting state institutions and automatic exchange of documents. We believe that similar cooperation between banks, mobile operators, insurance and other business entities with state authorities, can contribute to a greater efficiency and safety of business operations. Exchange of data with the Tax Administration, Social Security Register and Credit Bureau for the purpose of assessing actual creditworthiness and protection against fraud, enabling verification of the validity of the identity card through the Ministry of Interior when concluding a contract or using the e-inbox of the eAdministration for the delivery of documentation are just some of the examples in which we see this potential.

In the last five years, a major shift has been made when it comes to regulations from the domain of electronic commerce. However, regulations governing other areas often represent a barrier to the digitalization of business. These regulations are not easy to amend since they are often based on the erroneous paradigm that paper is a safer and transparent form of a document compared to an electronic document.

One such example are bills for telecommunications services. Namely, the Government of the Republic of Serbia has saved 180 million papers over a period of 4 years thanks to the digitalization of processes in public administration, which is a great result from the perspective of improvement and protection of the environment for which our country has received recognition by the World Economic Forum (WEF)[3]. Inspired by this success, mobile operators, which have over 5 million postpaid customers to whom they send bills each month, proposed to allow the issuance of electronic bills as the default form of bills for telecommunications services for all the existing customers and new ones. If all customers of mobile operators received electronic bills, only on this basis in 4 years in Serbia would save as much as 240 million papers. This proposal has not yet taken root because of the Law on VAT, which requires the consent of the recipient for the issuance of an electronic bill, while on the other hand, the Law on Consumer Protection prohibits the collection of costs for issuing and sending a paper bill. In conditions of insufficient environmental awareness, as well as awareness that an electronic bill brings the same level of legal protection, consumers are not motivated enough to switch from paper to electronic bills. The expectation of the Council is that this problem will be solved by the adoption of a new Law on Electronic Communications which, as a separate law (lex specialis), will regulate the bill for electronic communications services.

However, a bigger problem is the regulations on archiving, or rather the Regulation on Unique Technical and Technology Requirements and Procedures for Storage and Protection of Archival and Documentary Materials in Electronic Form, adopted based on the Law on Archiving, which will enter into force on 1 January 2024. This regulation provides for a costly and complicated process of archiving electronic documentation which implies, among other matters, that each individual document should be certified by a qualified electronic time stamp of an authorized trusted service provider. The expected costs of introducing an electronic archiving system and putting a qualified timestamp on each individual document threaten to approach or even exceed the cost of running a paper archive. In such circumstances, there will be no motivation for the economy to switch from paper to electronic business, and the return of business entities that already now operate electronically to an archive in paper form would be a major step back.

In conclusion, we note that a great effort and progress has been made in order to enable further digitalization of the economy and the public sector in the past period and that the readiness of all state institutions to continue in the same manner in the future is noticed.

3 https://www.weforum.org/agenda/2021/04/how-technology-helped-serbia-save-180-million-sheets-of-paper-in-less-than-4-years/

FIC RECOMMENDATIONS

- Amendment to the part of the Decision on the Classification of Bank Balance Sheet Assets and Off-Balance Sheet Items that refers to the content of the borrower's credit file, which would take into account the existence of the My Data for My Bank project and similar initiatives and which would accept data from the database of competent state institutions as credible proof of employment and earnings or pension of citizens, and in the case of consumer loans of small value and statements of citizens in digital form given under full material and criminal liability.

- In addition to enabling video identification, other ways of identifying the client should be enabled — exchange of data between banks through the platform (open banking) along with the key and central role of the National Bank of Serbia.

- In order to improve the efficiency and security of operations, automated data exchange between the public and private sectors should be enabled. For example, enable data exchange between the Tax Administration, the Social Security Register, and the Credit Bureau in order to assess actual creditworthiness and protection against fraud. Also, enable the submission of documentation by service providers to citizens through a unified electronic mailbox of eAdministration.

- Reduce the cost of electronic archiving of company documentation through the amendment of regulations along the lines of excluding the largest part of business documentation because it is not relevant for culture, art, science and other categories of the Law on Archival Material and Archival Activities.

- Adoption of the Law on Electronic Communications which will allow electronic form to be the default form of bill for telecommunications services.

- Amendment to the relevant Regulation that would allow banks to become trusted service providers and for banking identity to be recognized when issuing the Consent ID credentials.

REAL ESTATE AND CONSTRUCTION

1.36

Due to foreign policy events that inevitably have an impact on all market trends - the procurement of construction materials and raw materials for its production, the supply chain, as well as the employment of the workforce, the construction industry is facing challenges that may pose a threat to the growth and development of this sector. Therefore, it is necessary, through further improvement of procedures and legislative activity, to act preventively and give the necessary impulses so that the growth of this sector is not jeopardized.

The issue of land ownership and mixed forms of state and private ownership remains significant obstacle to construction in Serbia. It is necessary to consider the possibility of amending the law that regulates the issue of conversion with a fee in the part that concerns the payment of the fee for the conversion, so that the fee as a concept is completely abandoned for certain categories of persons.

The electronic business of the real estate cadastre and the cadastre of utilities is faced with numerous challenges, which require a systemic solution and which must be overcome in a timely manner.

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
CONVERSION OF THE RIGHT OF USE TO OWNERSHIP OF CONSTRUCTION LAND				
The Law on Conversion for a Fee should be amended in order to reduce the costs of the conversion fee. With regards to the undeveloped construction land, the holder of the right of use on the undeveloped construction land should be entitled to request registration of the ownership over such land, whereas the registration of the ownership in the Real Estate Cadastre should be accompanied with registration of annotation that the conversion fee has not been paid. This type of registration, would be a sufficient legal basis for the owner to acquire the construction permit, prior to payment of the conversion fee. Further, if such holder of right of use (i.e. newly registered owner) manage to obtain a construction permit and construct real estate on such land and register it in the Real Estate Cadastre within a period of 10 years, he should acquire the right of ownership on such land free of charge. Alternatively, if the real estate has not been constructed within the period of 10 years, such holder of right of use (i.e. newly registered owner) should be obliged to pay a reasonable fee in the fixed amount per square meter of the surface area of the subject land. When it comes the developed construction land, possibility of abolishment of payment of conversion fees should be considered, if in the moment of the entry into force of the new law, there is a legal building constructed on such land. Alternatively, prescribing a reasonable fixed amount of fee per square meter of the land without determining the land for regular use of the facilities, would be also a good incentive for further development of this sector. The amount may be determined according to the size of the city or municipality. For example, in Belgrade, the conversion fee can be 10 euros per m2, and in smaller cities and municipalities 3 euros per m2.	2021		√	
It remains unclear to what extent companies use the possibility of construction land leasing as an alternative to conversion. It is also unclear whether it is possible for a company that has the property right on the building with a corresponding right to use the land, to lease such (built) land instead of converting (for example, to demolish an existing building and build a new one), given that the institute of building land lease has so far generally been reserved only for undeveloped construction land.	2021			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The state needs to take the necessary actions to promote this alternative (lease instead of conversion) and use the lease more often in practice.	2021			√
CONSTRUCTION				
It is necessary to improve software solutions and capacities to facilitate and speed up the procedure of electronic submission of documentation.	2021		√	
The competent authority in the integrated procedure should issue 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).	2021			√
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 in cases when the main contractor (an entity with whom the investor entered into a direct construction agreement for the whole works) holds the license and is the main contractor obliged to have license if all subcontractors hold appropriate licenses. The answer to this question does not only affect the existence of the obligation to initiate the process of obtaining the license, but also other aspects of the subcontractor's and contractor's business, especially if it is a foreign entity. In addition, it is necessary to enact the rulebooks regulating issuance of the licences.	2021			√
Enactment of rulebooks on issuance of licences and clarify the obligation of subcontractors engaged by a contractor to hold licenses which are already held by the contractor and vice versa should be clarified.	2021			√
LEGALIZATION				
It is necessary to amend the Legalization 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.	2021			√
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).	2021			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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, 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.	2021			√
The Law is ambiguous on the issue of whether a decision on legalization substitutes a construction permit and a use permit. 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. 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.	2021			√

CONSTRUCTION LAND AND DEVELOPMENT

1.18

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.

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 had 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 (governed by a separate law).

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 legal successors in terms of status;
- entities which acquired the right of use on the land after 11 September 2009, through purchase of the building, with the accompanying right of use on the land, from the entities, which were subject of privatization in the past (as indicated immediately above);
- 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.

Construction

The Planning and Construction Law was amended several times in the past few years. 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.

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

Provisions of Article 11, paragraph 6 of the Law on Conversion for a Fee, stipulated 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 and legally binding completion of the restitution process.

Amendments to the Law on Conversion for a Fee from 2020 have changed the respective provisions in less strict manner and hence the conversion procedure shall be immediately suspended in the respective case, until the final and legally binding completion of the restitution process, or until the final decision on in-kind restitution is enacted, or until the confirmation that the natural restitution is not applicable is issued.

Amendments to the Law on Conversion for a Fee from 2020 in more detailed manner stipulate the cases to which the conversion with the fee applies, as well as the exceptions to the conversion with the fee regarding the real estate which belonged to entities which were privatized in the past.

During the final phase of the preparation of this White Book, the Ministry of Construction, Transport and Infrastructure has formed a Working Group to work on the Law on Conversion for a Fee and on the reform of the institute of conversion with a fee, whose members are all relevant representatives of state authorities, as well as the economy. We welcome the activities of the Working Group and the demonstrated willingness to solve the conversion problem as soon as possible. We will be able to evaluate the results of the work of the Working Group in the next edition of the White Book.

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.

REMAINING ISSUES

Construction

There is a problem with the content of the use permits issued through the system of unified procedure in the matter of utilities/installations - generally, in the wording of these permits, installations/utilities are not mentioned individually, or not mentioned at all, so even though through the CEOP, a geodetic study is also submitted with the use permit in to whom the installations are shown, RGA does not register the rights to them on the basis of the attached usage permits, but the party is exposed to additional costs and loss of time by obtaining a subsequent expert opinion

in order to register the rights to the lines according to the issued usage permit, which leads to the conclusion that this problem should be solved in cooperation with the competent ministry.

Conversion of the right of use to ownership of construction land

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.

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

The length of the conversion procedures, especially in cases where appeals or administrative suits were lodged, remains a serious issue.

FIC RECOMMENDATIONS

Conversion of the Right of Use to Ownership of Construction Land

- It is necessary to consider the possibility of amending the Law on Conversion for a Fee in order to exempt the following categories of persons or entities from the obligation to pay the fee for conversion, i.e. for whom the conversion of the right of use on construction land into the right of ownership would be provided without fee:
  (i) persons or entities that were or are commercial companies and other legal entities that were privatized on the basis of laws governing privatization, bankruptcy and enforcement proceedings, as well as their legal successors in terms of status;
  (ii) persons or entities that acquired the right of use on the land after September 11, 2009, by purchasing the building with the accompanying right of use, from entities that were privatized on the basis of the laws governing privatization, bankruptcy and enforcement proceedings, and who are not their legal successors in terms of status;
  (iii) persons or entities - holders of the right of use on undeveloped construction land in state ownership that was acquired for construction in accordance with the previously applicable laws that regulated construction land until May 13, 2003 or based on the decision of the competent authority;

Construction

- It is necessary to improve software solutions and capacities to facilitate and speed up the procedure of electronic submission of documentation.

- The competent authority in the integrated procedure should issue 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).

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 in cases when the main contractor (an entity with whom the investor entered into a direct construction agreement for the whole works) holds the license, as well as whether the main contractor is obliged to have license if its subcontractors hold appropriate licenses. The answer to this question does not only affect the existence of the obligation to initiate the process of obtaining the license, but also other aspects of the subcontractor's and contractor's business, especially if it is a foreign entity. In addition, it is necessary to enact the rulebook regulating issuance of the licences for construction buildings for which the municipalities issue construction permits.

- Enactment of rulebook on issuance of licences for constructing buildings for which the municipalities issue construction permits and clarify the obligation of subcontractors engaged by a contractor to hold licenses which are already held by the contractor and vice versa.

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, 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, 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. 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. Furthermore, the owners of the buildings are exposed to additional expenses and are put into an unequal position compared to the owners of other buildings with different purposes for which it is not required to obtain an energy licence.

- It is necessary to amend the Legalization 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.

- It is necessary that the Decision on legalization has the power of a construction permit and a use permit, which would be acknowledged by appropriate content of the decision (without an additional technical examination / obtaining of a special permit to use).

MORTGAGES AND REAL ESTATE FINANCIAL LEASING 1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	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 mortgages 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			√
The Law on Mortgage needs to be amended to simplify the requirements in relation to the mandatory elements of the mortgage document pertaining to the secured claim, i.e., not to require more than the amount, currency and interest (if any). Further, adequate language to be stipulated for future claims by e.g., specifically allowing registration of maximum future secured amount.	2021			√

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

Given that there were no legislative changes in longer period of time, there have been no manifest developments in this area. One point that can be mentioned here is digitalization process within the real estate cadastre which has positive effect on the speed of the mortgage registration procedure.

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. Given that the only requirement for a real estate sale contract is that it should be solemnized by a notary public, there is no policy reason why the same practice should not be applied to the mortgage documents as well.

The requirements of the Law on Mortgage in relation to the mandatory elements of the mortgage document pertaining to the secured claim are too excessive and inadequate for claims other than the loans. Further, such requirements are completely inadequate for future claims.

The position of the tenant in the case of an out-of-court settlement of a mortgage is not entirely clear. Unlike the Law on Enforcement and Security which explicitly states that the tenant can be evicted unless his lease is registered in the cadastre before all the mortgages and enforcement orders, the Law on Mortgage is silent on this matter. Thus, this implies that the general regime from the Law on Obligations applies, meaning that the lease agreement survives out-of-court foreclosure if the tenant was already in possession of the mortgaged property.

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 mortgages 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.
- The Law on Mortgage needs to be amended to simplify the requirements in relation to the mandatory elements of the mortgage document pertaining to the secured claim, i.e., not to require more than the amount, currency and interest (if any). Further, adequate language to be stipulated for future claims by e.g., specifically allowing registration of maximum future secured amount.

CADASTRAL PROCEDURES 1.73

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
It is necessary to ensure uniform, transparent and clear implementation of laws for further acceleration and foreseeability of cadastral procedures, including how to overcome the problems with registration of utility lines built according to old legislation.	2021		√	
It is necessary to establish an efficient system for the resolution of clients' requests and simplify the manner of submitting updates to the so-called notary cases or introduce the obligation for the notaries to add the documents necessary for the completion of registration to the documents they are certifying.	2019		√	
Republic Geodetic Authority should conclude all unresolved first-instance and second-instance cases as soon as possible.	2018		√	
It is necessary to allow full control of a registration procedure by the parties in the case which was opened by a notary, as it is just a service performed by notaries.	2021		√	
Establishment of an electronic base for utility cadastre which will be accessible to the public or registered users, as it has already been done with the real estate cadastre, with the possibility of issuing excerpts from the utility cadastre (as it has been done with real estate folios that are issued from the real estate cadastre).	2019		√	
Property sheets in electronic form from Cadastral online database are not user-friendly, especially for plots with several objects, where it is not possible to get an overview of A sheet in which all objects / parts of one plot are listed on the same place. It would be beneficial to improve the format so as to be similar to the the form in which the hard copy property sheets were issued before 2020. This new format (because of which each part of the plot and each building/part of the building must have a separate sheet) has caused excessive fees for some companies who possess over several hundreds of land plots, for example, a huge agricultural site. The fee for sheets in such cases amounts several thousands of euros, given that each sheet is charged separately. Although the e-cadaster evidence has been established, banks and other institutions require the official and original excerpts to be obtained. Hence, this issue must be solved as soon as possible, as it causes significant burdens to the investors.	2021			√
It is necessary to register all lines (and rights to them) in the utility cadastre without delay.	2019		√	
Real estate cadastre must be more accessible to general public and companies, such as, email communication with the real estate cadastre must be more efficient, the cadastre should work harder to make people more familiar with the electronic procedures, anyone should be entitled to easily schedule a face-to-face meeting in the relevant cadastre, etc.	2021			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Software of the utility lines cadastre and a notary's digital platform must be harmonized in order to allow the notaries to file requests for mortgage registration or mortgage release towards the utility lines cadastre, as well as to enable them to obtain sheets on utility lines.	2021		√	
Online access to real estate cadastre data should be free and unlimited, with real-time update.	2012		√	
Geodetic organizations should be entitled to issue official copies of cadastral plans and cadastral plans of utility lines.	2021			√

CURRENT SITUATION

Over the past year, the Republic Geodetic Authority has continued to work intensely on the digitalization of procedures that it started implementing in 2020. Electronic notice board represents an attempt to overcome the problem of decision delivery and, as such, it provides more transparency with regard to the acts adopted by the cadastre. An address registry was established, as well as a procedure for determination of house numbers on the territory of the entire country. Introduction of e-desks enhanced digital communication in the work of geodetic organizations and lawyers which realize operations envisaged by the Law on State Survey and Cadastre and Law on the Procedure for Registration in the Cadastre of Immovable Property and Utilities

The progress in this area is noticeable, but there is still room for improvement.

According to analysis conducted by the Republic Geodetic Authority, the exact number of unresolved cases before the adoption of the new Law on the Procedure for Registration in the Cadastre of Immovable Property and Utilities was 1,200,000, while three years after the law was passed, the number fell below 500,000. The effects of COVID-19 pandemic have additionally contributed to delay in resolving cases, despite the efforts on digitalization of work of RGA's services. Regardless of the potential effects of the pandemic or other unforeseen difficulties, it is essential to find systematic solution through dialogue between all stakeholders on the market and holders of public authorities in order to reduce the number of unresolved cases and thus speed-up the process of decision making as soon as possible.

There is still the problem of necessity to increase the efficiency of work of the utility cadastre departments, as well as the non-resolved issue regarding the documentation required for registration of the rights to the utility lines (non-recognition of permits issued before introduction the possibility to register rights on lines, but also for lines for which the permit was issued under the unified procedure due to non-listing each and every line to which the permit refers). Further step towards improvement of the utility cadastre is introduction of the adequate software which will connect public notaries with the cadastre (for example, currently it is not possible to file a request for the mortgage registration on the utility lines through the notary's office).

POSITIVE DEVELOPMENTS

Compared to the recommendations of the FIC from the 2020 and 2021 White Book, certain improvements were made in relation to the following recommendations:

- It is necessary to ensure clearer and more transparent instructions on the implementation of laws with the aim of accelerating and improving the foreseeability of cadastral procedures – RGA website offers instructions, request forms, the possibility to monitor the status of the case and make an appointment with the person who processes the request;
- Republic Geodetic Authority should contribute to the harmonization of practices of real estate cadastre offices/utility cadastre departments and strengthen control over their work, to ensure accessibility for the parties that request consultations, act more promptly upon complaints, and allow complaints about the work of utility cadastre departments to be filed via link on the RGA official website - the harmonization of practices was successful in certain cases. Also, RGA regularly publishes documents on its website that are important for standardizing the practice of services and which enable interested parties to become familiar with the practice of RGA (information, cadastral-legal practice, etc.);

- The Republic Geodetic Authority is actively working on solutions and is open to recommendations in order to find an adequate solution for a more efficient resolution of old cases;
- There is a noticeable tendency of more efficient software maintenance and improvement– besides noticeable problems that are actively resolved, improvements have been made in the maintenance of the publicly accessible cadastre database.

The implementation of the above listed recommendations can be generally regarded as positive, as their adoption contributes to timeliness, reduces clients' waiting time, simplifies and accelerates registration procedures, even though there is still plenty of room for improvement.

REMAINING ISSUES

Despite improvements, one of the most important problems lies in inconsistent interpretations of applicable regulations by different real estate cadastre offices, which are often non-compliant with other laws and bylaws.

The deadlines for delivery of decisions upon clients' requests for registration in the cadastral and utility registry represent one of the most significant problems, as the deadlines are routinely exceeded, due to overloaded offices with unprocessed cases and inadequate internal work organization (for example, during the submission of cases to the utility cadastre departments by some real estate cadastre offices, the geodetic studies were submitted without the requests and supporting legal documentation that were submitted by the parties). Even though a certain improvement has been made, a large number of cases from the past remains unresolved, as a matter of historical heritage, some of which date years back. The aforementioned also applies to the second-instance cases.

Offices still exhibit excessively formalistic approach to the resolution of requests for the registration of real estate rights. It is evident from their acting in the cases which are submitted by notaries, where the party is not allowed to participate in a possible case update or abandonment of the submitted request.

There is also a problem with the registration of facilities built under the Law on Mining and Geological Research and the rights to them, particularly in relation to the lines built several decades ago under permits obtained in accordance with the then applicable regulations.

A major problem in the work of real estate cadastre offices remains the lack of transparency in work and inaccessibility to parties (especially professional users). Although it is formally possible to schedule a meeting with an officer dealing with a case, scheduling a meeting is a painstaking job and is often impossible to schedule even after several months.

The existing decision from Article 58 of the Law on the Procedure for Registration in the Cadastre of Immovable Property and Utilities regarding deletion of the holder and the possession is incomplete and therefore needs to be amended. Namely, the aforementioned provision foresees that, if the legal conditions are not met by May 1, 2028 at the latest for the registration of property rights on immovable properties where a certain person is registered as a holder in accordance with the Law on State Survey and Cadastre, the office will ex officio delete the status of the holder and this persons possession on the immovable property. However, the Law does not prescribe the legal conditions for registering property right instead of state possession, as well as what the consequences would be after May 1, 2028, that is, who would be the owner of the real estate.

Speaking of the cadastre of utility lines, it should be noted that in practice notaries do not have any access to this cadastre, hence cannot obtain a sheet of utility lines, nor they can electronically file a request for the mortgage registration on utility lines. On the other hand, certain Utility Cadastre Services do not allow submission of hard-copy request, however according to the information received from RGA, they are working on solving this problem.

Also, the issue of systematic (ex officio) entry into the cadastre software of those utilities and boreholes for which legally binding decisions have already been made by the real estate cadastre office remains unresolved, because those utilities and boreholes are registered only at the special request of the party and not by official duty based on the already adopted decisions of the real estate cadastre. In order to have proper records of all previously issued decisions on the registration of utilities in the Utility Cadastre, as well as for the possibility of issuing copies of utility plans and lists of utilities for all previously registered utilities, we believe that it would be more expedient to have RGA ex officio enter all utilities for which there are previously issued decisions by the real estate cadastre offices.

One of the controversial issues is the issue of registering underground tanks, i.e. whether they will be recorded in

the real estate cadastre or in the utility cadastre, which affects the circumstance on whether, for the purpose of recording them, it is necessary to record the underground tanks and submit them in the studies for the real estate cadastre, or in the studies for the utility cadastre. Also, cases when the tanks are located under the canopy, in which case they cannot be registered in the real estate cadastre due to overlapping with another object, are also a problem. On these issues, it is necessary to standardize the practice.

The Republic Geodetic Authority was paralyzed for a long time due to a recent hacker attack, which indicates that the information system of the RGA needs to be further improved in order to be sufficiently secure.

The e-counter for professional users and the application "Real Estate Transactions" used by public notaries are not complete, i.e. they do not allow professional users to submit all the necessary requests (e.g. it is not possible to start the procedure for the condominium of an existing building) nor all the documents for registration in the real estate cadastre (e.g. public notaries cannot submit a request for registration of the lease of a building or office space). It is also necessary to consider the introduction of an infrastructure register, in order to enable up-to-date management and reliable access to data on infrastructure facilities, such as wind turbines.

FIC RECOMMENDATIONS

- It is necessary to continue with intensive work in order to achieve uniformity of practice and clear implementation of the law for additional acceleration and predictability of cadastral procedures, including finding an adequate solution to overcome problems with the registration of utilities built in accordance with former regulations.
- It is necessary to make the cadastre more accessible to parties and professional users, which would certainly lead to greater efficiency in work, as well as a relevant legal service at each real estate cadastre office that would eliminate doubts that parties and professional users have without an appointment. In this way, the number of dismissed and rejected requests, and therefore the number of second-degree procedures, would be significantly reduced. The first step towards this should be to enable professional users to get in direct contact with cadastre officials and to get answers to questions directly and in a short period of time.
- It is necessary to establish an efficient system for the resolution of clients' requests and simplify the manner of submitting updates to the so-called notary cases or introduce the obligation for the notaries to add the documents necessary for the completion of registration to the documents they are certifying.
- It is necessary to find a systemic solution as soon as possible in order to solve all backlogged first-degree and second-degree cases.
- It is necessary to allow full control of registration procedure by the parties in the case which was initiated by a notary.
- Electronic base for utility cadastre should be accessible to the public or registered users, as it has already been done with the real estate cadastre, with the possibility of issuing excerpts from the utility cadastre (as it has been done with real estate sheets that are issued from the real estate cadastre).
- It is necessary to register all utilities (and rights to them) in the utility cadastre without delay, i.e. enter the utilities registered so far into the existing software Utility Cadastre, and previously resolve all open issues and introduce uniformity regarding the registration of underground reservoirs.
- The new format of the extract from the electronic database of the Real Estate Cadastre (because of which each part of the plot, each building / part of the building must have a separate sheet) is insufficiently clear compared

to previous excerpt from immovable property and caused excessive fees for certain companies that own hundreds of land plots. Although the e-cadastre system has been established, banks and other institutions require obtaining official and original statements. For the above reasons, this problem must be solved as soon as possible and the calculation of costs in such a case should be adjusted, because it causes significant burdens for investors. Geodetic organizations should have the right to issue official copies of cadastral plans and cadastral plans of utility lines.

- It is necessary to amend the Law on the Procedure of Registration in the Cadastre of Immovable Property and Utilities in order to enable the conversion of possession into the ownership right. The solution could follow the path of the one provided for by the Law on State Survey and Cadastre before the adoption of the Law on the Procedure of Registration in the Cadastre of Immovable Property and Utilities, which provided that the possession right ex officio becomes the ownership right if a third party within a certain period does not submits a request for registration of ownership right and does not submit proof of ownership rights to that immovable property.
- It is necessary to further improve the e-counter and "Real Estate Transaction" application software in order to enable the submission of all types of requests.
- Prepare a draft of the Law on Infrastructure and start work on the introduction of the infrastructure register.

RESTITUTION 1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2015			√
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.	2015			√
Agriculture land under all type of objects/buildings such as lines and boreholes, have to be exempted from restitution and the agriculture land in the restitution for which the consolidation procedure was not being performed have to be listed and disclosed by the Agency.	2021			√

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 are processing individual requests, but still the impression is that the finalization of the procedures shall take some time, although the legal deadlines for resolution of individual requests have passed.

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 discretionary evaluation of evidence, as well as in requests for documentation which is not necessary for decision-making and which is in most cases impossible to obtain.

The 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.

POSITIVE DEVELOPMENTS

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

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

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

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

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. In practice such restitution process mostly does not take into consideration existence of different types of buildings/objects (such as lines and boreholes) in the ownership of third parties which agriculture land under such objects have to be exempted from restitution. The list of agriculture land that is included in the restitution procedure without being performed a land consolidation procedure is not officially disclosed.

In the beginning of 2021, the Government of the Republic of Serbia rendered a conclusion determining that the compensation in the cases where it is impossible to allow restitution in kind, will be 15% of the value of the seized property. Payments of compensation on the basis of final and binding resolutions on compensation have begun. The notification with instructions for receipt of payments of compensation is published on the Agency's web page. Portions of compensations payable as down payment are being duly paid, within short deadlines.

REMAINING ISSUES

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 those lawmakers are entitled to determine 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.

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.
- Agriculture land under all type of objects/buildings such as lines and boreholes, have to be exempted from restitution and the agriculture land in the restitution for which the consolidation procedure was not being performed have to be listed and disclosed by the Agency.

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 work from home, 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 structures, and the calculation of compensation for wages. Additional legislative provisions amendments are needed that regulate employment termination, such as those governing the statute of limitations and notice period, as well as a clear definition of the resolving redundancies procedure. 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. Staff leasing and staff leasing agencies' work have been regulated by adopting and entering into force Staff Leasing Act. However, there are still aspects in this area that could be improved. Finally, the COVID-19 epidemic onset highlighted the problems related to insufficiently legally regulated work from home and employers' obligations in the field of safety and health at work.

The human resources field was inevitably affected by the Russian-Ukrainian crisis in 2022. Many Ukrainian citizens were forced to emigrate to other countries, and the need for relocation did not escape Russian citizens either, bearing in mind that the business of many companies in Russia became difficult, due to the introduced series of sanctions packages.

Therefore, it is not surprising that the field of information technology was one of the first to adapt to the new circumstances, which led to the establishment of a large number of new IT companies in Serbia and the consequent relocation of businesses and employees to the territory of Serbia. HR managers took first strike of these changes and had to master the immigration procedures almost overnight and organize the often massive procedures of obtaining work permits and temporary residence permits for newly settled foreigners in Serbia.

Various ways were introduced to speed up the foreigner's employment procedures before the current global political crisis, but when some of the new solutions were tested, it turned out that they did not work in all cases. Namely, electronic submission of documents for temporary residence is not practical for situations of mass relocations because it implies that each individual creates an account on eUprava and submits a request for himself, including payment of administrative fees. Bearing in mind the competitiveness in the IT industry and the efforts of employers to attract and retain quality staff, they strove for a simpler and faster procedure, which could be done with as little involvement of the employees themselves as possible. Therefore, the current mechanisms of submitting documents in the procedure of obtaining temporary residence, in which the employer and his representatives cannot mediate (that is, they have limited mediating possibilities), turned out to be inappropriate in the given circumstances. On the other hand, the combined request for temporary residence and work permit showed that communication and cooperation between the Ministry of Interior and the National Employment Service could be improved.

It was noted that the competent authorities recognized the situation complexity and tried to do what was possible in order to speed it up and make it more flexible and simpler under the given circumstances. This change has led to the acceleration of the process of exercising the employees rights, and the question is justifiably raised as to whether certain changes could remain permanent.

Finally, labor law regulations branching and the absence of a single umbrella law that would regulate relevant issues in the domain of labor law in a unique and harmonized manner also represented a stumbling block when it comes to relocating business to Serbia. The number of mandatory documents that the employer is obliged to adopt, as well as the rigidity of certain labor law institutes, have proven to be quite a burden for foreign employers.

In this context, it is also important to note the non-compliance of the practice with the applicable laws, which in the newly created situation was particularly noticeable in the case of the impossibility of timely registration of foreign employees on the CROSO portal within three days from the day of issuing the work permit (that is, the employee starting work), considering that the issued work permits are still sent to the employer's address by mail, and as a rule they reach the employer only after the deadline specified

by law. This further conditioned the procedure for determining the nature of the insured, which slows down the registration process. Additionally, the lack of possibility to send work permits electronically to the employer has led to employee dissatisfaction, since employers cannot pay wages (as well as any other income that has the character of wages) before issuing work permits.

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 1,06

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The Labour Law				
Digitization of labor law documents. In order to harmonize with the trends, solutions and possibilities brought by the digitalization process, it is necessary to amend the Labour Law in order to define an alternative way of administering employment rights and obligations by using electronic documents and electronic signature (adoption of acts and concluding contracts), alternative formal communication on the relation employer - employee electronically, primarily via e-mail or other similar channels of electronic communication and with the use of electronic bulletin board, electronic records as well as submission of documentation electronically, etc., as ways and forms that would be completely equal to the currently valid forms. Also, we believe that it is necessary to amend the Law on Labour Records in relation to 3 key items: determining the maximum retention period up to 5 years after termination of employment, explicitly enabling electronic records and using various IT tools for this purpose, and prescribing the correct way disposal of employee files made in paper form.	2016			√
Flexible conditions of work outside Employer's premises. Introduction of a possibility of regulating employment when establishing it or in its course so that the employee would work one part of his working time outside the Employer's premises (not only from home), as well as a possibility of changing the work regime and concluding and Annex to the Employment Agreement during employment, i.e. without the obligation to conclude the Annex (in case when the transition to work regime outside Employer's premises is occasional or short-term, in which case Employer's provisions of general enactments would directly apply to conditions of work from home). It is necessary to precisely establish the difference between the work from home and remote work (by the place of work or means of work), and relativize the need to define "Place of work" as obligatory element of Employment Agreement by introducing, for example, "primary place of work" in case of remote work, as well as introduce general principles for the compensation of costs for work outside Employer's premises, since legal certainty and security are required. Within the flexible organization of work, possibility of introducing overtime should be expanded so that it is not linked only to extraordinary and unexpected circumstances. The Employer and employee should have the freedom to agree on the reason for and purpose of overtime, and the Employers should be entitled to contract a manager's fee that would also cover overtime fee for the overtime work of company managers.	2018			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Rational salary structure and salary compensation. We suggest that work performance be envisaged only as an option, and not as a mandatory part of earnings. Also, the proposal is that the basis for calculating the salary compensation during the absence from work be equal to the basic salary increased by the seniority pay. This would make it much easier for all employers to manage salaries and have more flexibility in both the salary contracting and the budget planning, and the salary structure itself would be more understandable. Also, we propose that the amendments to the Labour Law clearly define what the elements or conditions for determining the basic salary are and which general act of the employer determines those elements, as well as to determine the conditions for offering an annex which stipulates a change the basic agreed salary.	2021			√
Flexible engagement of students in practice. We propose amendments to the Labour Law in the part that regulates professional training and development. These amendments should provide for appropriate flexible modalities of engaging high school students, students and other persons outside employment (both in the field of education and outside the field of education) in order to gain practical knowledge and experience in a real work environment, career advancement and easier future employment. Additional conditions limiting the possibility of such engagement should be removed from the existing provisions on vocational training and development, and the same should be provided regardless of the employer's activity and whether it is the public or private sector. The competent ministry may establish all necessary mechanisms to prevent abuse of this institute, if this was the reason for the introduction of restrictions by Article 201. In this regard, in order to develop good and safe practice, it is necessary to harmonize the provisions of the Labour Law so that they form a consistent labour law regulation with the provisions of the Law on Dual Education and the Law on the Dual Model of Studies in Higher Education, which regulate the conditions of work practice of high school students and university students.	2016			√
More flexible conditions and procedures for employment termination. It is necessary to: (a) 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), (b) in the event of the employment contract termination, extend the maximum duration of the notice period from 30 to 60 days (c) enable employers to issue decisions in the form of an electronic document determining measures (dismissal or milder measure) or releasing employees from liability, as well as delivery these decisions are executed electronically, (d) the employee's refusal to receive the decision served on the employer's premises consider as if the act had been delivered, (e) enable the employer to unilaterally release the employee from work during the notice period (when the notice period is prescribed/contracted) with the salary compensation payment in the amount of the employee's basic salary, (f) regulate the procedure of termination of employment due to technological, economic or organizational changes – redundancy in cases when program is not mandatory, clearly stating the obligations of the employer or whether the employer is obliged to address a representative union within the company and the republic organization responsible for employment, whether he is obliged to apply measures for new employment and how they are being applied, especially additional qualification and retraining, etc.	2018			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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:				
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.	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 increasing the employment rate of PwD would be to incentivize employers with subsidies for their employment.	2009			√
Employment of Foreign Nationals				
The Central Registry of Mandatory Social Insurance's certificate on whether an employer, prior to filing an application for a work permit for employment, had dismissed employees as redundant should contain the exact job title of the employee who was declared redundant.	2015			√
The labour market test should not be a condition for issuing a work permit in case of hiring senior managers.	2015			√
It is necessary to shorten the duration of the procedure for issuance of temporary residence permit, allow a longer validity of temporary residence permit and work permit, and reduce the number of the required documents. Also, it is necessary to provide the possibility to submit the Joint Application electronically in accordance with Article 41a of the Foreigners' Act.	2021			√
Secondment of employees abroad				
We recommend extension of the maximum period employees at managerial positions are allowed to stay abroad on the basis of referral to business trip, without application of the Secondment Act to up to 180 days in total within a calendar year, instead of the currently applicable 90 days.	2016			√
We recommend allowing secondment abroad for the purpose of vocational training and development also to the entities which are not necessarily related to the employer by equity or control.	2018			√
We recommend allowing secondment abroad of employees under the age of 18.	2016			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Staff leasing				
We recommend deletion of Article 14 of the Staff Leasing Act, which limits the number of employees employed at the staff leasing agency on a fixed-term basis that a beneficiary can lease.	2020			√
We recommend deletion of Article 2 paragraph 5 of the Staff Leasing Act, which regulates situations in which there is no comparative employee at the beneficiary.	2020			√
We recommend deletion of Article 17 of the Staff Leasing Act, which prescribes the staff leasing presumption.	2020			√
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 taking part in 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			√
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.	2019			√
Due to COVID situation and upcoming economic effects of it, consider to support employment through reducing employment costs regarding taxes and contributions and thoroughly regulate legislation that's considerers work from home.	2021		√	
Safety and health at work				
Adoption of laws and bylaws. In the absence of legal norms, there are no bylaws that would be necessary to regulate in more detail:				
Training of employees for safe work from home / remotely,	2021			√
Procedure related to injury at work while working at home /remotely and filling in the injury list in case of injury while working at home or at another location,	2021			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Procedures related to the implementation of preventive measures for safe work from home / remote work, control mechanisms for the application of measures for safe and healthy work and mechanisms for determining the causes and manner of injuring when working from home, i.e. remotely (here we primarily refer to the preventive measures related to: ergonomics of work, lighting of the working space, microclimate in the working space, passability, stress management, maintenance of work space, electrical installations, fire protection, prohibited activities and behavior, and the actions of the employee in case of injury at work),	2021			√
Clear division of rights, obligations and responsibilities between the employer and the employee, in connection with the application of measures for safe work from home or remote work, as well as in case of injury at work or the occurrence of occupational diseases,	2021			√
The procedure for drafting the act on risk assessment for the jobs that are performed from home or remotely. We believe that the kitchen/dining room and bathroom / toilet in the employee's home should be included in the risk assessment, because these are premises that regularly exist in the employer's business premises and that the employee regularly uses them during working hours, hence those premises should also be subject to the risk assessment and measures for prevention/minimization of injuries at work in the circumstances of work from home/remotely.	2021			√
Dual education				
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.	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			√

THE LABOUR LAW 1.00

CURRENT SITUATION

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

In the meantime, in the past six years, practice has shown that the Labour Law does not meet actual needs of employers and employees hence a significant number of provisions of the Labour Law impose burdensome administrative, organizational and financial structures in the employment relationship.

In particular, everyday life in the field of labour relations requires improvements or changes to the Labor Law that would enable:

- application of electronic document and electronic signature, in order to efficiently and flexibly administer documents from the employment relationship;
- flexible working conditions outside the employer's premises, in order to efficiently organize work and optimize labor costs;
- flexible conditions for engaging students in practice, in or-

der to easily and legally secure the engagement of interns;
- more flexible and rational conditions for determining the length of annual leave;
- specifying the provisions governing amendments to the employment contract (annex), in order to ensure legal certainty;
- rational salary structure, in order to simplify the calculation and protect the employer from the high costs that arise when calculating salary compensation;
- more flexible conditions and procedures for dismissal and termination of employment contracts, in order to relieve the employer's administration.

Also, since the adoption of the amendments to the Labour Law from 2014 until today:

- certain provisions of the Labour Law remained inconsistent with EU Directives;
- Employers and employees face numerous problems related to the practical application of the Labour Law and other labour law regulations that are systematically related to the Labour Law. This is a clear indication that it is necessary to amend the provisions of the Labour Law that create doubts regarding their interpretation and application, as well as to amend the provisions whose application requires complicated or lengthy procedures;
- Judicial practice is still inconsistent in terms of application of the provisions of the Labour Law, which is partly a consequence of unclear or vague provisions of the Labour Law;

POSITIVE DEVELOPMENTS

There was no improvement in the previous year, bearing in mind that the Labor Law has not changed and the problems related to the implementation of the Labor Law practically only increase.

Improvements in the field of labor relations require amendments to the Labor Law, and it will also be necessary to reach full harmonization in the application of certain institutes through the views of the court and authentic interpretations.

In order to adopt comprehensive amendments to the Labour Law, it is necessary to take into account not only the requirements for harmonization of the Law in accordance with EU Directives, but also the problems faced by employers in practice in the Republic of Serbia, due to incomplete or unclear provisions of the Labour Law, or due to business requirements that are not yet regulated by the Labor Law.

REMAINING ISSUES

A significant number of provisions in the Labour Law burden the employment relationship in practice in terms of work organization, document administration and labor costs borne by the employer. Also, certain provisions of the Labour Law are open to interpretation and therefore lead to legal uncertainty in practice.

Some of the most significant current problems in the application of the existing provisions of the Labor Law have actually been transferred from previous years, and they are:

1. **Legal uncertainty regarding the impossibility/possibility of using an electronic signature and an electronic document.** The Labour Law does not explicitly prescribe whether an employment contract can be signed with an electronic signature, although such a possibility should exist, given that the electronic signature is regulated by the Law on Electronic Document, Electronic Identification and Trust Services in Electronic Business, even though a big step was made in digitalization public administration and providing electronic services in Serbia. On the other hand, the Labour Law does not prescribe the possibility of adopting general and individual acts in the form of an electronic document (except when it comes to the decision on annual leave), and in that part the Labour Law is inconsistent with the mentioned Law on Electronic Document. Everyday life in the field of labour relations requires the use of an electronic signature and an electronic document, in order to more efficiently administer labour documents, which we elaborate more in detail in point 10 down below. Therefore, it is necessary to amend the Labour Law by introducing an electronic signature and an electronic document as equal in relation to a handwritten signature and a paper document.

2. **Performing work outside the employer's premises.** The existing provisions of the Labor Law need to be amended to allow for flexible contracting of work outside the employer's premises and legal certainty regarding the reimbursement of costs related to work outside the employer's business premises. The provisions of the Labour Law should be amended to enable:

   - Introduction of occasional work outside the employer's premises without the obligation to conclude an

annex to the employment contract and on the basis of the conditions set out in the employer's general acts and through communication between the superior manager and the employee;

- Introduction of general principles for reimbursement of expenses incurred in connection with work outside the employer's premises. Namely, employers have doubts regarding the interpretation of the provision of the Law which prescribes that, in the case of work outside the employer's premises, the employment contract should stipulate the so-called compensation for other labor costs and the manner of their determination. The mentioned provision leaves a room for different interpretations regarding whether the employer is obliged to determine by a general act, i.e. to stipulate these costs by an employment contract, or the employment contract could provide for a free will of the parties to agree whether in a particular case there are any so-called other costs for the employee.

3. **Status of high school students and university students on work practice.** When it comes to engaging persons outside employment for the purpose of professional development, the Labour 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 and rare, especially when it comes to the private sector. In this way, along with the above-mentioned restrictions, work practices or engagement of high school students and university students who want to improve and acquire certain practical knowledge and skills for easier future employment, remain outside the scope of the Labour Law, so employers in practice have difficulties with engaging young people, for their work engagement which should be legally secure, and which would include learning through practice. In the absence of an appropriate form of contract through which high school students and university students would be engaged, in order to implement the work practice of high school students and university students, employers most often use the contract on performing temporary and periodical jobs, since its flexible legal nature in a certain manner allows it, although the intention of the legislator was not to engage high school students and university students strictly through the mentioned form of contract.

4. **Criteria for annual leave.** Mandatory criteria (education, work experience, working conditions and contribution at work) determined by the Law for increasing statutory minimum for annual leave for employers are impractical and administratively burdensome. Instead of the Law determining the criteria for increasing the annual leave in advance, it would be more practical if the Law would leave it to the employer to determine the criteria for increasing the annual leave, whereby the amendments to the Law may stipulate that the employer may determine by a general labour act the criteria for annual leave increase or to simply provide employees more vacation days than the legal minimum, without applying any criteria.

5. **Modification of the agreed working conditions in order to change the elements for determining the base salary.** Employers have difficulties in applying Article 171 Paragraph 1 Item 5) of the Labour Law, which stipulates that the employer may offer the employee amendments to the Employment Contract (Annex) in order to change the elements for determining the base salary. Namely, in order to eliminate ambiguities and for the purpose of legal safety, it would be necessary to adopt amendments to the Law, prescribing the elements for determining the basic salary. Also, Article 107 Paragraph 1 of the Law determines that the base salary is determined on the basis of conditions, determined by the rulebook, that are necessary for work on jobs for which the employee has concluded an employment contract and the time spent at work. Therefore, it is not clear from the Law whether the elements for determining the base salary are the same as the conditions for determining the basic salary, and it is also unclear by which general act it is necessary to determine the conditions or elements for determining the base salary, i.e. whether they are determined by the employment rulebook or by the rulebook on job systematization. The mentioned ambiguities and inconsistencies of legal provisions lead to problems in practice, when employers want to offer employees a change in the amount of base salary, because in the absence of clear legal norms, a large number of employers have not determined or clearly determined the elements or conditions for determining basic salary. Therefore, due to the mentioned vague and inconsistent legal provisions, the employer faces the problem

that there is no formal legal basis to offer the employee a change in the agreed base salary.

6. **Modification of the agreed working conditions for the purpose of transfer to another suitable job.** Article 171 Paragraph 1 Item 1) of the Labour Law prescribes that the employer may offer the employee a change in the agreed working conditions (annex to the contract) in order to transfer the employee to another suitable job, due to the needs of the process and organization of work. The court practice has taken the standing that in the offer for concluding an annex to the employment contract, it is necessary for the employer to explain in detail which specific needs of the process and organization of work led to the need to transfer the employee to another suitable job. Given this position of the court practice, it would be necessary to amend the provisions of Article 171 by: (a) either explicitly prescribing the employer's obligation to explain in detail the needs of the process and organization of work that led to the need to transfer the employee to other suitable job, considering that in the existing terminology prescribed by the Law employers rightly conclude that it is sufficient to prescribe in the offer for concluding an annex to the employment contract that the reason for transfer is "the need for the process and organization of work" given that the Labour Law uses this phrase; (b) or that, having in mind the views of the Supreme Court of Serbia regarding the transfer of an employee to other suitable job, the Law explicitly stipulates that the employer is not obliged to explain in detail in the contract annex the "needs of the process and organization of work" which led to a transfer to other jobs, provided that the needs of the process and organization of work are real (and not fictive), that the jobs are appropriate in terms of the provisions of the Law and that the Employee is trained to work on those jobs.

7. **The structure and calculation of salary and salary compensation for sick leave, national holidays, annual leave, paid leave, etc.** – Salary structure in the Labour Law is regulated so as it consists of salary for the work performed and time spent at work, salary based on employee's contribution to the employer's business success (rewards, bonuses etc.) and other income based on the employment relation, according to the general act and employment contract. Furthermore, salary for the work performed and time spent at work is based on basic salary, work performance and increased salary. All those elements are regulated in more detail by general act and employment contract. The aforementioned structure is quite complicated and 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. That is why it is necessary to simplify the salary structure and its calculation. 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. It is also demotivating that the employee has a higher income during the period of absence than during the period of work.

8. **Flexible work organization** – constantly evolving in practice and taking and increasingly important place in the development of companies and employee relations. However, for the time being the legal solutions do not fully follow this dynamism, so that provisions of the Labor Law regulating work outside Employer's premises are incomplete and have contributed to the creation of challenges the Employers meet in practice, but also to the unnecessary risks-taking by Employers. These risks can be eliminated with more precise definition of the categories of such work – work from home and remote work, by relativizing the notion of the "work place" as obligatory element of the Employment Agreement, as well as by introducing general principles for the compensation of costs for work outside Employers' premises. In order for work organization to be able to follow the need for quick transitions and changing circumstances of the new normality, it is necessary to amend Article 171 of the Labor Law in a way so that it prescribes that: (a) Annex to the Employment Agreement contracts changes in the contracted conditions of work, the subject of which would be transition to work regime outside Employer's premises or vice versa, (b) Annex to the Employment Agreement is not concluded under conditions when the employees only occasionally work outside Employer's premises, in line with Article 50, paragraph 2 of the Labor Law, where in such cases conditions of work outside Employer's premises are determined by the Employer's general enactments and are determined in agreement between line manager and employee. As con-

cerns the work outside Employer's premises, changes are necessary to the Law on Occupational Health and Safety, which would define obligations of not only the Employer, but also employees for such type of work. Furthermore, irrespective of the type of employees' engagement, provisions which regulate overtime are rather restrictive and should be amended in a way so as to enable Employers greater flexibility when deciding on introducing overtime and manner of compensating for overtime (through increased salary or days off). This is particularly important when we speak of employees at managerial positions.

9. **Termination of employment due to technological, economic or organizational changes, subjective and objective statutes of limitations, notice period in case of dismissal by the employee.** Labour Law does not regulate clearly: the procedure of termination of employment due to technological, economic or organizational changes - redundancy. Above all, in cases of termination of employment when due to technological, economic or organizational changes the need to perform a certain job ceases or there is a reduction in the scope of work, the Labour Law did not regulate the procedure for the case of the so-called individual redundancy (situation where there is no statutory requirement for adoption of redundancy program). Also, there are numerous doubts related to the redundancy program itself, and it is unclear whether the employer should first change the rulebook on job systematization or adopt a redundancy program. This issue is particularly highlighted since several judgments of the Supreme Court of Cassation were published during the previous year, which interpret the redundancy procedure and the sequence of the mentioned actions in different ways, precisely due to the aforementioned gaps in the Labour Law, which increases the legal uncertainty in the application of this law. There are also some doubts regarding the application of measures for employment, especially the additional qualification and retraining. Furthermore, subjective and objective statute of limitations for termination of employment contract - six months from the date of learning about the facts / one year from the date of occurrence of the fact, is too short defined, which is especially evident for employers with large numbers of employees, complex structures and processes, mainly regarding the employers who can initiate the procedure for termination of the contract only after the internal controls determine the overall factual situation. For these reasons, in complex cases, legal deadlines are often breached, and the situation is that employees who have grossly violated their work obligations or have not respected work discipline remain employed. In practice, a major problem is the inability to arrange a notice period longer than 30 days in the event of dismissal by an employee. This is especially evident when the employment termination is initiated by the director or another member of the management, because usually it is extremely difficult to find adequate replacement in a short period of time. In addition to the above, it often happens that the employee simply stops coming to work (without first regulating their professional status with the employer), because they started working for another employer, with whom he is registered for insurance. Reality requires the introduction of the possibility that, in the case when an employee establishes an employment relationship with another employer without giving written notice to the employer, it is considered that the employee has canceled the employment contract, and that in those cases the first employer is not obliged to implement the procedure for unilateral cancellation of the contract of work due to violation of work obligations and non-observance of work discipline.

10. **Digitalization in labour regulations** – With a view to efficient and flexible administration of labor-legal documents, it is necessary to explicitly define in the Labor Law the equality of the use of electronic documents and electronic signature. Article 7 of the Law on Electronic Documents, Electronic Identification and Trust Services in Electronic Business, prescribes that electronic form is one of the forms of written format, whereby the electronic form is fully equalized with traditional written form, which implies paper shape. On the other hand, the Labor Law did not explicitly envisage the electronic form of documents and electronic signature and in the practice so far, the Labor Law was applied in such a way that the Employment Agreement is concluded in written form, with personal signature of the authorized person of the Employer and the employee. Identical is the situation with general labor-legal documents and general solutions, which determine employees' rights and obligations. The present Labor Law, in its Article 75, paragraph 6, prescribes that decisions on the use of annual vacations, can be sent to the employee in electronic form, but that, at the employee's request, the decision must be also supplied in written form. Also, the problem is rigid attitude of the Labor Inspectorate on this question – Employment Agreements, decisions on employees' rights and obligations, notice of dismissal by the employee, have to be in paper form, personally signed, while the Employers are still required to

provide a stamp, although under the Company Law, the stamp is no longer obligatory. Therefore, digitalization in business operations has to be recognized through modernization of the Labor Law provisions which will equitably make it possible:

- to adopt all labor-legal documents (Employment Agreements, Rules of Procedure and other general enactments, individual decisions on the use of annual vacation, leaves, dismissal from work, pay slips and other documents) in a form of electronic document, with a possibility of using electronic signature, in accordance with the Law on Electronic Documents, Electronic Identification and Trust Services in Electronic Business.

- Electronic communication between the Employer and employees (posting general and individual labor-legal documents on internal Employer's online platforms and/or by e-mail correspondence, sending information and documents in electronic way);

- Administration of annual vacations through the electronic system of annual vacation recording, on online platforms and abandoning administratively burdening system of issuing annual vacation decisions.

With the change of relevant provisions of the Labor Law, we consider it necessary to also change the Law on Records in the Labor Field and carry out adjustment of the obsolete regulation with modern digitalization processes, by introducing an explicit possibility for safekeeping documents in electronic form, while also adjusting deadlines for documents safekeeping. If more work would be done on digitalization, the positive effect on business would be manifold, primarily through the promotion of efficiency of business operations, costs savings, but also important ecological effects (minimum use of paper).

FIC RECOMMENDATIONS

- **Digitization of labor law documents.** In order to harmonize with the trends, solutions and possibilities brought by the digitalization process, it is necessary to amend the Labour Law in order to define an alternative way of administering employment rights and obligations by using electronic documents and electronic signature (adoption of acts and concluding contracts), alternative formal communication on the relation employer - employee electronically, primarily via e-mail or other similar channels of electronic communication and with the use of electronic bulletin board, electronic records as well as submission of documentation electronically, etc., as ways and forms that would be completely equal to the currently valid forms. Also, we believe that it is necessary to amend the Law on Labour Records in relation to 3 key items: determining the maximum retention period up to 5 years after termination of employment, explicitly enabling electronic records and using various IT tools for this purpose, and prescribing the correct way disposal of employee files made in paper form.

- **Flexible conditions of work outside Employer's premises.** Introduction of a possibility of regulating employment when establishing it or in its course so that the employee would work one part of his working time outside the Employer's premises (not only from home), as well as a possibility of changing the work regime and concluding and Annex to the Employment Agreement during employment, i.e. without the obligation to conclude the Annex (in case when the transition to work regime outside Employer's premises is occasional or short-term, in which case Employer's provisions of general enactments would directly apply to conditions of work from home). It is necessary to precisely establish the difference between the work from home and remote work (by the place of work or means of work), and relativize the need to define "Place of work" as obligatory element of Employment Agreement by introducing, for example, "primary place of work" in case of remote work, as well as introduce general principles for the compensation of costs for work outside Employer's premises, since legal certainty and security are required. Within the flexible organization of work, possibility of introducing overtime should be expanded so that it is not linked only to extraordinary and unexpected circumstances. The Employer and employee should have the freedom to agree on the reason for and purpose of overtime, and the Employers should be entitled to contract a manager's fee that would also cover overtime fee for the overtime work of company managers.

- **Rational salary structure and salary compensation.** We suggest that work performance be envisaged only as an option, and not as a mandatory part of earnings. Also, the proposal is that the basis for calculating the salary compensation during the absence from work be equal to the basic salary increased by the seniority pay. This would make it much easier for all employers to manage salaries and have more flexibility in both the salary contracting and the budget planning, and the salary structure itself would be more understandable. Also, we propose that the amendments to the Labour Law clearly define what the elements or conditions for determining the basic salary are and which general act of the employer determines those elements, as well as to determine the conditions for offering an annex which stipulates a change the basic agreed salary.

- **Flexible engagement of students in practice.** We propose amendments to the Labour Law in the part that regulates professional training and development. These amendments should provide for appropriate flexible modalities of engaging high school students, students and other persons outside employment (both in the field of education and outside the field of education) in order to gain practical knowledge and experience in a real work environment, career advancement and easier future employment. Additional conditions limiting the possibility of such engagement should be removed from the existing provisions on vocational training and development, and the same should be provided regardless of the employer's activity and whether it is the public or private sector. The competent ministry may establish all necessary mechanisms to prevent abuse of this institute, if this was the reason for the introduction of restrictions by Article 201. In this regard, in order to develop good and safe practice, it is necessary to harmonize the provisions of the Labour Law so that they form a consistent labour law regulation with the provisions of the Law on Dual Education and the Law on the Dual Model of Studies in Higher Education, which regulate the conditions of work practice of high school students and university students.

  Alternatively, a good way to regulate the employment of students could be the Work Practice Law. However, the draft of this law that was on public discussion had flawed solutions based on which practitioners can perform work practice for a certain period after schooling, for work in a profession within the acquired level of qualifications, which leaves room for the interpretation that work practice within of the aforementioned law, students cannot work for the occupation for which higher education is provided (since at that moment they have acquired secondary education). It remains to be seen what the final solution of the future law will be and whether it will represent an adequate basis for the employment of students.

- **More flexible conditions and procedures for employment termination.** It is necessary to: (a) 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), (b) in the event of the employment contract termination, extend the maximum duration of the notice period from 30 to 60 days (c) enable employers to issue decisions in the form of an electronic document determining measures (dismissal or milder measure) or releasing employees from liability, as well as delivery these decisions are executed electronically, (d) the employee's refusal to receive the decision served on the employer's premises consider as if the act had been delivered, (e) enable the employer to unilaterally release the employee from work during the notice period (when the notice period is prescribed/contracted) with the salary compensation payment in the amount of the employee's basic salary, (f) regulate the procedure of termination of employment due to technological, economic or organizational changes – redundancy in cases when program is not mandatory, clearly stating the obligations of the employer or whether the employer is obliged to address a representative union within the company and the republic organization responsible for employment, whether he is obliged to apply measures for new employment and how they are being applied, especially additional qualification and retraining, etc. (g) the Labor Law to define that the establishment of an employment relationship with another employer who submitted the employee's application for insurance, without prior written notice to the original employer, is considered a termination of the employment contract by the employee, and that with the first day when he did not show up for work at the employer .

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. Having in mind the COVID 19 pandemic, companies may find themselves in an extremely difficult situation to meet all necessary measures for employment of persons with disabilities.

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]. Since the beginning of the COVID 19 epidemic, this procedure is even slower and more complicated, especially for employees.

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. This procedure for acquiring the status of PwD is the biggest challenge in this area.
- 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 1.00

CURRENT SITUATION

Employment of foreigners is regulated by the Employment of Foreigners Act from 2014 and the Foreigners Act from 2018. Last amendments of both entered into force in May 2019.

The employment (based on an employment or another type of agreement for work outside employment relationship) and self-employment of foreigners in Serbia is subject to obtaining a work permit, except in cases specifically listed in the Employment of Foreigners Act.

The Employment of Foreigners Act envisages two types of permits to work: (i) personal work permit, enabling foreigners who have a permanent residence permit, as well as refugees and other special categories of foreigners, to work, be self-employed, and exercise unemployment rights in Serbia; and (ii) work permit which can be: for employment, for self-employment, and for special cases of employment (seconded staff, movement within the company, independent professionals, and vocational training and development). A personal work permit is issued at the foreigner's request, while a work permit (except for self-employment) is granted at the employer's request. Necessary documentation and conditions for issuance depend on the type of work permit. Work permit is issued by the National Employment Service ("NES").

A foreign national who seeks employment in Serbia may be granted only one type of work permit at a time, and s/he may only perform the jobs for which s/he was given the permit. A requirement for obtaining a work permit is a temporary residence permit, or visa for longer stay issued on the ground of employment ("Visa D"). A work permit is issued for the period of validity of the temporary residence permit/Visa D. The work permit based on Visa D is issued for 180 days at most, and for its extension, the foreigner must first obtain temporary residence permit. The Serbian employer may submit the application for work permit for the foreigner, while the procedure for issuance of Visa D is still ongoing, which enables the foreigner to commence with work in Serbia immediately after entering the country. It is also possible to personally submit a single application for issuance/extension of temporary residence permit and work permit ("Joint Application"), as well as to submit an application for temporary residence permit electronically, using the e-government portal. Visa D is issued by the Serbian diplomatic-consular authority in the country of the foreigner's residence or another foreign country that has a Serbian diplomatic - consular mission whereas temporary residence permit is issued by the Foreigners' Office within the Ministry of Interior.

POSITIVE DEVELOPMENTS

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

REMAINING ISSUES

- According to the provisions of the Employment of Foreigners Act, a work permit for employment will only be issued if the employer had not dismissed employees as

redundant within the period of three months prior to the filing the application for work permit for employment. This is confirmed by a certificate issued by the Central Registry of Mandatory Social Security Insurance. However, in practice, the Central Registry of Mandatory Social Security Insurance does not monitor redundancies as per the specific work post but can only issue a certificate if no redundancies occurred in the company within the relevant period, irrespective of the specific work post. For that reason, the employer must submit, along with such certificate, a statement that no employee has been declared and dismissed as redundant from the specific work post for which a work permit is requested;
- A labour market test is still required for every work permit for employment, including when senior management is employed, which is impractical, in particular when it comes to hiring senior management;
- The one-year maximum period of validity of residence and work permits is too short, especially taking into account that according to the Employment of Foreigners Act, a work permit may be issued on the basis of an approved temporary residence, which obliges the foreigner to start the complicated and lengthy procedure for extension of residence permit much before its expiration. Also, although Article 41a of the Foreigners Act stipulates that Joint Application may be submitted electronically or in person, in practice, it is still not possible to submit this application electronically.
- The Ministry of Interior approves the temporary residence retroactively, with the validity from the date of submission of the request. This affects the duration of work permit and employment agreement.

FIC RECOMMENDATIONS

- The Central Registry of Mandatory Social Insurance's certificate on whether an employer, prior to filing an application for a work permit for employment, had dismissed employees as redundant should contain the exact job title of the employee who was declared redundant.
- The labour market test should not be a condition for issuing a work permit in case of hiring senior managers.
- It is necessary to shorten the duration of the procedure for issuance of temporary residence permit, allow a longer validity of temporary residence permit and work permit, and reduce the number of the required documents. Also, it is necessary to provide the possibility to submit the Joint Application electronically in accordance with Article 41a of the Foreigners Act.
- Temporary residence permit, once granted, should be valid from the date of granting and not from the date of submission of the request, given that the applicant does not control the length of the approval process and is, if at all, in Serbia pending the approval on another legal basis and not on the basis of requested temporary residence permit.

SECONDMENT OF EMPLOYEES ABROAD 1.00

CURRENT SITUATION

The Act on Conditions for Secondment of Employees to Temporary Work Abroad and their Protection ("Secondment Act") has been in effect since 13 January 2016, regulating secondment of employees abroad by a Serbian employer for the purpose of temporary work or vocational training and development abroad. The Secondment Act defines the following types of secondment: (i) performance of investment and other works and provision of services, pursuant to a business cooperation agreement or another adequate basis; (ii) work or professional training and development at the employer's business units established

abroad, pursuant to a secondment enactment or another appropriate basis; and (iii) work or professional training and development in the context of intra-company movement pursuant to an invitation letter, intra-company movement policy or another appropriate basis (which includes secondment to a foreign employer that has a significant equity 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 the control of a third foreign company).

The Secondment Act does not apply to business trips abroad which last for up to 30 days continuously or up to 90 days with interruptions within a calendar year. In 2016, the Ministry of Labour issued an opinion which states that the employer can refer its employees to business trips abroad irrespective of the said limitations, if such business trips do not fall under one of the cases (i) – (iii) from the previous paragraph (e.g. business trip abroad for the purpose of negotiations with a potential business partner and concluding a business cooperation agreement).

An employer can second abroad only its employees, and not persons engaged outside employment. The employer and the employee must conclude the amendments to employment agreement regulating the terms of secondment abroad (the mandatory elements are prescribed by the Secondment Act). The employee must be employed at the employer which is seconding the employee for at least three months prior to secondment (except in case secondment assumes work which falls within the employer's core 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, the exception also applies 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 abroad for justified reasons prescribed by the Secondment Act (e.g. during pregnancy). The initial duration of secondment is limited to 12 months, with the possibility of extension. In case of secondment of fixed-term employees, the duration of secondment may not exceed the term of their employment, and the time spent on secondment does not count toward the maximum statutory duration of fixed-term employment.

The employer must register the change of the seconded employee's social security insurance ground in the Central Registry of Mandatory Social Security Insurance, and state the host country, as well as any subsequent change of the host country.

POSITIVE DEVELOPMENTS

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

REMAINING ISSUES

Although the Secondment Act provisions do not apply to business trips abroad the duration of which does not exceed 30 days continuously or 90 days in total within a calendar year, in practice of a large number of employers, this limitation is inadequate when it comes to managerial positions which require frequent business trips for the purpose of performing work for the employer abroad, since the employees who work at managerial positions are often required to be on business trip abroad for more than 90 days in total within a calendar year.

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

The Secondment Act prohibits secondment abroad of employees under the age of 18 (unless another statute regulates otherwise). This limitation is unnecessary, having in mind that secondment for the purpose of vocational training and development can be useful for employees between the age of 15 (the statutory condition for establishing employment) and 18.

FIC RECOMMENDATIONS

- We recommend extension of the maximum period employees at managerial positions are allowed to stay abroad on the basis of referral to business trip, without application of the Secondment Act to up to 180 days in total within a calendar year, instead of the currently applicable 90 days.
- We recommend allowing secondment abroad for the purpose of vocational training and development also to the entities which are not necessarily related to the employer by equity or control.
- We recommend allowing secondment abroad of employees under the age of 18.

STAFF LEASING 1.00

CURRENT SITUATION

The Staff Leasing Act ("Official Gazette of the Republic of Serbia", no. 86/2019) ("Staff Leasing Act") entered into force on 1 January 2020, and became applicable on 1 March 2020. This is the first time that staff leasing and staff leasing agencies' work are regulated in Serbia. The Staff Leasing Act regulates the rights and obligations of leased employees employed at a staff leasing agency, equal treatment of leased employees regarding certain employment rights and rights arising from work, the conditions for temporary employment, the operation of the agencies, the conditions for staff leasing, the relationship between an agency and a beneficiary and the obligations of an agency and a beneficiary towards leased employees. However, the Staff Leasing Act created certain problems, such as those connected with the notion of comparative employee, the limitation of the number of leased employees who are employed for a fixed-term with an agency that a beneficiary can lease, and the presumption of staff leasing.

POSITIVE DEVELOPMENTS

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

REMAINING ISSUES

The Staff Leasing Act prescribes that a beneficiary can engage leased employees who are on a fixed-term employment contact with the staff leasing agency only if the number of such leased employees does not exceed 10% of the beneficiary's total workforce. This provision has many negative effects. Prior to the adoption of the Staff Leasing Act, one of the reasons for staff leasing was that there are industries in which the volume of workload is uncertain, i.e. there are sudden decreases and sudden increases of workload. In such industries, the beneficiary needs to engage leased employees for a fixed-term, during the increase of the workload, and during such times the number of the leased employees the beneficiary needs can easily exceed 10% of the beneficiary's total workforce. With the adoption of the Staff Leasing Act, this can no longer be done because it is not realistic that staff leasing agencies will employ people for indefinite-term in order to lease them to the beneficiaries for a fixed-term. This leads to an increase in the number of persons engaged on the basis of the agreement on temporary and periodical work (directly or through a youth cooperative). Workers engaged on this basis are less protected than leased employees under the Staff Leasing Act (persons engaged based on the agreement on temporary and periodical work are not guaranteed the same work conditions as comparative employees at the beneficiary). Reduced flexibility in engaging staff in Serbia certainly discourages potential and existing investors. Limiting the number of fixed-term employees that a beneficiary can lease from a staff leasing agency practically obviates the need for staff leasing agencies on the Serbian labor market.

The concept of a comparative employee from the Staff Leasing Act introduces legal uncertainty and potentially leads to the violation of the basic principles of the labor legislation. Namely, the Staff Leasing Act defines a compara-

tive employee by developing the basic idea of the Directive 2008/104/EC (harmonization with the Directive 2008/104/EC was one of the goals when adopting the Staff Leasing Act). However, the Staff Leasing Act prescribes that, when there is no comparative employee at the beneficiary, the leased employee's basic salary cannot be less than the basic salary of the beneficiary's employees who have the same degree of professional qualification or same qualification level as the leased employee. This solution is not in the spirit of the Directive 2008/104/EC. In addition, a potential consequence of this solution is that leased employees and the beneficiary's employees, who have the same degree of professional qualification, would be entitled to the same basic salary even if their jobs are different (the complexity of the job, and responsibility are not taken into account). This is contrary to the equal pay for equal work principle.

The Staff Leasing Act introduces the presumption of staff leasing, according to which a person who does the work for the beneficiary or at the beneficiary's premises, but has an employment agreement or other engagement agreement with another employer, is considered a leased employee unless proven otherwise. The Staff Leasing Act, therefore, does not recognize situations in which a beneficiary and another employer have a business cooperation agreement, service agreement, construction agreement etc., on the basis of which the employees of another employer work for the beneficiary or at the beneficiary's premises. The possibility to rebut the presumption ("unless proven otherwise") does not offer sufficient legal certainty, i.e. it unnecessarily shifts the burden of proof to the beneficiary. Having in mind that the Staff Leasing Act defines staff leasing in detail, and determines who can be considered a leased employee, the staff leasing presumption is unnecessary, and can result in practice in unwarranted misdemeanor proceedings and expose the beneficiaries to unnecessary costs of overturning the statutory presumption.

FIC RECOMMENDATIONS

- We recommend deletion of Article 14 of the Staff Leasing Act, which limits the number of employees employed at the staff leasing agency on a fixed-term basis that a beneficiary can lease.
- We recommend deletion of Article 2 paragraph 5 of the Staff Leasing Act, which regulates situations in which there is no comparative employee at the beneficiary.
- We recommend deletion of Article 17 of the Staff Leasing Act, which prescribes the staff leasing presumption.

HUMAN CAPITAL 1.17

CURRENT SITUATION

The state of the labour market is becoming more and more challenging as several factors such as the Covid epidemic and the latest developments in the world have made the already existing challenges even more apostrophized. 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 again registered in Vojvodina, which poses a great challenge to employers in terms of recruiting and selecting adequate staff. The unemployment rate in the entire country in the first quarter of 2022 is around 10.6%, while employers have increasing challenges to find, attract and retain the workforce, especially quality candidates.

The consequences of the pandemic are still present, and changed the standpoint of both Employers and candidates and established new trends and new challenges with remote working, the outflow of personnel and the partial and short-term return of people to the country without the intention of permanent or longer stay in the country.

The educational structure and the labour market indicate that finding candidates who meet the requirements of high-level, expert and strategic positions is still challenging. Also, finding candidates for lower positions is becoming more difficult due to various restrictions. The retention of high-skilled work-

ers and development of own resources are still very popular trends, having in mind market conditions. Highly qualified people as well as people with lower education for basic positions are very difficult to recruit and retain since they are leaving the country trying to find better paid jobs abroad.

The epidemiological situation has caused changes in the organization of work and caused the aspirations of employees and employers to maintain efficiency in a challenging environment through the adjustment of work processes, in such a way that the organization of work from home is one of the most interesting topics in companies.

Finally, despite the economic crisis that has hit the whole world, the minimum price of labor will be increased this year as well as the previous ones.

POSITIVE DEVELOPMENTS

Unemployment rate was constantly dropping before COVID-19 situation and emerging political crises so it seems that government was trying to support employment in all industries.

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.

With the current situation and the agreed and planned changes of Labour Law, there is great need of amendments to be done in various areas.

FIC RECOMMENDATIONS

- Improvements of the educational system should be continued. To this end, regular contact between the FIC and the Government, the ministries 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.
- Consider to support employment through reducing employment costs regarding taxes and contributions and thoroughly regulate legislation that's considerers work from home.

SAFETY AND HEALTH AT WORK 1.00

CURRENT SITUATION

The outbreak of the infectious disease COVID-19 in March 2020 is the reason for opening certain topics on which the Council of Foreign Investors in previous years pointed to the Ministry of Labour, Employment, Veterans and Social Affairs and the Directorate for Safety and Health at Work, and certainly one of those would be work from home and the need to regulate work from home through relevant laws. One of the main reasons why work from home became so relevant at the time of the outbreak of the infectious disease COVID-19 is the extent to which it was used, having in mind that was perceived as practically the most effective measure to prevent the spread of this infectious disease on workplace. The IT industry should be highlighted, in which the practice of working from home has gained momentum, since the basic conditions for work are met by providing the employee with a computer and other relevant equipment.

The current Law on Safety and Health at Work ("Official Gazette of the RS", No. 101/2005, 91/2015 and 113/2017 - other law), does not contain provisions that specifically regulate issues related to safety and health at work of employees when working from home, nor working remotely, although in professional circles, this topic is emerging as a significant part of the future draft of the Law. According to the above, the conspicuous legal gap and the risks that employers need to take in order to enable work from home for their employees, with the epidemic of the infectious disease COVID-19, have become even more noticeable.

The rights, obligations and responsibilities of employees and employers, when working from home and all actions related to it, are all issues that should be regulated by the law on safety and health at work because we believe that it is not entirely possible to apply general principles and provisions on different models of work engagement. Finally, regulating this topic by law would lead to the exclusion or at least reduction of the risks that employers take in order to protect employees and business in general, which begun with Draft Law on Safety and Health at Work.

IMPROVEMENTS

During January 2021, the Directorate for Safety and Health at Work developed and published a Guide to Safe and Healthy Work from Home, with the aim of making it easier for employers and employees to work in a situation caused by the COVID-19 epidemic. Clearly, the great effort that has been made to address this extremely complex topic (from the point of view of labor relations, safety and health at work, psychological and sociological aspect, perspectives of corporate governance, etc.) to a certain extent.

The Guide for Safe and Healthy Work from Home identified the obligations of employers on the topic of safety and health at work which represent the duty of the employer, and also identified guidelines, recommendations and other suggestions for employers. In relation to the employee-employer relationship, we consider the adopted practice (checklist, self-assessment, etc.) and the proclaimed principle of "cooperation" between employees and the employer to be a positive development. The Foreign Investors Council believes that the views of labour inspectors are in line with the views set out in the Guide for Safe and Healthy Work from Home, as well as that legal security and certainty, at least in that part, would not be lacking.

However, the Guide for Safe and Healthy Work from Home, unfortunately, cannot fill the legal gap that exists in relation to work from home in the current regulations of the Republic of Serbia, and for that reason we believe that regulating this topic through law has no alternative.

Finally, it is significant that the current version of the Draft Law on Safety and Health at Work still recognizes work from home and remote work, but we believe that there is still room for improvement.

REMAINING ISSUES

Legal underregulating. At the moment, working conditions from home or remotely are not regulated sufficiently by law and bylaws. On the other hand, it is uncertain whether and in which way the current draft amendments to the Law on Safety and Health at Work would include defining the workplace and working environment for work at home or remotely, defining an injury at work while working from home or remotely, mutual rights and obligations of the employer and employees, conditions for safe and healthy work from home / remote work, as well as way of regulating work from home on the employer-employee relation. In the absence of legal norms, there are no bylaws that would be necessary to regulate more in detail commitments of the as well as the precise duties and responsibilities of the Occupational Safety and Health Officer: procedures related to the implementation of preventive measures for safe work from home / remote work; minimum conditions for ergonomic work from home; trainings of employees for safe work from home / remotely; rules of communication between employees and their managers in working conditions outside the employer's premises; procedure related to injury at work and filling in the injury check-list, in case of injury while working at home or at another location; the procedure for drafting an act on risk assessment for work performed from home or remotely.

Legal uncertainty. The absence of laws and bylaws further leads to legal uncertainty, because employers, even with the professional support of licensed companies for safety and health at work, do not have enough professional knowledge and previous practice to regulate all the above issues by general acts. Even if employers would have professional knowledge and experience in practice, regulating these issues by a general act of the employer would lead to diversity and inconsistency in terms of definitions and in terms of mutual rights and obligations of employer and employees, as well as in terms of the procedures.

Risks related to the control of safe work from home or remote work. In the absence of laws and regulations, the question is raised as to how employers could ensure safety and health at work in the premises where the employee resides and works, since that would be a place of work that is not under the direct control of the employer. Risks of legal uncertainty are especially open in cases when employees would perform jobs outside the territory of Serbia.

Risks related to injuries at work when working from home or at a distance. The Rulebook on the content and manner of issuing the form of the report on injuries at work and occupational diseases ("Official Gazette of RS", No. 72/06, 84/06 - correction, 4/16, 106/18 and 14/19) does not prescribe a code for work from home, and also the existing form of the report on injury at work cannot be applied in the conditions of injury during the work at home i.e. remotely. Also, there is a risk related to the correct determination of the causes and manner of injuring at work when working from home i.e. remotely, given that in that case it would be necessary to provide for the constitutional right to inviolability of the apartment. On the other hand, in regular circumstances when the employee works in the business premises, the employer performs a physical inspection at the location where the injury occurred. That is why this issue opens a challenge for the legislator in relation to finding possible solutions in case of injuries during working from home or remotely. Also, we believe that it is necessary to make clear statement if the "workplace" in working conditions at home does include only the work space in the employee's home where the employee performs the contracted work, but also includes the kitchen, dining room and bathroom / toilet.

FIC RECOMMENDATIONS

Adoption of laws and bylaws. In the absence of legal norms, there are no bylaws that would be necessary to regulate in more detail:

- procedures related to the implementation of preventive measures for safe work from home / remote work, control mechanisms for the application of measures for safe and healthy work and mechanisms for determining the causes and manner of injuring when working from home, i.e. remotely (here we primarily refer to the preventive measures related to: ergonomics of work, lighting of the working space, microclimate in the working space, adequate equipment, passability, stress management, maintenance of work space, electrical installations, fire protection, prohibited activities and behavior, and the actions of the employee in case of injury at work),
- training of employees for safe work from home / remotely, and digitalization of complete working process of trainings and administration regarding work from home
- procedure related to injury at work while working at home /remotely and filling in the injury list in case of injury while working at home or at another location,
- clear division of rights, obligations and responsibilities between the employer and the employee, in connection with the application of measures for safe work from home or remote work, as well as in case of injury at work or the occurrence of occupational diseases, as well as as well as the precise duties and responsibilities of the Occupational Safety and Health Officer with a special focus on communication, keeping documentation and controlling the application of measures for safe and healthy work,
- the procedure for drafting the act on risk assessment for the jobs that are performed from home or remotely and clear specification if the kitchen / dining room and bathroom / toilet in the employee's home should be included in the risk assessment, because these are premises that regularly exist in the employer's business premises and that the employee regularly uses them during working hours, hence those premises should also be subject to the risk assessment and measures for prevention / minimization of injuries at work in the circumstances of work from home / remotely.

DUAL EDUCATION 1.33

CURRENT SITUATION

As of the 2019/2020 school year, the Law on Dual Education and the Law on Dual Model of Studies in Higher Education have been applied in Serbia, regulating the content and implementation of dual vocational education and dual higher education and mutual rights and obligations of all participants.

Pursuant to the Law on Dual Education:

- Mutual rights and obligations of employers and schools will be regulated by an agreement on dual education, to be concluded for a minimum period of three or four years.
- Mutual rights and obligations of employers and students will be regulated by an 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 side.

- For 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
- 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.
- On-the-job training at a company can be performed throughout the entire school year, up to six hours per day, i.e., up to 30 hours per week, but not in a period from 10 p.m. to 6 a.m. the next day
- 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.

Pursuant to the Law on Dual Model of Studies in Higher Education:

- A higher education institution which wants to implement dual study programs shall form a network of employers who need to employ persons with appropriate qualifications, and the dual model of studies shall be implemented based on an accredited study program in accordance with the law on higher education.
- Mutual rights and obligations of employer and higher education institution will be regulated by a dual model agreement, to be concluded for a period which cannot be shorter than the number of years of the study program.
- Mutual rights and obligations of employer and student will be regulated by an on-the-job training agreement to be concluded by the employer and the student.
- The employer shall provide an adequate number of mentors who have at least the type and level of higher education corresponding to the education that the student shall acquire according to the study program and three years of professional work experience.
- The employer will pay the student a monthly compensation for each hour of on-the-job training in the net amount of at least 50% of the basic salary of an employee working on the same or similar jobs (where such compensation can be paid in different amounts per years of study, in range from 30-70% of the basic salary of an employee working on the same or similar jobs, but the total compensation paid at the level of the study program must be at least 50% of the basic salary of the employee paid for the same period).

IMPROVEMENTS

Compared to the previous situation, there have been no significant improvements in terms of the FIC recommendations.

Certain improvements are reflected in the amendments to the Law on Dual Education, by which certain provisions of the Law have been specified, but to a very limited extent.

The provisions of the Law on Dual Education were also further specified by the adoption of certain by-laws that more closely define only specific segments thereof (establishment and work of the committee for the implementation of dual education, for example), but again in a limited scope.

REMAINING ISSUES

The implementation of the Law on Dual Education and the Law on the Dual Study Model in Higher Education began in the school year of 2019/2020. Considering the period over which the provisions of these Laws have been applicable, their effects are becoming visible, but not yet fully. We can expect the entire prospective clearly displaying effects and potential problems which occur in practice to be available in the upcoming period

In order for dual education to be fully implemented, primarily as an educational element unifying the theory and practice which profiles pupils and students for a more comprehensive inclusion in modern trends, and as such to lead the alignment of the education system with the needs of the labour market, a clear and precise formal legal framework is required which shall determine in more detail the relation of the Law on dual education to the Labour Law, the Law on Occupational Health and Safety, as well as other laws that regulate various aspects of employment.

Furthermore, the issue is raised on defining the aspects of detail implementation of dual education, in reference to certain areas of business or specific industries where dual education is implemented and taking into consideration the particulars of specific industries.

Although, in principle, the relevant authorities expressed their willingness to consider providing subsidies and tax allowances for companies participating in the dual model of education, since the employers have the obligation of constant supervision, the appointment of instructors/men-

tors during the entire period of the process, etc. such incentives have not yet been prescribed.

The Law on Dual Model of Studies in Higher Education stipulates that an obligatory element of the on-the-job training agreement shall be a damage compensation in the event of dismissal by the employer unless the dismissal occurred without the fault of the employer. However, the Law does not specify cases in which it is considered that the dismissal occurred without the fault of the employer, which creates a problem in practical application of the stated provision. Further, the Law does not prescribe conditions under which the employer is obliged to compensate the damage to the student in case of dismissal, nor does it provide for a mutual obligation of student to compensate the damage to the employer, e.g. in case of retaking of the year at the studies or causing damage to the employer, thus, in reference thereto, the only solution is to apply general rules on compensation of damages pursuant to the Law on Contracts and Torts.

Regarding the termination of the contract on dual education, in accordance with the provisions of the Law on Dual Education, particular cases whereby the termination of the contract occurs by force of law, have not been specified, namely: if further operation of school is prohibited or the school has been closed in accordance with the law; if the school ceases to meet the prescribed conditions for the educational profile in which the employer implements on-the-job training; if a decision has been adopted whereby concluding that conditions for performing on-the-job training have not been met; if the student losses his/her status or permanently loses his/her health capacity to perform work required by the profession for which he/she is schooled.

In reference to school's ability to terminate the contract with the employer, the provisions of Article 19 of the Law on Dual Education are not specified in detail. For example, in the event the employer fails to fulfil the obligations stipulated in the contract on dual education, the obligation of the school to notify the employer in writing about specific violations of its obligations stipulated by the Law prior to terminating the contract or consequential obligation to provide the employer with an appropriate deadline for correcting such deficiencies have not been prescribed by the stated law. Further, if the employer violates the prohibition from Article 10 of this Law, it is not stipulated for the violation of the prohibition to be formally ascertained in a specific manner (by a specific decision issued by the inspection body, a court decision, etc.). Similarly, it is not stipulated that the violation of student rights should be formally ascertained in a specific manner, which would establish legal certainty, but would also prevent the school from potentially damaging the employer's reputation by unilaterally terminating the contract.

Another issue emerges here in reference to establishing clear regulations of procedure on employment contract termination, from the standpoint of the employer as well as the position of the school, and in terms of the termination technique itself (sending a written notice) and in respect to the period when the termination occurs (on the day the notice is received or on a certain later date), which should be clarified in order to avoid any interpretations and potential disputes. It is also necessary to further specify the termination procedure in the event the student violates the obligations defined by on-the-job training agreement and the Law, which may imply the obligation of the employer to send a written notice to the school whereby the violation of obligations and/or the law by the student will be specified, following which the employer is granted the right to terminate the agreement with the student upon handing over or sending the written termination of the agreement to the student.

FIC RECOMMENDATIONS

- By-laws should be adopted, or authentic interpretations or opinions should be given which will regulate more closely the relationship between the laws on dual education and the Labour Law and other laws governing different aspects of employment, that is, the Labour Law and the Law on Occupational Health and Safety shall be applied accordingly, unless otherwise defined by laws on dual education.
- By-laws should be adopted, or authentic interpretations or opinions should be given, especially for each scope

of business or industry, in respect to all particulars (from specific formal legal requirements to requirements and specificities in practice), which will regulate more closely all aspects of dual education implementation.

- Incentives in form of subsidies or tax allowances that would attract companies in Serbia to join this system should be provided and accordingly, by-laws that regulate them should be adopted.
- Obligation of a student to compensate the employer in case of retaking of the year or causing damage to the employer should be prescribed, as well as the right of an employer in such cases to terminate the on-the-job training agreement, in addition to the right to damage compensation, without any obligation to compensate the student.
- The provisions of the Law on Dual Education and the Law on Dual Model of Studies in Higher Education shall be amended regarding termination of contracts (between employers and schools/higher education institutions and employers and pupils/students) by force of law, in accordance with the above statements.
- The provisions of both laws shall be amended regarding the ability of the school/higher education institution to terminate the contract with the employer and specify the need for prior formal determination of violations by the employer, before contract termination, in accordance with the above statements.
- Contract termination procedure shall be regulated in both laws in accordance with the above statements.

LEGAL FRAMEWORK

In relation to the areas elaborated in the White Book's part dealing with the legal framework in general, recently, there has been a certain legislative improvement i.e. a couple of new laws have been brought into force, which can be considered as a step forward in the relevant areas (despite the impression that legislative activity has slowed down in the most recent period, having in mind the establishment of the new Government).

Concerning the novelties, the new Consumer Protection Law entered into force, which made a significant progress from the perspective of solving the consumer disputes. With the new legal solutions, a mechanism for the extra-judicial resolution of consumer related disputes was introduced, which works adequately in practice, unlike the previous solution. Also, the new Law on the Protection of Trade Secret represents a notable development – the new Law specifies various matters more precisely, deals more with the trade secret protection from the perspective of intellectual property protection, and represents an even greater alignment with EU regulations. It is worth mentioning that, when it comes to legislative progress in general, important new laws have been adopted in other areas covered by the White Book as well (as the Law on the Use of Renewable Energy Sources and Capital Markets Law).

Notwithstanding the mentioned legislative activity, it is required to adopt new laws in various additional areas, as it is the case with the new Law on Protection of Competition. Of course, in the same manner, it is also necessary to continue improving the existing regulations, such as laws regulating the personal data protection, civil and bankruptcy procedure, foreign exchange, etc. In this regard, it is important to note that, lately, there were certain legislative changes that did not actually contribute to the investors protection and legal certainty - a good example is one of the amendments to the Companies Law (as one of the „main and umbrella" laws), which introduced a controversy with respect to the reliance on the public registry (APR) by investors when acquiring a company, i.e. a share in the company.

Generally, it should be emphasized that laws are constantly passed and changed in Serbia in order to harmonize the domestic regulatory framework with the EU regulatory framework. However, even so, it seems that there is a lot of space for progress and improvement when it comes to the implementation of (new) statutory provisions, which the FIC Legal Committee, together with all its partners, will continue to work on. In this sense, it is necessary to:

- have more unified practice of the Serbian courts, as well as a generally greater efficiency of the judiciary and regulatory authorities. Although certain efforts have been made, the duration of the court proceedings is still one of the biggest problems in terms of creating a more favorable environment for the investors.

- work more on, and to provide additional funds for authorities specialization and creation of adequate mechanisms for the implementation of the laws, taking into account a bigger number of new and specific areas that are important in the business environment (as it is the case with, for example, the competition protection law or IP rights protection).

- make more efforts in public education with respect to the statutory provisions and available options (e.g. consumers and potential whistleblowers);

- provide more practical solutions for the implementation of various laws (as it would be the case with introducing the "foreign" e-signatures, which would significantly facilitate business operations in Serbia).

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LAW ON 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 share capital of a single-member limited liability company, 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, harmonizing provisions within the Law itself.	2013		√	
The increase in the share capital through debt-to-equity swap (conversion) should be clearly regulated.	2016			√

CURRENT SITUATION

The Companies Law ("Official Gazette of the Republic of Serbia", Nos 36/2011, 99/2011, 83/2014, 5/2015, 44/2018, 95/2018, 91/2019 and 109/2021) ("Law") came into force on 4 June 2011 and is applicable as of 1 February 2012.

By signing the Stabilization and Association Agreement with the European Union, the Republic of Serbia undertook the obligation to harmonize its domestic law with the EU acquis. Within the negotiations on the accession of the Republic of Serbia to the EU, Chapter 6 – Law has a special role, which includes issues of establishment and operation of companies in EU member states, in accordance with which the Republic of Serbia would be provided with better business conditions on the EU market, simplified procedures and the possibility of establishing new forms of economic entities. The Law is an indicator of progress in harmonizing the legislation of the Republic of Serbia with the EU acquis, which is important for the process of integration of the Republic of Serbia into the EU.

The main characteristics of the Law 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 regulation have been resolved;
- the distinction between (public) joint-stock companies and other forms of business organization and;
- single-tier and two-tier management systems.

The latest amendments to the Law were in November 2021 which is the seventh time the Law undergoes changes since it was enacted ten years ago. These latest amendments introduced various changes, such as:

- Each company must register for use of e-government services.
- The companies may have only legal entities as directors.
- Provisions on approving the transactions involving personal interests contain more details and duties.
- There are new (confusing) provisions in relation to the (i) agreement between the company and a new shareholder regarding the share transfer, and (ii) nullity of share transfer agreement (as explained below in more detail).
- More information must be registered in relation to the company's seat.
- For all individuals registered in the companies' registry (director, shareholder, member of the supervisory board, etc.) gender is mandatory as registration data.
- Each joint stock company must provide to a shareholder, who initiated litigation procedure against the company based on legal grounds provided by the Law, the information related to the court case (even if in ordinary course of dealings such information would not be available to such shareholder).
- The total remuneration of the director (of a joint stock company) includes salary or other remuneration provided in employment/management agreement and may

include the right to incentives through the allocation of shares of the company or another affiliate of the company. Also, the shareholders holding at least 5% of the share capital are now entitled to access the documents and data on the amount and structure of the total remuneration for each director and member of supervisory board.
- The public joint stock companies are now obliged to prepare the policy which will in detail regulate the fixed and variable parts of compensations to directors and supervisory board members. Such policy is to be adopted by the shareholders meeting, and any payments must be made in accordance with that policy. Additionally, the detailed report on the compensations to directors and supervisory board members must be part of the annual financial statements of the company, is subject to audit and must be publicly available for at least 10 years.

POSITIVE DEVELOPMENTS

There are no improvements in terms of fulfilment of the recommendations published in last year's White Book, but there are some improvements as a result of the latest amendments to the Law. This mainly relates to the following:

- So far, companies were obliged to have at least one natural person performing the function of director. Now, this requirement is no longer applicable, and the companies may have only legal entities as directors.
- If the owner of the premises has not consented to the registration of the registered seat of the company at its premises, the owner is entitled to file a lawsuit requesting deletion of the registered seat address of such company. If the company does not register a new proper address within 30 days following the final court ruling accepting the owner's claim, the companies' registry shall be entitled to initiate a compulsory liquidation procedure over such company. This novelty has obvious aim to address the problems which occurred in practice involving false addresses and addresses at locations without the consent of the owner.
- It is worth mentioning that earlier amendments introduced the:
- institute of reserved own share of an LLC which, in a nutshell, allows companies to give to employees the right to acquire a share in the company. More specifically, the right to acquire share, which is a non-transferable financial instrument, gives the consented holder (does not have to be an employee) the right to acquire a share on a particular day (maturity day) at a certain price, if certain conditions are fulfilled.
- distribution of the profit to the employees.

These institutes provide an opportunity for the LLC to stimulate its employees to perform their jobs in the best way possible in a way not previously envisaged, by giving them the opportunity to become shareholders of that company, following the example of companies and economic systems of the EU and the USA. Until this moment, only limited number of companies used this option – the full effect of this possibility is yet to be achieved in practice.

In relation to the registration aspects, there is an improvement as well - now the shareholder may file for registration of the dismissal of the representative, if there is no already appointed new representative, which was not the case earlier.

Positive progress has also been made through the BRA's cooperation process with the National Bank of Serbia, the Tax Administration, the Anti-Money Laundering Administration and the market inspection in a manner which enables fast and efficient exchange of information on business entities.

Also, with the introduction of the possibility of founding a single-member and multi-member limited liability company electronically the establishment procedure has been significantly simplified.

REMAINING ISSUES

One of the disadvantages of the 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 latest amendments introduced a rather confusing provision requiring that for a third party to become a shareholder in a LLC, an agreement between that party and the company itself must be made (person nominated by the shareholders meeting signs on behalf of the company). It seems that the purpose of this amendment is to provide a legal basis for the existing practice where in case of a share

capital increase by a third party, the Serbian Business Registries Agency ("BRA") required an agreement on accession to be signed between existing and new shareholders. On the other hand, according to the BRA, this provision will apply only in special (in practice very rare) cases where the company's memorandum of association provides that consent of the company itself is required for transfer of the share to a third party. There is a concern that the wording of the provision is such that this provision apparently applies even if a third party becomes a shareholder by acquiring shares from the existing shareholder. Requiring such an agreement does not only seem to lack purpose but is arguably detrimental to the status of minority shareholders in LLC's. It appears that this provision may give the right to majority shareholders to block the minority shareholders to rightfully transfer their shares to third parties (by blocking execution of such an agreement at the level of shareholders' meeting). It seems that this was not the intention of the legislator but is apparently an unfortunate inadvertent effect.

The latest amendments also contain a provision that, if a nullity of a share transfer agreement is established by a court ruling, the parties can request from the BRA to change the registration of the title to the affected share. It is not clear whether this newly introduced article will override the principle of reliance in the registered data, providing that the parties cannot bear negative consequences if they relied on the registered data (which is of paramount importance for the certainty of legal transactions), and whether subsequent acquirers of the share (in case of sale chain) acting in good faith would bear consequences to their title to the share if the title of one of the previous sellers in the sale chain would be declared null. We hope this controversy will be resolved in court practice in favour of the reliance principle, but until then the huge legal uncertainty remains.

On a related note, the Law allows various restrictions (regarding the share transfer) to be prescribed in the company's memorandum of association. However, there is no prescribed consequence if such restrictions are breached, which may limit practical aspects of limitations provided under the memorandum of association.

The latest amendments also enhanced "mechanism" in relation to the approval of transactions involving personal interests. While there is a general comment that these duties may be deemed as too burdensome, in any case it should be: (i) clarified that there is no need for publishing the details about the related party transaction, if there an exception to a duty to approve respective personal interest transaction, (ii) clarified if an exception related to the Republic of Serbia refers to the transactions only involving the Republic of Serbia or transactions with companies where the Republic of Serbia is shareholder (irrespective if Republic of Serbia is a party to the respective transaction); (iii) provided that subsequent approval for these transactions is allowed.

The "standard" comment about e-signing under Serbian legislation should be considered from the perspective of executing the decisions of corporate bodies as well – electronic signatures recognized in other countries should be acceptable in Serbia (and not only qualified electronic certificates in Serbia). This would significantly speed up the business operations.

In relation to the representatives' responsibilities, it is required to (i) harmonize non-compete duty with employment regulation, (ii) reflect provisions regarding director's liability in joint stock companies (Article 415) to the LLCs as well, (iii) clarify if fiduciary duties are applicable to the representatives of the branch and representative offices. Also, the Law should prescribe consequences if decisions of various management boards (e.g. board of directors) are not adopted in line with the law.

The provisions of the Law restricting the powers of representatives to represent the company are inconsistent with the relevant provisions of the Law on Contracts and Torts. It should be clear that the respective provisions of the Law, as lex specialis, have a prevailing effect.

Currently, any dividend paid between the regular shareholders meetings are deemed as interim dividend (which triggers additional duties for the companies). There is no reason that distribution of dividends (representing the profit based on annual financial statements) made after the regular shareholders meeting is considered as an interim dividend i.e. current approach is too formalistic.

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.

Other inconsistencies of the Law include the provision prohibiting a single-member LLC from acquiring own shares,

which is contrary to the Law's provisions on status changes.

One of the insufficiently clear institutes of the 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.

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 Law does not provide a precise explanation in terms of the procedures and conditions of such a swap, and this should certainly be regulated. It is also required to clarify if the evaluation made by external expert is always needed when the share capital is increased by the in-kind contribution.

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.

FIC RECOMMENDATIONS

- Limited liability partnerships (LLPs) should be prescribed by the Law.
- The new confusing provisions in relation to the (i) agreement between the company and a new shareholder regarding the share transfer, and (ii) nullity of share transfer agreement should be amended to avoid legal uncertainty.
- The provisions in the Law on Contracts and Torts that deal with limitations to the authority of a company's representatives should be harmonized with the provisions of the Law.
- Consequences for breaching the share transfer restrictions provided under the Memorandum of Association should be prescribed by the Law.
- Consequences for adopting the decisions by various corporate bodies (such as board of directors) contrary to the law should be prescribed by the Law.
- Common practical issues should be resolved, such as regulating shareholders' additional payments, e-signing, representatives liabilities, share capital increase and approving the transactions involving the personal interest.
- Difference between regular and interim dividend should be prescribed in a less formalistic approach.
- Clearly defining reasons for lifting the corporate veil.
- Corrections of technical flaws in the Law should be made to eliminate inconsistencies and provide clear procedures and competencies, harmonizing provisions within the Law itself.

CAPITAL MARKET TRENDS

1.50

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, including green bonds, should be stimulated, while IPOs and issuance of corporate bonds in the private sector should be encouraged.	2015		√	
The legal framework for performing operations with financial derivatives and more complex financial instruments should be improved, including in relation to establishment of regulatory framework in connection with Employee Share Plans, and crowd financing and its manifestations.	2015		√	
Further stimulation of the possibility of Serbian residents to invest in more complex securities on foreign markets, including structural products, structural deposits, ETFs and investment funds, all in accordance with European standards and ESMA guidelines	2017			√
It is necessary to amend the Law on Financial Collateral in order to make available to commercial entities protection in derivatives transactions in the way that is provided to other entities to which its provisions apply.	2021			√

CURRENT SITUATION

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, and of the additional more material reforms from 2016 and 2018, cannot be duly assessed.

Although noticeable, regulatory reforms alone were not enough to stimulate growth of the capital market. There is a constant downward trend in the number of financial instrument issuers as well as of public joint stock companies where such trend was also continued in the previous year, according to the publicly available information of the Central Securities Depositary and Clearing House.

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 there are still issues associated with quality and liquidity of capital market products.

The COVID - 19 pandemic outbreak also had a negative impact on the Serbian capital market, where the Belgrade Stock Exchange recorded a notable drop in turnover in 2020, according to publicly available data.

POSITIVE DEVELOPMENTS

Last year recommendations in relation to which certain developments were made:

- 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.

Enactment of the Regulation on the Procedure for Issuance of Debt Securities by which procedure for issuing corporate bonds, as an additional financing option, was eased for the limited period of time, although in relation to COVID – 19 pandemic and its effects on the economy, could also generally have positive effects on stimulation of the issue of corporate bonds as way of financing in future.

The indication of potentially positive movements on the corporate bonds market in Serbia in future could be trading with corporate bonds of the state-owned Telekom Srbija, which were offered to local banks and also purchased by the National Bank of Serbia.

We would like to commend most recent amendments to the Law on Capital Markets, also enacted with the aim to simplify the procedure for compiling a prospectus for issuing debt securities, which can result in reliving issuers from

some unnecessary administrative burdens.

Also, in relation to education and support of initial public offerings, we commend activities on the "IPO Go!" programme – a project of the Belgrade Stock Exchange supported by, inter alia, EBRD (through EBRD SSF), which was launched in 2018.

Although this is not new, significant event was the issuing of RSD 2.5 billion worth of dinar bonds by EBRD in December 2016, which boosted investors' confidence in Serbia's capital market.

- The legal framework for performing operations with financial derivatives and more complex financial instruments should be improved, in which regard we believe that the amendments to the Law on Financial Security to also apply it to business subjects, in addition to financial institutions, would represent a major step towards regulating legislation on transactions with financial derivatives.
- Furthermore, improving the legal framework in connection with Employee Share Plans and crowd financing and its manifestations is also necessary.

As the most important novelty and development in this segment, we emphasise enactment of the Regulation on Financial Derivatives Transactions for the Purpose of Managing the Republic of Serbia's Public Debt, which lays down the general conditions for the performance of financial derivatives transactions by the Serbia for the purpose of hedging. Although this Regulation was enacted in 2019 it came into force in the begging of 2020, where implementation practices are already being established to a certain extent. According to the publicly available information published by the Serbian Administration for Public Debt, a couple of financial derivatives transactions were entered into by Serbia in 2020, for certain hedging purposes.

It is important, in parallel with improving the legal framework, to continue jointly with the NBS the education campaign of corporate participants on the benefits of introducing financial derivatives in business and to provide support (accounting, IT, technical etc.) in order to foster demand for these instruments. Special focus should be put on promoting the interest swap (IRS) as financial derivative, which protects legal entities from the now imminent risk of interest rates increase. In that regard, the proposal is to hold a conference intended to companies by the end of this year, with NBS participation, to explain to businesses the possibilities of transactions with financial derivatives.

Additional developments:

We point out to the enactment of the Law on Digital Assets, which for the first time provides legal grounds for, inter alia, issuance of digital assets (including virtual currencies) on the primary market as well as secondary trading therewith. Although the said Law and the relevant bylaws are yet to be tested in practice, we commend regulation of this area and efforts of, inter alia, the Securities Commission in relation thereto.

Moreover, we welcome the announcement of the National Strategy for the Development of the Capital Market, which may have an important impact on growth of the capital market in Serbia.

We note the readiness of competent authorities, especially the Securities Commission and the Central Securities Depository and Clearing House, 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 round table about the development of the capital market in Serbia organised last year.

REMAINING ISSUES

We have to note that identifying all of the remaining legislative issues related to the capital market is difficult as the capital market in Serbia is rather underdeveloped, i.e. shallow and insufficiently liquid.

Although state bonds are being successfully issued in the practice, municipal bonds are still rare, and these bonds were not traded on the secondary market. The same applies for the corporate bonds market, which is still in development. Certain types of bonds are still not present on the market, such as so-called green bonds.

Regulatory should be improved to enable transactions with more complex financial instruments, including the regulatory framework by which more liberal approach and better legal certainty in relation to Employee Share Plans, as well as regulatory framework in relation to securitization.

The Law on Financial Collaterals, which application began in January 2019, was adopted in order to regulate the secu-

rity procedure in transactions with financial derivatives. Although the draft provided that the Law applies to both financial institutions and legal entities, in the process of adoption the relevant provisions relating to commercial entities were excluded, thereby not giving the opportunity for them to be on an equal footing with other participants in the subject transactions; to utilize the benefits and perform netting of claims in accordance with the provisions of this Law; to use the protection provided by the financial collateral agreement, as well as the protection in case of bankruptcy proceedings of the other party. Therefore, we believe that it is necessary to amend this Law in order to provide legal entities with the stated level of protection.

We note that it is necessary to establish a straightforward regulatory regime so to support more complex investment methods through crowd funding, as potential way of financing of small and micro enterprises.

FIC RECOMMENDATIONS

- The issuance of state and municipal bonds for the financing of infrastructural and other large communal projects, including green bonds, should be stimulated, while IPOs and issuance of corporate bonds in the private sector should be encouraged.
- The legal framework for performing operations with financial derivatives and more complex financial instruments should be improved, including in relation to establishment of regulatory framework in connection with Employee Share Plans, and crowd financing and its manifestations.
- It is necessary to amend the Law on Financial Collateral in order to make available to commercial entities protection in derivatives transactions in the way that is provided to other entities to which its provisions apply.
- Further stimulation of the possibility of Serbian residents to invest in more complex securities on foreign markets, including structural products, structural deposits, ETFs and investment funds, all in accordance with European standards and ESMA guidelines.

JUDICIAL PROCEEDINGS 1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Additional education and specialization of judges and the introduction of better mechanisms for the liability of judges in wrongful decisions.	2012			√
Improve and justify the even allocation of cases among courts and judges.	2011			√
Enactment of new amendments to the Law on Civil Procedure to assure flexibility of the timeframe and deadlines for certain actions.	2011			√
Concepts that allow for delay of procedure, such as postponement and restitutio 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 2021 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 latest amendments to the Law on Civil Procedure, from 2020, only concerned inclusion of para. 3 to Article 355 of the Law on Civil Procedure (the article that regulates verdict's obligatory elements), 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, 113/2017 – authentic interpretation and 54/2019) was not significantly changed.

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, 44 misdemeanour, 25 high, 16 commercial 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, given that courts are still overburdened with cases (which is already a chronic problem of justice), especially in civil litigation, which often leads to adjudication deadlines breaches.

In February 2021, the Unified Program for solving old cases in the Republic of Serbia for the period 2021-2025 was adopted (measures, recommendations, implementation and monitoring) (RS Official Gazette No. 101/2020), which aims to reduce the total number of pending cases in front of the courts of the Republic of Serbia of 1,510,472 (which is about 570 pending cases per judge) that remained at the end of 2020, to 1,000,000, which is about 330 cases per judge. This would reduce the share of old cases in the total number of pending cases to 2,61%.

The Working Group for Amendments to the Law on Civil Procedure presented a draft of a new Law in May 2021. Although the draft made a positive step forward in certain areas (relief of courts in mass proceedings, electronic submission of submissions etc.), criticism of a certain part of the general and professional public regarding certain proposed legal solutions, led to the draft being returned for revision by the Working Group whose work is still in progress (this primarily refers to the provisions on payment of court fees prescribing that all submissions for which fees are not duly paid are considered withdrawn and the provision stipulating that the law will be applied retroactively and that it will be applied to all ongoing proceedings).

At the beginning of 2022, a referendum was held on changing the Constitution of the Republic of Serbia in the area of judiciary, which led to the adoption of the proposed amendments and, among other things, the adoption of a change in the method of electing judges who are now to be elected by the High Court Council in order to further strengthen the independence of the judiciary and judges.

Dispute Resolution

Some Law on Civil Procedure provisions, such as simplified rules on the service of court documents, shortening of the evidence-producing procedure, equal treatment of the parties (i.e. setting the same deadline for the submission of and response to the legal remedy), expansion of the parties' representatives circle in proceedings, and 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. Some of the solutions envisaged by this law were not applied in practice even after several years of 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 ones of two or more years.

In accordance with the Legal Practitioners Law, the Bar Academy was introduced as a special body established by the Bar Association of Serbia, responsible for the professional education and specialization of attorneys and graduate lawyers, but its work so far has not been noteworthy. Since its establishment the Bar Academy 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 established online databases with status of ongoing cases, facilitating access to this information. The databases are regularly updated, so in most situations it is possible to obtain this information promptly. 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/business names of parties is no longer possible, and there are no signs that it will be introduced again.

Compliance of the number of judges with the scope and structure of their workload

The Government of the Republic of Serbia adopted the Strategy of Human Resources in the Judiciary for the period 2022-2026 ("RS Official Gazette" No. 133/2022), whose implementation should result in an unbiased and transparent procedure for managing human resources in the judiciary of the Republic of Serbia in order to strengthen the rule of law and legal certainty.

Some problems that this strategy seeks to solve are the unnecessarily long duration of court proceedings due to a lack of staff and the establishment of a judge evaluation system that, at the moment, does not recognize the connection between the uniform workload of judges in relation to the complexity of the case, the actual time spent on solving the cases depending on their complexity, and additional professional development and training.

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 revision request 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 lawsuit filing date).

Enforcement

The authentic interpretation of the Law on Enforcement and Security, Article 48, issued by the National Assembly at the end of 2017, was a last significant development in this Law's application. According to the interpretation, Article 48 should be understood to encompass the assignment of a claim or obligation within the legal term "transfer" 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.

Electronic auction

Starting in 2020, public auctions in the enforcement process are conducted electronically only, via website of the Ministry of Justice. The system is quite simple and intui-

tive, and all that is needed is a qualified electronic signature. The system should improve transparency and prevent abuse. All participants are anonymous.

Payment of court fees

During 2021, the Ministry of Justice enabled the payment of court fees through the e-Payment portal. Payment is made by payment and credit cards, and the court automatically receives information about the fees paid, so it is not necessary to submit proof of payment.

Submitting submissions electronically

Many courts in Serbia have accepted the option of sending and receiving submissions electronically and have created special email addresses for this purpose. This has made the work of lawyers easier and sped up the proceedings, especially when submissions are to be sent to a court located outside of the lawyer's seat.

REMAINING ISSUES

Education of judges and better mechanisms for the liability of judges in wrongful decisions

The specialization of the judges' portfolio 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. The hearings should be set in shorter time periods, and the length of appellate proceedings in practice should be aligned with legal provisions.

Flexibility of the timeframe and deadlines for certain actions

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 for 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 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.

Amendments to the Law on Civil Procedure enacted in 2020 fail to address the subject issues.

Consensus on cases arising under Article 204 of the Law on Civil Procedure

Article 204 of the Law on Civil Procedure prescribing the possibility to complete a litigation 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 – respondent could be obliged to pay the assignee at the request of claimant. However, such reasoning is not uniformly accepted by the entire jurisprudence, leading 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. Even though Article 204 was amended with the previous amendments of the Law on Civil Procedure, only time will show whether these amendments will lead to the resolution of the above-mentioned problem in the jurisprudence.

Restrictive interpretation of concepts that allow delay of procedure

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 case of failure to comply with the deadline for submitting an objection or appeal in the procedure of contesting 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 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, is not acceptable.

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

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 broad, 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.

Necessity of a non-resident bank account with a non-resident creditor when initiating enforcement proceedings

In 2021, the Commercial Court in Belgrade took the position that it is necessary to state the number of the non-resident bank account of the enforcement creditor when submitting a proposal for enforcement, even when the enforcement is being carried out on the entire assets of the enforcement debtor. The stated position is not in accordance with the Law on Enforcement and Security. In practice, this kind of court action led to a significant prolongation of the initiation of the enforcement procedure, because opening a non-resident bank account can take up to a few months, which opens a space for debtors to dispose of assets and creates additional costs for non-resident creditors, that are not necessary at the given moment.

FIC RECOMMENDATIONS

- Additional education and specialization of judges and the introduction of better mechanisms for the liability of judges in wrongful decisions.
- Improve and justify the even 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

1.25

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
It is necessary to clarify the relationship between bankruptcy and arbitration proceedings 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			√
Organize trainings and conferences aimed at judicial sector in order to facilitate and consolidate experience in arbitration related court procedures (annulment and recognition).	2021			√

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 (especially in disputes of greater value) 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, a number of highly experienced practitioners, significantly cheaper costs of the arbitration proceedings compared to the more popular arbitration institutions in Europe and the fact that Serbian courts rarely annul arbitration decisions, Serbia should be perceived as an attractive arbitration destination.

POSITIVE DEVELOPMENTS

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

- It is necessary to clarify the relationship between bankruptcy and arbitration proceedings in the Bankruptcy Law.

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. If there is an arbitration clause in the contract from which the disputed claim arises, which refers to the settlement of the dispute before arbitration, the court would be incompetent to resolve such a dispute. Despite this, 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.
- Finally, there is insufficient court practice and therefore relevant judicial experience in this area. Since case law is somewhat modest, foreign case law should also be consulted in order to determine best practices based on the UNCITRAL Model Law and improve efficiency in recognition and enforcement of foreign arbitral award.

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.
- Organize trainings and conferences aimed at judicial sector in order to facilitate and consolidate experience in arbitration related court procedures (annulment and recognition).

LAW ON BANKRUPTCY

1.22

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2016			√
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.	2016			√
To regulate in detail the procedure of electronic sale, if possible, by following the example from the Law on Enforcement and Security.	2020			√
To consider legal regulation of digitalization process in operations of creditors' bodies and communication between bankruptcy bodies.	2020			√
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			√
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			√
Stipulate the possibility and procedure for amending the adopted reorganization plan.	2016			√
Regulate the procedure of personal insolvency either by amendments to the current Law on Bankruptcy or the adoption of a separate law.	2016			√
To establish electronic sale of debtor property.	2020	√		

CURRENT SITUATION

According to data on the Bankruptcy Supervision Agency's website, as of 1 July 2022 there were a total of 1,746 pending bankruptcy proceedings 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 Deposit Insurance Agency's jurisdiction. The average duration of the procedures initiated under the Law on Bankruptcy Proceedings is about 3 years and 11 months, while average duration of the proceedings initiated under the Law on Bankruptcy is about 1 year and 9 months.

228 bankruptcy proceedings were initiated in the first six months of 2022 . This means that approx. 38 bankruptcy proceedings were initiated per month. Compared to 2021, when the monthly average was 29 initiated bankruptcy proceedings, the increase 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 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.

After public consultations held on the Draft Law on Amendments to the Law on Bankruptcy and the Draft Law on Amendments to the Law on Bankruptcy Supervision Agency at the beginning of 2021, the procedure for consideration and adoption of the drafts before the National

Assembly of the Republic of Serbia has not yet been initiated. These are the fifth amendments to the Law on Bankruptcy since its entry into force in early 2010.

At the beginning of 2021, the Ministry of Economy has formed a working group to prepare a draft of a law that will regulate (previously introduced then abolished) the bankruptcy of entrepreneurs, following the Program for resolving problem loans for the period from 2018 to 2020 of the Government of the Republic of Serbia.

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

Most of the latest amendments are expected to improve the quality of the procedure, but actual results will be seen after their adoption end entry into force and in court practice in the following period.

POSITIVE DEVELOPMENTS

In addition to the improvements indicated in the previous edition of the White Book made by the last amendments to the Law on Bankruptcy at the end of 2018, given that a new change in bankruptcy regulations is expected in the coming period, we can point out to certain potential improvements that are the subject of the Draft Law on Amendments to the Law on Bankruptcy and the Law on the Bankruptcy Supervision Agency.

Examples of proposed regulatory amendments that are worth mentioning as potential positive change are as follows:

Improved position of secured and pledged creditors

In the previous edition of the White Book, it was pointed out that one of the remaining problems related to the lifting of the ban on enforcement against pledged property in the reorganization procedure was the provision according to which the bankruptcy judge would not make a decision on lifting the ban on enforcement if the bankruptcy administrator proves that pledged property is crucial for reorganization of the debtor or for the sale of the bankruptcy debtor as a legal entity. This wording gives the bankruptcy administrator the opportunity to avoid lifting the enforcement ban because it seems that it can be easily proven that some of the property is necessary for reorganization or sale of a legal entity, while a secured creditor can hardly prove otherwise. One of the recommendations was to additionally restrict possibilities for banning enforcement against the bankruptcy debtor's property during the procedure of the adoption of a pre-packaged 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.

The proposed amendments to the Law on Bankruptcy introduce the authority for a bankruptcy judge to decide on the abolition of security measures, upon the proposal of a secured or pledge creditor, including a ban on enforcement against the pledged property of the bankruptcy debtor. It is also proposed that the bankruptcy judge may, when making this decision, request the opinion of an expert on cruciality of the pledged property for the reorganization.

If the proposed amendments are adopted, the possibility for the pledge and security creditor to get settlement from the value of the pledged property within the bankruptcy proceedings or outside of it will be significantly improved, and the possibility for abuse will be at least partially reduced in terms of multiple submission of a pre-prepared reorganization plan with a proposal for determining the measure of prohibition of enforcement against the pledged property of the debtor.

Additional increase of transparency and efficiency of the proceedings

Amendments to the Law on Bankruptcy have been proposed to expand the principles of publicity and information, to collect, process and analyze statistical data related to bankruptcy proceedings and now, in addition to allow all creditors to explicitly request and receive all information related to the bankruptcy debtor, on the course of the bankruptcy procedure, on the property and management of the property of the bankruptcy debtor and all state authorities have the obligation to submit to the bankruptcy administrator data on the property, rights and interests of the bankruptcy debtor, free of charge. Also, it is proposed to introduce the sale of the bankruptcy debtor's property electronically, through the portal of the authorized organization for the sale of property. It is proposed to shorten the deadline for filing bankruptcy claims from 120 to a maximum of 60 days and to shorten the deadline for

scheduling hearings to decide and vote on the reorganization plan from 90 to 60 days. The draft Law on Amendments to the Law on the Bankruptcy Supervision Agency proposes, among other things, the addition of two new articles, which regulate the implementation of actions in bankruptcy proceedings through an electronic portal, and collection and statistical processing of the data related to bankruptcy proceedings.

All proposed changes should lead to greater transparency and efficiency of bankruptcy proceedings.

Better control of bankruptcy administrator's work and expertise

The proposed amendments to the Law on Bankruptcy specify that the selection of bankruptcy administrators will be made either from the general or from a special list of active bankruptcy administrators, depending on the criteria for classifying legal entities into micro, small, medium and large legal entities. The Draft Law on Amendments to the Law on the Bankruptcy Supervision Agency prescribes the professional training of bankruptcy administrators, in order to develop and improve their profession. The existence of two lists of bankruptcy administrators from which the selection is made and the existence of the obligation of professional training should solve the issue of bankruptcy administrators' expertise. Finally, the proposed amendments to the Law on Bankruptcy and the introduction of additional reasons for the dismissal of bankruptcy administrators enable better control of their work.

REMAINING ISSUES

The proposed amendments to the Law on Bankruptcy, if adopted, would significantly resolve the problems of secured and pledge creditors regarding possible abuses of legal gaps by bankruptcy debtors regarding the rendering and revocation of ban of enforcement against the pledged property of the debtor, especially in the procedure initiated based on a pre-packaged reorganization plan.

However, the proposed amendments do not cover all problems pointed out in previous editions of the White Book, so we hope that this will be done in the coming period.

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, since a bankruptcy debtor's business activity may not be on the expected level after the adoption of the plan and 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 distribution of funds collected through the sale of a bankruptcy debtor's property that was pledged in favor of secured and pledge creditors. The claims of these 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 decided by the bankruptcy judge of first instance, and no appeal is allowed against this decision. The legal solution envisaging the right to appeal for unsecured creditors may seem unfair, while secured and pledge creditors are deprived both of a first and second-instance review of the legality of the decision of the bankruptcy administrator.

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. To eliminate uncertainties, it is recommended that the opening of bankruptcy proceedings produces effects as of the date of the publication of the notice of the opening of bankruptcy proceedings in the Official Gazette.

Large 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 personal insolvency. The resolution of this issue would benefit both creditors and insolvent debtors. The existing options available to creditors regarding insolvent natural persons do not lead to the most favorable collective settlement. They result in the settlement of the claims of some creditors through enforcement procedure, while other creditors, in most cases, do not have any possibility to settle their claims with over-indebted natural persons. We consider that the introduction of the concept of personal insolvency would ensure creditors higher settlement amounts, while protecting the integrity and basic needs of overindebted individuals.

The situation caused by the COVID-19 pandemic with uncertain duration imposes the need for increasing digitalization in in bankruptcy proceedings, often requiring the presence of a large number of people at hearings, meetings of creditors, public sales, etc. In that sense, it would be useful to regulate in more detail the procedure of electronic sale and the functioning of creditors' bodies and electronic communication between the bodies in bankruptcy procedure.

Finally, the introduction of new reasons for the dismissal of bankruptcy administrators is not without flaws, as the reason relating to their inefficient work is still not prescribed, including prolongation of the sale of property or of the distribution of money obtained from the sale of the property of the bankrupt debtor, etc., which are more common in practice than violations of the duties of bankruptcy administrators. Hence, it would be useful to introduce such a provision to better prevent practical problems related to the work of bankruptcy administrators.

At the end, many other questions arise regarding 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, para. 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

- Regulate the delivery issue in bankruptcy proceedings 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.
- Regulate additionally the position of secured and pledged creditors to provide the two-instance procedure with respect to their settlement from the sale of pledged property.
- Regulate in detail the procedure of electronic sale, if possible, by following the example from the Law on Enforcement and Security.
- Consider legal regulation of digitalization process in operations of creditors' bodies and communication between bankruptcy bodies.
- 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.
- 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.

- Stipulate the possibility and procedure for amending the adopted reorganization plan.
- Regulate the procedure of personal insolvency either by amendments to the current Law on Bankruptcy or the adoption of a separate law.
- To establish electronic sale of debtor property.

INTELLECTUAL PROPERTY

1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The Customs should enable full electronic communication.	2020			√
The Law on Trademarks should be changed in such a way that it enables full electronic communication with the IP Office (e.g., removal of the necessity to submit original priority documents in paper). Use this opportunity to amend the provisions of the Law on Trademarks that regulate exhaustion of rights.	2021			√
Cybercrime:				
- State authorities should enhance their efforts to combat online copyright infringement, concerning the software, music, and film industries.	2010			√
- The Government needs to provide more resources to the courts, prosecutors and police units dealing with cybercrime.	2020			√
- Adoption of further amendments to the Law on Copyright and Related Rights in terms of TV broadcasting and re-transmission, in line with the changes of EU SatCab Directive passed in 2019.	2020			√
- Amendments to the Criminal Proceedings Law and related legislation with regards to cybercrime.	2018			√

CURRENT SITUATION

The intellectual property legal framework mainly consists of the substantive laws enacted in 2009 and afterwards. In the past few years, changes occurred in the fields of copyright, patents, trademark and topographies of semiconductor products. At the end of 2021, amendments to the Law on Patents were adopted, and a new Law on the Protection of Confidential Information was passed in the middle of the same year. Changes in legislation reflect further approximation of the laws to the rules set in the relevant international conventions, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and in the EU standards. The principal substantive provisions regulating intellectual property in Serbia are contained in the following pieces of legislation:

- The Law on Trademarks (2020);
- 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 the Legal Protection of Industrial Design (2009, amended in 2015 and 2018);
- The Law on the Protection of Topographies of Semiconductor Products (2013, amended in 2019);
- The Law on Patents (2011, amended in 2017, 2018, 2019 and 2021);
- The Law on the Protection of Confidential Information (new law from 2021, which replaced the law from 2011);
- The Law on Trade (2019).

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), following 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, videogames, 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 concerning 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.

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.).

Finally, the Law on Trade regulates issues of unfair competition, including infringement of unregistered marks used in the course of trade.

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

- 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 and 2021);
- The Criminal Code (2005, amended in 2009, 2012, 2013, 2014,2016 and 2019);
- The Customs Law (2010, amended in 2012, 2015, 2016, 2017, 2019,2020 and 2021); 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).

The functioning of the Customs and the IP Office during the pandemic was enabled through their electronic portals. However, there are certain limitations. For example, the initial filing through the INES portal operated by the Customs is possible after a regular written contract with the Customs is signed. Besides that, electronic portal operated by the IP Office does not enable full electronic communication between this body and the right holders. Among other options, it does not enable:

- Registration of changes for multiple trademarks at once, even though the Law on Administrative Fees envisages payment of lower administrative fees in case of multiple registrations;
- Requesting validity certificates for internationally registered trademarks; and
- Registration of the ownership change without submission of the original assignment deeds in physical form.
- Submission of the certificates on priority electronically.

POSITIVE DEVELOPMENTS

As of September 2018, Serbia is obliged towards the EU to apply the same standards of protection of intellectual property rights as those imposed by the EU. This obligation is set within the Stabilisation and Association Agreement and the Serbian Constitutional Court confirmed that these provisions are directly applicable. In practice, bearing in mind that the laws are mostly harmonised, this means that the courts and other state bodies ought to follow the same interpretation of these rules as the EUIPO and CJEU. Events in the specific fields will be presented below.

The amendments of the Law on Patents introduced more precise rules in the field of innovations made in the course of employment. The latest changes from 2021 refer to the pharmaceutical industry and additionally regulate the area of supplementary protection certificates and small patents, and were introduced to increase the competitiveness of domestic drug manufacturers compared to those from the European Union.

The Law on Copyright and related rights - A working group was formed to prepare draft amendments to this law.

Emphasis is placed on increasing the transparency of the work of organizations for the collective exercise of copyright and related rights. However, this working group deals with the harmonization of this area with the EU directives adopted by 2019. It follows that issues such as digital education and data mining will remain unharmonized, which will make Serbia less competitive compared to the European Union countries.

The Law on Trademarks introduced the opposition system during the trademark examination procedure. This partially slowed down the registration procedure. However, the IP Office keeps on examining both absolute and relative grounds for refusal itself, as well. In terms of the procedure before the IP Office, the online portal was improved, and e-filling services are made easier. The change that also occurred is that the principle of international exhaustion of rights is introduced. This disabled prevention of parallel imports using trademarks. It is worth noting that introduction of this principle got Serbia further away from the EU standards. The EU adopted the regional principle of exhaustion, which means that it recognises the outer borders of its market to be relevant. Therefore, this chapter of the law will have to be changed once again before Serbia accedes to the EU. 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.

The court specialisation will also facilitate the standardisation of judicial practice in the field of intellectual property rights.

In 2021, the IP Office played a more active role in the enforcement of intellectual property rights. According to the data from the 2021 annual report, in cooperation with the Danish Patent and Trademark Office, a computer platform was created for the exchange of information whose goal is to facilitate the cooperation of state authorities, primarily customs and market inspection, in their joint fight against piracy and counterfeiting.[1]

In 2021, the IP Office issued a permit for the collective exercise of property rights of actors, which should lead to the improvement of their financial situation.[2]

REMAINING ISSUES

The most significant pieces of legislation in this filed were amended in the past few years. However, the procedure was not transparent, meaning that the professional community was not substantially involved in the drafting of the texts that reached the parliament.

Despite the fact that the relevant intellectual property legislation has already been in place in Serbia for several years, the efficiency of its enforcement is still not satisfactory. The authorities are still reluctant to apply the reasoning in IP matters that was EU bodies. There are positive initiatives on combating counterfeits online. The Ministry of Trade has a lead role, and it coordinates all relevant bodies like high-tech crime units and postal service providers. However, prosecutors and police units dealing with a high-tech crime need more human and technical resources to be as productive as necessary.

1 2021 Annual IP Office Report.

2 Ibid.

FIC RECOMMENDATIONS

- The Customs should enable full electronic communication.
- The Law on Trademarks should be changed in such a way that it enables full electronic communication with the IP Office (e.g., removal of the necessity to submit original priority documents in paper). Use this opportunity to amend the provisions of the Law on Trademarks that regulate exhaustion of rights.
- Following the example of EUIPO's portal, enable greater transparency in the online register of trademarks, so that it will be visible to third parties whether objections or requests for the termination of the validity of a certain trademark have been filed.

- Cybercrime:
  - State authorities should enhance their efforts to combat online copyright infringement, concerning the software, music, and film industries.
  - The Government needs to provide more resources to the courts, prosecutors and police units dealing with cybercrime.
  - Adoption of further amendments to the Law on Copyright and Related Rights in terms of TV broadcasting and re-transmission, in line with the changes of EU SatCab Directive passed in 2019.
  - Amendments to the Criminal Proceedings Law and related legislation with regards to cybercrime.

PROTECTION OF COMPETITION

1.33

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Adoption of the new Competition Law and relevant bylaws as soon as possible.	2020			√
In order to enhance transparency and legal certainty, the Commission should issue clear guidelines and instructions containing the manner of application of certain provisions of the Law, with the involvement of interested parties in commenting proposed documents.	2010		√	
The fees in the Tariff Rules should be decreased to a reasonable sum, especially in the merger control area.	2009			√
The Commission should publish issued opinions and decisions on individual exemptions, i.e. to altogether improve transparency and predictability of decisions.	2018			√
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			√
Sector inquiries should contain more precise findings related to possible infringements of competition and competitive concerns to enable market participants to immediately comply behaviour in accordance with the findings of the Commission.	2021		√	
Judges of the Administrative Court should complete advanced training in both competition law and economics. All rulings of the Administrative court and the Supreme Court of Cassation should be made publicly available, and explained in detail in terms of the substantive issues of the Commission's decisions.	2010			√
The Commission must allow legitimately interested third parties to comment on procedures which affect their business, for the complete and correct determination of facts.	2019			√
The Commission's practice should be consistent with respect to all market players with detailed reasoning in relation to exceptions from the previous practice and the EU practice. In merger control cases, requests for additional information must be related to the assessment of the concentration having in mind broad discretionary powers of the Commission. 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.	2021		√	

CURRENT SITUATION

The harmonization with EU competition rules in Serbia began with the adoption of the currently applicable Competition Law in 2009 (the **"Law"**). The Law set material and technical preconditions in place for the independent work of the Commission for the Protection of Competition (the **"Commission"**). The Law was amended in 2013, whereas the corresponding by-laws were adopted back in 2009 and 2010 and the new Regulation on the Content and Manner of the Submission of Merger Notifications (**"Merger Control Regulation"**) in 2016.

In 2021, there were no developments in the field of the adoption of the new law and bylaws that started in 2017, most likely due to the coronavirus pandemic whose effect still exists, as well as the lack of legislative initiative by the competent authorities to change and improve regulations in this area.

Given that the annual report of the Commission has not yet been published at the time of writing this text, the information below is presented in accordance with the information available on the Commission's official website. In comparison to 2020, the number of notified concentrations increased in 2021. Out of 114 resolved concentrations which are published on the official website of the Commission, all of them were cleared in summary proceedings, i.e., there was no Phase II in-depth investigation nor is known whether the Commission opened any Phase II in-depth investigations.

In 2021, the Commission initiated four new procedures on investigation of the competition infringements and further extended the procedures regarding consumer electronics initiated in 2020. In one case, the Commission conducted an analysis of the conditions of competition on the retail market of selected food products in the Republic of Serbia, which included, among other things, an analysis of the retail price trends of certain coffee brands in the period from 2017 to 2020. As it was determined in the examination procedure that the alleged price coordination existed even before this period, thus the Commission extended the procedure in terms of the initial period to which the examination refers, covering the period from 2014 onwards. The Commission rendered two additional conclusions in two separate investigations against major manufacturers/wholesalers and their significant customers/retailers on the market for sale of consumer electronics, thereby expanding the reach of the initial investigation. A lot of attention was attracted by the procedure for abuse of dominance on the market of textbooks for primary education in the Republic of Serbia in the period from 2018 to 2020 against one of the largest publishing houses and its affiliated parties. In the conclusion on the initiation of this procedure, the Commission stated that the publishing houses undertook the actions which can potentially impede or make it difficult for the competitors to enter the market (by threatening to terminate the agreement if the company enters into another agreement with the publishing houses' competitor, reducing the number of distributors with whom it cooperates with the recommendation that textbooks are purchased from a specific distributor), to influence the price or rebate policies and benefits for schools in textbook procurement procedures. Further, the Commission began to examine the non-notified concentrations and initiated two investigations, claiming that there was a change of control which was not notified to the Commission. The first case encompasses an acquisition made by a member of the BIG 4 consulting/accounting/auditing firm over a technology-consulting company on a global level that has its subsidiaries in Serbia, Montenegro and Bosnia and Herzegovina. The second case related to the sale of a legal entity in bankruptcy proceedings, whereas the Commission states that the purchaser failed to obtain a merger clearance before the acquisition of shares. This is an indicator that the Commission closely observes all concentrations falling within its scope irrespective of the size of an acquirer and a target, their ownership, and the legal basis of the concentration.

The Commission imposed fines in three restrictive agreements cases and one fine in an abuse of dominance proceedings. The Commission terminated five antitrust proceedings in 2021, two of which proceedings were terminated because the Commission determined that in the specific case the agreement did not constitute a restrictive agreement, i.e. they were covered by block exemption, while the remaining three proceedings were terminated due to the lack of conditions for the proceeding to be conducted further, i.e., since the parties to the proceedings were unable to participate in the proceedings. In four cases, the Commission suspended the investigation of the infringement of competition, since the parties undertook commitments to alleviate any potential competition concerns. Finally, the Commission rendered the resolution and imposed fine to the company for gun-jumping.

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

POSITIVE DEVELOPMENTS

The trend of opening more investigations continued as well as drafting of the sector inquiries and analysis of the conditions of competition on the relevant markets.

In 2021, the results of sector inquiries:
- market of travel operators for the period 2017-2019, and
- markets for production and purchase of sugar beet, production and wholesale of sugar in the period 2017-2019, were published. .

Conducting a sectoral inquiry of the travel operator market is significant due to the problems that arose in practice with regard to the solvency of travel operators, especially in the period of the COVID-19 virus pandemic, and the sectoral inquiry is particularly focused on issuing travel guarantees and travel operator insurance. Also, the sectoral

inquiry of the market for production and purchase of sugar beet, production and wholesale of sugar is significant both for the reason of the importance of the product itself and for the detailed inquiry that includes 2 large sugar mills that appear as producers but also as the most important sellers of sugar in the Republic of Serbia. However, the Commission in the sector inquires evidently does not present clear conclusions about possible competition law infringements (except many useful economic parameters) which prevents market undertakings to act preventively and comply their behaviour with competition law.

In terms of the events that took place in 2021 and the activities in the area of international cooperation, it can be pointed out that the Commission, together with the Regulatory Body for the Protection of Competition of the Republic of Italy, as a Twinning partner, participated in the Final Conference of the Twinning Project "Further Development of Competition Protection in the Republic of Serbia", whose aim was to contribute to the process of further harmonization of domestic legislation in the field of competition protection with European Union law, its effective implementation and increased awareness of competition protection law and policy among all relevant actors. As part of the same project, a lecture on competition protection was held at the Faculty of Law of the University of Kragujevac.

Even though the Commission should regularly publish its decisions, 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 cause for particular concern is that the Commission did not publish any decision in individual exemption proceedings in 2021. Also, even though the Commission published on its webpage a video about the possibility of usage of leniency programme with the aim of further application of this institute in practice, the Commission has not published any decision on the use of this programme, so it still remains undeveloped.

The Commission has published a guidance on the application of Article 10 of the Law to certain forms of cooperation between market participants in public procurement procedures from 25 March 2021, enabling more clarity on participation in public procurement procedures, as well as the opinion on the Draft Rules on Preventing Abuses in the Electricity and Natural Gas Market. Also, in accordance with the powers vested by the Competition Law, the Commission issued opinions on drafts of numerous laws (Law on Railways, Law on Electronic Communications, Law on Free Access to Information, Law on Regulating the Market of Agricultural Products and Law on Energy Efficiency and Rational Use of Energy.

REMAINING ISSUES

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 entire lack 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) and does not contain all rendered decisions, or they are published with significant delays. Additionally, the Commission does not publish information on submitted initiatives, even after the decision on such initiatives have been made. Even in cases of submitted initiatives, Commission delays its mandatory notification to the applicant, which should be done in 15 days as of the submission – certain initiatives were never responded. Annual reports are published with delay.

The need for further digitalisation of the process and work of the Commission has become evident during the COVID-19 pandemic and remains an issue up to date. The Commission should apply more resources in digitalisation which would ease and simplify their work in the given situation (e.g. holding meetings of the Council electronically, holding meetings with the parties electronically even when it is not possible to meet in person etc.).

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. In certain merger control cases, the Commission extensively used its right to ask for additional information as it required information not relevant for the assessment of a concentration, which caused unnecessary delays. If the Commission uses its broad discretionary powers in requests for additional information, the Commission must elaborate the aim and purpose of the requested information and its relevance for the assessment of the concentration.

As for dawn raids, the Commission's decisions on dawn raids still 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. In the previous period, it was evident that the Commission has 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 only to repeating the Commission's findings and consideration of the basic procedural issues, without analysing the arguments of the parties in dispute. This is a serious shortcoming, as it prevents a confrontation of opinions, a comprehensive and adequate control of the Commission's decisions, and the development and harmonization of practices with EU standards (which is a requirement of the Stabilization and Association Agreement), while it also jeopardizes further appeal proceedings in cases when an extraordinary legal remedy is lodged. A detailed reasoning of the decisions of the Commission and the court, with a particular consideration of arguments and evidence presented by the parties to the proceedings, is of considerable importance for establishing judiciary oversight of the Commission's work. Otherwise, the Commission would be in the position to misuse its powers and independence.

As for the leniency programme, the Commission did not publish any decision on the implementation of this programme, so it is unknown whether this institute applies in the practice and to which extent.

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, i.e. are not published.

It is noticeable that the Commission has been applying a more complex methodology in analysing the individual exemption of restrictive agreements, It is essential that complex analysis in individual exemption proceedings should not adversely affect the efficiency of the Commission's decision-making process, in terms of avoiding any unjustified delay. In practice, the review period of individual exemption requests is often prolonged beyond the 60 days deadline as envisaged by the Competition Law (and in some cases even lasts for 4-5 months). This is causing practical problems to the business community when it comes to implementing agreements and business policies which require prior approval of the Commission. The economic reality requires swift action from all parties including the Commission. 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 European Union abolished almost twenty years ago. In the 2019 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.

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 previous situation.

Finally, the draft of the new Competition Law published in 2019 has not yet entered into force, nor is there any news about its entry into force. There is a need for all competent authorities to be involved in order for the new Law with adequate solutions to be adopted.

FIC RECOMMENDATIONS

- Adoption of the new Competition Law and relevant bylaws as soon as possible.
- In order to enhance transparency and legal certainty, the Commission should issue clear guidelines and instructions containing the manner of application of certain provisions of the Law, with the involvement of interested parties in commenting proposed documents.
- The fees in the Tariff Rules should be decreased to a reasonable sum, especially in the merger control area.
- The Commission should publish issued opinions and decisions on individual exemptions within the shortest possible period from their issuance, 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.
- Sector inquiries should contain more precise findings related to possible infringements of competition and competitive concerns to enable market participants to immediately comply behaviour in accordance with the findings of the Commission.
- Judges of the Administrative Court should complete advanced training in both competition law and economics. All rulings of the Administrative court and the Supreme Court of Cassation 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 with detailed reasoning in relation to exceptions from the previous practice and the EU practice. In merger control cases, requests for additional information must be related to the assessment of the concentration having in mind broad discretionary powers of the Commission. 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 1.57

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Increasing and strengthening personnel capacities of the CSAC.	2009	√		
Securing a timely adoption of the relevant bylaws that are aligned with the EU acquis (especially with regards to companies in the process of privatization), as well as a proper implementation of the Law in the area of transparency (registries, reports).	2020		√	
Effective state aid control – utilizing different mechanisms envisaged in the Law in order to monitor granted state aid and also impose measures for incompatible state aid.	2016			√
Consistent application of state aid rules, EU standards and practices and the harmonization of the fiscal schemes with the EU acquis.	2011			√
Transparency of the procedure - introduction of the registry of state aid and effective control of the compliance with the obligation to report to the aid grantors.	2021		√	
Continuous and effective control of compliance with the law– utilizing different mechanisms envisaged in the Law in order to monitor granted state aid and also impose measures for incompatible state aid.	2021			√

CURRENT SITUATION

The legal framework regulating the granting of state aid in the Republic of Serbia consists of the Law on State Aid Control from October 2019 (the**"Law"**), which entered into force on 1 January 2020, and the relevant bylaws.

There are no data on state aid granted in 2020 because the annual report is not available yet. As a reminder, the total absolute amount of state aid granted in 2019 amounted to RSD 110,724 million (EUR 939.6 million) while its share in gross domestic product was 2.0%.

Of this amount, in 2019 the agricultural sector was granted state aid in the absolute amount of RSD 33,983 million (EUR 288.4 million), which compared to 2018 represents an increase of 29%. State aid was granted to the industry and services sector in 2019 in the absolute amount of RSD 76,741 million (EUR 651.2 million). The share of this aid in the total state aid granted in 2019 was 69.3%, while in 2018 it was 71.6%, and in 2017 it was 72.6%.

Although in relation to the absolute amount the aid records an increase, in relation to the GDP, the aid granted to the industry and services sector in 2019 amounted to 1.4% remaining at the same level as in 2018, while in a slight decline compared to 2017.

The most common instrument for granting state aid in 2019 were subsidies, with a share of 55.4% in total state aid, to encourage the achievement of goals in both agriculture and industry and services, followed by tax incentives with a share of 22.2%.

POSITIVE DEVELOPMENTS

Under the Law, the Commission for State Aid Control ("CSAC") functions as an independent body and is accountable to the National Assembly, ensuring independence from the executive power from a formal-legal point of view. In the previous period, there have been improvements in the financial independence and personnel capacities of the CSAC.

A precondition for legal certainty is the assurance of transparency of CSAC's work. The CSAC has a duty to publish its decisions on its website and to maintain a registry of granted aid, including a separate de minimis aid registry.

Moreover, the practice of introducing draft bylaws on the CSAC's website in the form of public consultations before adoption has been introduced, which is a significant step towards the legal predictability.

Many bylaws have meanwhile been adopted. The most important are the decrees on regional and horizontal state aid, granting of state aid in the fields of culture and information, and state aid for recovery and restructuring of market participants in difficulties.

REMAINING ISSUES

In the last report on Serbia's progress in the EU accession process for the year 2021, European Commission identifies the core obstacles to the further harmonization of national legislation with the European acquis:

- the lack of list of state aid schemes and of an action plan for their harmonization, especially of fiscal state aid schemes established in accordance with the Law on Corporate Income Tax,
- the lack of regional maps,
- the lack of a register of granted state aid,
- lack of effective control of compliance with the law – CSAC has not yet issued a negative decision (prohibition of award, conditional award, or ordered restitution),
- although the awareness of existing state aid control mechanisms exists, it is necessary to put systematic effort into its improvement.

In year 2021, the CSAC adopted 29 decisions (according to the data available on the website of CSAC), of which 28 ascertain the existence of state aid and assess the compliance of state aid, while 1 decision refers to the company Technical Development, an investor and manufacturer of Geox footwear in Vranje, and orders the restitution of the aid in the amount of RSD 400 million since the aid was granted against the law. Also, 8 binding opinions on draft regulations were adopted, i.e., 1 binding notification on the obligation to harmonize regulations.

State aid policy must be predictable and consistent and primarily based on grantor schemes, while individual aid should be the exception. It is necessary to adopt clear plans and programs based on which companies and the public can be informed about that policy in a timely manner, and not from the decisions of the CSAC.

Attracting investment in underdeveloped regions, as well as defining a clear government strategy on investment areas (digitalization and green energy) with full respect for state aid rules, are key starting points for achieving a clear and cost-effective state aid allocation.

With the new law and bylaws in force, the CSAC must actively work on developing the awareness of all relevant parties about these rules, especially state aid grantors and beneficiaries whose knowledge is limited. The stated is a precondition for the involvement of the economy and the general public in the drafting of state aid policy, targeting vulnerable categories or sectors of the economy, so that specific, predictable, and effective solutions can be reached jointly.

It is necessary to raise awareness and capacity of state aid grantors, thus increasing the legal legal certainty of state aid beneficiaries when allocating funds.

FIC RECOMMENDATIONS

- Transparency of the procedure - introduction of the registry of state aid and effective control of the compliance with the obligation to report to the aid grantors.
- Continuous and effective control of compliance with the law– utilizing different mechanisms envisaged in the Law in order to monitor granted state aid and also impose measures for incompatible state aid.

CONSUMER PROTECTION 2.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Ongoing work on consumer education and implementation of topics in the field of consumer protection in primary and secondary education curricula;	2014		√	
Promoting the protection of consumer rights and interests at the local level.	2013		√	
Improving and strengthening the system of out-of-court settlement of consumer disputes.	2021		√	

CURRENT SITUATION

The National Assembly of the Republic of Serbia adopted a new Law on Consumer Protection, which, while retaining some earlier solutions, provides for a lot of innovation with the aim of improving consumer protection and position in relation to previous solutions. The Law entered into force on 19 September 2021, and its application starts after the expiration of three months from the day of entry into force (except for the provisions of Articles 149 to 169, which apply from 20 March 2022).

In addition to referring to the provisions of the Constitution of the Republic of Serbia, the reasoning of the Law also refers to Article 78 of the Stabilization and Association Agreement, which stipulates that the parties will encourage and ensure a policy of active consumer protection in accordance with Community Law and the harmonization of the Consumer protection legislation in Serbia with the protection which is already in force in the EU community. When it comes to strategic planning in this area, the Consumer Protection Strategy for the period 2019-2024 envisages legislative measures in order to improve the consumer protection system in accordance with new challenges on the world market and more complete protection in accordance with EU best practice.

One of the most significant innovations brought by the new Law is the significant improvement of the mechanism of out-of-court settlement of consumer disputes (which does not exclude and does not affect the exercise of the right to judicial protection). The new solution defines out-of-court settlement of consumer disputes as a way of resolving disputes between consumers and traders before the body for out-of-court settlement of consumer disputes entered in the List of bodies for out-of-court settlement of consumer disputes. Proceedings before the body can be initiated by the consumer only if they have previously raised a complaint or objection to the trader and the trader is now obliged to participate in the out-of-court settlement of consumer disputes proceedings before the body. The fine for those who refuse to participate in mediation or do not publish a notice that the buyer has the right to an out-of-court settlement of the dispute is RSD 50,000 (Approximately EUR 425). Although this way of resolving disputes has existed before, so far, traders in practice avoided participating in the process, they only rejected complaints on goods and referred dissatisfied customers to court, and those consumers often opted not to pursue the matter to court. The Law introduces an obligation for the competent courts for resolving consumer disputes to keep records of these disputes and to submit data from the records to the Ministry of Justice.

The Law also introduced the so-called "Do not call" register of telephone numbers of consumers who do not want receive calls of traders who offer goods / services by telephone which is kept by the regulatory body responsible for electronic communications, which should prevent or reduce aggressive business practices that exist through multiple telephone calls to consumers. Namely, the consumer who wants his telephone number to be found in the register, fills in the form and submits it to the operator whose network he uses, and the operator forwards the data on the telephone number to RATEL (The Regulatory Agency for Electronic Communications and Postal Services).

The new Law also improved and more precisely defined the complaint procedure (after two years from the purchase, the complaint is declared to the issuer of the guarantee and the Law introduces the obligation to receive the complaint for the seller addressing previous problems in practice related to the rejection of complaints by the seller), the obligation to prepare a calculation and specifications of the sale price of the service (for value of services greater than RSD 5,000 approximately EUR 42). the necessary parts of the invoice issued for services of general economic interest

is prescribed, and the prohibition of unfair business practices covers all phases of purchase (this legal specifying is very important, considering that it provides room for more comprehensive implementation of inspection supervision).

The implementation of the new Law provides greater protection for consumers in exercising the rights under the travel contract. One significant novelty is the binding nature of pre-contract information, which stipulates that passengers must be provided with information of other expenses, which are not included in the single sale price of a tourist trip, therefore the passenger will not be obliged to bear them unless they are informed.

The Law now introduces the possibility of issuing misdemeanour warrants in the domain of traders' liability, i.e. it prescribes a fixed fine in the amount of RSD 50,000, (Approximately EUR 425) for legal entities and RSD 30,000 (Approximately EUR 255) for entrepreneurs, for certain misdemeanours. Longer statutes of limitations are also prescribed, so misdemeanour proceedings cannot be initiated or conducted if two years have elapsed from the day when the misdemeanour was committed (previously, the one-year statute of limitations established by the Law on Misdemeanours was applied).

POSITIVE DEVELOPMENTS

Although the previous Law presented a significant step forward in terms of ensuring a high level of consumer protection, during the implementation of the previous Law certain shortcomings were observed which affected the unsatisfactory level of consumer protection, which the new Law, with its numerous improvements, should take to a higher level.

One example of the improvement is the introduction of an out-of-court settlement obligation, an attempt to ease pressure on the courts, as well as to stimulate consumers to continue the process of exercising their rights at no additional cost, which in the past has been the reason consumers have given up on court proceedings. Significant advances are also established restrictions on direct advertising, so the Law foresees a ban on direct advertising by phone, fax or e-mail and other means of long-distance communication, without the prior consent of the consumer.

Also observed is the higher engagement of the Consumer protection association through educations of consumers on their rights, organizing round tables during which significant topics in this area were discussed as well as testing consumer products and informing consumers on perceived irregularities etc. The Law itself provides additional obligations for consumer protection associations as well as service providers of general economic interest, and they apply to complaints commissions and advisory bodies.

Positive improvements have also been visible on the at the level of local administrative units and competent state institutions (including primarily ministries, inspection departments and courts), where, various types of education on consumer protection were organized, such as trainings for employees, conferences and round tables, all with the aim of raising the level of their expertise and implementation of EU standards, as well as government activities to improve the framework for e-commerce development. According to the research of the Serbian Chamber of Commerce, e-commerce has doubled during the state of emergency compared to the time before the COVID-19 pandemic, and the growth of online commerce is expected in the coming period.

The new Law should, as previously announced, give greater protections to passengers in tourism, and it is planned to harmonize the consumer rights of Serbian citizens with the new regulations of the European Union on travel in package deals and related travel arrangements.

REMAINING ISSUES

Although the Law formally establishes a greater balance in the relations between traders and consumers, the results in practice still attest to the fact that this relationship is still far from equal. According to the data of the Ministry of Trade, 23,472 consumer complaints were registered in the regional consumer counselling centres in 2021. Data on consumer complaints by place of purchase shows that by far the largest number of consumers still make purchases in the classic way, in retail stores, in 90.34% of cases. Online shopping was made in 7.12% of cases, door-to-door purchases in 1.23% of cases, while phone shopping, promotion shopping, catalogue shopping and TV purchases were represented in less than 1% of the total number of complaints from consumers towards the place of purchase.

Out of all the complaints and only 6 were resolved with out-of-court settlement, which is negligible more than the

previous year when it was 2, while 13 lawsuits were filed against traders. This trend is to be expected to continue, especially given the increase in e-commerce.

Consumer Protection Associations insist that insufficient information of consumers is another cause of consumer problems and occurs as a result of a lack of notification of consumers prior to the conclusion of the contract as a legal obligation of the trader, which is necessary for a reasonable selection of offered goods or services. It is necessary to strengthen competition across the supply of goods and services on the market and continue to carry out activities to raise consumer awareness of their rights and mechanisms for achieving them, so that consumers make rational economic decisions about buying goods or services.

Although there have been noticeable improvements in terms of educating and informing consumers about their rights, it is necessary to actively continue campaigns throughout Serbia in order to balance consumer information in all regions of Serbia.

FIC RECOMMENDATIONS

- Improving and strengthening the system of out-of-court settlement of consumer disputes.
- Promoting the protection of consumer rights and interests at the local level.
- Ongoing work on consumer education and implementation of topics in the field of consumer protection in primary and secondary education curricula.

PROTECTION OF USERS OF FINANCIAL SERVICES

1.50

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Further educating financial services consumers on their rights, as well as insurance service users.	2014			√
Educating judicial officers on banking operations and insurance sector.	2020			√
Permanent resolving disputes initiated by loan processing fees in line with above mentioned manner.	2021			√
Amendments to the Law on Conversion in terms of specifying norms that would clearly define the rights of clients and banks	2021			√
Permitting the electronic issue of bills of exchange for individuals	2021			√
Regular workshops and seminars are proposed in cooperation with the NBS and insurance companies, and for the purpose of constructive discussions, exchange of opinions and obtaining instructions and guidelines in the field of finding the best solutions in the field of protection of rights and interests of insurance users.	2020	√		
Continuous exchange of opinions and constructive discussions with insurance companies regarding the implementation of rules on insurance distribution, ie regulatory requirements regarding market behaviour.	2021	√		
Increasing the limit stipulated in Article 3, paragraph 3 of the Law on the Protection of Financial Services Consumers in Distance Contracts, that is, enabling the conclusion of a contract through two-factor authentication or an IT solution that would enable the security without the use of an electronic qualified signature.	2021			√

CURRENT SITUATION

The rights of financial services consumers provided by the banks, issuers of financial leasing and merchants, and the terms/conditions and manner in which these rights are exercised and the protection of these rights are regulated via the Law on the Protection of Financial Services Consumers (hereinafter: the LPCFS) with its latest amendments of 2015. Suspending education of financial services consumers as initially planned has resulted in practice in the situation wherein clients enter contractual relations with providers of financial services without basic knowledge of the importance of contractual provisions and the honouring of assumed obligations. Thus, the burden of client education on possible consequences of concluding contracts passed onto providers of financial services. The role of the NBS as regulator, and organization trusted by financial services consumers is of utmost importance. We believe that implementing controls of providers of financial services and related fines for established breaches is not sufficient to adequately address the lack of basic financial literacy among financial services consumers, as prerequisite for understanding obligations assumed by conclusion of contracts.

In addition to the aforementioned law, overall technological development and the increasing significance of doing business electronically in modern society, has contributed to the development of new ways of sending offers and advertising financial services, which has created a need for additional regulation in this area through the rendering of the Law on the Protection of Financial Services Consumers in Distance Contracts, which entered into force in September 2018. The advantages of this regulation are strengthening the trust of financial services consumers in distance contracts, reduced costs of financial services providers, and the establishment of a unique legal framework for the protection of users in negotiating distance contracts on the provision of financial services.

For the purpose of creating a uniform legal framework that acts as a unique solution to the issue of loans indexed in Swiss Francs, the Law on the Conversion of Housing Loans Indexed in Swiss Francs (hereinafter: the Law) was adopted,

which entered into force in May 2019. The Law applies exclusively to private individuals who have concluded housing loan agreements with banks indexed in Swiss Francs (CHF), while this Law does not apply to those who have already converted their debt into the Euro, in accordance with some earlier available model. Despite expectations that the enormous quantity of litigations conducted for years regarding loan processing fees and determining nullity of currency clauses, which entails huge court and bank expenses, these expectations have unfortunately not been met. The ambiguity of this Law resulted in second-instance court rulings voiding indexations of housing loans in CHF, and the question arises – in which currency should these loans be processed? With reference to this, we believe that it would be paramount for the NBS to issue a formal opinion, because chances of modifications – specifying this by provisions of the law itself - are very slim at the present time, bearing in mind that the RS government will not be formed before the third quarter of this year.

To ensure that the rights and obligations of financial services consumers and providers are clearly and comprehensively regulated, the National Bank of Serbia (hereinafter: the NBS) has rendered a set of decisions regulating the area of the protection of financial services consumers. The following are the most significant of these Decisions. From April 2019, the Decision on Detailed Conditions of Financial Services Advertising, which regulate, in detail, the overall and specific conditions of advertising financial services and the obligations and responsibilities of financial services providers which refer to this type of advertising. In line with the decision, the NBS shall control how financial services providers advertise, whether or not they act in accordance with the decision, i.e. whether the advertising message lasts long enough so that the average consumer can read it unhindered, and/or hear the message, uses the right font which must be used depending on the advertising form, etc. However, there should be a two-way media communication because that is the only way to create real effect, which is why we want here to underline the importance of the foregoing client education, which should also be enclosed on the NBS agenda.

Furthermore, the Decision on Handling Complaints of Financial Services Providers, the latest version of which entered into force in July 2019, regulates the manner of submitting complaints of financial services consumers to the providers of financial services and the NBS, and how these institutions are to respond to these complaints. Financial services providers are, inter alia, obliged to issue confirmation of the receipt of a complaint, to allow clients to submit complaints via the providers' websites, as well as to visibly display on their websites, notifications containing information on the protection of the consumer rights process. Pursuant to this Decision, financial services providers are considered to be banks, financial lessors, payment institutions, electronic money institutions, and the public postal operator in relation to payment services provision and electronic money issue.

On the other hand, the manner in which the rights and interests of the insured, policyholders, insurance beneficiaries and third injured parties and the manner of mediation in the settlement of claims for damages, complaint filing by the insurance service consumer and the handling of such complaints is regulated via the Decision on the Manner of Protecting the Rights and Interests of Insurance Service Consumers which entered into force in November 2015. Additionally, the protection of insurance service users is regulated by the Law on Insurance from 2014. An important segment of informing insurance policyholders is pre-contractual information, defined in Article 82 of the Insurance Law. In the pre-contractual information, the insurer / insurance company transparently provides all relevant information before concluding the insurance contract, including the manner of protection of the rights of insurance policyholders and protection of interests of insurers, manner and deadline for filing claims, information on the supervisory body for insurance companies. Both the manner and the protection of the rights of the insurance contractor with that body. Pre-contractual information must be signed by the policyholder, and must be part of each case. If the policyholder and the insured are not the same person, and it is a case of collective insurance or insurance that is a related contract, the insurer is obliged to provide the insured with a set of pre-contractual information, as well as to provide the insured with insurance conditions applicable to the insurance contract. Furthermore, the National Bank of Serbia has published Guidelines on minimum standards of conduct and good practice of participants in the insurance market, which, along with more detailed recommendations regarding the manner of pre-contractual information, create preconditions for harmonization with EU regulations, ie the Insurance Distribution Directive. The implementation of the Directive on the distribution of insurance at the EU level in 2018 was postponed by 7 months, at the initiative of a number of Member States, because neither industry nor supervisory authorities were fully prepared to respond to the requirements of the Directive. This is an illustrative example of the complexity of the new rules and the warning that the implementation of these rules needs to be approached carefully.

In 2019, the implementation of the Law on Personal Data Protection began, which is especially important for clients - individuals. The field of personal data protection in recent years in the world and in Europe is very actual, and all market participants (banks, insurers, pension funds) strive to comply with this topic and regulations, use various tools / software, provide mandatory notices on the processing of personal data, it is possible to file complaints, consents are collected for contacting for marketing purposes. All of this is important so that both customers and operators are aware and understand the importance of processing personal data, to reduce the risk of misuse of personal data and to make the processing consistent with the purpose. Personal data processed by financial market participants are numerous: name, surname, identification document number, address, telephone, e-mail, but also data such as health status.

Not intending to diminishing the significance of other NBS decisions in terms of the protection of financial services consumers, we would like to emphasise the importance of the Decision on Terms and Method of Calculating the Effective Interest Rate and on the Layout and Content of Forms Handed out to Consumers, with the latest amendments which apply as of January 2019. The aforementioned decision clearly prescribes which elements are included in the calculation of effective interest rates, as the true price and cost of funds thus allowing financial services consumers to clearly compare the offers of various financial services providers. Furthermore, by prescribing the various forms that are given to the consumer in the process of concluding an agreement, we believe that the financial services consumer is fully informed both in terms of all costs related to the product in question, and in terms of foreign currency borrowing risk and the variable nominal interest rate. Unfortunately, recent effective court rulings bear witness to non-recognition of clear communication of banks towards clients as regards contractual obligations.

The outbreak of the pandemic caused by the COVID-19 virus, perhaps now more than ever has imposed the need for financial services to be digitalised to the highest degree possible, which is evident in particular, in the area dealing with payment services where the NBS (by issuing various instructions) regulated the payment of funds to consumer who were not able to personally visit the banks' premises and did not have the established payment instruments in place through which to initiate transactions. In this regard, the NBS is working on the digitalization of bills of exchange, in the first step for legal entities, and then for individuals, which is necessary to complete the digital process of marketing bank products.

Insurers / insurance companies even before the outbreak of extraordinary circumstances started selling policies through various online services (through sites for certain types of insurance, eg travel, property), but also additionally enabled the submission of claims, as well as the submission of complaints via e-mail addresses and via the site, in addition to the already standard ways of sending by mail or delivery in organizational units in person.

POSITIVE DEVELOPMENTS

Relevant open communication of the NBS which proves a sincere intention to provide support to resolving remaining issues encountered by banks in their daily handling of complaints of financial services consumers. In that sense, the NBS deserves all praise because it is prepared to step outside its prescribed competences in order to ensure best possible functioning of the banking system.

By adopting an amended legal position on the admissibility of contracting loan costs at a session of the Civil Department of the Supreme Court of Cassation, held in 2021, the right of banks to collect costs and fees for banking services has thereby been recognized, which means that the provisions of the loan agreement which obliges the borrower to pay the loan costs to the bank are not null in case that the bank's offer contained clear and unambiguous data on loan costs and also that they can be expressed as a percentage and charged through the calculation of the effective interest rate, without the obligation of banks to prove the structure and amount of costs covered by the total amount of loan costs, which are stated in the offer accepted by the borrower.

Additionally, one of the recommendations was that it was necessary to harmonise case law with the new regulations in force, such as the Law on the Conversion of Housing Loans Indexed in Swiss Francs, bearing in mind that prior to the adoption of the cited law, the Supreme Court of Cassation took the position whereby it established that the clause on the indexation of loans in the CHF is deemed null and void, unless the bank has reliable written proof that it obtained the lent dinar funds through its own borrowings in this currency and that before concluding the agreement, it provided the borrower with complete, written information on all risks arising from negotiating the application of such a clause. As the law failed to

include all categories of consumers indexed in Swiss Francs, disputes are continued to be filed against the banks, in particular, by consumers who repaid their obligations prior to the entry of said law into force or those who did not accept conversion, however the number of this second type of dispute is significantly less. Therefore, it would be necessary to amend the Law on the Conversion of Housing Loans Indexed in Swiss Francs to resolve all doubts that are the subject of litigation.

REMAINING ISSUES

From the sector report, it is possible to observe that a large number of unfounded complaints in the total number of complaints indicates that consumers still turn to the NBS, even if there has been no violation of their rights, which in turn indicates the fact that many financial services consumers remain unfamiliar with the regulated rights and obligations in the area of financial services consumer protection. In this regard, in our opinion we must work together on ensuring further financial literracy of financial services consumers, not only through the NBS website, but also through other forums where information is made available to the public through various types of education.

The rationales of a large number of court judgments regarding loan processing fees, indicate that the judicial functionaries do not have the necessary knowledge to make legal decisions in the field of banking. Here, it is necessary to organise the constant training of judicial officers, in order to educate and acquaint them with banking regulations.

If it turns out in practice that the scope of the Legal Position of the Supreme Court of Cassation on the admissibility of contracting loan costs did not contribute to relieving the judicial and banking system, it would be necessary to consider adopting a legal or any other institutional solution regarding the problem of disputes arising from this situation, especially bearing in mind that the current leads to paradoxical situations that clients file a lawsuit against banks within a few days after the bank pays off the loan and collects the fee. This increases the pressure on the court system on a daily basis due to the daily increase in new lawsuits and the inability to process them all.

The pandemic caused by the COVID-19 virus has additionally stimulated the need for digitalisation, and it is therefore necessary to create a legal and IT framework for the electronic issuance of bills of exchange for individuals. In practice, a bill of exchange is a widespread means of securing loan agreements and other, non-banking products, and it is necessary that the method of issuing bills of exchange follows the development of modern society and in that direction, it is necessary to enable the electronic issuance of bills. Namely, without the electronic issuance of bills of exchange, just signing a loan agreement with a qualified electronic signature is not practical, as a personal visit to the branch is required for the issuance of bills of exchange.

Furthermore, the pandemic caused by the COVID-19 virus has imposed a need to increase the legal limit for the negotiating of remote financial services without the use of a qualified electronic signature. The Law on the Protection of Financial Services Consumers in Distance Contracts has provided for the possibility of negotiating financial services by using means of distance communication, and therefore including the negotiating of a distance loan agreement. The cited law has envisaged that "If the law requires a specific type of financial service contract to be concluded exclusively in writing, the distance contract may be concluded also by using a means of distance communication in the form of electronic document, bearing a qualified electronic signature, in accordance with the law governing electronic signature." It is evident in this provision that any financial services agreement, regardless of its amount, may be concluded at a distance, with the necessary qualified electronic signature. However, the legislator has recognised that a large number (especially private individuals) do not have a qualified electronic signature certificate, and it is therefore envisaged that a distance contract "with a value of up to RSD 600,000 may be concluded by a consumer without using his/her qualified electronic signature, if he/she gave consent to conclude that contract using at least two elements of consumer identity verification (authentication) or using an electronic identification scheme with a high level of reliability," We feel that digitalisation in the provision of finance services on the one hand, and the fact that a large percentage of private individuals do not have a qualified electronic signature, on the other, imposes a need to increase the given limit and thereby allow for financial services of greater value to be concluded using at least two elements of consumer identity verification (authentication) or using an electronic identification scheme with a high level of reliability, as, the use of, for example, e-bank and OTP (one time password) for concluding agreements, fulfils all security standards.

Also, there are no clear instructions or guidelines on how to enter a case in the Register of Complaints where the com-

plainant expresses dissatisfaction on several grounds. In that case, the insurer should enter only one complaint and choose one of several grounds prescribed by the NBS instruction, and assessing it as primary, or for the same complainant should enter several consecutive complaints, entering each basis of complaint separately, even if it is the same applicant. objections and the same insurance contract. In practice, it is most common for clients to file an objection in an improper form without often providing primary data or evidence to substantiate their allegations, which puts insurers in a position to defend the unfoundedness of such allegations in later statements of the NBS. by the objector.

In addition, an increase in the number of both reported damages and complaints filed by lawyers on the basis of material and non-material damages from liability insurance due to the use of a motor vehicle was noticed, which increases the costs of processing such requests to insurers in settling attorney's fees. The insurer often encounters premature complaints, especially in the part of the amount of future insurance compensation, when the processing of the request for compensation is still in progress and the first instance decision has not been made.

Regarding the insurance sector rules of market behaviour, since it is planned to significantly improve the regulations governing this matter, and as these rules are of great practical importance because they affect the core business of insurance companies (from supervision and management of insurance products to placement and product distribution), continuous and constructive communication between industry and the NBS would be useful before implementing and prescribing new obligations in order to properly assess the level of market development as well as the achieved level of user protection by current regulations and rules.

FIC RECOMMENDATIONS

- Further educating financial services consumers on their rights, as well as insurance service users.
- Educating judicial officers on banking operations and insurance sector.
- Permanent resolving disputes initiated by loan processing fees in line with above mentioned manner.
- Amendments to the Law on Conversion in terms of specifying norms that would clearly define the the currency clause and rights of clients and banks
- Permitting the electronic issue of bills of exchange for individuals
- Regular workshops and seminars are proposed in cooperation with the NBS and insurance companies, and for the purpose of constructive discussions, exchange of opinions and obtaining instructions and guidelines in the field of finding the best solutions in the field of protection of rights and interests of insurance users.
- Continuous exchange of opinions and constructive discussions with insurance companies regarding the implementation of rules on insurance distribution, ie regulatory requirements regarding market behaviour.
- Increasing the limit stipulated in Article 3, paragraph 3 of the Law on the Protection of Financial Services Consumers in Distance Contracts, that is, enabling the conclusion of a contract through two-factor authentication or an IT solution that would enable the security without the use of an electronic qualified signature.
- Promoting mediation as way of resolving litigations between banks and financial services consumers and amending the Law on Mediation would be important in that regard.

PUBLIC PROCUREMENT

1.33

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Active cooperation between the Public Procurement Office, 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			√
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		√	
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).	2014			√

CURRENT SITUATION

On December 23rd 2019, the Serbian Parliament adopted the new Law Public Procurement Law (RS Official Gazette No 91/2019, hereinafter: the New Law). The New Law entered into force on January 1, 2020 and started to be applied as of July 1 2020. The law is to a significant extent harmonized with EU acquis, notably Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC and Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport, and postal services sectors and repealing Directive 2004/17/EC.

REMAINING ISSUES

The public procurement market in the Republic of Serbia in 2021 accounted for 8.93% of GDP, which is significantly higher compared to 2020, when it was 6.88%. The average number of bids per tender remained at a stable 2.5, but that is still lower than 2017 when the average number of offers per procedure was 3. The number of contracts awarded to foreign bidders remained at low level of 2% whereby this percentage is equally distributed between companies coming from the EU and third countries.

When it comes to contracts awarded in the negotiation procedures without prior notice their values accounted for 7.67% which represents a significant increase from 2020, when that percentage was at 2.57%. Open proceedings still have a dominant share with a percentage representation of 91.33%.

The value of public procurement, which is exempt from the implementation of the Law on Public Procurement, amounted to approx. 3.2 billion euros, of which the highest percentage (22.7%) represents international contracts that are exempted from the Law on Public Procurement.

The public procurement portal, which began operations in June 2020, represents a significant step in improving transparency of public procurement procedures.

REMAINING ISSUES

In the previous year, no progress was made in the field of fight against corruption and integrity in the field of public procurement.

Furthermore, 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. 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 previous Law, to file a lawsuit for the annulment of the contract on grounds set forth in this article.

A remaining issue is the application of the rules on an "unusually low bid." Despite FIC's effort to draw attention of inadequate provisions with regard to "unusually low bid" and proposal to set limits i.e. percentage in the New Law defining what exactly "unusually low bid" and obligation of the contracting authorities to reject "unusually low bids", FIC proposal was rejected. The point is, that the official position of the Commission 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 New 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.

The capacities of the Commission for protection of rights in public procurement procedures and Public Procurement Authority remain very weak. Also, the professional capacity of the Administrative Court to decide in complex and numerous cases remains low due to the lack of adequate training.

FIC RECOMMENDATIONS

- Improving the administrative and expert capacity of the Commission for protection of rights in public procurement procedures and the State Audit Institution so that they can effectively monitor the planning and execution of public procurement.
- Establish closer co-operation between, on the one hand, the Public Procurement Authority and the Republic Commission for protection of rights in public procurement procedures and the Administrative Court in order to exchange knowledge and information.
- Contracting exemptions from the implementation of the Law on Public Procurement in international agreements with third countries should be significantly reduced.

PUBLIC-PRIVATE PARTNERSHIP

1.58

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Better coordination among institutions dealing with PPP (better coordination and streamlined cooperation of all relevant PPP institutions with project initiators at all levels of government).	2020		√	
Institutional support to small local autonomies in demand of PPP projects of smaller scale and value which autonomies lack the funds to engage multidisciplinary experts.	2020		√	
Avoiding practice of having the same International Financial Institutions (IFIs) being engaged in support to public partner in preparation of PPP project and later procuring the financing to project company.	2020			√
Raising PPP awareness (PPP promotion campaign illustrating its advantages and potential, possible inclusion of PPP in universities curriculum to enhance fairness, transparency and competition, increasing the average number of participants to a single tender to at least 3, to avoid the risk of cartels being formed and competition being restricted).	2020			√
Raising the awareness of public partner of the importance of proper, fair and justifiable risk allocation and its embedding into PPP contract.	2020		√	
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 developed in accordance with the best international practice but in full compliance with Serbian law applicable to PPP contract, as well as investing resources in training public sector partners to successfully navigate a PPP project from inception to realization.	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. 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.	2017			√
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.	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			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Due attention be given to supervening events in future PPPs and the way in which parties will chose to deal with their consequences, as well as properly assessing the right risk allocation for such events.	2020		√	
Institutional capacity building and development that should be aimed at preparing the public sector for project implementation once the PPP contract is signed.	2020		√	

CURRENT SITUATION

Despite the Law on Public Private Partnerships and Concessions (the "PPP Law") having been adopted in 2011 and amended twice in 2016, 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 224[1] public private partnerships.

POSITIVE DEVELOPMENTS

Given the global impact that the Covid-19 pandemic has had, it is no surprise that the effects have also spilled over into the progress with PPPs in Serbia, being rather stagnant during this period.

However, there has been a number of newly approved PPP projects, whose realisation and trajectory is yet to be seen. Despite the negative consequences of Covid-19 pandemic, 2022 holds promise for further PPPs, including certain larger scale projects in the domain of water transport.

REMAINING ISSUES

Achieving progress in several aspects that are outlined below would highly contribute to the further development of PPPs.

A definitive goal towards Serbia should progress is increasing the level of legal certainty in the application of legislation, as well as improving the legal framework. On one hand, the PPP Law is ripe for an amendment, at a minimum in respect of aligning with that of the EU legislation that instils in it what international best practice has become. Furthermore, due to the relatively new nature of the PPP Law in Serbia, there is much room for improvement in understanding the relevant legislation in order to properly apply it, both by public and private stakeholders. Overall, further regulatory harmonisation in aspects related to PPPs would bode positively on the perception of the legal environment in Serbia for this type of investment.

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 preparation of a PPP project, 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." It is crucial that the public sector is entirely familiar with the preconditions for the project to be realized pursuant to a PPP model, project implementation requirements and that a designated team is assigned this task on behalf of the public partner at very early stage.

Due to the lack of sufficient market practice in implementing PPP projects in different sectors, 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 and proven problems in recognition and collection of costs incurred by private partner in preparation of self-initiative PPP proposal PPP when such private partner is not awarded a PPP contract.

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

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

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.

Lastly, an equally challenging phase of a PPP project is its implementation and contract management, which presupposes that both public and private partners have dedicated teams that will cover all aspects of the delivery of the PPP project, i.e. operational, technical, legal and financial. Progress should be made in this regard and overall strengthening the public sector capacity in this respect.

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:

- Better coordination among institutions dealing with PPP (better coordination and streamlined cooperation of all relevant PPP institutions with project initiators at all levels of government).
- Institutional support to small local autonomies in demand of PPP projects of smaller scale and value which autonomies lack the funds to engage multidisciplinary experts.
- Avoiding practice of having the same International Financial Institutions (IFIs) being engaged in support to public partner in preparation of PPP project and later procuring the financing to project company.
- Raising PPP awareness (PPP promotion campaign illustrating its advantages and potential, possible inclusion of PPP in universities curriculum to enhance fairness, transparency and competition, increasing the average number of participants to a single tender to at least 3, to avoid the risk of cartels being formed and competition being restricted).
- Raising the awareness of public partner of the importance of proper, fair and justifiable risk allocation and its embedding into PPP contract.
- 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 developed in accordance with the best international practice but in full compliance with Serbian law applicable to PPP contract, 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.
- Due attention be given to supervening events in future PPPs and the way in which parties will chose to deal with their consequences, as well as properly assessing the right risk allocation for such events.
- Institutional capacity building and development that should be aimed at preparing the public sector for project implementation once the PPP contract is signed.

ILLICIT TRADE AND INSPECTION CONTROL

1.57

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Adopting the Program for the Suppression of the Grey Economy for the period 2022-2025 and the accompanying Action Plan for the implementation of this program for the period 2022-2023.	2021		√	
Continuing with capacity building of republic inspections by employing new inspectors, and by improving working conditions for inspectors.	2021		√	
With the aim of increasing the efficiency of the illicit trade penal system, introducing specialization of judges for misdemeanor offences in the field of suppression of the grey economy.	2019		√	
Improving the system of fiscal burden for companies operating in the Republic of Serbia by creating a register of applicable fees, in order to further control parafiscal levies.	2018			√
Establishing a system of reporting on the measures and effects of Action Plans (flowcharts), while communicating the results of controls to stakeholders from the economy.	2021			√
Establishing and implementing a fast and efficient procedure for regulating the storage of seized goods between the public and private sectors.	2021			√
Maintaining the continuity of the process of improving import and export procedures.	2021		√	

CURRENT SITUATION

After the relaxation of restrictive measures that were in force during 2020 due to the COVID-19 pandemic, 2021 was marked by growth in economic activity and all macroeconomic indicators improvements. As a result of the growth of private consumption, foreign trade exchange, the effects of the government stimulus measures on consumption and deferred consumption from the previous year, a significant increase in tax revenues was recorded in 2021. Stable fiscal parameters provided a favorable environment for continuation of the institutional improvements of business conditions. Regular activities for improving the illicit trade control system continued during 2021.

The beginning of 2022 was marked by the outbreak of a new global crisis arising from the conflict in Ukraine. The increased uncertainty stemmed from the geopolitical crisis resulted in a general deterioration of business conditions at the global level, as the prices of energy, primary agricultural products and metals approached historically high levels. Since the outbreak of the new crisis, the focus of state authorities has been redirected to preserving economic activity and preventing global negative spillovers on the business environment in Serbia.

POSITIVE DEVELOPMENTS

The Coordination Body for the Suppression of the Grey Economy coordinated activities of all state administration bodies related to the preparation of the new Program for Suppression of the Grey Economy for the period 2022 – 2025. Together with business representatives, citizens and the non-governmental sector, priority measures and activities to suppress the grey economy until 2025 were defined. The Program for Suppression of the Grey Economy 2022 – 2025 has passed the public discussion procedure, opinions of the members of the Government of the Republic of Serbia had been collected and it is expected to be adopted with the Action Plan 2022-2023, by the new Government of the Republic of Serbia.

Aiming to improve inspection controls, the Coordination Commission for Inspection Supervision of the Ministry of Public Administration and Local Self-Government continued with its regular activities. By providing the recommendations and guidelines, that are regularly published in the Inspection Practice Book, the efficiency of inspection controls are being improved. It was recommended that inspection services, in addition to strategic and annual plans for inspection supervision, prepare and agree on special plans for managing crisis situations, which foresee the

measures and actions by which inspections proceed in the event of a crisis, as well as, based on the analysis of regular and extraordinary inspections carried out in the previous period, plan the number of future extraordinary inspections, in order to preserve the public interest and properly plan the schedule of inspection supervisions.

Inspection supervisions are continuously carried out in accordance with checklists and inspection forms, which are regularly published and updated on www.inspektor.gov.rs. Availability of all documents provides businesses with a simplified access to information on the requirements for operating a business in accordance with regulations. In March 2022, the Ministry of Public Administration and Local Self-Government established a special Department for Coordination of Inspection Supervision, to inherit all activities undertaken since June 2017 by the Support division / Team for inspections reform that has been donor funded to support work of the Coordination Commission for Inspection Supervision, including digitization and further regulation of policies in the field of inspection supervision.

The use of the Single Contact Center for reporting irregularities to the republic's inspections, which was launched in March 2020, and upgraded with new features in next 12 months, such as artificial intelligence (Chabot IVA application available on also on www.inspektor.gov.rs, and on viber messenger) as well as linking with local self-government inspections and e-Inspector information system, significantly simplified the procedure for reporting irregularities. In the coming period, it is planned to promote the Single Contact Centre as a unique place for businesses to report illegal activities and obtain all answers to questions from the jurisdiction of inspections.

After a delay and transitional period, the implementation of the new fiscalization system began on May 1, 2022, at the same time as the mandatory implementation of electronic invoicing within the public sector (G2G) and private sector to public (B2G). Implementation of e-Fiscalization and e-Invoice, as important tools in the fight against grey economy, envisioning the use of modern technologies for the purpose of digitalization of transaction recording, electronic exchange of invoices and a simpler and more efficient control by state bodies.

Regarding improvements to import and export procedures, we would like to mention that UNECE (United Nations Economic Commission for Europe) has prepared a study entitled "Regulatory and Procedural Barriers to Trade in Serbia" which was officially presented in July of 2021 (Regulatory and Procedural Barriers to Trade in Serbia: Needs Assessment (ECE/TRADE/460) | UNECE). The study was prepared in cooperation with representatives of the Serbian economy and contains numerous recommendations for improving the subject procedures. Additionally, the implementation of the World Bank's Western Balkans Trade and Transport Facilitation Program with the application of a Multiphase Programmatic Approach is underway, where we would like to highlight the subcomponent of the project "National One-stop Shop (NOSS)". The implementation of NOSS is aimed at providing businesses with a possibility to electronically submit to and receive from state bodies all documents that are necessary for performing foreign trade activities through a single portal. It was estimated that NOSS could start operating within a framework of three years, given that the implementation requires extensive activities in order to identify and provide necessary infrastructure and adequate software solution.

REMAINING ISSUES

In order to achieve the continuity of systematic efforts to suppress the grey economy, a new Program for Suppressing the Grey Economy for the period up to 2025 should have been adopted in 2021The Program proposal was drafted during 2021, but there was a delay in its adoption, which is now expected only at the end of 2022, after the new Government of the Republic of Serbia is formed. In the meantime, as macroeconomic context significantly changed, it would be reasonable to revise draft Program accordingly, prior to its final adoption.

In the framework of further improvements to the e-Inspector software functionalities, we would like to emphasize the importance of the linking of all inspections and the necessity to establish new functionality for information exchange between the Tax Administration and Custom Administration with the e-Inspector system. Additionally, it is necessary to link the e-Inspector with the Misdemeanor court information system (SIPRES), to enable information exchange and improve efficacy, for which the changes to the Law on Misdemeanors will be needed.

Activities to ensure an adequate number of new inspectors and necessary equipment, as well as to improve the performance appraisal system in order to increase efficiency and earnings of inspectors, should remain among top pri-

orities. As a result of the natural outflow due to retirements, an additional reduction in the capacity of inspections is expected, therefore it is necessary to continue actively working on this issue to provide unhindered continuation of all inspections activities. The Action plan for employment of new inspectors at the state level 2019-2021 has been 50% achieved as of August 2021. Reasons for delay in implementation lies in complex and long-lasting employment procedures, as well as insufficient attractiveness of inspection jobs (i.e. inadequate salary levels).

A public electronic register and portal with valid fees and charges, as one of the important elements of predictability of the business environment and the disincentive of illegal trade activities, have not been implemented either.

A reporting system for the results of the implementation of adopted flowcharts for controls of illicit trade in certain sectors/goods has not been finalized yet, and no data on the outcome of such controls is available to stakeholders.

One of the most important preventive measures is setting up an adequate system of penalties for illicit trade so further improvements are needed regarding the efficiency of communication between control bodies and courts, as well as further specialization of commercial courts.

Having in mind the estimated scope of activities and the goal of simplifying the import and export procedures, it is recommended that the state authorities should keep this topic among the priorities.

FIC RECOMMENDATIONS

- Adopting the Program for the Suppression of the Grey Economy for the period 2022-2025 and the accompanying Action Plan for the implementation of this program for the period 2022-2023.
- Continuing with capacity building of republic inspections by employing new inspectors, and by improving working conditions, including material status for inspectors.
- With the aim of increasing the efficiency of the illicit trade penal system, introducing specialization of judges for misdemeanor offences in the field of suppression of the grey economy.
- Improving the system of fiscal burden for companies operating in the Republic of Serbia by creating a register of applicable fees, in order to further control parafiscal levies.
- Establishing a system of reporting on the measures and effects of Action Plans (flowcharts), while communicating the results of controls to stakeholders from the economy.
- Establishing and implementing a fast and efficient procedure for regulating the storage of seized goods between the public and private sectors.
- Developing a system of advanced analytical methods for the use of data obtained from e-Fiscalization, and regularly publishing the results of the processed data.
- Supporting the full implementation of the Law on Electronic Invoicing and related by-laws in accordance with the planned dynamics
- Maintaining the continuity of the process of improving import and export procedures.

CUSTOMS

1.20

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2018			√
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.	2018			√
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; (3) adopt new Explanations of the Customs Administration related to the inward processing procedure. The opinions of the Customs Administration should contain an interpretation, and not just a citation of regulations; (4) specify the procedure for determining and changing the customs value in the event of a goods' price change; (5) by adopting an appropriate Explanation from the CA, change the interpretation that the implementation of temporary export requires the approval of the customs authority, as this is contrary to the legislation or harmonize the regulations; (6) adoption of an act of the CA which would explain the procedure for determining and changing the customs value in case of transfer prices; (7) ensure the full applicability for "new" rules of origin on trade with PAN-EU members; (8) improve efficiency for issuing "BTI" documents.	2021		√	
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, improve the risk analysis system according to which goods and / or importer type would be identified for an accelerated or simplified import procedure.	2018			√
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.	2019			√

CURRENT SITUATION

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"). Custom Law provides solid regulatory baseline for further simplification custom procedures and cost reduction.

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, CEFTA, UK, Turkey and new EAEU.

Serbia has accepted PEM Convention suggestions for more liberal rules of origin and movements of goods, which shall enhance the trade between Serbia, CEFTA and PAN-EU members, as all stakeholders fully implement them.

POSITIVE DEVELOPMENTS

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

- Additional alignment with EU regulations and acceptance of more flexible rules on the concept of origin of goods between Serbia, CEFTA and PAN-EU members.

- Partial improvement related to the process of approval of simplification (Domestic customs clearance) in the sense that the circumstances in which business entities operate are taken into account and that there is no need to insist exclusively on financial indicators.

REMAINING ISSUES

General Comments of the Council

- 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.

- 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%.

Application of legislation

- 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 declarant 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.

- 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 fee for the parking at the terminals where the customs formalities are performed, is still being charged and it is contrary to the Customs Law, which stipulates that customs authorities do not charge fees for performing customs controls, which should include the possibility of access to customs premises at no additional cost.

- The following deviations have been noted in practice: i) decisions on the request to amend the customs declaration are made after the prescribed deadlines; ii) full implementation of Article 158 of the Law is not allowed, declarations are still forwarded electronically, although the Law allows the holder of the approval to submit a declaration in the form of recording in business books, iii) restrictive approach is still applied when it comes to discounts and still insists on submitting contracts in writing although it is no longer necessary.

- Customs Authority has provided the official Explanation on how the duties are calculated and the customs value is determined for finished products that are exported to the territory of Serbia outside the zone, and which are produced in the free zone from materials for which exemption from customs duties was applied. The application of the Explanation has been delayed few times and still it is not adopted.

- Customs regulations do not define temporary export as a special customs procedure, which means that the temporary export of goods does not require the approval of the customs authority, but to apply the provisions relating to the export of goods. However, the customs authorities require temporary export to be applied for and an authorization issued, which unnecessarily slows down and complicates the implementation of the export procedure.

- The problem was noticed that in the case of the need to change a large number of declarations related to a longer period of time, the changes would be made for each declaration individually.

- FTA are applied without major difficulties, but documents of origin and "BTI" should be issued and processed more efficiently.

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; 3) it is necessary to prescribe a simplified procedure that

defines the process of correction of the customs value of previously imported/exported goods for a longer period of time.

- 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; (3) we propose that opinions of the Customs Administration should be more precise and detailed; (4) specify the procedure for determining and changing the customs value in the event of a goods' price change; (5) specify the procedure for temporary export in order to customs authority approval is not required and regular export procedures can be applied in practise; (6) adoption of an act of the CA which would explain the procedure for determining and changing the customs value in case of transfer prices; (7) ensure the full applicability for "new" rules of origin on trade with PAN-EU members; (8) improve efficiency for issuing "BTI" documents, (9) introduce an exemption from conducting misdemeanor proceedings for a person who only requests to change the data on the quantity of goods in the customs declaration after the end of the procedure and after determining the actual quantity of delivered goods; (10) consider the introduction of customs relief for the import of new equipment that is not produced in the country.

- 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, improve the risk analysis system according to which goods and / or importer type would be identified for an accelerated or simplified import procedure.

- 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

1.80

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Qualified signature – possibility of signing via the Cloud, possibility of offering legal entities an electronic signature.	2021	√		
The acceptance of electronic documents by government bodies	2021		√	
Amendments to the Law on Multilateral Interchange Fees and Special Operating Rules for Card-based Payment Transactions	2015		√	

CURRENT SITUATION

In 2021, there were no significant regulatory activities relative to payment services. The overall impression is that much has been done in recent years until the start of 2021, and what is left to do is to fine tune and adapt participants, in order for payment services provision and use process is additionally improved upon.

In the period starting from end-of-year 2014, when the Law on Payment Services was adopted, through to the amendments of said Law which took place in 2018, the period until the end of 2020 was a period of significant regulatory activity in this area, the aim of which was to establish a modern, easily accessible and digitalised process of providing and using payment services.

At the same time, we are not only referring to the Law on Payment Services and the bylaw adopted under said Law, we are also referring to the entire set of other regulations adopted by the National Assembly of the Republic of Serbia and other regulatory bodies (Law on Electronic Documents, Electronic Identification and Electronic Trust Services of 2017, the Law on the Protection of Financial Service Consumers in Distance Contracts of 2018, Decision on General Rules on Instant Credit Transfers of 2017 with amendments, Decision on Conditions and Manner of Establishing and Verifying Identity of a Natural Person through Means of Electronic Communication and the like). The entire group of these and other documents supports the implementation of both the 2020-2024 Strategy for Digital Skills Development of the Republic of Serbia and the Strategy for the Development of the Information Society and Information Security for the 2021 to 2026 Period, documents adopted by the Government of the Republic of Serbia, as umbrella documents serving to modernize and digitalize the entire society.

In line with the above, it is clear that much has been done in recent times to advance, digitalise, make available and improve payment services customer protection relative to payment and other corresponding services. Of the significant regulatory changes made in 2021, we would like to highlight the amendments to the Law on Electronic Documents, Electronic Identification and Services of Trust Services by which an additional step was taken toward facilitating and simplifying the use of qualified electronic signatures (digital identification was introduced, document signing by branches of public administration via qualified electronic seal or the qualified electronic signature of authorised persons, has been made possible, and so on).

Furthermore, it is important to note that, differing from 2020, there were no significant regulatory activities of the National Bank of Serbia in the area of payment services linked to the COVID-19 pandemic, as there was no need. Namely, much was done throughout 2020 in order to sustain financial system stability, while in 2021, the circumstances themselves did not require intervention in the form of rendering various bylaws in this area.

In line with said, this text aims to analyse the results of the previous recommendations, as well as to propose what needs to be done in addition in order to improve payment services in the Republic of Serbia.

POSITIVE DEVELOPMENTS

RECOMMENDATIONS FROM THE PREVIOUS YEAR

As far as recommendations from the previous year are in question, there have been improvements in the following scope:

- Increasing the limits to which electronic signature is applicable – there has not been any improvement in this area, given that the limit, in line with the Law on the Protection of Financial Service Consumers has remained at the threshold (amount) of RSD 600,000.00. Given the

necessity for the author of the text to undertake responsibility in certain cases if he/she was not clear enough, we would like to take a critical look at the recommendation provided by us. Namely, the recommendation itself has not been expressed clearly enough, furthermore, we believe that said recommendation refers much more to the section referring to the area which regulates the protection of financial service customers. In line with the above, and although we remain of the opinion that it is necessary to increase the limit applied to concluding the Financial Services Contract, which may be concluded without the use of a personal qualified electronic signature, if consent to conclude this agreement was provided through the use of at least two elements to confirm the users identity (authentication) or by using a highly-reliable electronic identity scheme, we will no longer deal with this issue in the text referring to payment services.

- Qualified signatures – in this section, we believe that significant strides have been made in the regulatory and technical sense. Digital identification has been made possible in obtaining a qualified electronic signature. The technical infrastructure required for legal entities to use qualified electronic seals has been created, the use of qualified electronic signature in the Cloud has been made possible and, in this regard, a significant step forward has been made in terms of the large-scale use of qualified electronic signatures. In future it is necessary to actively promote the wide-scale use of qualified electronic signatures.
- Acceptance of electronic documents by government bodies – In this segment there has been a certain degree of improvement given that more and more government bodies correspond with citizens and corporate entities electronically. For example, the cadastre is largely digitalised, a large number of courts have created the technical infrastructure needed to receive documentation electronically, the Ministry of the Interior allows for the issuance of various documents electronically, thus, we see improvements in the area concerning the work of government bodies. The complete digitalisation of the government administration would be desirable, in particular in the area concerning the submittal of various documents by the citizenry and corporate entities to government bodies. For instance, if a client asks the Bank for a specific certificate/letter of confirmation it is necessary for the government body to accept this certificate/letter of confirmation if it is signed via a qualified electronic signature of the Bank's authorised person, and to allow clients to send said documents to the government body via an official email address designated to receive electronic mail (as is the case with most of the courts).
- Revision of the NBS's transactions price list – Upon analysing this recommendation and historical analysis of the fees charged by the NBS for transactions, the authors of this text have abandoned this recommendation.
- Amendment to the Law on Multilateral Interchange Fees and Special Operating Rules for Card-Based Payment Transactions in the manner that the issue of cards, where domestic payment transactions are not processed in the Republic of Serbia, is not conditioned by the prior issuance of a payment card for the execution of domestic payment transactions - With regard to this recommendation, we believe that some progress has been made. Namely, upon detailed analysis and understanding of the reason for introducing this provision into our country's legal system, we wish to emphasise that the FIC supports the opinion that in order to secure the unhindered functioning of domestic payment operations and financial stability, it is necessary for such a provision to exist in our legal system. We would like to highlight once again that our proposal is to abolish the need for a special request issued by the client to issue him/her a payment card that can be used to initiate payment services from their current account, where in domestic payment transactions, the processing, netting and settlement of transfer orders issued based on its use are NOT performed in the Republic of Serbia. Namely, our proposal is fully aimed at terminating unnecessary administration and the existence of a special request, and is in no way aimed at abolishing the existing obligation to issue 'domestic' payment cards. Given that the regulator believes that there is room for the consideration of the aforementioned proposal, and aiming to facilitate the actions of banks concerning payment card issuance, we believe that we are on the right track to completely fulfilling this proposal.

REMAINING ISSUES

1) Automating the video identification process

The authors of this text are content that as of 2019, and via the subsequent amendments which took place in 2020 and 2021, establishing and verifying the identity of clients have been enabled, by using electronic means of communication and without the obligatory physical presence of the

person whose identification is being verified (video identification procedure). Video identification in question here is a process that not only facilitates the work of legal entities which are obliged to identify clients, but also provides comfort to clients who can be identified from any location, without the need to visit the business premises of the reporting entity.

Not wishing to diminish the great significance of this regulatory solution, we would hereby propose to take this a step further. We propose the consideration of changes to the necessary regulations in order to automate the process itself, and to exclude the need for the presence of the reporting entity's representative in the video identification process, who conducts the video identification process in the name and on behalf of the said reporting entity.

In this regard, our proposal is to allow for video identification to be performed by using various software solutions which use biometric data to identify clients.

The advantages of creating a regulatory framework for introducing software into the video identification process are manifold, the process itself would be automated and quicker, the risk of personal assessment of protective elements of the identification document would be reduced, the risk of fraud would be reduced, as would the number of files created during the video ID process, connection issues, the need for the client to be in a certain type of environment in order for the process to take place, and at the end of the day, the client would be more comfortable using these services.

2) Establishing a joint platform for the banks to exchange information during the process of payment account switching (Switching Service)

The authors of the text understand that much has been done concerning the process of establishing a joint bank platform created to support the process of loan refinancing. From the client's viewpoint, we believe this is significantly beneficial. Further, we are aware of the fact that the amendments to the Law on Payment Services of 2018 have greatly facilitated the process of payment account switching from the payment service user's point of view.

What we consider to be a step further, and one that would make the process much more efficient is the need to create an interconnected (joint) bank platform, as is the case of the refinancing loans process, which would allow for the exchange of data for those clients who wish to switch to another payment service provider. Also, to allow clients to issue authorisation to switch payment accounts electronically, in the same way they can give consent to establishing a business relationship, after the video identification process has been implemented.

The creation of this type of platform would further facilitate the process of payment account switching, from both the client's and the PSP's perspectives. Namely, data exchange is currently performed between PSPs via email, which can create issues in the monitoring process and in the ability to promptly respond to requests/forms.

3) Introducing electronic bills of exchange for PIs

Given that the process of implementing electronic bills of exchange (e-bills of exchange) for LEs and entrepreneurs is in its final stages, the authors of this text believe it necessary to introduce the possibility of issuing e-bills of exchange to PIs, under the same grounds.

Namely, PIs, as users of various banking products are very often obligated to issue bills of exchange when concluding agreements. In line with the above, it would be easier for both banks and clients alike if e-bills of exchange could be issued by PIs.

Primarily because banks are more often allowing for the conclusion of distance loan agreements, in line with the provisions of the Law on the Protection of Financial Service Customers concerning distance contracting. From a legal standpoint, these agreements are uncollateralised, because more often than not, nothing is taken from the client, not even bills of exchange. Namely, if a distance agreement is concluded, it is not expedient to ask the client to visit the bank's premises in order to issue bills of exchange.

Introducing e-bills of exchange increases the safety of bank operations in the area of loan approval. However, this may also benefit various segments of society, given the countless business transactions performed between PIs and LEs, as well as between PIs themselves.

4) Amendment to Article 9, paragraph 2 of the Law on Multilateral Interchange Fees and Special Operating Rules for Card-Based Payment Transactions in the section on the existence of special client requests

We propose the amendment of the Law on Multilateral Interchange Fees and Special Operating Rules for Card-Based Payment Transactions, such that the issue of cards, where in domestic payment transactions, the processing, netting and settlement of transfer orders issued based on its use are NOT performed in the Republic of Serbia, are not conditioned by the previously mentioned special request of the payment services user.

As already mentioned, the authors of the text are fully aware of the significance of the existence of the provisions of Article 9, paragraph 2 of the Law on Multilateral Interchange Fees and Special Operating Rules for Card-based Payment Transactions. We would once again like to propose here that within the aforementioned paragraph, the section which states that the card for which processing, netting and settlement of transfer orders issued on the basis of its use in domestic payment transactions are not carried out in the Republic of Serbia, can only be issued at the special request of the payment service user, given in writing.

We propose Article 9, paragraph 2 of the Law be worded as follows:

"A payment card which may be used to initiate current account payment transactions, where the operations stipulated in paragraph 1 of this Article are not performed in the Republic of Serbia – can only be issued to the user to initiate payment transactions from said current account if he/she has already been issued or will be issued the payment card referred to in paragraph 1 of this Article."

Namely, the proposed amendment in no way jeopardises the meaning or reason for introducing the mentioned provisions into our legal system. On the other hand, by excluding the need for a special request in written form, unnecessary administration is reduced for the Bank, by introducing the need to generate and sign additional documentation for the issuance of a payment card, necessary for payment service users to perform transactions at points of sale or online stores abroad.

5) Amendments to the regulations in the section referring to documents submitted to clients when opening a current account

According to the current regulatory framework, PI clients who wish to open a so-called basic account, as an account that provides clients with a minimum set of services, it is necessary to submit at least 6 documents during the pre-agreement and agreement phase (Payment Account Statement, Draft Agreement, Current Account Offer, General Business Regulations, Price List, Overview of Services and Fees, etc.). Experience in practice shows that the clients themselves complain, as they don't understand the need for such a large set of documentation. The authors of the text understand the regulators' desire for clients to receive as much information during the pre-agreement phase about the fees that they will be charged for by the PSP, and so that they may compare the fees of various PSPs. However, practice has shown that the average client cannot understand the vast amount of information and documentation they are given, that is, the average cost of the services they are charged for and what services they require, and to compare these with the fees charged by other PSPs. It is a fact that when opening an account, clients are given three documents which provide similar information – the Offer, Price List and Overview of Products and Fees. This can cause confusion and ambiguity regarding what information is important and should be paid close attention. On the other hand, clients are often unaware of the fact that the National Bank of Serbia's website provides an overview of the fees of various PSPs, which they can use to compare prices.

In line with the aforementioned, and aiming to protect and provide comprehensive information to the client, it would be desirable and more efficient to review regulations in this area so as to ensure full disclosure to clients while reducing the amount of documentation PSPs are required to provide clients.

We propose that the section of the documentation provided to clients excludes the obligation to provide the Offer, in that the submittal of the Draft Opening an Account Agreement together with the General Business Regulations and the Price List of the PSP could be considered the Offer.

Further, a key amendment which would allow for full client disclosure is to introduce a new document to replace the document entitled: Overview of Services and Fees. Namely, a set of approx. 5-10 most common services should be prescribed, which are taken as assessment criteria for all banks for the observed period of one month and to allow banks to download this document from the NBS's website, with the obligation that said document be submitted to the client in the pre-agreement phase. The idea behind this document is to provide the average client with a one-page document that shows the total monthly

fees for that particular set of services for every bank operating in Serbia. We believe that this would satisfy the regulator's desire for full disclosure to the client. An obstacle to this proposal is that the banks all have various package accounts available, however, in this modern technological age, it would be easy to set up the application to recognise which package is most favourable for the client, and which includes a particular set of chosen services.

FIC RECOMMENDATIONS

- Automating the video identification process
- Establishing an interrelated (joint) bank platform for information exchange in the payment account switching process
- Introducing e-bills of exchange for PIs
- Amendment to Article 9, paragraph 2 of the Law on Multilateral Interchange Fees and Special Operating Rules for Card-Based Payment Transactions in the section on the existence of special client requests
- Amendment to the law in the section referring to documentation submitted to the client when opening a current account

FOREIGN EXCHANGE OPERATIONS

1.38

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			√
Further relaxation of administrative requirements (e.g. delivering of documentation via e-mail instead in hard copy), and particularly switching to ex post reporting of cross-border financial loans.	2021			√
Continue the practice of publishing of opinions of state authorities in charge of forex operations, in particular NBS, for the consistency in application of regulations by all participants.	2021	√		
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 in accordance with Article 23 of the Law and relevant bylaws. Additionally, the clear instructions are required regarding the type of securities for receivables collection that are to be obtained from non-residents in case of granting loans to a non-resident or providing guarantees and other type of securities under credit operations between non-residents.	2021			√
Simplify the set-off rules from the Article 6 of the Law (and relevant by-laws) 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, as currently envisaged by by-laws governing cash inflow and outflow with abroad, subject to condition (if necessary) for such notification to be made subsequently and electronically at certain time intervals, if possible, directly from the companies and not threw commercial banks (e.g., monthly, quarterly, etc.) For natural persons, enable automatic distribution of all inflows from abroad, i.e., without exceptions regarding the notification of the Bank on certain bases of inflow.	2018		√	
Further liberalisation of foreign deposit transactions of residents, especially for companies subject to project financing by foreign banks and international financial institutions.	2018			√

CURRENT SITUATION

As of 28 April 2018, when the amendments to the Law on Foreign Exchange Operations (Official Gazette of RS Nos. 62/2006, 31/2011, 119/2012, 139/2014 and 30/2018) (Law) entered into force, no significant changes in the field of foreign exchange regulations have occurred.

Since the last edition of the White Book, several by-laws have been adopted and amended. In general, the changes were related to the regulation of exchange transactions, while there were no changes to the regulations to which the Council's recommendations refer.

POSITIVE DEVELOPMENTS

During the last year there have been no material changes of the Law and/or the bylaws, and thus significant positive

developments in this area have not been made.

A significant improvement in terms of transparency and availability of opinions of the National Bank of Serbia (NBS) in interpreting the provisions of the Law achieved in the first half of 2021, when the NBS began publishing its responses on frequently asked forex questions on its website, should be continued as it significantly contributes to legal certainty. Although it is clear on the basis of this document that the NBS maintains a positive approach to interpretation of the Law, in the sense that only explicitly prescribed operations in the Law are considered allowed, the public availability of these opinions significantly contributes to the knowledge of stakeholders of the regulator's views, what is important for planning transactions.

REMAINING ISSUES

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

Recognising the position of the regulator regarding the necessity to preserve macroeconomic and financial stability, we believe that there is still a need 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, as well as by the NBS, remains that all other unregulated activities are not in accordance with the Law. Legal transactions and the market continuously evolve, and it is neither possible nor expedient to apply a legislative technique that lists the allowed operations, while regarding the others as unpermitted. In practice, this perennial approach results in situations where certain operations, which the legislator does not seem to intend to exclude, cannot be performed due to the lack of governing norms. In addition, it is noticeable that, in certain matters, the competent authorities' interpretation narrows down the scope of application of certain rules, thereby constraining the operations of participants in the field of forex operations.

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

Certain practical difficulties in conducting cross-border loan transactions arise from the ex-ante reporting procedure of the NBS on financial loans, which is a precondition for utilization of funds by resident companies. Given the purely statistical purpose of reporting, we believe in need of further simplification of the said procedure e.g., by introducing the obligation of ex-post aggregate reporting by e-mail, with a reduced volume of documentation or in a similar manner.

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

Moreover, in relation to the 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, necessity in practice remains to further liberalise foreign deposit operations of residents, including for companies that are the subject of project financing by foreign banks and international financial institutions.

Furthermore, the by-laws regarding foreign cash inflows do not fully allow the automation of international payment transactions. In order for a resident to realise foreign cash inflow, it must first provide the bank with information for statistical purposes regarding the basis for collection and in certain situations documentation for justification of the basis of collection. Only certain types of inflows of up to 1,000 euros have been exempt from the procedure as part of the gradual liberalisation process. In addition, as of 1 April 2021, the implementation of the amended provisions of the Guidelines for Implementing the Decision on Terms and Conditions of Performing Foreign Payment Transactions (amendments from July 2020) has begun, which prescribes the obligation to enter data on invoice in payment/collection order in accordance with the single customs document for operations of import and export of goods. The change required significant changes in bank systems and adds an administrative burden in carrying out international payment transactions.

It also remains unclear why the possibilities of providing guarantees i.e., collaterals by residents are limited only to credit operations between non-residents, and not for the guarantees pursuant to Article 26. of the Law. Therefore, further liberalisation of the Law in this direction is also required.

Additionally, 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. Moreover, the discretion of the NBS to restrict individual residents from providing guarantees and other types of security for foreign loans or from granting loans to non-residents creates significant legal uncertainty. The restriction procedure itself and the moment at which the NBS may render the decision on restriction are not further defined. Furthermore, the wide scope of this discretion of the NBS applies not only to foreign loans granted by a resident to a non-resident and guarantees/securities for foreign loans, but also to guarantees/securities provided by residents for foreign loans taken by residents (for which the amendments from 2018 practically tightened the legal regime). Also, it remains an open question what specific type of security for collection of receivables need to be obtained from non-residents in case of granting loans to a non-resident or providing guarantees and other types of securities under foreign credit operations between non-residents, so additional specifying is required in order for the parties to be timely aware of what is an acceptable collateral for the NBS before structuring the credit transaction, and not after receiving comments from the NBS in this regard after the signed loan agreement and reporting thereof.

With the UK's exit from the EU completed, the NBS is expected to harmonise its stance towards UK-based banks in the coming period with the position of EU member states and with any bilateral documents that are or will be in force between Serbia and the UK.

Furthermore, Article 32 of the Law allows legal entities and entrepreneurs to perform cross-border payment transactions through a payment institution and the public postal operator. At the same time, however, the Law on Payment Transactions of Legal Entities, Entrepreneurs and Individuals Not Engaged in Business Activity ("Official Gazette of RS" no. 68/2015) prescribes the obligation for legal entities and entrepreneurs to make payments through a current account opened with a bank or the Treasury Department (which indirectly indicates that payment institutions and the public postal operator are not authorised to conduct international payment operations). For this reason, it is necessary to harmonise the aforementioned law and the law regulating payment services with the amendments to the Law in order to fully enable legal entities and entrepreneurs to perform cross-border payment transactions through a payment institution and the public postal operator.

Additionally, it is necessary to regulate the treatment of inflows and outflows of cross-border donations, grants and other non-refundable givings whereby domestic business entities participate, either as recipients or donors. Currently, such payments are not regarded as current nor capital transactions defined by the Law, hence, their legal treatment is not clear. Detailed regulation in this regard is required start-up companies, especially in the IT sector, require such funding in the initial stages of the development of particular innovations.

Finally, we would raise the systemic issue of more efficient collection of claims of non-residents arising from

judicial and executive proceedings, execution of extrajudicial mortgages and bankruptcy proceedings. Currently, under the laws governing the aforementioned procedures, non-resident account is required at the time of submission of the proposal for execution and/or collection in dinars, making the collection procedure for non-residents ineffective, as the opening of non-resident bank accounts can take months. This issue needs to be systematically resolved through changes/interpretations of all relevant laws regulating the aforementioned procedures and in coordination with competent authorities. As per the Law, it would be useful to amend or interpret Articles 32 and 34 of the Law to enable payment in foreign currency directly to the account of non-residents abroad in such cases. Where the laws governing the aforementioned procedures prescribe the collection or denomination of receivables in dinars, possibility of introducing an exception for payments to non-residents in foreign currency directly to an account abroad should be considered.

Therefore, the forex policy should be directed towards the further liberalisation of current and capital transactions to harmonise the applicable Serbian legislation with EU rules and international standards in this area. Application and interpretation of the laws by the competent authorities should be 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.
- Further relaxation of administrative requirements (e.g. delivering of documentation via e-mail instead in hard copy), and particularly switching to ex post reporting of cross-border financial loans. Enable foreign inflows without prior notification to the bank, as currently envisaged by by-laws governing cash inflow and outflow with abroad, subject to condition (if necessary) for such notification to be made subsequently and electronically at certain time intervals, if possible, directly from the companies and not through commercial banks (e.g., monthly, quarterly, etc.) For natural persons, enable automatic distribution of all inflows from abroad, i.e., without exceptions regarding the notification of the Bank on certain bases of inflow.
- Continue the practice of publishing of opinions of state authorities in charge of forex operations, in particular NBS, for the consistency in application of regulations by all participants.
- 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 in accordance with Article 23 of the Law and relevant bylaws. Additionally, the clear instructions are required regarding the type of securities for receivables collection that are to be obtained from non-residents in case of granting loans to a non-resident or providing guarantees and other type of securities under credit operations between non-residents.
- Simplify the set-off rules from the Article 6 of the Law (and relevant by-laws) for all types of current and capital transactions and allow cash pooling between affiliated parties.
- Reconsider Articles 7, 20 and 33 of the Law so that the transfer, payment and collection of receivables and debts are resolved adequately for all types of current and capital transactions.
- Further liberalisation of foreign deposit transactions of residents, especially for companies subject to project financing by foreign banks and international financial institutions.

- Clearly regulate the treatment of inflows and outflows of cross-border donations, grants and other non-refundable givings whereby domestic business entities participate, either as recipients or donors.
- Re Articles 32 and 34 of the Law, enable the direct collection of claims of non-residents in foreign currency to their accounts abroad in judicial and extrajudicial enforcement proceedings and bankruptcy proceedings to make the proceedings more efficient.

PREVENTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM

1.25

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Develop a system that would enable better cooperation between the Administration, supervisory bodies and obliged entities, with the aim of better implementation of regulations with emphasis on prevention of money laundering and funding of terrorism and not burdening obliged entities with numerous formalities e.g., establishing a Task Force that would meet regularly to monitor the implementation of regulations with the participation of representatives of the competent authorities.	2009			√
Create an analysis of new changes to the regulations in this area and recommend a meeting with the Government of RS in order to further improve the legal framework.	2020			√
Accept and adopt initiatives of professional associations to exempt certain business relationships from obligations prescribed by law (e.g., risk insurance).	2019			√
Continue organizing adequate seminars and workshops with the purpose of conducting certain training for the persons to whom the New Law with the purpose of increasing the efficiency of its applicability.	2011		√	

CURRENT SITUATION

In 2021 and 2022, no changes have been made to the Law on the Prevention of Money Laundering and Financing of Terrorism (Off. Gazette of RS Nos. 113/2017, 91/2019 and 153/2020), hereinafter: „Law“). The latest amendments were introduced in 2020 to enable harmonization with the Law on Digital Property (Off. Gazette of RS, No. 153/2020) and full compliance with FATF Recommendation 15 and, to a large extent, with the EU Fifth Directive.

In accordance with their obligation to adopt bylaws, state authorities have already adopted certain regulations, of which we single out the adoption of a decision on guidelines for the application of the provisions of the Law for obligors supervised by the NBS, decision on conditions and manner of determining and verifying the identity of a natural person using electronic means of communication as well as the rulebook on conditions and manner of determining and verifying the identity of a natural person using electronic means of communication regulating conditions and manner of establishing and verifying the identity of a natural person those parties, a party that is an entrepreneur and a natural person who is a representative of a party that is a legal entity and without the obligatory physical presence of particular person. Also, the amendments to the Rulebook on the methodology of performance of activities in accordance with the Law on the Prevention of Money Laundering and Financing of Terrorism specified which persons that can be classified in the low-risk category of money laundering and financing of terrorism, and introduced other amendments dealing with services and transactions that can be classified in the low-risk category, the content of the annual report on executed internal inspection and the form of keeping the records of data and collected information regarding the obliged entities in the digital asset sector.

In addition, at the meeting on 30 September 2021, the Government of the Republic of Serbia decided to introduce the National Risk Assessment of Money Laundering and National Risk Assessment of Terrorist Financing, Risk Assessment of Money Laundering and Terrorist Financing in the Digital Asset Sector, and Risk Assessment of Proliferation Financing of Weapons of Mass Destruction.

Also, the Action Plan for the Implementation of the Strategy Against Money Laundering and the Financing of Terrorism (2020-2022) was adopted on 17 March 2022 with the primary aim of establishing a complex and comprehensive system for combat against money laundering and financing terrorism.

The Administration for the Prevention of Money Laundering adopted a Directive on the indicators for entrepreneurs and legal entities that provide accounting services and factoring companies.

POSITIVE DEVELOPMENTS

The competent authorities remained very active regarding the necessary regulations and bylaws, considering to some extent the comments made on the earlier draft of the Law by obligors and the interested public (especially those concerning the introduction of the video identification procedure, the possibility of keeping documentation in electronic form, better regulation of the form of consent of the top management). However, there is still room for improvement regarding the opening of this process for the experts and the business community.

Amended Law in force and the other enacted regulations are almost fully harmonized with the relevant EU directives and international standards and conventions in this field, which is of special relevance to foreign investors.

Moreover, the announcement of the Committee of the Council of Europe MONEYVAL, published in December 2021, states that "Serbia improved the measures against the combat against money laundering and financing terrorism and by doing so proved significant enhancement concerning the degree of compliance with the FATF standards.

FIC supports the initiative to continue the promotion of not just the legal framework, but also to keep intensive monitoring on the application of all new regulations and cooperation with all competent state bodies with the hope that these new regulations will bring forth the much-needed legal certainty, considering the specificities of the legal framework.

REMAINING ISSUES

Although the new regulations are adopted without a sufficiently open public debate, FIC emphasizes that it is necessary to achieve good cooperation between all competent state bodies and investors, companies, professional associations, and business organizations in order for the Law to be successful.

The application of the Law, above all, depends on the activities of the Administration and other competent bodies (NBS etc.). Standards and rules established in EU countries are largely accepted and incorporated into the new text of the Law and the next step would be to find mechanisms for their implementation in cooperation with business entities.

The remaining problems are the existence of several supervisory bodies with often different views in terms of application of regulations, imprecision of certain legal provisions, legal solutions that are sometimes stricter than the requirements of relevant foreign and EU regulations but also the regulations of neighbouring countries - such as obligation of licensing of authorized persons and their deputies as well as obligation to obtain excerpts from commercial registries for all companies in ownership chain of the client (i.e. impossibility to determine ultimate beneficial owner through other sources), frequent and unclear requests for additional information from the side of supervisory bodies, which consume time and personnel of the obliged entities, and the tendency of the supervisory authorities not to deal with essential issues which are important for the prevention of money laundering and funding of terrorism but with punishing obliged entities for certain formal omissions (which there are potentially more of, given the growing number of regulations and their frequent change).

FIC RECOMMENDATIONS

- Develop a system that would enable better cooperation between the Administration, supervisory bodies and obliged entities, with the aim of better implementation of regulations with emphasis on prevention of money laundering and funding of terrorism and not burdening obliged entities with numerous formalities e.g., establishing a Task Force that would meet regularly to monitor the implementation of regulations with the participation of representatives of the competent authorities.
- Create an analysis of new changes to the regulations in this area and recommend a meeting with the Government of RS to further improve the legal framework.
- Accept and adopt initiatives of professional associations to exempt certain business relationships from obligations

prescribed by law (e.g., risk insurance).

- Continue organizing adequate seminars and workshops with the purpose of conducting certain training for the persons to whom the New Law with the purpose of increasing the efficiency of its applicability.

LAW ON THE CENTRAL REGISTER OF BENEFICIAL OWNERS

1.50

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Significant changes should be made to the procedure of registration of the respective data in the Central Register using the certificate.	2018		√	
The sanctions prescribed by the Law should be reduced.	2019			√

CURRENT SITUATION

The Law on Central Register of Beneficial Owners ("Official Gazette of the Republic of Serbia", No. 41/2018,91/2019 and 105/2021) (hereinafter: the Law) came into force on 8 June 2018.

In accordance with the Law, two rulebooks have been adopted which regulate this matter in more detail: 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: SBRA), other State Authorities and the National Bank of Serbia in order to register Beneficial Owners.

The Central Register was established on 31 December 2018 and is a public, unique, electronic, and centralized database of natural persons who are beneficial owners of a legal entity or another entity registered in the Republic of Serbia, including companies, except for public joint stock companies, business associations and associations, foundations, endowments and other legal entities (hereinafter: Registered entity).

Business companies and institutions in which the Republic of Serbia, an autonomous province, or a local self-government unit, is the sole member or founder are exempted from the application of the Law.

The latest amendments to the Law, which came into force on 1 January 2020, prescribe that the supervision over the registration, accuracy and updating of registered data and storage of data and documents is performed by the SBRA, the National Bank of Serbia, competent state bodies –Tax Administration, Administration for Prevention of Money Laundering, market inspection, as well as that in case of determining irregularities, they can initiate misdemeanor proceedings against the Registered entity and the responsible person in the Registered entity - legal entity. Supervision over the implementation of the Law and supervision over the work of SBRA in connection with the Central Register is performed by the ministry in charge of economic affairs.

The latest amendments, which entered into force on 16 November 2021, and whose application will begin after 18 months from the date of entry into force, foresee several important changes. Primarily, the Law expands the concept of an authorized person in a manner that it now includes the founder in the process of establishment of the Registered entity electronically, as well as the person who is a legal representative of the Registered entity in all other cases. Following this novelty, the Law now regulates management of the Central Register. Further, last years' report outlined a problem concerning the obligation of a foreign person to physically come and be present in Serbia in order to be able to register the establishment of a Registered entity, as a difficulty to be overcome. The latter had negative impact on the motivation of foreign investors to establish Registered entities in Serbia. However, with the amendments from 2021, steps have been taken in order to overcome this problem, and for the first time it is foreseen that the registration of the establishment of a Registered entity in the Central Registry can be done indirectly, using an application for receiving electronic applications for the establishment of Registered entities.

Furthermore, the amendments to the Law expand the circle of persons who bear misdemeanor responsibility in the event that they do not record data about the Registered entity or the Beneficial Owners, and a fine of 50,000 to 150,000 dinars is now imposed on to the person responsible for the misdemeanor, that is, the person who is authorized for representation in the Registered entity in all other cases except in the procedure of establishment by electronic means, if it does not act in accordance with the relevant provisions of the law.

As of 1 December 2021, 146,202 entities were registered in the SBRA as the Beneficial Owner. Until this date, a lit-

tle over than 85% of Registered entities have entered their data in the Central Register of Beneficial Owners.[1]

POSITIVE DEVELOPMENTS

The aim of expanding the concept of an authorized person with the possibility of data registration also indirectly and electronically is to eliminate the previously existing obstacles and problems for potential investors in registration of data when the basis of registration is the establishment of the Registered entity. Before implementation of the latest amendments to the Law in 2021, the potential investors were easily demotivated in cases when the authorized person for the legal representation performing the registration was a foreign citizen. Due to the previous obligation under the specified basis to register data by mandatory usage of the certificate of an authorized person, that authorized person who is foreign citizen was required to visit Serbia since the takeover of the certificate from an authorized body must be performed exclusively by the personal presence.

The latest amendments enable indirect registration, electronically through an application for receiving electronic applications for the establishment of Registered entities. The practical consequences of this amendment are elimination of the obstacles for foreign investors and simplifying the process of establishment of the company, increasing efficiency, and reducing the rigidity of the process.

1 https://www.apr.gov.rs/infografike.4320.html?infoId=109

REMAINING ISSUES

The above-mentioned introduction of indirect registration only applies during the process of establishing Registered entities - it seems as it might be necessary to facilitate the registration process after the Registered entity has been established. This refers especially to the situations when the legal representative of the Registered entity is registered as the Beneficial Owner (which is not uncommon), but there is a change of the legal representative, so that the new legal representative is a foreign citizen (who often does not have a residence in Serbia). Considering that this change would have to be registered not later than 15 days upon the change, the legal representative is required to visit Serbia in a short period because the above-mentioned certificate must be obtained exclusively in person by the legal representative, which may represent an additional logistical challenge.

It is necessary to state that the Law does not "exclude" foreign public joint stock companies (as is the case with the Law on the Prevention of Money Laundering and Financing of Terrorism). That means that if in the ownership structure of the Registered entity there is a foreign listed joint stock company, it is necessary to examine the ownership structure of the listed company, which in most cases is not possible and is not a reasonable approach.

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

- The procedure for electronic registration should be further developed, and the indirect registration of the establishment of the Registered entities should be facilitated.
- The foreign public joint stock companies listed on the reputable stock exchange should be excluded.
- The sanctions prescribed by the Law should be reduced.

LAW ON PERSONAL DATA PROTECTION

1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Provide the Commissioner with better working conditions, equipment and staff to ensure an effective implementation of the new Law.	2009			√
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.	2019			√
Harmonize Article 55 paragraph 10 of the new Law with Article 36, paragraph 5 of GDPR.	2019			√
Amend Article 65, paragraph 2 item 2 of the new Law in line with Article 46, paragraph 2, item c of GDPR, ECJ judgement (Case C-311/18) and new standard contractual clauses under the GDPR for data transfers from controllers or processors in the EU/EEA (or otherwise subject to the GDPR) to controllers or processors established outside the EU/EEA (and not subject to the GDPR) issued by European Commission on June 4, 2021 providing for the possibility for transfer personal data from a controller to a controller and a controller to a processor registered in third countries without authorization from the Commissioner and in internal market on the basis of standard contractual clauses drafted by the Commissioner, based on best European practice.	2021			√
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, applying best European practice.	2019			√
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, including on impact of ECJ judgement (Case C-311/18) on data transfer of personal data to countries which do not provide adequate level of protection of personal data,	2019			√
Provide an official interpretation including interpretation of Articles 41 and 50 of the new Law;	2021			√
Provide sanctions for non-compliance with Articles 41 and 50 of the new Law;	2021			√
Amend Decision on List of Countries, Parts of their Territories or One or More Sectors of Certain Activities in these States or of International Organisations for Which It Is Considered that Adequate Level of Protection Personal Data is Ensured – deleting formulation "United States (limited to Privacy Shield Framework").	2020			√
Issuance of guidance in regard to application of the new Law in relation to remote work and other measures implemented by companies to prevent spread of SARS-CoV-2 virus in working environment.	2020			√
Enact conditions for the issuance of licences to certification bodies by the Commissioner	2020			√
Resolve ambiguities in Article 60 of the new Law in regard to competences of competent authorities for accreditation of the legal entities supervising implementation of codes of conduct.	2021			√

CURRENT SITUATION

On November 13, 2018, the National Assembly of the Republic of Serbia adopted a new Personal Data Protection Law (Official Gazette of the RS No. 87/2018), (hereinafter-referred to as: "new Law"). The new Law entered into force on November 21, 2018 and its implementation commenced after the expiration of nine months from the date of entry into force, i.e. from August 21, 2019. The new Law is, to a considerable extent, a translation of the General Data Protection Regulation 2016/679 (GDPR), without its recitals and with minor specificities reflecting the 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 the specificities of the Serbia's legal system, FIC believes that it may serve as a solid legal basis for the promotion of European values in Serbia.

The legal solutions in the new Law clarify the ambiguities that existed in the previous Personal Data Protection Law, such as the method of providing consent for the processing of personal data, introducing legitimate interest as the basis for data processing, recognizing the new rights of data subjects (right on data portability, right to object, right not to be subject to automated processing) or improving the content recognized by the old Personal Data Protection Law. The controllers are now obliged to implement additional measures to protect the rights of data subjects: when processing is likely to result in a high risk to the rights and freedoms of data subjects, controllers are obliged to carry out a data protection impact assessment and cooperate with the supervisory authority in the event that the organizational and technical measures proposed in the data protection assessment are not able to mitigate the risks to the rights and freedoms of data subjects to an acceptable level. The most important innovation is the fact that the controller is obliged to implement the appropriate technical, organizational and personnel measures to ensure that the processing is carried out in accordance with this law and be able to demonstrate this, taking into account the nature, scope, circumstances and purpose of the processing, as well as the probability of risk occurrence and the level of risk to the rights and freedoms of data subjects. Furthermore, the controllers shall demonstrate that they implement the appropriate organizational and technical measures. Controllers shall be obliged to report data breaches to the supervisory authority and notify the data subjects, in certain cases. In addition, the controller must enter into written agreements on data processing with the processors defining the subject and nature of the processing, data being processed, relationship with the subprocessors, applied organizational and technical measures, method of verification of their implementation by the controllers and the obligations of the contractual parties regarding data protection impact assessments and data breach, etc. The law introduces obligations for controllers and processors to appoint a personal data protection officer in certain cases and to establish and keep records of processing activities.

The legal regime applicable to the transfer of personal data is now more liberal. Personal data may be transferred to countries that have not ratified the Council of Europe Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data and to countries not considered by the European Union (EU) to ensure an adequate level of personal data protection (third countries) based on the Standard Contractual clauses approved by the Commissioner for Information of Public Importance and Personal Data Protection (hereinafter referred to as: the Commissioner). The new lawful basis for the transfer of personal data to third countries are codes of conduct and certificates issued by certification bodies. Furthemore, personal data may be transferred to companies owned by multinational companies and having registered offices on the territory of third countries, based on binding business policies. The new Law introduces the possibility of establishing certification bodies authorized to verify the degree of compliance with the new Law and issue certificates of compliance.

POSITIVE DEVELOPMENTS

The Commissioner has continued to take an active part in expert meetings related to the enforcement of the Law and public appearances with regard to highlighting the importance of privacy and data protection for citizens and controllers and processors and published excerpts from his opinions on the enforcement of the Law on his website. Certain explanations and a legitimate interest assessment model have been published related to the application of legitimate interest as a lawful basis for personal data processing. The number of staff members with the Commissioner has increased by 15 full-time employees.

The commissioner takes part in the implementation of the short study program "Training of managers for the protection of personal data" implemented by the Faculty of Security of the University of Belgrade, as well as in the implementation of the short program "Legal data protection

and access to information" implemented by the Faculty of Law of the University of Kragujevac. The implementation of these study programs contributes to the education and training of personal data protection officers within the higher education system of the Republic of Serbia.

REMAINING ISSUES

The new Law does not regulate special forms of processing of personal data, such as video surveillance, processing of employees' personal data and processing for the purpose of scientific and historical research, or for statistical purposes. The absence of regulations creates legal uncertainty for controllers, which will significantly hinder their ability to carry out operations. The provision provided for in Article 100 of the Law has not been implemented, the provisions of other laws relating to the processing of personal data should have been harmonized with the provisions of this Law by the end of 2020. The formation of a working group to develop a strategy for the protection of personal data is only a small step in the implementation of much-needed steps to resolve issues in this area.

An important question is whether and to what extent the government intends to promote the values proclaimed by the new Law. In addition to the Commissioner, the government should put in much more effort in raising the awareness of data subjects about the importance of the above-mentioned values by organizing public debates or public conferences where data subjects can learn more about their rights contained in the new Law . The Commissioner is not the only state authority obliged to promote the enforcement of the new Law. Additionally, state authorities should put in more efforts in the implementation of the new Law. The lack of enforcement of the law by state authorities creates an atmosphere that other entities to which the new law applies are not obliged to implement it either. Despite the official warnings of the Commissioner that most controllers have not appointed data protection officers, many of them have not fulfilled this obligation yet.

With regard to the implementation of Articles 41 and 50 of the Law, which refer to the implementation of appropriate technical, personnel and organizational measures, for the purpose of more efficient implementation and better understanding of these provisions by the economy and the public sector, we believe that guidelines could be published by the Commissioner, based on the best European practice, in order to facilitate the application of these provisions and thus improve data security.

A deficiency in the new Law regarding the authority of the Commissioner to enact standard contractual clauses in order to enable the data transfer to controllers located in countries that do not provide adequate protection of personal data, prevents the transfer in these situations, i.e. enables the transfer of personal data without the appropriate protection measures. Making the instrument for data transfer on the territory of Serbia and to countries with adequate protection of personal data equivalent with the instruments for transfer to third countries is inadequate. The Ministry of Justice must consider the content of the new standard contractual clauses under the GDPR for the transfer of data from controllers or processors in the EU/EEA to controllers or processors based outside the EU/EEA issued by the European Commission on June 4, 2021.

It is necessary to intensify activities on the adoption of the guidelines by the Commissioner in order to facilitate the enforcement and interpretation of the Law.

By the time this edition of the White Book was closed, the Commissioner has not yet exercised his authority to prescribe conditions for the issuance of licenses to certification bodies. In addition, the ambiguities in Article 60 of the new Law regarding the accreditation of the legal entity that supervises the implementation of the code of conduct and the competence of the Commissioner make it impossible to supervise the implementation of the code of conduct.

In the context of the judgment of the European Court of Justice C-311/18, the Council expects the Government of the Republic of Serbia to amend its Decision on the List of States, Part of their Territories or One or More Sectors of Certain Activities in Such States and International Organizations Considered to Provide an Adequate Personal Data Protection Level and delete the wording: "United States (limited to Privacy Shield.)

FIC RECOMMENDATIONS

- Provide the Commissioner with better working conditions, equipment and staff to ensure an effective implementation of the new Law.
- Harmonize all laws with the Personal Data Protection Law.
- Enact/amend laws regulating special forms of personal data processing, such as video surveillance, employees' personal data processing and processing for scientific and historical research and statistical purposes.
- Amendments to the Personal Data Protection Law should provide for the recognition of the validity of binding business policies approved by the body responsible for the protection of personal data in the EU and recognize the validity of the Personal Data Processing Agreement concluded by the controller with the processor from abroad using standard contractual clauses published by the European Commission. This would provide the same degree of protection and there would be no negative consequences for the protection of personal data of citizens of the Republic of Serbia, bearing in mind that the controller would still be liable under the domestic law.
- Article 65, paragraph 2, item 2 of the new Law should be amended in accordance with Article 46, paragraph 2, item c of the GDPR, judgment of the European Court (case C-311/18) and the new standard contract clauses under the GDPR for transfer of data from controllers or processors in the EU/EEA to controllers or processors based outside the EU/EEA issued by the European Commission on June 4, 2021, providing for the possibility of transferring personal data from the controllers to the controllers and from the controllers to the processors registered in third countries without the authorization of the Commissioner and in the internal market based on standard contractual clauses drafted by the Commissioner, based on the best European practice;
- Article 77 of the new Law should be amended and it should be provided for the obligation of the Commissioner to draft standard contractual clauses for the transfer of personal data between joint controllers, applying the best European practice;
- More active adoption of guidelines by the Commissioner in order to facilitate the enforcement and interpretation of the Law:
- Adopt guidelines on the implementation of Articles 41 and 50 of the new Law;
- Amend the Decision on the List of States, Part of their Territories or One or More Sectors of Certain Activities in Such States and International Organizations Considered to Provide an Adequate Personal Data Protection Level and delete the wording "United States (limited to Privacy Shield.")
- Enact conditions for issuing licenses to certification bodies by the Commissioner.
- Eliminate ambiguities from Article 60 of the new Law regarding the competence of competent bodies for accreditation of legal entities that supervise the implementation of the code of conduct.

LAW ON THE CENTRAL REGISTER OF TEMPORARY RESTRICTION OF RIGHTS

1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Significant changes should be made and certain provisions should be more precise (as elaborated in the Remaining Issues above) in order to minimize, to the extent possible, the possibility that the Law is applied to business entities and their members/bodies acting bona fide.	2015			√
It is necessary to regulate liability for entering incorrect data into the Central Register.	2016			√

CURRENT SITUATION

Law on the Central Register of Temporary Restriction of Rights of Entities Registered in the Business Registers Agency ("Official Gazette of the Republic of Serbia", No. 112/2015) (hereinafter: the Law) came into force on 4 January 2016 and is applicable as of 1 June 2016.

The Law established a Central Register of Temporary Restriction of Rights of Entities Registered in the Business Registers Agency (hereinafter: Central Register), i.e., an electronic database, that contains information on business entities, their owners, directors, representatives, and members of their bodies, whose business has been subject to criminal, misdemeanour, or administrative sanctions.

Temporary measures of injunctions, restrictions or precautionary measures with respect to carrying on registered business activities or operations, injunctions preventing the disposal of money, injunctions or restrictions with respect to the disposal of shares and other measures in accordance with the law may be imposed on founders, management, directors, legal representatives, and other bodies of a company.

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 Business Registers Agency for filing in the Central Register.

The intention to introduce stricter discipline in the operations of business entities in the Republic of Serbia and 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 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 Business Registers Agency's 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.

In accordance with Article 29 of the aforesaid Law, the Business Registers Agency 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 2017, the Central Register contains informa-

tion on enforced collection provided by the National Bank of Serbia, which has contributed to the fact that the largest number of registered temporary restrictions relates to resident and foreign legal entities and individuals was taken from the National Bank of Serbia's records.

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 opinion 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 since 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 and clarification of certain provisions are necessary (as elaborated in the Remaining Issues above) in order to minimize, to the extent possible, the chances of Law being 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

There were no improvements compared to previous recommendations.

However, 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. One of the most significant first verdicts is the verdict of the Court of Appeals in Novi Sad no. Gž Uz 7/2017 (2) from Jun 20th, 2017 and the judgment of the Supreme Court of Cassation no. Rev2 Uz 1/2018 from July 5th, 2018, who awarded the whistleblowers compensation for non-pecuniary damage for mental anguish for offended reputation and honour and for fear suffered. Today we have more and more court proceedings. 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 1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2019			√
Reducing charges for services provided by public notaries, and their harmonization with the purchasing power of companies and natural persons.	2017			√
Further improvements in communication between the public notaries and the cadastre of real estate, including the possibility for notaries to initiate registration of leases on buildings (when applicable).	2020			√
Unification of the practice of notary publics to obligatory implementation of the opinions of the Chamber of Notary Publics.	2020			√
Preventing notaries from denying verification due to circumstances that they are not obliged by law to determine for a certain form of certification.	2021			√

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 106/2015) (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.
- 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 41/18,31/19 and 15/2020) and the Law on Electronic Documents, Electronic Identification and Confidential Services in Electronic Transactions (RS Official Gazette No 94/2017 and 52/2021), 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. 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, and also a record that a taxpayer does not agree to have the tax return sent through the public notary's office. 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. A major step forward has also been made in the process of digitization and interconnection of the public administration and interconnection between the public administration and public notaries. after January 1, 2021 documents are sent to the cadastre in electronic form, through the so-called "electronic counter.", which reduce the use of paper documents and instead of having to go to a counter three-four times, 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.

In addition, as of December 31, 2020, notaries are also authorized to issue excerpts from the Real Estate Cadastre (or utility list), which relieves the real estate cadastre services in the part related to this service and enables citizens to obtain the necessary excerpts on the spot, without unnecessary waiting.

REMAINING ISSUES

The prices of public notary services remain an acute problem in this area. 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.

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). This problem has existed for a long time, but little has been done to solve it.

Important problem is the inconsistent practice and approach in the work of different public notices, meaning that one notary public refuses to verify a particular document, while the other one accepts the verification of the same document. Although the Chamber of Notary Publics issues the opinions on acting of the notaries in certain situations, such opinions are not obligatory for the notaries.

Another big problem is that some notaries often require the submission of documentation for the purpose of verification in order to determine circumstances that are not their obligation by the law to determine and contribute to the unpredictability of the legal environment, given that parties are exposed to additional requests from notaries.

FIC RECOMMENDATIONS

- 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.
- Reducing charges for services provided by public notaries, and their harmonization with the purchasing power of companies and natural persons.
- Further improvements in communication between the public notaries and the cadastre of real estate, including the possibility for notaries to initiate registration of leases on buildings (when applicable)
- Unification of the practice of notary publics to obligatory implementation of the opinions of the Chamber of Notary Publics.
- Preventing notaries from denying verification due to circumstances that they are not obliged by law to determine for a certain form of certification.

TAX

1.04

No progress on longstanding tax issues, focus on fiscalisation and e-invoicing

Abolishment of epidemiologic measures and restrictions in the first few months of this year and return to ordinary business activities and topics returned to the fore the questions of improvement of the tax system and resolving problems arising in practice which are outstanding for years. However, the focus of the Government was on new model of fiscalization and preparation for introduction of electronic delivery of VAT invoices, i.e. on measures which are intended to strengthen the mechanism of reporting and control of fulfilment of tax obligations with very modest improvements in tax laws and practice. New fiscalization and e-invoices represent a positive development for which we expect that will contribute to greater fiscal discipline, but also bring a host of new uncertainties and problems which should be solved during their implementation. It appears that some of the questions that arise in relation to the implementation, like corrections of the VAT invoice through credit and debit notes, advance VAT invoices and vouchers etc., could have been anticipated and solved in a better way.

With regards to the other changes in tax regulations, we had the amendments of the Personal Income Tax Law which introduce tax incentives and tax relief for individuals directly engaged on research and development activities of the employer which performs its activities in Serbia, and for employment of certain categories of individuals. Corporate Income Tax Law has not been amended, apart from introduction of tax relief for a specific transaction of contribution in kind of intellectual property, in relation to IP tax incentives that were previously introduced in the tax law. VAT Law had a few minor amendments. Changes of the Property Taxes Law were also very limited and mainly aiming at sale of used motor vehicles, without significance for majority of taxpayers. A new Free Trade Agreement with the UK came into force. So, we have had another year without real progress in relation to problem at which FIC is pointing for years.

Unfortunately, there was lack of willingness for dialogue on part of the authorities and the Working Group tasked for implementing the recommendations contained in the FIC White Book was not active in the area of taxation. Notwithstanding that, FIC will continue to fight for continuation of the dialogue and improvement of the tax legislation and practice, along with higher transparency and timely public presenting of planned amendments of the tax laws. We will continue to fight for resolving as soon as possible the most important problems from prior periods, such as changes of the Property Taxes Law, corporate income tax treatment of property measured at fair value etc. Concurrently with that, we advocate further modernization and completion of the reform of the Tax Administration.

*During the final phase of the White Book preparation, set of amendments to the tax laws were proposed. The effects of which will be analyzed in the next edition.

A. CORPORATE INCOME TAX (CIT)

1.00

WHITE BOOK BALANCE SCORE CARD

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 the payment of taxes as a condition for their recognition as an expense in the Profit and Loss Account.	2010			√
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.	2014			√
Supplement the CIT Law with provisions to regulate taxation of company restructuring, 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.	2010-2016			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2012-2016			√
Introduce detailed tax depreciation rules which will allow for the proper classification and depreciation of specific assets such as windmills, oil rigs etc. in accordance with their economic and useful life. 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: 1) 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. 2) 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. 3) 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.	2015 /2016 /2017			√
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.	2017			√
Cancel or amend the controversial opinions of the Ministry of Finance on the tax treatment and documenting of reimbursement of employees' commuting expenses.	2019			√
Properly regulate the application of the tax credit for banks defined by the Law on the Conversion of Housing Loans Indexed in Swiss Francs. Avoid introducing tax incentives in regulations that do not constitute tax regulations.	2020			√

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 2021 (RS Official Gazette No 118/2021). As for international treaties, in April 2021 Serbia signed a Double Taxation Agreement with Singapore, which entered into force on January 1, 2022. On January 1 previously singed Double Taxation Agreement with Japan entered into force.

POSITIVE DEVELOPMENTS

With the latest CIT Law amendments, taxpayers are given the right to capital gains realized by entering property rights (i.) copyright or related rights on the deposited author's work, i.e. the subject of related rights, (ii.) rights related to the invention, based on the law regulating patents) are not included in the capital of resident legal entities in the tax base, provided that the rights thus acquired are not alienated by that person within a period of two years from the date of acquisition, as well as that in the same period, he does not assign that right for use in whole or in part at a price that is lower than the price determined in accordance with the "out of reach" principle, if the taxpayer made the assignment to a related legal entity.

Regarding the right of banks to a tax credit based on the Law on Conversion of Housing Loans Indexed in Swiss Francs, Amendments to the Rulebook on the Contents of the Tax Balance Sheet and Other Matters of Importance for the Method of Determining Corporate Income Tax (RS Official Gazette No 97/2021) prescribed a new OPKB 1 Form, which is submitted with the tax return, and in accordance with that, changes were made to the PDP Form. Thus, the tax regulations regulate the presentation of data on the tax credit based on the Law on Conversion.

REMAINING ISSUES

- In 2019, the Ministry of Finance issued a few opinions 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 opinions 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, these opinions should be cancelled or amended without further delay.
- 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 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. In addition, taxpayers are faced with disproportionately long resolving tax issues procedures, such as making a decision on the (non) existence of the obligation to pay capital gains tax with an element of foreignness. Consequently, this puts taxpayers in a situation where the realized funds, received through a non-resident account, cannot be taken out of the Republic of Serbia due to the slow action of the tax authorities, which again has the consequence of creating an unfavourable business climate.
- New rules on tax depreciation were introduced for newly acquired non-current assets from 1 January 2019. 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. Also, properly regulating the classification and depreciation of specific assets (e.g. windmills, oil rigs etc.) is particularly important.

- Provisions of the law pertaining to the method for calculating tax depreciation for assets acquired before 2019 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 Finance published opinions regarding the method of calculation of the cost and recognition of tax depreciation for the first group of fixed assets on 31 December 2003, causing numerous dilemmas and controversial interpretations in practice.

- The Ministry of Finance issued an opinion in 2017 regarding the method of calculation of tax depreciation of assets in case of acquiring a bankruptcy debtor as a legal entity, and took the position that tax depreciation should be calculated in the same way as before 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.

FIC RECOMMENDATIONS

- Cancel or amend the controversial opinions of the Ministry of Finance on the tax treatment and documenting of reimbursement of employees' commuting expenses.

- Supplement the CIT Law with provisions to regulate taxation of company restructuring, 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 etc. in accordance with their economic and useful life. 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.

- Properly regulate the application of the tax credit for banks defined by the Law on the Conversion of Housing Loans Indexed in Swiss Francs. Avoid introducing tax incentives in regulations that are not tax regulations.

- Since the corporate income tax application and accompanying forms are submitted through the eTaxes portal, taxpayers should be allowed to submit transfer pricing reports in the same way. In this way, the cost of printing and storing reports in paper form would be avoided, the quality of data related to the determination of tax liability would be improved, and the reports would be more easily accessible.

B. PERSONAL INCOME TAX 1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Repeal or amend the disputed opinion of the Ministry of Finance regarding tax treatment and documentation required for the reimbursement of commuting costs of employees to and from work and amend the Law so that the documentation requirement is revoked or harmonized with the earlier judgment of the Supreme Court of Cassation.	2020			√
The application of schedular personal income taxation is still in force and this remains a problem of the Serbian system of taxation of personal income. Therefore, the Government of Serbia should consider the introduction of a synthetic taxation system, which is present in many advanced tax systems.	2008			√
The recommendation refers to the timely adoption of an appropriate bylaw that will regulate in detail the issue of per diems for business trips and reimbursement of expenses.	2017			√
The recommendation is that the Ministry of Finance should take a clear position regarding the tax treatment of interest-free loans (i.e., loans with interest rates below market ones) and publish their position in the form of an official opinion that would lead to greater legal certainty in this respect.	2017			√
We believe that cooperation should be established between the Ministry of Finance and the Ministry of Labour, Employment, Veterans and Social Affairs to ensure the proper application of relevant regulations, i.e., to treat compensation for unused leave as compensation (as recognized by the Labour Law) and not as salary.	2017			√
Considering that social security rights are among the basic social and economic rights of workers, we would like to stress the importance of harmonizing provisions of regulations to allow foreign nationals seconded to work in Serbia (without entering employment) and Serbian nationals employed with foreign employers in Serbia to register for mandatory social insurance. Additionally, we note that Serbia needs to expand the network of international agreements regulating the issue of social security, to avoid double payment of contributions.	2017			√
It is necessary that annual personal income tax return form be aligned with Article 12 of the PIT Law (the right to tax credit) and agreements on the avoidance of double taxation, i.e., the taxpayer should be allowed the right to use the tax credit.	2019			√
While some progress has been made in terms of electronic communication, we believe that there is significant room for improving the functionality of the E-porezi platform, as well as the communication between taxpayers and the Tax Administration via e-mail. The number of tasks that can be carried out through the E-porezi platform should be expanded and digital profiles of taxpayers should be introduced.	2020			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Types of income should be clearly differentiated according to their intrinsic nature and adequate taxation methods should be applied to income of persons working for foreign employers under other types of contracts (as remuneration for work performed along with eligible standardized costs of 20%) as well as of persons who work for foreign employers under employment contracts (as salary). We believe that, in this case, it is necessary to amend not only the tax laws, but also the regulation governing the field of labour and compulsory social insurance, in order to have this issue regulated properly.	2021			√
In order to eliminate discrimination against taxpayers on the basis of whether the entity paying their income is a domestic or foreign entity, we propose to either amend the provisions governing the calculation of the tax base for the remuneration for work performed, on which the tax is paid by self-assessment, or define the categories of taxpayers that are considered freelancers because of whom this provision was introduced in the first place, while other taxpayers, specifically, domestic experts paid by a foreign entity for their work, receiving regular and higher payments, should have equal tax treatment as taxpayers whose remuneration is paid by domestic entities.	2021			√

CURRENT SITUATION

Taxation of personal income in Serbia is based on the schedular income tax system which has been abandoned by many advanced tax jurisdictions as unclear and unfair.

The Personal Income Tax (PIT) Law as the key regulatory instrument recognizes several categories of taxable income. Depending on each individual case, personal income tax is paid: (i) as withholding tax, (ii) based on the decision of the relevant tax authority or (iii) by self-assessment.

We would like to highlight in particular the latest amendments to the PIT Law, adopted in late 2021: (i) Extension of the application of the Article 21ž i.e. tax incentives for the employment of qualified individuals under certain conditions, ii) introduction of a new tax incentive for the employment of new employees iii)introduction of the tax incentive for the individuals working on research and development, iv) additional non-taxable amount for the tax payers younger than 40 years of age.

In addition, the latest amendments to the PIT Law prescribe a tax exemption from capital gains tax in its entirety in the event that a person enters property rights (copyright, related and industrial property rights) as a whole as a non-monetary contribution to the capital of a company.

POSITIVE DEVELOPMENTS

The latest amendments to the PIT Law and its implementing by-laws have led to some positive developments:

- The law prescribed an exemption in the case of the transfer of property rights as a non-monetary contribution to the capital of a company, on the condition that the company does not alienate that right in its entirety within two years from the date of acquisition, i.e. that it does not transfer that right in part or in full to a related entity for a price which is lower than the price in accordance with the "out of reach" principle,
- The PIT law prescribes new tax benefits and extended the application of existing ones,
- The new tax incentives encourage the employment of individuals who were not previously registered with the National Employment Agency and were not insured as an employee or self-employed person who is the founder or a member of a company in the period from 01.01.2019. until 28.02.2022. The condition for applying this incentive that the salary is greater than RSD 76,500;
- Another tax incentive that is new is the incentive for employees working in research and development, which has unlimited application.
- The application of the existing tax incentive for qualified new employees has been extended under certain conditions, all in order to resolve the status of persons who

remained lump-sum entrepreneurs after April 2020 and did not meet the requirements of the independence test.
- For persons under 40 years of age, an additional non-taxable amount has been introduced for the annual personal income tax, which is applied to three types of income - salaries, income from copyright, related and industrial property rights, and income from self-employment. This tax-free amount is equal to 6 average annual salaries. In the event that the person does not have the obligation to pay the annual tax by applying this tax-free amount, there is still the obligation to submit the annual tax return.

REMAINING ISSUES

- While the latest amendments to the PIT Law stipulate that transportation costs for commuting to and from work must be documented in order for the reimbursement thereof to be tax-free up to a certain threshold, they fail to specify what is considered as a "documented cost". This has contributed to aggravating the problem created by the publication of the controversial opinion of the Ministry of Finance from 2019, which caused negative reactions of the business sector and imposed unnecessarily complicated requirements on taxpayers regarding the documentation of such costs.
- No progress has been seen in the area of reimbursement of expenses to employees for business trips abroad. This area has not yet been properly regulated, nor have there been any amendments to the Law that would help to resolve this problem. The same disputable provisions are in force, prescribing that the amount of per diem shall be determined in line with and in the way stipulated in the decision of the relevant authority, which leaves ambiguities regarding which acts of the authorities this refers to. Consequently, when performing tax audits, tax inspectors often rely on the provisions of the Regulation on the reimbursement of costs and severance pays of state officials and employees, despite the fact that this Regulation only applies to the public sector.
- Furthermore, not even these latest amendments to the PIT Law mention tax treatment of no-interest loans (i.e., loans with interest rates below the market ones) granted by the employer to its employees. It remains unclear whether approving such loans should be considered as a benefit or not.
- Compensation for unused annual leave paid to an employee who did not use paid leave in the course of employment is still treated as salary. Considering that the Labour Law stipulates that this payment is a compensation for damage and not salary, the reasons why the Ministry of Finance opted for such tax treatment remain unclear. This further clearly implies that a satisfactory level of cooperation between the two relevant ministries has yet to be achieved, at least in terms of the tax treatment mentioned herein.
- Due to the way in which the method of calculation of taxable net income for the purposes of calculating the annual tax is defined, taxpayers who have already paid tax abroad on income earned from abroad, are unable to use this tax as a tax credit in full and are exposed to double taxation. This arrangement directly affects experts whose expertise is in demand abroad, who, because of their wish to continue living and working in Serbia, suffer the burden of double taxation for the same type of income.
- Due to the introduction of item 18 in Article 85, paragraph 1, stipulating that remuneration for work performed, on which the tax is paid by self-assessment, shall be taxed as "other income", and the Opinion of the Ministry of Finance No. 011-00-689/2021-04 of 23 July 2021 and no. 011-00-511/2022-04 of 11 July 2022, the impression is that all income from abroad related to work, even if it is earned under an employment contract, will be taxed as "other income". There are a number of tax residents in Serbia who have employment contracts with foreign companies that are not recognized as employment contracts by the Ministry of Labour. Despite this, these people are, as a matter of fact, employed, their employer determines their working hours, annual leave, provides professional training and similar. Based on the foregoing provision alone, their income, which is in actual fact their salary, will be unfairly treated as "other income" and will be taxed at a higher tax rate and subject to payment of mandatory social insurance contributions without the possibility of applying the maximum monthly base. Also, these persons are discriminated against in relation to natural persons seconded to work in Serbia, whose income from abroad is treated as salary for tax purposes.
- Article 85, paragraph 1, item 18 of the Personal Income Tax Law was amended to remove the eligible standardized costs of 20% when determining the basis for calculating the tax on remuneration for work performed (on which the tax is paid by self-taxation), with the intention of regulating the taxation of the so-called "freelancers", consequently, the tax burden falls on workers who receive their remuneration for continuous work

performed for a foreign payer, irrespective of whether these are salaries, which due to the position of the Ministry of Labour were renamed to "remuneration for work performed" or whether they are, indeed, remunerations. Specifically, these workers have been unjustifiably placed in an unequal position in relation to persons who receive remuneration for work performed from domestic payers (and who are entitled to 20% of standard costs). In total derogation from the Government's initiative to retain domestic experts in Serbia and reduce the brain drain, specifically, we refer to the initiative for the return of our experts, the so-called "newly domiciled taxpayers" (Article 15c of the Personal Income Tax Law and Article 15a of the Law on Compulsory Social Insurance Contributions), local experts who wish to work for foreign employers while being based in Serbia are additionally burdened with the abolition of the 20% standardized cost rate and the introduction of fixed standardized costs (3 x 19,300 per quarter) and on top of all that they pay the annual personal income tax.

- In the case of tax incentive for qualified newly employed persons, the law does not clearly define how these individuals, once they lose the right to that incentive with their current employer, can regain the same right and if they can at all. Namely, that person is the bearer of tax incentive and in accordance with the Opinion of the Ministry of Finance 011-00-59/2020-04 of 11.2.2020. qualified newly employee, when s/he terminates the employment relationship with one employer and starts with another, can still apply the tax incentive for him, but in a situation where this right is lost with the same employer, it is not possible to acquire it again. The law should be specified in this part so that taxpayers are not misled that it is possible to regain a right once lost.

FIC RECOMMENDATIONS

- Repeal or amend the disputed opinion of the Ministry of Finance regarding tax treatment and documentation required for the reimbursement of commuting costs of employees to and from work and amend the Law so that the documentation requirement is revoked or harmonized with the earlier judgment of the Supreme Court of Cassation.
- The application of schedular personal income taxation is still in force and this remains a problem of the Serbian system of taxation of personal income. Therefore, the Government of Serbia should consider the introduction of a synthetic taxation system, which is present in many advanced tax systems.
- The recommendation refers to the timely adoption of an appropriate bylaw that will regulate in detail the issue of per diems for business trips and reimbursement of expenses.
- The recommendation is that the Ministry of Finance should take a clear position regarding the tax treatment of interest-free loans (i.e., loans with interest rates below market ones) and publish their position in the form of an official opinion that would lead to greater legal certainty in this respect.
- We believe that cooperation should be established between the Ministry of Finance and the Ministry of Labour, Employment, Veterans and Social Affairs to ensure the proper application of relevant regulations, i.e., to treat compensation for unused leave as compensation (as recognized by the Labour Law) and not as salary.
- Considering that social security rights are among the basic social and economic rights of workers, we would like to stress the importance of harmonizing provisions of regulations to allow foreign nationals seconded to work in Serbia (without entering employment) and Serbian nationals employed with foreign employers in Serbia to register for mandatory social insurance. Additionally, we note that Serbia needs to expand the network of international agreements regulating the issue of social security, to avoid double payment of contributions.
- It is necessary that annual personal income tax return form be aligned with Article 12 of the PIT Law (the right to

tax credit) and agreements on the avoidance of double taxation, i.e., the taxpayer should be allowed the right to use the tax credit.

- While some progress has been made in terms of electronic communication, we believe that there is significant room for improving the functionality of the E-porezi platform, as well as the communication between taxpayers and the Tax Administration via e-mail. The number of tasks that can be carried out through the E-porezi platform should be expanded and digital profiles of taxpayers should be introduced.

- Types of income should be clearly differentiated according to their intrinsic nature and adequate taxation methods should be applied to income of persons working for foreign employers under other types of contracts (as remuneration for work performed along with eligible standardized costs of 20%) as well as of persons who work for foreign employers under employment contracts (as salary). We believe that, in this case, it is necessary to amend not only the tax laws, but also the regulation governing the field of labour and compulsory social insurance, in order to have this issue regulated properly.

- In order to eliminate discrimination against taxpayers on the basis of whether the entity paying their income is a domestic or foreign entity, we propose to either amend the provisions governing the calculation of the tax base for the remuneration for work performed, on which the tax is paid by self-assessment, or define the categories of taxpayers that are considered freelancers because of whom this provision was introduced in the first place, while other taxpayers, specifically, domestic experts paid by a foreign entity for their work, receiving regular and higher payments, should have equal tax treatment as taxpayers whose remuneration is paid by domestic entities.

C. VALUE ADDED TAX 1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
With respect to the application of the reverse charge mechanism, it should be specified that for supplies by a foreign entity, the obligation of the recipient of goods and services to account for the VAT due should occur either at the moment when: 1) an invoice is received for goods or services provided by the foreign entity; or 2) when an advance payment is made to the foreign entity, whichever of these two events occurs earlier.	2013			√
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			√
We suggest that in Article 10a, paragraph 6 of the Law on Value Added Tax, the words: "issuance of invoices ".	2020			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
VAT legislation should provide that a credit note may be issued either by the supplier or recipient of goods/services. This practice is in line with VAT rules in other countries and a common business practice. This cannot jeopardize VAT collection in any way. On the other hand, this would help companies decrease their administrative costs. Additionally, it is necessary to specify clearly that in the case of mistaken delivery of goods in a smaller quantity than was previously invoiced, the taxpayer may either issue a new invoice or credit note. This practice also corresponds to a customary business practice. Insisting on exclusively one approach imposes additional costs, whereas from the VAT collection point of view, there is no reason why both approaches cannot be applied. With respect to above, in case of return of goods, it is also necessary to define that irrespective of the expiration date, the supplier can issue a credit note or the buyer can issue an invoice/debit note in accordance with their mutual agreement. This approach can not jeopardize VAT collection since the same VAT rate is applied irrespective of who issues the credit note.	2014			√
It is necessary to specify that in the case of supplies in the field of construction, parties may choose taxation in line with the general principle – that is, VAT charged by supplier. Also, in the case when a supplier calculated and paid VAT, and the tax authority considers that the recipient should have calculated VAT, as the tax debtor, the recommendation is for the supplier's invoice to be considered the correct invoice, and that administrative proceedings should not be initiated against either the supplier or the recipient. Namely, in the Member States of the EU, for the supply in the field of construction, the recipient is the tax debtor because of the prevention of evasion and fraud relating to VAT assessment, where the subject, special rules apply when the supply is performed by a construction subcontractor, but not when the supply is performed by the main contractor to the investor. We emphasize that the biggest problem in practice occurs precisely with respect to supplies between main contractors and investors, given that in this case the investor can be an entity that purchases services of the current maintenance of facilities and similar services (i.e., the investor does not have to be active in construction). Bearing in mind this motive for designating the recipient as tax debtor, there is no reason to prevent the supplier from assessing and paying VAT, or to penalize any of them because the general rule on taxation is applied instead of the special rule according to which the recipient is the tax debtor.	2017			√
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 advance payment.	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

The value added tax is governed by the Law on Value Added Tax (RS Official Gazette No 84/2004, 86/04 – correction, 61/05, 61/07, 93/12 and 108/13, 142/2014, 83/2015, 108/2016, 7/2017, 113/2017, 13/2018, 30/2018, 4/2019, 72/2019, 8/2020 and 153/2020; hereinafter: the "VAT Law").

In the previous period, VAT Law hasn't been amended. Certain by-laws adopted in accordance with the VAT Law have been amended. Accordingly, Rulebook on Value Added Tax (VAT Rulebook) has been amended several times, in order to align with rules on invoice issuance with the fiscalisation and e-invoicing rules.

Among other, VAT Rulebook prescribes that:

- The rules on VAT treatment of returnable packaging apply from January 1, 2022.
- If a VAT invoice is issued in line with electronic invoicing rules, it does not have to contain information on the place of issuance of the invoice.
- Date of the advance payment is a new mandatory element of an advance payment invoice.
- A fiscal invoice issued by a VAT payer that records supply via an electronic fiscal device in accordance with the law governing fiscalisation, is considered to be a VAT invoice within the meaning of the VAT Law. If an advance payment has been made for the supply, for which a fiscal invoice is issued in accordance with the law governing fiscalisation, that the fiscal invoice shall not be considered to be a VAT invoice within the meaning of the Law on VAT, in the part relating to the advance payment.
- Fiscal invoice issued in accordance with the law governing fiscalisation, which contains information on TIN of the recipient of the fiscal invoice, does not have to contain other data prescribed by the VAT Law and VAT Rulebook, which are not mandatory in accordance with the regulations governing fiscalisation.

In particular, the previous period was predominantly marked by the adoption and start of implementation of regulations on fiscalization and electronic invoicing.

Although these are regulations that formally are not VAT regulations (in the sense that they were not adopted in accordance with the VAT Law), they are closely related to the application of VAT regulations. Thus, the regulations on electronic invoicing, in defining the person liable for issuing an electronic invoice start from the concept of the VAT payer, the obligation to issue an electronic invoice is linked to supplies and advances (same as VAT regulations), they define the obligation to issue invoices (same as as the VAT regulations) but also the obligation to electronically record the calculated VAT. And although the Law on Electronic Invoicing explicitly stipulates that it "does not affect" the implementation of the VAT Law and accompanying by-laws, it is already clear that it will systematically affect the implementation of VAT regulations and the way of fulfilling the obligations of VAT payers.

This is especially pronounced in the domain of issuing invoices. It is evident that VAT payers who are simultaneously obliged to issue electronic invoices will, as a rule, issue an electronic invoice which is also an invoice in terms of VAT regulations.

It is important to emphasize here that there is a significant inconsistency between VAT regulations and regulations on fiscalization and electronic invoicing. This is (for now) most pronounced in the domain of the obligation to issue and the content of invoices. Given that these are new regulations whose full implementation is expected from January 2023, it is to be expected that in the coming period, the focus of the discussion on the application and potential changes to the VAT regulations will be on the harmonization of VAT regulations, regulations on electronic invoicing and regulations on fiscalization.

We see signs of this in the regulatory activity during the previous period. In fact, most of the changes of the VAT regulations were in the function of harmonization with regulations on electronic invoicing and regulations on fiscalization.

Regulations on fiscalization and electronic invoicing are analyzed in a separate document where certain recommendations are also given that are also important for the application of VAT regulations.

POSITIVE DEVELOPMENTS

With the latest amendments to the VAT Rulebook, certain clarifications were made to the existing rules and certain situations were more precisely regulated.

In addition to the amendments to the VAT Rulebook, pro-

visions were made to harmonize the VAT regulations with the regulations on electronic invoicing and fiscalization. This is, for example, the case with the rule that in certain cases a fiscal invoice can be treated as a correct VAT invoice (thereby eliminating the previously widespread practice of issuing a so-called cash invoice). This eliminated part of the mismatch between VAT regulations and regulations on fiscalization and electronic invoicing. Space for other adjustments should primarily be sought in the sphere of changes to regulations on electronic invoicing.

REMAINING ISSUES

VAT is accounted for by the recipient of goods and services performed by a foreign supplier (applying the so-called reverse charge mechanism) at the moment when the supply takes place or at the moment when advance payment is made, depending on which occurs earlier. In case there is no advance payment, VAT should be accounted for at the moment the service is rendered, something often unfeasible in practice, especially in the case of services for which the price in the contract was not specified as a fixed amount, but rather depends on a contractually specified calculation. At the moment of supply, or up to the deadline for filing a tax return, the VAT payer frequently does not have the supplier's invoice or information on the amount of the compensation, and so cannot know what the taxable amount is.

VAT legislation provides that in cases where taxable amount has changed after the supply of goods and services has taken place (e.g. subsequently approved discounts), the supplier should issue a document containing certain obligatory items. VAT legislation does not provide the possibility for the recipient of goods/services to issue this document, as is the business practice in other countries. Because of this, additional costs are imposed on companies since they have to change their business practices due to Serbian VAT rules.

In practice, there is an issue with VAT treatment of in-kind contribution of goods and services and status changes. Specifically, in such instances the VAT accounted for by the transferor of assets is income for the transferor and an expense for the transferee, and consequently in-kind contribution and status changes are not neutral from the perspective of the income statement, as they should be, essentially. For this reason, in such instances, the transferee should be the one to account for the VAT (applying the so-called reverse charge rule).

The VAT Law defines new rules regarding the assessment of VAT in the case of supplies in the field of construction. The rules relate to the classification of business activities, which results in numerous questions and uncertainties in practice, because, in substance, the classification was not drafted for tax purposes. Consequently, taxpayers have to deal with legal uncertainty due to the different interpretation of regulations by taxpayers and by tax authorities alike. Due to diverging interpretations, taxpayers face the risk that tax authorities will hold the supplier accountable for output VAT, although the recipient as the taxpayer accounted for the VAT, or that the recipient who accounted for the output VAT is denied his right to input VAT deduction because tax authorities deem that the obligation to assess VAT is on the side of the supplier, even though none of these two approaches is to the detriment of the state budget. The latest amendments have made significant changes in terms of supply in area of construction (introduction of a threshold of 500,000 dinars, prescribing a list of supplies that are excluded from application, etc.). However, the basic principles on which the supply in the area of construction is regulated (the rule is still related to the classification of activities) have not been changed.

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 No 90/2017, 119/2017, 48/2018, 60/2018 and 75/2019) prescribes the method of keeping VAT records and 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. In addition, due to 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 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 state 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 programs 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, VAT refund audit is not prescribed as precondition for VAT refund, the Tax Administration has a right to audit VAT regardless on executed VAT refund until expiration of period of limitation. Moreover, the Law on Tax Procedure and Tax Administration specifies that if no refund is made to the VAT payer within the deadline specified by the VAT Law, interest shall be accrued as of the next day after the expiry of such a deadline. We emphasize that a VAT refund is not the result of error or oversight on the part of the taxpayer, but a key mechanism for the functioning of this form of taxation. All delays in VAT refunds directly impact the liquidity of companies that are required to make payments that include VAT to their suppliers by statutory deadlines, and on which depends the ability of their suppliers to regularly settle their tax liabilities.

Article 10a paragraph 6 of the Law on VAT stipulates that the tax representative of a foreign person in the name and on behalf of a foreign person registered for VAT performs all tasks related to fulfilling obligations and exercising the rights that a foreign person has as a VAT payer . We believe that the relevant wording of Article 10a paragraph 6 of the Law on VAT "invoicing" should be deleted, because the provision in question is not precise, it creates a bang in which customers receive two invoices (one commercial issued by a foreign person) and the other VAT invoice to submit a VAT proxy and create unnecessary additional administration and legal uncertainty. The VAT representative is certainly jointly and severally liable for the obligations of a foreign person who is registered as a VAT payer through him.

FIC RECOMMENDATIONS

- 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. Also, the introduction of an annual VAT return (monthly/quarterly returns would be treated as advance payments) should be considered, which would be submitted by March of the current year for the previous year, and through which taxpayers could make all the necessary changes, including changes related to transactions from abroad for which the recipient of goods or services is obliged to calculate VAT as a tax debtor.

- VAT legislation should provide that a credit note may be issued either by the supplier or recipient of goods/services. This practice is in line with VAT rules in other countries and a common business practice. This cannot jeopardize VAT collection in any way. On the other hand, this would help companies decrease their administrative costs. Additionally, it is necessary to specify clearly that in the case of mistaken delivery of goods in a smaller quantity than was previously invoiced, the taxpayer may either issue a new invoice or credit note. This practice also corresponds to a customary business practice. Insisting on exclusively one approach imposes additional costs, whereas from the VAT collection point of view, there is no reason why both approaches cannot be applied. With respect to above, in case of return of goods, it is also necessary to define that irrespective of the expiration date, the supplier can issue a credit note or the buyer can issue an invoice/debit note in accordance with their mutual agreement. This approach

can not jeopardize VAT collection since the same VAT rate is applied irrespective of who issues the credit note.

- The Law should specify that the obligation to account for VAT lies with the transferee of goods and services in the following instances: 1) in the case of in-kind contributions, when the supply of goods and services as an in-kind contribution is subject to VAT; and 2) in the case of a change in status, when the supply of goods and services is subject to VAT.

- In the first place, it is necessary to harmonize the VAT regulations of Serbia with the regulations in force in the EU regarding the calculation of VAT for transactions in the field of construction. Namely, in EU countries, the recipient is a tax debtor for sales in the field of construction due to the prevention of evasion and fraud in the calculation of VAT, whereby the relevant, special rules are applied when sales are made by a subcontractor to a contractor, but not when sales are made by a contractor to an investor. We emphasize that the greatest number of problems in practice occur precisely in the transaction between the contractor and the investor, since the "investor" in this case can also be a person who procures, for example, ongoing facility maintenance services and the like (ie, the "investor" does not have to be active in the field of construction at all). Bearing in mind this motive for defining the recipient as a tax debtor, there is no reason to prevent the provider from calculating and paying VAT, nor for any of them to be penalized, because the general rule of taxation was applied, and not a special rule according to which the recipient is a tax payer. debtor. This approach would also be more favorable for the state, from the perspective of cash flows (by applying the "reverse charge" mechanism, the state consciously "renounces short-term financing", in order to avoid tax evasion). 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.

- 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 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.

- We suggest that in Article 10a, paragraph 6 of the Law on Value Added Tax, deletes the words: "issuance of invoices".

D. PROPERTY TAX 1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
It is recommended that 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.	2015			√
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.	2014			√
It is advisable that the property tax return form and supporting documents be simplified by linking the Portal with the Cadaster and 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, then automate the following data entries: a) all facilities of the same type (e.g. all taxpayer's warehouses in the territory of a particular local municipality); b) calculation of quarterly installments (e.g. based on Sub-Annexes); and c) amended tax returns. In line with the above, make appropriate technical adjustments after which, it would be possible, based on the data saved from the Cadaster, to automatically fill in the appropriate forms (PPI-1, Annex 1, sub-annex), for the purpose of filing property tax returns for each year.	2018			√
Rephrasing provisions regulating 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.	2021			√
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.	2018			√

CURRENT SITUATION

Having in mind FIC recommendations in 2021, we consider that the latest amendments to the Law on Property Taxes (hereinafter: "the Law") that are in effect from January 1, 2022 generally did not resolve the important issues (recommendations) that we pointed out in the previous edition of the White Book. On the other hand, amendments to the Law have introduced certain new rules, and we will refer to some of these solutions below.

In accordance with the current version of 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 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 market value as the property tax base caused different interpretations over the years as to which taxpayers can apply this concept and due to the fact that the legislation did not regulate this issue in a sufficiently precise way. Opinions of the Ministry of Finance that

have been issued over the years expressed in the unequivocal stand regarding the possibility for small and medium-sized enterprises ("SMEs") to determine the property tax base using the fair value of immovable property recorded, in accordance with IFRS for SMEs. However, according to our experience from practice, the opinions in question increased the level of legal uncertainty in terms of whether these would be applied by the Tax Authorities and whether their application would be binding only for future tax liabilities or retroactive.

The latest amendments to the Law have introduced detailed rules related to taxation of transfer of ownership over used motor vehicles from the perspective of absolute rights transfer tax. Namely, in accordance with new Article 27a of the Law, it is stipulated that tax base will be determined based on engine displacement, engine power and age of vehicle. It is also defined that taxpayer is a buyer of motor vehicle, as well as that absolute rights transfer tax will be determined by self-assessment in case of transfer of ownership over used motor vehicle between individuals (except for special types of vehicles, such as ambulance, rent-a-car vehicle, taxi vehicle etc.), while in other cases tax liability will be determined based on the ruling of the competent tax authority.

Additionally, the amendments to the Law envisage that municipalities (local tax administrations) will exclusively determine, collect and audit tax on gift and inheritance and absolute rights transfer tax starting from 1 January 2023.

POSITIVE DEVELOPMENTS

Bearing in mind the recommendations from last year, we believe that in the meantime there have been no significant improvements as a result of the implemented recommendations from the past Beyond the recommendations and on the positive note, we do recognize the introduction of new online services on the Portal of the local tax administration, which made it possible to obtain a certificate of debt for property tax without going "to the counter". This service is available only to taxpayers who have obtained a qualified electronic certificate and we support the initiative to promote this type of communication with taxpayers.

REMAINING ISSUES

We would like to point out the inconsistent implementation of the concept of market value of the property, as well as certain gaps related to the determination of 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).

Law on Accounting prescribes that IFRS for small and medium-sized enterprises (hereinafter: IFRS for SMEs) can be applied by small and medium enterprises, while micro legal entities may opt to apply stated standards, and article 7 of the Law does not explicitly state whether it also applies to legal entities that apply IFRS for SMEs. The issued Opinions of the Ministry of Finance are of a rigid stand that there are no legal grounds for legal entities applying IFRS for SMEs to determine the property tax base based on the fair value method. However, in order to completely remove doubts on this issue it would be advisable to additionally clarify provisions of Article 7.

When determining the property tax base by applying the average prices published by local tax authorities, one of the basic parameters is the zone in which the property is located, determined by local municipalities based on the criteria of how public areas are developed. However, the procedure of assessing a public area's development level is insufficiently transparent. Also, no criteria for value adjustments are envisaged regarding the quality/age and/or purpose and size of the property, which in practice may lead to that tax base of a newly-built real estate and one that is significantly older, can be the same.

Due to the above, 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, which puts in an unequal position taxpayers who evaluate real estate in their business records at fair value and those who use some other method of evaluation.

Particular administrative difficulties are caused by the Rulebook on property tax return forms for determining property tax, according to which taxpayers are obliged to file data to the LPA Portal every fiscal year, even when there were no changes compared to the previous year. The taxpayer fills a tax return form for each municipality where it has property rights that are subject to tax, annexes for each cadastral parcel and sub-annexes for each building on a cadastral parcel on territory of that municipality, as well as for the land itself. FIC members concluded that although electronic tax returns is technical improved, still one data must be recorded on all related forms which leads to double data entry which often causes errors, especially for the

taxpayers owning properties in different local municipalities, which can lead to filing hundreds of tax returns in electronic form.

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 territories of specific unit of local municipality (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.

As for the provision of the Law which defines exemptions from the absolute rights transfer tax, and in accordance with which the absolute rights transfers on which VAT is paid are exempt from the payment of absolute rights transfer tax, we consider the term ''paid'' is not appropriate, because VAT is calculated and reported in the VAT return, where certain transactions subject to VAT may be exempted from VAT for reasons prescribed by this Law.

FIC RECOMMENDATIONS

- It is recommended that 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, simplify the method of calculating property taxes, if, for example, the storage area, the administrative building and the land represent one unit.
- It is advisable that the property tax return form and supporting documents be simplified by linking the Portal with the Cadaster and 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, then automate the following data entries: a) all facilities of the same type (e.g. all taxpayer's warehouses in the territory of a particular local municipality); b) calculation of quarterly installments (e.g. based on Sub-Annexes); and c) amended tax returns. In line with the above, make appropriate technical adjustments after which, it would be possible, based on the data saved from the Cadaster, 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 exemptions from the absolute rights transfer tax, so that it is understood that the exemption applies to the transfer and acquisition of absolute rights that are subject to VAT, not to those for which VAT is paid.
- Enable 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 1.11

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
The electronic services of the Tax Administration should be further improved and developed in a way to enable the taxpayer to download all tax returns in a form customized to user, as well as to enable all taxpayers to electronically obtain TIN and all tax certificates.	2014		√	
Regulating the provisions of the Criminal Code concerning tax crimes in more detail and 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.	2011			√
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. The PTA Law should envisage offenses of employees in the Tax Administration who do not act in accordance with regulations (or decisions of immediate higher instances) during their work, especially in cases when they do not act within the deadlines prescribed by the PTA Law and in case of non-execution of the second instance body's decision in line with guidelines and understandings set forth therein. 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.	2019			√
Amending Article 147(1) of the PTA Law, so as to read that an appeal suspends the enforcement of the decision.	2016			√
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.	2017			√
Abolishing the provision of the PTA Law which prohibits the SBRA 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.	2014			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Abolishing the provision of the PTA Law which prohibits the SBRA from registering acquisition of shares in legal entities as well as establishment of new legal entities in cases when the founder of such entity is a legal entity or entrepreneur over whom tax audit or any other action performed by the competent tax authorities has been registered.	2021			√
Strengthen the capacity of the Administrative Court in terms of expertise, specialization and speed in resolving tax disputes.	2020			√

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).

In 2020 PTA Law was amended. The most important amendments relate to:

- Introduction of an investment fund in tax legal relations in the capacity of a taxpayer. In accordance with proposed amendments, the investment fund has all the rights and obligations under the tax legal relations, where all the tax obligations of the fund and all activities in relation to the execution of its tax obligations are fulfilled by the company in charge for the management of the fund.
- Introduction of special penalties for tax fraud related to VAT and tightening of penalty provisions for unfounded claims for VAT refunds.
- Tightening of tax audit measures. The right to confiscate goods in the process of tax audit is introduced, if such goods are located in premises for which the taxpayer has not notified the Tax Authorities.
- Specifying the manner of submitting requests / delivering acts electronically - through the government portal e-Uprava. Additionally, amendments introduce option to submit a tax refund/rebooking request via the government portal e-Uprava.
- Introduction of a new form of regular collection of taxes - by giving and only in cases when there is an interest of the Government to acquire the property in question.
- Prohibiting Serbian Business Register Agency (SBRA) to register the acquisition of shares in legal entities or establishment of new legal entities in cases when the founder of such entity is a legal entity or entrepreneur over whom tax audit or any other action performed by the competent tax authorities has been registered.

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 option of submitting a request for refund and rebooking of taxes through the government portal e-Uprava . This option is enabled from January 1, 2021. The latest amendments to the PTA Law have improved the position of taxpayers who postpone the payment of owed tax (they postpone the payment of other owed interest, that is, they change the means of security in the procedure of deferring the owed tax). In this way, taxpayers are helped to more easily overcome financial problems caused by the COVID-19 pandemic.

However, no significant progress has been made in the previous year in regard to the recommendations made earlier. There is a need to strengthen the capacity of the Tax Administration in providing tax services and to affirm the client relationship. On the contrary, some of the new

amendments impose new requirements and restrictions to taxpayers. Additional efforts are needed to limit discretionary authorization and arbitrariness in the actions of Tax Authorities.

REMAINING ISSUES

- The existing regulatory framework governing the tax procedure still does not provide sufficient protection for taxpayers against discretionary decisions of tax authorities. Additionally, the lack of capacity and competences jeopardizes the protection of legality in the control procedure, as well as in the appellate and court proceedings.
- 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 restrictive 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, consequently reducing the scope of tax audits.
- During a tax audit, as well as during the period in which a taxpayer's 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 and restrictiveness 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.).
- Prohibiting SBRA to register the acquisition of shares in legal entities or establishment of new legal entities in cases when the founder of such entity is a legal entity or entrepreneur over whom tax audit or any other action performed by the competent tax authorities has been registered. The restrictiveness of this provision leads to the business limitations of taxpayers, which de facto taxpayer represent a punishment for a taxpayer without any grounds.
- 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 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.
- In its actions, the Tax Administration, despite the normative regulation of the termination of tax obligations due to statute of limitations, transfers them to off-balance sheet tax accounting and those obligations are still considered the taxpayer's debt, and in those cases they do not issue certificates to taxpayers that they do not owe tax, which is in conflict with by provision of Art. 23 PTA Law.
- There is no prescribed length of time for the temporary confiscation of PIB by the Tax Administration, which in practice equates to the permanent confiscation of TIN and preventing taxpayers from performing their activities, as they cannot perform any payment transaction except paying taxes.

FIC RECOMMENDATIONS

- The electronic services of the Tax Administration should be further improved and developed in a way to enable the taxpayer to download all tax returns in a form customized to user, as well as to enable all taxpayers to electronically obtain TIN and all tax certificates. Propose an amendment to the Rulebook on the allocation of TIN, so that it is prescribed that the Tax Administration delivers the confirmation of the TIN allocation to the taxpayer in e-form.

- Regulating the provisions of the Criminal Code concerning tax crimes in more detail and 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 (or adopt the provision of Article 38 of the Law on Inspection according to which the control procedure is suspended after 8 days have passed from the date of submission of the taxpayer's request for the end of the control in a situation where the inspector does not make a decision after the end of the day of the end of the control after the end of the day of the end of the inspection supervision specified in inspection order), 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.

- Introduction of a time limit duration of the TIN temporary revocation.

- 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. The PTA Law should envisage offenses of employees in the Tax Administration who do not act in accordance with regulations (or decisions of immediate higher instances) during their work, especially in cases when they do not act within the deadlines prescribed by the PTA Law and in case of non-execution of the second instance body's decision in line with guidelines and understandings set forth therein. 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.

- Introduction of the obligation in the PTA Law of the second-instance authority of the Ministry of Finance to resolve the administrative matter by itself, instead of the first-instance authority, if the first-instance authority

does not act according to its order and does not issue a decision within the deadline, as stipulated in Art. 173 st. 3 GAP Law. In this way, the multi-year duration of tax proceedings would be resolved, where often the first-instance authority does not act according to the order of the second-instance authority, as well as the first-instance authority does not issue a decision in the re-procedure within the time prescribed by law, which jeopardizes the legal security of taxpayers and violates the principle of legality of the tax procedure.

- Amending Article 147(1) of the PTA Law, so as to read that an appeal suspends the enforcement of the decision.
- 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.
- Abolishing the provision of the PTA Law which prohibits the SBRA 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.
- Abolishing the provision of the PTA Law which prohibits the SBRA from registering acquisition of shares in legal entities as well as establishment of new legal entities in cases when the founder of such entity is a legal entity or entrepreneur over whom tax audit or any other action performed by the competent tax authorities has been registered.
- Strengthen the capacity of the Administrative Court in terms of expertise, specialization and speed in resolving tax disputes.
- Adopt Ministry of Finance binding opinion the for the actions of the Tax Administration in the domain of termination of tax liability by statute of limitations, for which termination of tax liability is prescribed that the Tax Administration issues a decision on the termination of tax liability ex officio and that the same one is in accordance with Art. 163 PTA Law transfers to off-balance sheet tax accounting. In the opinion in question, it is necessary for the Ministry of Finance to clearly state that this is a tax-legal relationship as a relationship of public law and that any tax paid in which the statute of limitations has expired does not represent a natural obligation.

F. E-FISCALIZATION

CURRENT SITUATION

E-commerce in the Republic of Serbia implies a comprehensive change in business operations of the public and private sector and its implementation first started in 2017, with the passing of the Law on Electronic Document, and further in 2021, with amendments to the regulations in the domain of fiscalization, regulating the electronic document/invoice, electronic identification and electronic data exchange in the public and private sector. In this way, the Republic of Serbia took a step further in legally regulating and implementing e-commerce and in following the devel-

opments in information technologies based on solutions enshrined in international practice, regulations and standards of the European Union.

Members of the Foreign Investors Council support the introduction and modernization of e-commerce, whose aim is to stimulate more efficient in business entities' operations, contribute to a decrease in grey economy and develop a trusted market, make citizens' access to the services of public authorities easier and safer, while the introduction of electronic archiving is expected to simplify the access to financial documents.

As of April 2022, amendments to the Law on Fiscalization entered into force and a new fiscalization model was introduced, meaning that, at the moment of a retail transaction, every invoice is fiscalized and that the data on the issued fiscal slips is transferred to the Tax Administration via a permanent internet connection in real time, as opposed to the previous method of data transfer at the end of the day. This was enabled by the use of a new electronic fiscal device through which fiscal slips will be issued with a QR code/hyperlink. An electronic fiscal device, in addition to a cash register, can be a computer, tablet, or mobile phone and the QR code on each slip enables customers, i.e., users of services, to check the validity of the bill by a simple code scanning. The change implies the introduction of new fiscal devices, as well as adjustments of the local IT systems, which was not easy for business entities to do while at the same time pursuing their business activities without disruptions. As good practice and precondition for efficient business activities, we can mention the consultations and continuous contacts between businesses and the Ministry of Finance.

In order to regulate the implementation of electronic invoices (hereinafter: e-Invoice), during 2021 and 2022, legal regulations were more precisely specified by the following legal acts:

- Law on Electronic Invoicing ("RS Official Gazette", no. 44/2021 and 129/2021"), hereinafter "EI Law");
- Rulebook on the manner and procedure of registration for access to the e-Invoicing System, the manner of accessing and using the e-Invoicing System and the manner of using data available in the e-Invoicing System („RS Official Gazette", no. 69/2021, 132/2021 and 46/2022"), hereinafter "EI Law Rulebook");
- Rulebook on the electronic invoice elements, the form and manner of delivery of supporting and other documentation via the e-Invoicing System, the manner and procedure of electronic recording of value added tax calculations in e-Invoicing System and the manner of applying e- Invoicing standards;
- Decree on the conditions and manner of using the invoicing management system;
- Rulebook on the manner of proceeding of the Central Information Intermediary;
- Rulebook on the criteria and procedure for granting and withdrawing authorizations for the performance of information intermediary activities;
- Decree on the conditions and manner of storing and making available for inspection the e-Invoices and of ensuring the authenticity and integrity of the content of invoices in paper form;
- Of great importance is the Internal Technical Instruction published by the Ministry of Finance of the Republic of Serbia

Deadlines for the start of implementation of the E-Invoicing Law:

I. 1 May 2022 – obligation of the public sector entity to receive and store the electronic invoice ("e-Invoice"), obligation to issue e-Invoice to another public sector entity, as well as the obligation of the private sector to issue e-Invoice to the public sector entity.

II. 1 July 2022- obligation of the public sector entity to issue the e-Invoice to the private sector entity.

III. 1 January 2023 – obligation of the private sector entity to receive and store e-Invoices issued by the public sector entity, as well as by other private sector entities.

The E-Invoicing Law identifies entities which are obliged to issue e-Invoices; introduces a special obligation of electronic recording of VAT calculation in the e-Invoicing System; regulates the manner of using the e-Invoicing System; provides basic instructions for handling e-Invoices, how an e-Invoice is accepted/rejected and provides other instructions.

The E-Invoicing System ("SEF") has been introduced as an information technology solution for sending, receiving, recording, processing and storing e-Invoices, which is managed by the central information intermediary. In addition, recording of VAT calculation is also done in the SEF for public and private sector entities, as well as of VAT for the legal proxies of foreign entities registered for VAT in the Republic

of Serbia who are required to provide technical capacities and timely implementation in line with the E-Invoicing Law.

The implementation of e-commerce and issuance of invoices in electronic form is the biggest change since the introduction of VAT and, even with the new regulations, implies further harmonization with other relevant laws, mainly with the VAT Law and the Law on Accounting, especially in terms of specifying more precisely the content and manner of issuing invoices.

REMAINING PROBLEMS

I. Most issues related to the implementation of the E-Invoicing Law have been clarified through the by-laws and binding opinions. But, given the complexity of the change and its close relations to a number of relevant by-laws and other laws, we suggest that the by-laws should be consolidated into an instruction or a single rulebook regulating implementation.

II. We will point out some doubts regarding the interpretation of the E-Invoicing Law:

- The E-Invoicing Law contains the terms of the European and Serbian e-Invoicing standard that have not been applied in business practice so far. Legal entities have done research of the legislation in order to ensure its better understanding and adequate application, but it was not easy to find complete explanations and even the standard itself is not publicly available. We consider it important for a better understanding of the rights and obligations of private sector entities that standards should be transparent and publicly available.

- Given the complexity of the new way of transaction recording and based on the experience of states that have already introduced e-invoicing, legal entities from the private sector may have unintentional errors in the transitional period, which are subject to the penal provisions of Art. 18-21 of the E-Invoicing Law. We believe that it is not appropriate to apply penalties during the period of adjustment to the new system and that it is necessary to distinguish the between the application of existing and new legislation.

- Pursuant to Article 10 of the E-Invoicing Law, private sector entities are required to accept or reject an invoice within 15 plus 5 days. In light of the volume of transactions of FIC members, we consider the prescribed time frame too short while in practice, much more time is needed to deliver the relevant evidence, e.g., about a service received, to the finance department, and only after the necessary checks it can be accepted or rejected. It would be helpful to consider extending the deadline.

- Certain concepts in the VAT and E-Invoicing Law are still terminologically incoherent, especially when it comes to the implementation of Article 42 of the VAT Law. Some examples include the concepts of "bill" and "e-Invoice", "transaction date", etc.

- In our view, in cases where there is a requirement to record VAT electronically under Art. 4 of the E-Invoicing Law, individual recording of transactions in certain situations is an obligation that leads to significant difficulties in the taxpayer's business operations. This is especially so for foreign entities registered for VAT through a tax proxy, who predominantly provide their services electronically to numerous natural persons and, in this case, it would be appropriate to apply the collective recording solution from Art. 4 of the E-Invoicing Law. We remind that these foreign entities are not liable for fiscalization and that there is no obligation to issue a fiscal invoice for these transactions or an obligation to issue an invoice in accordance with the VAT regulations.

- The issuing of an advance invoices should be specified more precisely, taking into account VAT and E-Invoicing Law regulations. By way of example:

  (i) It is necessary to further specify the issuing of advance invoices or e-Invoices for transactions in construction, taking into account VAT regulations.

  (ii) In reference to the Opinion explaining the issuance of e-Invoices in transactions of private and public sector entities, clarify if it can also be applied to transactions between private sector entities, i.e. that a VAT payer who receives an advance payment and performs the sale of goods and services for which he received the advance payment in the same tax period is not required to issue an invoice for the received advance payment, but only an invoice for the sale of goods and services, regardless of whether the sale of goods or services will be done in the same or different tax period from the tax period in which an advance payment was received.

- It is unclear if, when issuing e-Invoices for services regu-

lated in para. 3, Art. 167 of the Rulebook on Value Added Tax ("VAT Rulebook"), due to the nature of the transactions, the provisions of paragraph 1 of the same article may be applied, i.e., the information on the date of transaction of services should not be stated, which is deemed as mandatory information under the Law on Electronic Invoicing ("E-Invoicing Law").

- In reference to Article 44 of the Law on VAT, a person who made a value correction or canceled an invoice, must have a notification from the invoice recipient in paper form that he did not use the calculated VAT as previous tax, i.e., that he made a correction of deduction of previous tax. It is expected that the digitalization of invoicing also refers to these documents, but the corresponding technical option has not been created in the SEF.

III. The SEF functionality will be fully implemented from 1 January 2023 and FIC has communicated its recommendations for its technical upgrading on several occasions. With the further development of e-commerce, it would be important to introduce automated data checks.

IV. The Law on Fiscalization and the Law on Electronic Invoicing: In accordance with the EI Law, the Ministry recently published an official opinion in which it took the view that transactions of positioning services provided by a retailer to suppliers are deemed to have been performed in a retail store, i.e., that they are considered as retail and that there is an obligation of recording these services through an electronic fiscal device (hereinafter: EFU). This interpretation, aside from deviating from the long-standing practice and its application, inevitably imposes significant administrative costs, leads to legal uncertainty in terms of application of the opinion due to numerous open issues regarding the way of recording this transaction in line with the Law on Fiscalization. The positioning service provided to another legal entity or entrepreneur cannot be considered a retail transaction since such a transaction does not take place in the presence of a natural person in a retailer's retail space. This fact is important because it indicates that the provision of positioning services in a retail space has no impact on the qualification of these services as retail sales, but represents a regular business transaction between two legal entities. Foreign Investors Council supports the real-time recording of transactions made possible through the EFU and e-Invoicing and we believe that recording this transaction through e-invoice achieves the same objective as through the EFU, but its implementation is much simpler for private sector entities.

FIC RECOMMENDATIONS

- We recommend the introduction of a consolidated instruction for the implementation and recording of e-invoices, modeled on the User Instructions on Reporting Data in the POPDV form.

- We recommend the following amendments or clarifications of the Law on Electronic Invoicing;
  - Enable a simple and transparent access to the "European and Serbian electronic invoicing standard";
  - Postpone the application of Art. 18 – 21 of the EI Law for six months, i.e., until the establishment of the regular business process by most business entities;
  - We recommend to postpone the application of Art. 10 of the EI Law for at least six months, i.e., until the relevant facts are established in practice and thus the deadline for accepting or rejecting e-invoices is adequately regulated. Additionally, it is necessary to specify the consequences in case an invoice is rejected (in the case of active or passive rejection) and the payment has been performed;
  - Further harmonize the terminology of VAT and EI laws, especially with Article 42 of the VAT Law;
  - Make it possible for foreign entities registered for VAT through a tax proxy to electronically record the value added tax calculation from Art. 4 of the EI Law collectively in the case of transactions with natural persons.
  - We suggest to exempt transactions in the construction industry from the EIL regulations, as well as other transactions for which exemptions are stipulated under Art.164-169 of the VAT Rulebook.
  - Align E-Invoicing Law with VAT regulations, further specify the concept of transaction date stated on the e-Invoice for transactions involving services of copyright and related rights regulated by Art. 167 of the VAT Law Rulebook.

  - We propose to develop in the SEF and specify by the E-Invoicing Law the digital signing of cancelled documents as proof of correction of the previous VAT.

- The implementation of digitalization is expected to bring the streamlining of processes and time-savings in this respect and we are asking for further development of the SEF in terms of digital verification of the formal correctness of e-Invoice elements such as e.g., logical and mathematical checks of e-Invoice correctness as well as error reporting.

- We recommend that the recording of transactions of positioning of advertising articles should be exempted from the Law on Fiscalization and that these transactions should be recorded on the e-Invoice.

G. LATEST DEVELOPMENTS IN THE SERBIAN TAX SYSTEM (PARAFISCAL CHARGES)

1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
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.	2015			√
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.	2014			√
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.	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			√
Change the methodology and manner of determining the fee for the environment protection and improvement so that the fee is paid exclusively by taxpayers whose activities affect environmental pollution and use the funds to mitigate the negative consequences of these activities.	2020			√
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.	2016			√

CURRENT SITUATION

There are numerous parafiscal charges in Serbia 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, but also by imposing new parafiscal levies such as a mandatory membership fee for the Serbian Chamber of Commerce in 2018. The reform process is still ongoing, which is especially reflected in the large number of changes that have been made to the regulations governing the manner of determining and reporting compensation for the protection and improvement of the environment.

POSITIVE DEVELOPMENTS

During the previous year no significant improvements occurred in respect to FIC recommendations given earlier.

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.

To additionally point out, during 2019, the determining the fee method for the environment protection and improvement was changed on two occasions. The methodology initially established by the Law on Fees for the Use of Public Goods and accompanied by provided bylaws, inter alia, defined the fee to be paid according to the amount of pollutants emitted and the hazardous waste produced and disposed of. However, although the method of determining the fee was intended to be paid by legal entities and entrepreneurs who perform activities that negatively affect the environment, the calculating fee methodology was too complicated, which resulted in a very small number of applications fees for environment protection and improvement by taxpayers.

At the end of December 2019, the manner of determining the compensation for the environment protection and improvement was changed again by the bylaws amendments. The new methodology simplifies the calculating fee method and it envisages that the fee is paid in a fixed annual amount depending on the size of the legal entity in accordance with accounting regulations and the degree of environmental impact of the predominant activity performed in accordance with the prescribed classification. However, in this way, the obligation to pay compensation was imposed on almost all legal entities and entrepreneurs in Serbia, regardless of whether their predominant activities really have a negative impact on the environment. The current methodology for determining the amount of compensation is contrary to the provisions of the Law on Fees for the Use of Public Goods, which, among other things, stipulates that the basis of compensation for environmental protection and improvement is the amount of pollution, i.e. the degree of negative impact on the environment.

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.)
- Change the methodology and manner of determining the fee for the environment protection and improvement so that the fee is paid exclusively by taxpayers whose activities affect environmental pollution and use the funds to mitigate the negative consequences of these activities.
- 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

1.43

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Adopt the Air Protection Strategy and accompanying planning documents and start implementing it. Continue with the transposition and implementation of regulations in this area;	2021			√
Responsible actors for air quality monitoring should ensure quality maintenance of measurement systems and data availability as well as financing the smooth operation of air quality monitoring networks;	2021			√
Develop and adopt a new National Strategy for Waste Management, amendments to the Law on Waste Management, continue work on strategic documents in this area, such as the strategy for waste sludge management and the like;	2021		√	
Create an economic model that will motivate local governments to dispose of waste in sanitary landfills and to accelerate the process of closing and remediation of landfills - garbage dumps. Provide preconditions for the application of the principles of the waste management hierarchy with an emphasis on waste prevention, reuse and waste recycling. Ensure further application of the "polluter pays" principle;	2021		√	
Adopt a Regulation on acceptability assessment, which will establish the necessary standards for the approval of plans and projects that may have an impact on the ecological network;	2021			√
Ensure adequate and purposeful financing of nature protection from the Green Fund (determine priorities and criteria for allocation of funds). Continue activities on the establishment of the ecological network of the Republic of Serbia and the NATURA 2000 network. Allocate more funds for the practical protection of species and habitats;	2021			√
Accelerate the transposition and implementation of regulations related to climate change as well as the strategic framework for this area, which is the most neglected in terms of legislation and implementation and therefore needs special attention.	2021		√	

CURRENT SITUATION

The situation in this area, like all other areas of society in the previously observed period, was under considerable influence of the COVID-19 pandemic. The consequences of the pandemic also had an influence on the environmental protection in Serbia overall, first of all in the sense that certain processes have slowed down, and concretely in the sense that the environment has somewhat lost its position of strategic priority with regards to health care and some other areas.

The most significant change relates to developments regarding Chapter 27, which deals with environmental protection and climate change issues. This chapter is one of the most complex and demanding chapters because it requires the application of environmental standards and integration into all other development policies and at the same time it is the most expensive. At the end of 2021, Cluster 4 was opened in the negotiations between Serbia and the EU, which also encompasses chapter 27. A position with 8 criteria was delivered to the Republic of Serbia, which must be fulfilled so that the conditions for closing of chapter 27 would be fulfilled.

Since 2016, all EC annual progress reports on Serbia have mentioned the need to increase the administrative and financial capacity of the Ministry of Environmental Protection. A significant increase in budget funds intended for the improvement of environmental protection is noticeable. Budget funds are provided mainly through foreign borrowing and various forms of loans.

At the beginning of 2022., a public debate was held on the Draft Law on Environmental Impact Assessment and the Draft Law on Strategic Environmental Impact Assessment. It is not certain when these drafts will outgrow into laws. When this happens, a significant time shift in advance of the obligation to obtain consent for the environmental impact assessment study is expected (or a decision that such study is not neces-

sary) for projects where the environmental impact assessment study is mandatory (or where it can be mandatory). Due to the impact of the pandemic, ensuring the required participation of the public during the consultative process was very difficult due to the pandemic measures that were in force. With that in mind, the realization of the principles of the Arhus convention was made difficult to some extent. In October 2022 the Ministry of Environmental Protection initiated consultations on the draft version of the Strategy for Applying Aarhus Convention and Action Plan – it remains to be seen whether and what results the work on these documents will give.

Also, in September 2022 the preparation of the Environmental Protection Strategy with Action Plan commenced. Given that the work on this strategic document has just begun, it is too early to assess its value.

For wastewater treatment, the construction of a big amount of WWTPs has been planned all around Serbia, which would contribute to the resolving of one of the biggest ecological problems in the country.

The Air Protection Strategy has not yet been adopted, even though the air pollution is a burning problem. In a larger number of urban agglomerations, the air pollution is above the maximal permissible limits, especially during winter.

About 12,5 million tons of waste are produced in Serbia in 2020., according to the data of the Environmental Protection Agency, of which almost 3 million tons are municipal waste. There is no plant for thermal treatment of hazardous waste in Serbia, so this waste for treatment purposes has been exported mainly to other European countries. As a consequence of obligations under the Basel Convention, Serbia will have to find an adequate solution for taking care of hazardous waste which arises on its territory, which includes the construction of facilities for thermal waste treatment. When it comes to municipal waste, many municipalities do not have recycling yards built, sufficient number of storage bins/containers and no waste collection system at source. Waste collection has been charged according to the square footage of an apartment and not according to the amount of waste produced. Therefore, as well as due to weak or no penal policy, the number of illegal landfills has been estimated at around 3500. The problem of the return of illegal landfills is still noticeable, on already cleaned locations. This situation indicates the need for rigorous application of legal regulations and for improvement of the work of competent authorities to prevent this problem from recurring. In June 2022, the line Ministry has earmarked significant funds with the aim of cleaning about 700 wild landfills in 34 local self-governments. In 2020 Amendments to the Law on Waste Management were planned but this law has not been changed yet. Louder initiatives are also noticeable in the direction of using waste as energy source, first of all in the process of remediation and construction of a waste to energy facility on the Belgrade landfills of Vinca, but Elektroprivreda Srbije has also taken the first steps towards the possibility of co-combustion of coal and communal waste in thermal power plants first on boilers in TENT, and later TEKO B.

The development of the Water Management Plan on the territory of the Republic of Serbia for the period from 2021 to 2027, as the basic instrument implementing the principles of the Water Framework Directive, has begun in Serbia through the Twinning project. At the end of 2021 public discussion was completed, and its adoption is expected in the upcoming period. A Flood Risk Management Plan is being prepared at the same time with the Water Management Plan on the territory of the Republic of Serbia. At the end of 2020, a Public Debate was conducted on the Draft on the Environmental Impact Strategic Assessment Report on the Influence of the Action Plan for the Realization of the Water Management Strategy on the territory of the Republic of Serbia until 2034 on the environment. The Action Plan has not yet been adopted.

The Law on Climate Change was adopted in March 2021. This Law is the first of its kind in the field of combating climate change and is the basis for the bylaws necessary to start the green transition. It is expected that the umbrella climate strategy be adopted, one that would affect all sectors: energy, agriculture, forestry, water management, etc. The adoption of an integrated national energetic and climate plan is also expected, which would cover the period to 2030 (with projections up until 2050) – a public discussion on the draft of this plan is expected to last until the end of 2022.

The first by-laws which will enable inventory work in the management of gas emissions with the greenhouse effect have been enacted, but there is still significant room for improvement to be made in this area.

For all aspects of the environment, the problem is the administrative capacity of actors at both the local and central levels. There are not enough employees in the public administration who deal with the environment, and this is most felt in the Environmental Protection Inspectorate. The capacity of the judiciary has been deficient in this area, and

it is important to create a database of all cases of environmental crime and environmental criminal acts.

Environmental investment management in Serbia does not have a clear strategic framework. In general, strategic planning, project management and transparency of processes aren't still on a satisfying level.

POSITIVE DEVELOPMENTS

The new Noise Protection Law has been adopted, with the aim of further harmonizing this area with the regulations of the EU, but also to resolve the chronic problem of noise from catering facilities. A new Law on Biocidal Products has been adopted as well, which provides additional harmonization with relevant EU regulations.

In 2022, a Decree on Types of Activities and Gases with the Greenhouse Effect, as one of the bylaws which is a precondition for issuing permits to facilities where an activity that leads to GHG emissions is carried out. When the other relevant by-laws are passed, it is expected that around 140 existing plants will have to obtain the mentioned permit.

In May 2022. an Action Plan for the Waste Management Program in the period 2022. - 2024. was adopted. This document represents a strategic plan for solving problems related to the waste management in the upcoming period.

In the previous period, several projects for the construction of WWTP have been activated. Funds have been provided by the EU for a number of these projects. Several wastewater treatment systems have been brought to the final stage of construction in the previous period and the preparation of projects or the start of construction in several places has been announced. Water protection is the area in which there was the most activity in terms of projects, preparing of design documentation and the construction itself, so it could be said that this area is prioritized in the environmental protection in Serbia. The realization of these projects requires significant financial funds, but it can be stated that progress in this area is noticeable, not only related to legal regulations.

REMAINING ISSUES

In February 2020, the Republic of Serbia adopted the National Plan for the Reduction of Emissions of Major Pollutants from Old Large Combustion Plants (NERP). Some old large plants to some extents do not meet the obligations under the NERP in terms of permitted emissions of pollutants, so additional efforts to harmonize with NERP are necessary.

The Air Protection Strategy, as an umbrella document at the state level for this area, has not yet been adopted. The air pollution and inactivity in this field have brought even louder complaints from the public in Serbia.

The Programme of Waste Management in the Republic of Serbia for the period 2022 – 2031 has been adopted, while the results will be seen in upcoming period.

Based on the National Waste Management Strategy from 2009, the closure and reclamation of existing landfills and the construction of 29 regional sanitary landfills have been planned. 24 regional centers for waste management. These expectations aren't even nearly met. Also, the aims of the previous strategy have predicted a big coverage with the system of collecting waste – the draft of the new strategy estimates that the coverage is currently around 82%, but at the same time states that only 10 sanitary landfills in Serbia meet EU criteria, which means that a big part of the population still isn't covered with the system whose outcome are adequate sanitary landfills. The remaining landfills and garbage dumps are not only potential polluters of the environment (primarily water and soil) but also pose a danger as possible locations for the spread of infection, and fires are also frequent there.

Investments in the field of wastewater treatment are evident, but their realization and effects are yet to be seen.

The strategic framework for combating climate change is still at an unsatisfactory level. A low-carbon development strategy with an action plan has not yet been adopted, although a public hearing ended in January 2020. In the near future, it is necessary to adopt a mechanism for taxing CO2 emissions, in the synchronization of the expected introduction of CBAM mechanisms (carbon border adjustment mechanism) by the EU.

The non-existence of this mechanism currently gives Serbia a comparative advantage in respect of the EU market, which will be completely lost when the CBAM is introduced in the EU This will have an impact not only on electricity exported to the EU but also on products originating from industries with high GHG emissions. The sectors for production of cement, iron and steel, aluminium and fertilizers for agriculture will be in the first phase of the mechanism. Climate change with

its accompanying regulations will be one of the biggest challenges for the Republic of Serbia in the future, among other things because the transposition of regulations has been delayed and awareness of climate change is relatively low.

The wide interpretation of the right to justice from the article 81a of the Environmental Protection Law brings to the shorter or longer paralysis not only of projects which can have an influence on the environment, but also of projects aiming to improve the environment. This is because such interpretation allows certain actors of the interested public to, instead of defending the right to a healthy environment in the process of assessing the impact of the relevant project on the environment, attack such projects on every step, through complaints and administrative disputes on every administrative act in the multitude of acts which such project demands (for example construction permit, energy permit, consent to impact assessment, water permit, etc.).

On the other hand, it is noticeable that current measures for the inclusion of the public aren't adequate, and that transparency of the enforcement procedures is not on an appropriate level. This results in situation that the public reacts too late to legally provided deadlines in procedures and channels its dissatisfaction through protests. The public voice has brought to modifications of certain decisions in the previous period like the ban on the construction of small hydroelectric power plants in protected areas and the annulment of the spatial plan for special purpose area for the Jadar project.

FIC RECOMMENDATIONS

- Adopt the missing strategic documents (including Air Protection Strategy and Waste Management strategy) and accompanying planning documents and start implementing them. Continue with the transposition and implementation of regulations in this area;
- Responsible actors for air quality monitoring should ensure quality maintenance of measurement systems and data availability as well as financing the smooth operation of air quality monitoring networks;
- Create an economic model that will motivate local governments to dispose of waste in sanitary landfills and to accelerate the process of closing and remediation of landfills - garbage dumps. Provide preconditions for the application of the principles of the waste management hierarchy with an emphasis on waste prevention, reuse and waste recycling;
- Ensure further application of the "polluter pays" principle;
- Adopt a Regulation on appropriate assessment, which will establish the necessary standards for the approval of plans and projects that may have an impact on the ecological network;
- Ensure adequate and purposeful financing of nature protection from the Green Fund (determine priorities and criteria for allocation of funds). Continue activities on the establishment of the ecological network of the Republic of Serbia and the NATURA 2000 network. Allocate more funds for the practical protection of species and habitats;
- Accelerate the transposition and implementation of regulations related to climate change as well as the strategic framework for this area, which is the most neglected in terms of legislation and implementation and therefore needs special attention;
- Through a more rigid interpretation or change of regulations, find a balance between the right of the interested public to challenge projects if they consider that they infringe the right to a healthy environment, and the interest of investors to conduct projects in an atmosphere of legal certainty and time efficiency, without the ecological acceptability of the project being attacked on every step, which consequently creates, sometimes perennial, time delays and significant costs.

SECTOR SPECIFIC

top

FOOD AND AGRICULTURE

1.13

Almost three years after epidemiological crisis had started, the economy is facing new challenges, caused by economic and political events in Europe, which affects the difficult procurement of certain raw materials and the increase in prices on the market. There are no significant developments in the functioning of the local food safety system, bearing in mind the fact that official controls take place with the same dynamics.

The exchange of documentation with competent bodies, which is carried out physically, is still a major obstacle to the efficient functioning of the food sector. Also, a transparent and comprehensive system of risk analysis would make the flow of goods more efficient, because with the reorganization and redirection of existing resources, and by focusing on high-risk products, manufacturers and importers, stronger control of those who are high-risk would be ensured, which in such circumstances of multiple importance.

Harmonization of regulations with EU is not proceeding as fast as expected, and implementation in practice is still a big challenge, bearing in mind the unclear responsibilities of the institutions regarding the interpretation of regulations. Part of the regulations is harmonized, but the greater part are national regulations that are unique, so the application in practice is not uniform with the practice in the EU and neighbouring countries. Such circumstances represent an obstacle to free trade and create certain restrictions for local producers in terms of applying innovative processes and product development. The tendency is to modernize outdated regulations, to eliminate restrictions, however, the transposition of EU regulations is additionally difficult due to the existence of administrative obstacles and methodological rules for drafting regulations in Serbia.

The report on the work of the Expert Council for Risk Assessment, established in June 2017, as well as the Council's activities, are still not known to the interested public.

There is still room for improvement. Improvement of the regulatory framework would ensure high standards in food quality control, and in the application of a uniform approach to the control of all food bussines operators, for both importers and local producers. It is extremely important to simplify examination procedures, strengthen transparency while enabling predictability of goods retention. Strengthening the capacities of the directorates for veterinary and phytosanitary control and the National Reference Laboratories, as well as the consistent application and improvement of the approach based on risk analysis, are key to further strengthening the food safety management system. Of particular importance for all participants in the chain of food safety management would certainly be enabling the electronicall exchange of data and documentation between state institutions and the economy.

1. FOOD SAFETY LAW

1.14

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Align the Law on Food Safety and all accompanying bylaws with EU regulations (178/2002 / EC and accompanying bylaws).	2017		√	
Establish a transparent and comprehensive risk analysis system (combination of product, country of origin, manufacturer, destination and importer risk) by all inspection services, with the establishment of a functional IT system and digitization of supervision.	2015			√
By adopting the rulebook, establish uniform rules in the procedures of inspection services in terms of costs, deadlines, field work mechanisms, taking the number of samples, determining the type and number of analyzes during official controls.	2014			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
To harmonize the criteria of the laboratory during control analyzes, with a clearly defined responsibility of the laboratory regarding the interpretation of regulations.	2020			√
Establish a national Food Safety Agency following the example of EU member states and neighboring countries and create conditions for the National Reference Laboratory to perform all tasks provided by law, in order to strengthen the capacity of the food safety system.	2018			√
Create legal conditions for food business operators to place new foods on the market from the list, according to a simplified procedure, and keep the approval procedure for novel foods that are not on the list in Annex 1, according to the EU model.	2020			√
Enable electronic exchange of data between state institutions and the economy.	2020			√

CURRENT SITUATION

The Law on Food Safety (hereinafter: the Law) adopted in 2009 and amended 2019, has not been fully implemented so far, nor all necessary bylaws have been adopted.

Amendments to the Law reorganized the division of inspection responsibilities between the competent inspections of the Ministry of Agriculture and the Ministry of Health,

The National Reference Laboratory was opened in 2015, 2019 amendments to the Law define its competence and introduce the term Reference Laboratories, which should entrusts part of the work performed by the National Reference Laboratory. It is envisaged that the Ministries will select reference laboratories through a competition, and that the list of reference laboratories will be published in the "Official Gazette of the Republic of Serbia".

A working group for milk was formed within the Ministry of Agriculture in 2015, but by the middle of 2022, there was no harmonization of the current legislation in the part related to milk safety. The latest amendment to the legislation from September 2021 extended the application of the maximum permitted content of aflatoxin M1 in raw milk of 0.25 µg/kg. Extending the validity of the provision is helpful for milk producers in the territory of the Republic of Serbia. On the other hand, current measures allow the import of milk from neighboring countries and the EU whose aflatoxin content exceeds the limit of 0.05 µg / kg. Due to all the above, and primarily due to food safety, it is necessary to focus activities on the application of measures to reduce the presence of aflatoxins in animal feed.

The Expert Council for Risk Assessment was officially formed in April 2017.

The new Rulebook on Maximum Concentrations of Certain Contaminants in Food (SG 81/2019) from November 2019 is annually aligned with EU and defines the maximum permitted amounts of contaminants in certain types of food (Annex I), which brings Annex I partially harmonized with EU regulations (1881/2006 / EC), due to the fact that the children's food is under the jurisdiction of the Ministry of Health, so harmonization with (1881/2006/EC) is not carried out at the same speed for all food categories. This Rulebook also transposes the provisions of EU Regulation 2017/2158, which prescribes mitigation measures to reduce the presence of acrylamide in certain food categories.

POSITIVE DEVELOPMENTS

Amendments to the Rulebook on Maximum Concentrations of Certain Contaminants in Food, from the end of 2021, predefined food categories in the part related to acrylamide, in order to align the domestic categorization with the European one, and avoid different interpretations.

REMAINING ISSUES

Inconsistency of the Law on Food Safety and certain bylaws with EU Regulations.

a. Rulebook on Maximum Concentrations of Certain Contaminants in Food partially contains the provisions of

EC 1881/2006, food for babies and children are still not alligned,; The Rulebook on the Coffee Products Quality, in addition to the provisions of Directive 1999/4 / EC, also prescribes requirements for categories of coffee products that are not prescribed at the EU level; The Rulebook on Fruit Juices, in addition to the requirements of Directive 2012/12 / EU, prescribes additional requirements regarding the quality of fruit juices. Thus, domestic entities in the food business are placed in a less favorable position compared to entities operating outside the borders of Serbia.

b. There is a room for different inspection interpretations.

c. Slow transposition of the latest amendments to the regulations in the field of food additives into national legislation.

Lack of a comprehensive risk assessment system by inspection services. No improvement and coordination in the application of risk analysis and assessment methods was observed:

a. With the formation of the Expert Council for Risk Assessment, a progress was expected in performing the risk analysis provided by the Law, but this did not happen. The activities of the council are not known to the interested public even after 5 years from its establishment.

b. Risk analysis would enable the classification of food business entities into low-risk and high-risk, which would speed up the process of customs clearance and release of low-risk goods. Importers assessed as low-risk could realize savings in money and time by faster receipt of documents and reduced number of sampling at import.

c. Risk analysis would reduce the scope of inspections and relieve them of limited resources as resources would be focused on testing high-risk products.

d. The publication of the Rulebook on special elements of risk assessment within the scope of sanitary inspection and within the scope of agricultural inspection at the end of 2018, created a framework for starting the risk assessment process, but there is still no uniformity in terms of application between different inspections

Unpredictable business conditions during the procurement of raw materials for food production:

a. Uniform rules do not apply in the procedures of inspection services in terms of costs, deadlines, field work mechanisms, number of samples, determination of type and number of analyzes in laboratory processes,

b. Application of different criteria by laboratories in control analyzes, and vaguely defined responsibility of laboratories in terms of interpretation of regulations.

Unclear procedure for placing novel food on the market:

a. Irrespective of the fact that the Rulebook on Novel foods (SG 88-2018) takes over the list of novel foods that are freely placed on the EU market, the Rulebook prescribes an additional procedure by which the Ministry of Health issues permits for placing novel foods on the market for the first time.

b. The Rulebook stipulates that the Ministry gives approval based on the Opinion of the Expert Council. It is still not clear why the Expert Council gives each operator an opinion on food for which there is already a relevant scientific opinion from an internationally recognized institution (EFSA), and which has already been taken over from the list in Annex 1 to this Rulebook.

The exchange of documentation with the competent authorities is still mostly done physically, which complicates the work of companies and significantly slows down the flow of goods.

FIC RECOMMENDATIONS

- Align the Law on Food Safety and all accompanying bylaws with EU regulations (178/2002 / EC and accompanying bylaws).
- Establish a transparent and comprehensive risk analysis system (combination of product, country of origin, manufacturer, destination and importer risk) by all inspection services, with the establishment of a functional IT system and digitization of supervision.
- Establish uniform rules in the procedures of inspection services in terms of costs, deadlines, field work mechanisms, taking the number of samples, determining the type and number of analyzes during official controls.
- To harmonize the criteria of the laboratory during control analyzes, with a clearly defined responsibility of the laboratory regarding the interpretation of regulations.
- Establish a national Food Safety Agency following the example of EU member states and neighboring countries and create conditions for the National Reference Laboratory to perform all tasks provided by law, in order to strengthen the capacity of the food safety system.
- Create legal conditions for food business operators to place new foods on the market from the list, according to a simplified procedure, and keep the approval procedure for novel foods that are not on the list in Annex 1, according to the EU model.
- Enable electronic exchange of data between state institutions and the economy.

2. SANITARY AND PHYTOSANITARY INSPECTIONS 1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Adopt the new Law on Sanitary Supervision and executive regulations on the work of sanitary and phytosanitary inspection harmonized with the Law on Inspection Supervision and EU regulations.	2017			√
Adopt the Law on Official Controls and executive regulations on the manner of conducting official controls which would ensure consistent application of uniform rules in the procedures of inspection services in terms of costs, deadlines, field work mechanisms, sampling, type and number of analyses in laboratory processes.	2018			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Prescribe the Law on Republic Administrative Fees to prescribe the costs for the inspection of consignments and additional costs for categories of food that are under the jurisdiction of the sanitary inspection.	2020			√
Modify the Decisions of the competent inspections so as to allow the use of raw materials in production, without the right to release the finished product until obtaining a decision on the release of raw materials.	2017			√
Clearly define the time period required for import procedures for all types of food.	2018			√
Enable electronic data exchange between state institutions and the economy.	2020			√

CURRENT SITUATION

The Law on Food Safety amendments from 2019 reorganized the division of inspection supervision responsibilities between the competent inspections of the Ministry of Agriculture and the Ministry of Health.

The work of inspections is also regulated by the Law on Inspection Supervision, which has been in force since April 2016. Some inspections are developing models for the application of the Law on Inspection Supervision, but the full harmonization of sectoral regulations with this Law has not yet been completed.

Since 2016, the Ministry of Health has been in the process of passing the Law on Sanitary Supervision, which would regulate the affairs of sanitary supervision in more detail.

POSITIVE DEVELOPMENTS

No improvements have been noticed in this area.

REMAINING ISSUES

The Law on Sanitary Supervision and executive regulations on the work of sanitary and phytosanitary inspection in accordance with the Law on Inspection Supervision and EU regulations have not been adopted yet, even though they have been announced years ago

Regulation on the manner and methods of conducting official controls, the system of approval and certification, the manner of cooperation with the customs authority and competent authorities of EU Member States and third countries, the manner of inspection, sampling, criteria for determining deadlines for official controls, as well as reporting on implemented official controls and the Regulation on methods of sampling and testing of food in the procedure of official control, etc need to be adopted.

The competent inspections do not allow the use of raw materials in production before obtaining the Decision on release for placing on the market, which leads to a loss of time and money.

The time period required for food import procedures is not clearly defined.

The exchange of documentation with the competent bodies is still mostly done physically, which complicates the work of companies and significantly slows down the flow of goods.

FIC RECOMMENDATIONS

- Adopt the new Law on Sanitary Supervision and executive regulations on the work of sanitary and phytosanitary

inspection harmonized with the Law on Inspection Supervision and EU regulations, as well as the Law on Official Controls based on Regulation (EU) 2017/625 and executive regulations on the conducting official controls manner. This would ensure the consistent application of uniform rules of the inspection services procedures.

- Modify the Decisions of the competent inspections so as to allow the use of raw materials in production, without the right to release the finished product until obtaining a decision on the release of raw materials.
- Clearly define the time period required for import procedures for all types of food.
- Enable electronic data exchange between state institutions and the economy.

3. QUALITY ASSURANCE, DECLARATIONS ON FOOD PRODUCTS, NUTRITION AND HEALTH CLAIMS 1.25

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Define the competence of institutions regarding the interpretation of regulations in the field of food safety and ensure the obligation to apply the official positions of the Ministry to all participants in the chain; ensure uniform interpretation and application of the Rulebook and Guidelines adopted by competent Ministry, adopt Rulebook on conditions and manner of production and placing on the market of food for which quality conditions are not prescribed.	2016			√
Adopt executive regulations arising from the Law on Food Safety and harmonize them with EU, as Rulebook on food with modified nutritional composition.	2017		√	
Adopt Amendments to Article 34 of the Law on Trade in terms of clearly defining that the provisions of this Article do not apply to products to which the provisions of the Law on Food Safety apply, and bylaws prescribing the declaration and labelling of food.	2020			√

CURRENT SITUATION

June 15 2018 The Rulebook on Declaring, Labelling and Advertising of Food (Official Gazette of the RS, No. 19/2017; 16/2018; 17/2020, 17/2022, 23/2022 i 30/2022) (hereinafter: the Regulation), which is largely in line with the relevant EU regulations, is in force. In September 2020, amendments were made to the Rulebook, which refer to the labelling of the country of origin of the main ingredient, as well as information on the absence or reduced amount of gluten in food (harmonization with EU regulations 2018/775 and (EU) 1155/2013). The originally prescribed transition adjustment 18 months period, which refers to the indication of the country of origin of the main soldier, was extended at the beginning of this year and the implementation was postponed to January 1, 2023. Additional provisions were made at the beginning of 2022, that more closely

prescribe the appearance of graphic symbols "Origin from Serbia" for meat and meat products.

A number of regulations prescribing the quality of certain food categories are not fully harmonized with the EU, are outdated or there are no regulations in the EU that define the quality of these food categories. Such vertical legislation puts food business operators at a disadvantage compared to producers in the countries of the region and the European Union. Due to the obsolescence of regulations, the appropriate raw material is often difficult to find and has a higher price. The situation is similar with finished products that do not fit into the categorization of the mentioned regulations.

The Law on Trade, published in the middle of 2019, prescribed the obligation to obligatorily mark the country of production on the labelling of goods in retail trade. Although it was considered that this requirement does not apply to the labelling of food for which the Law on Food Safety (Lex Specialis) and Rulebook on Declaration, Labelling and Advertising of Food are in force and which Article 26 prescribes mandatory indication of the country of origin only for certain categories of food, due to uneven interpretation by inspection and business entities with food in practice makes business more difficult.

POSITIVE DEVELOPMENTS

Rulebook on the Health Suitability and Salt Quality for Human Consumption and Food Production was issued at the end of 2021 (Official Gazette of the RS, No. 111/2021). In addition to prescribing a higher iodine content than the previous one, which protects the general interest of the population, this Rulebook also prescribes that salt in products intended for export does not have to be iodized. This is a relief for producers, bearing in mind that many countries to which food is exported do not require the use of iodized salt in production.

Rulebook on Food Additives (Official Gazette of the RS, No. 45/2022) was issued in April 2022, which exempted food supplements from the Rulebook on the Healthiness of Dietary Products. This aligns local legislation with regard to product composition with EU legislation in this area.

REMAINING ISSUES

The current legal framework does not define the competence and responsibility for the interpretation of regulations in the field of food safety, and over time the practice has been created on the market for laboratories to interpret regulations:

a. Regardless of the fact that the legal assessment, ie. Determining certain illegalities in business in the exclusive competence of the inspector in accordance with Article 37 of the Law on Inspection Supervision, the inspector, as the competent body, is exclusively guided by the conclusion made by the laboratory, which is often not in line with the official position of the Ministry. This is especially reflected in the interpretation of regulations in the field of labelling, where, despite the existence of the Guide, there are different approaches and interpretations of its provisions.

b. The official position of the competent Ministry is not a binding act for inspection services.

c. This practice contributes to the difficult functioning of food business operators, and to the great limitations of long-term planning.

d. A bylaw has not yet been adopted by Minister of Health, in accordance with the division of competencies referred to in Article 12 of the Law. This bylaw should prescribe in more detail the conditions and manner of production and marketing of food for which quality requirements are not prescribed, which is provided by Article 55 of the Law.

Nonharmonised regulations prescribing product quality with EU regulations:

a. Most of the national regulations, which prescribe the certain categories of food quality, date back to the 80s and 90s of the last century. Some of the regulations, such as the Rulebook on the Fruit and Vegetable Products Quality and the Rulebook on the Quality of Raw Coffee, Coffee Products, Coffee Substitutes, as well as Related Products, although more recent, are entirely national in nature, and are therefore not subject to harmonization with the EU legislation, nor are there requirements for them at the EU level, except for instant coffee products and instant coffee substitutes. With the latest amendment to the Rulebook on the Fruit and Vegetable Products Quality, from the end of 2021, no progress in harmonization was made. By adopting such national regulations, the

Quality Group of the Ministry of Agriculture shows a sense of the needs of domestic producers, to define quality parameters for certain product categories, as well as traditional products and reduce the possibility of abuse. On the one hand, the way of doing business in the internal market is harmonized in the case of products that are clearly categorized, on the other hand, food business subjects are limited, because it further complicates the way of working in the case of no categorized products within Rulebook, especially with related products, there is room for different interpretations.

b. The Rulebook on Fruit Juices, although harmonized with EC Regulation 2012/12, still has additional requirements regarding the quality of fruit juices, taken from the standards of the European Association of Fruit Juice Producers, which as such in the EU countries have voluntary and not legally binding application, which puts domestic entities in the food business in a less favourable position in relation to entities that operate outside the borders of Serbia.

c. The Rulebook on Dietary Supplements retains the process of registering products in the Ministry's database, as it existed in the Rulebook on the Healthiness of Dietary Products, which, unlike the notification process in EU countries, involves the procedure of obtaining confirmation from several institutions before entering the Ministry of Health's database

Inconsistency of the requirements of the Law on Trade and the Rulebook on Labelling, in case of stating the country of origin on the product declaration, prescribe the obligation to state the country of origin of the main ingredient, create a framework for additional problems in practice.

FIC RECOMMENDATIONS

- Define the competence of institutions regarding the interpretation of regulations in the field of food safety and ensure the obligation to apply the official positions of the Ministry to all participants in the chain; ensure uniform interpretation and application of the Rulebook and Guidelines adopted by competent Ministry, adopt Rulebook on conditions and manner of production and placing on the market of food for which quality conditions are not prescribed.
- Enact the Rulebook on the Conditions and Manner of Production and Placing the Food on the Market for which Quality Conditions are Not Prescribed.
- Adopt executive regulations arising from the Law on Food Safety and harmonize them with EU.
- Adopt Amendments to Article 34 of the Law on Trade in terms of clearly defining that the provisions of this Article do not apply to products to which the provisions of the Law on Food Safety apply, and bylaws prescribing the declaration and labelling of food.

INSURANCE SECTOR

1.00

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				
It is necessary to establish a strategy for natural disasters insurance, which aims to ensure that, in the event of a major adverse event, a significant proportion of the damage will be transferred to the insurance company. It would be important to avoid new levies on existing contracts, a measure already proposed by the Ministry of Finance, which would lead to additional expenditure for a small number of insured persons who now have insurance coverage. Implementation could be done gradually, as follows: i) Introducing compulsory insurance for all state and public property and infrastructure. ii) Introducing mandatory coverage of all assets designated as collateral for financing. iii) Introducing mandatory coverage from natural disasters/elemental disasters for all property that includes fire insurance, based on the French model.	2015			√
Consider a mechanism for natural disasters insurance with mandatory or semi-mandatory coverage. There are examples of such a solution, which are far from perfect, and which have shown that these mechanisms are effective in increasing coverage and managing this risk at the country level (Romania, Turkey). In addition, consider tax relief for companies in order to promote natural disasters insurance.	2018			√
When insuring crops and hail protection, exclude the hail contribution or collect the hail contribution from all farmers but not through the insurance policy.	2021			√
All crops or animals that are subject to state subsidies (for raw materials, fuel, procurement of basic livestock…) should be insured.	2021			√
AUTO INSURANCE MARKET				
Allow insurance companies to register cars on their own premises.	2013			√
Allow the possibility of issuing a compulsory auto liability insurance policy in electronic form as an electronic document.	2019			√
INSURANCE LAW				
In the case of concluding a life insurance contract, the notice referred to in paragraph 1 of this Article, in addition to the information referred to in that paragraph, shall also contain information regarding: 1) the basis and criteria for share in profit and the manner and deadlines for payment of share in profit; 2) the table of cash surrender values; 3) the conditions for exercising the right to capitalization of the contract and the rights under such contract; 4) in the case of insurance related to investment fund units - who shall bear the investment risk, the definition of investment units to which fees have been related and the prospectus of the investment fund, and especially on the investment structure; 5) tax regulations relating to life insurance.	2021			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Amend the Law on Insurance in such a way that the text of the existing Article 82 is amended and reads: Before concluding the insurance contract, the insurance company shall inform an insurance policy holder at least about: 1) the business name, legal form, registered office and address of the registered office of the insurance company with which he concludes the contract; 2) the insurance conditions and the law applicable to the insurance contract; 3) the term of the insurance contract; 4) the risks covered by insurance and exclusions related to those risks; 5) the amount of insurance premium, the method of payment of insurance premium, the amount of contributions, taxes and other costs that have been calculated in addition to the insurance premium, as well as the total amount of payment; 6) the right to terminate the contract and the conditions for termination, or the right to withdraw from the contract; 7) the period within which the offer shall be binding on the insurance company; 8) the manner of filing and the deadline prescribed for filing a claim for damages, or for exercising rights based on insurance; 9) the manner of protection of his rights and interests with the insurance company; 10) the name, registered office and address of the body responsible for supervising the operations of the insurance company, as well as the manner of protection of his rights and interests with that body.	2021			√
In the case of insuring the costs of legal protection when choosing a lawyer or other person who has the appropriate qualifications in accordance with the regulations to defend, represent or protect the interests of an insured person in the investigation or proceedings – an insured person shall freely choose a lawyer or other person.	2021			√
If the data stated in the previous paragraphs of this Article have been contained in the insurance conditions submitted by the insurance company to an insurance policy holder before concluding the insurance contract, it is considered that the insurance company has fulfilled the obligation to provide information to an insurance policy holder. "	2021			√
NEW LAW ON PREVENTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM				
Amend Article 4 of the Law by adding a new paragraph 4 after paragraph 3, which reads: Notwithstanding the provisions of paragraph 1, item 6) of this Article, insurance companies that have a license to conduct life insurance, insurance brokerage companies when performing life insurance brokerage, insurance agencies, insurance agents and banks that have a license for the performance of life insurance business shall not be considered entities subjected to the duty of due diligence under this Law when it comes to life insurance contracts that do not have a savings component (do not cover the risk of pure endowment).	2021			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Amend Article 18 of the Law in order to define the conditions for establishing the identity of a party through a qualified electronic signature that can technically be achieved in practice.	2020			√
Amend Article 8 of the Law by adding a new paragraph 3 after paragraph 2, which reads: Notwithstanding paragraph 1 of this Article, the entity subjected to the duty of due diligence under this Law referred to in Article 4, paragraph 1, item 6) of this Law shall not perform the measures referred to in Article 7 of this Law when concluding a new life insurance contract when the insurance premium has been paid from the sum insured or mathematical reserve, or its part, based on expiration or surrender of the existing life insurance contract during the conclusion of which the entity subjected to the duty of due diligence under this Law has already performed actions and measures of knowing and monitoring a party in accordance with the Law, provided that a new insurance contract does not change a policy holder and a beneficiary.	2021			√
LIFE INSURANCE – EXEMPTION FROM INCOME FOR TAXATION OF FEES FROM PERSONS INSURANCE				
Amendments to Article 9, paragraph 1, items 6) and 7) of the Law on Personal Income Tax, which provide for exemption from income for taxation of income of natural persons based on certain types of insurance benefits, so that the application of the prescribed exemption extends to exemption from taxation of all benefits from the insurance of persons, and the deletion of Article 84 of the Law relating to the taxation of income of a natural person who receives compensation from the insurance of persons, as follows: - In Article 9, paragraph 1, item 6) after the words "except for salary compensation (salary)", the words "property insurance compensation and personal insurance compensation in accordance with the law governing voluntary insurance" shall be added; " - Article 9, paragraph 1, item 7) shall be deleted. - Article 84 shall be deleted.	2021			√
ABOLITION OF DOUBLE TAXATION FOR UNIT LINK PRODUCTS AND INVESTMENTS IN INVESTMENT FUNDS				
Bearing in mind that the insurance company has only formal ownership over the units of the investment fund, and it cannot freely dispose of them, whereby the payment of insurance compensation to a natural person (difference between the sum insured obtained by selling fund units by the insurance company and paid premium) represents the taxable income of a natural person, the Law on Corporate Income Tax should be amended in a way that would exempt the income generated from the sale of investment units to which life insurance is linked from the calculation of capital gain in the tax balance of the insurance company. In this way, double taxation shall not be completely eliminated, but only the income generated from the sale of this type of investment units shall be excluded from the calculation of capital gains, but it shall certainly be included in the taxable profit of the insurance company, as its "regular income".	2021			√
The Law on Corporate Income Tax should be amended as follows: - In Article 27, paragraph 1, item 4) after the words "in accordance with the law governing investment funds" add the words "except in the case of surrender of investment units to which life insurance has been linked in accordance with the law governing voluntary insurance".	2021			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
LAW ON ROAD SAFETY				
Amend Article 7 of the Law on Road Traffic Safety and introduce the definition of electric scooters in paragraph 1, item 34a: "electric scooter shall be a motor vehicle with two wheels, with its own electric drive"	2021			√
Introduce the obligation to insure owners of electric scooters against liability for damages caused to third parties.	2021			√
LAW ON ROAD TRANSPORT				
Amend Article 7 of the Law on Road Transport and provide for a professional liability insurance policy of the carrier as a mandatory condition for obtaining a transport license.	2021			√
LAW ON HEALTH INSURANCE				
Amend the Law on Health Insurance in such a way that: a) the text of the existing Article 179 should be amended to read as follows: The contract on voluntary health insurance shall be concluded based on a previous offer for concluding a contract on voluntary health insurance (hereinafter: the Offer) given by an insurer to a person wishing to conclude a contract on voluntary health insurance. The offer referred to in paragraph 1 of this Article shall contain important data on voluntary health insurance policy holders, insurance start date, insurance waiting period, as well as insurance end date, amount and deadlines for payment of insurance premium, maximum agreed amounts by coverage risks and other important elements for insurance contracting. Important data on the insured persons of voluntary health insurance referred to in paragraph 2 of this Article shall be: 1) name and surname, 2) Personal Identification Number, or the registration number for foreign citizens. In the case of collective insurance, a policy holder may submit a unique offer containing the data referred to in the previous paragraph of this Article on each individual who will be covered by collective insurance. The offer referred to in paragraph 1 of this Article as well as the unique offer referred to in paragraph 4 of this Article, as important data, shall also contain data on the previous health condition of the insured persons of voluntary health insurance which are necessary for an insurer to assess insurance risk. Notwithstanding the provisions of this Article, when the insurance company concludes with a policy holder a contract on collective voluntary health insurance of employees, where the insured persons are entitled to payment of insurance compensation directly from the insurance company and where the paid compensation does not cover treatment costs, insurance can be concluded based on official records of employed insurance policy holders. b) the text of the existing paragraph 1 of Article 182 should be amended to read as follows: An insurer shall issue a voluntary health insurance document to any voluntary health insurance policy holder who does not use his insurance rights directly with an insurer on the day of issuing the policy, and no later than 60 days from the day of issuing the policy.	2021			√

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
LAW ON HEALTH CARE				
Enable health care providers to diagnose or prescribe therapy by telephone or through online consultations by the Law on Health Care.	2021			√
LAW ON INJURIES AT WORK				
Occupational Safety and Health Directorate should propose the adoption of the Law on Insurance against Occupational Injuries, Occupational Diseases and Diseases Related to Work.	2021			√

OVERVIEW OF THE INSURANCE MARKET

CURRENT SITUATION

There are 20 insurance companies operating in Serbia, 16 of which are involved exclusively in insurance activities, while four companies are involved 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 highly concentrated: i) the market leader, Dunav, holds 26,4% market share, ii) the three largest insurers together hold 57,7% of the market; and iii) five leading insurance companies control 75,8% of the market.

Majority foreign-owned companies (15 of 20) definitely dominate the market, accounting for 73,4% in assets (60,0% in non-life insurance premiums and 87.1% in life insurance premiums).

The insurance market recorded a premium of RSD 119.4 billion dinars (EUR 1.02 million), which is an increase of 8,6% compared to the same period last year (at the end of year).

As a conclusion of comparative indicators for the year 2022 and the previous years, the following changes were observed:

- an increase in the balance amount of the insurance sector by 6.3% amounting to RSD 334.0 billion;
- capital increased by 5.5% reaching RSD 81.1 billion;
- technical reserves increased by 5.3% reaching RSD 219.2 billion;
- the total premium reached the level of RSD 119.4 billion, with a growth rate of 8.6%;
- the share on non-life insurance in the total premium remains dominant with 77.3% in the total premium; the non-life insurance premium recorded a 10.2% growth, while voluntary health insurance, property insurance, motor vehicle insurance – "kasko" (full coverage) and vehicle liability insurance recorded an upward trend;
- the share of life insurance in the total premium dropped from 23.8 to 22.7%, with the growth of this premium by 3.6 %;
- there were 20 insurance companies on the market of the Republic of Serbia, an unchanged number compared to the same period last year, while the number of employees dropped to 11.244, a reduction of 1.0%.

The establishment of insurance companies and their activities are mainly regulated by the Insurance Law from December 2014, amended in 2021, and by the relevant by-laws of the National Bank of Serbia (NBS).

Other significant legal sources include the Law on Mandatory 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 (Law on Obligations). The lateral relevant legal source is the Law on Road Traffic Safety.

A large number of insurance companies and other insurance market participants try to adapt their services to the digital world. However, besides technical, cultural and other barriers, regulations are also an important limiting factor. Although in recent years, huge strides have been made towards creating conditions for digital business, there is still room for improvement. This primarily refers to the vehicle liability market where

policies still have to be issued according to the law on predefined forms printed by the Institute for Production of Banknotes and Coins – Topčider, which practically renders digital business impossible. Also, regulations in the area of prevention of money laundering and terrorism financing are an important limiting factor, as it does not recognize the exceptions previously recommended, which would contribute to the sale of life insurance through digital channels on the market of the Republic of Serbia taking hold in practice.

The impact of the COVID – 19 virus pandemic is certainly not to be underestimated. However, remote business activities and work from home have contributed to the faster expansion of digital sale channels, as well as to an increasing level of digitalization of the insurance companies' business operations.

INSURANCE CONTRACT LAW

CURRENT SITUATION

Insurance contract law is regulated by the provisions of the Law on Contracts and Torts ("SFRY Off. Gazette", no. 29/78, 39/85, 45/89 – CCY decision and 57/89, "FRY Off. Gazette", no. 31/93, "SCG Off. Gazette", no. 1/2003 – Constitutional Charter and "RS Off. Gazette", no. 18/2020) from 1978 last amended 19 years ago.

POSITIVE DEVELOPMENTS

None.

REMAINING ISSUES

The Law on Contracts and Torts was passed more than forty years ago and was last amended nineteen years ago. Although it is one of the better laws that was taken over in all neighboring countries after the breakup of the old state, some segments simply do not correspond to the present time.

There are several reasons for passing a special Insurance Law:

Alignment with the changed circumstances and market needs

As mentioned before, the Law on Contracts and Torts was passed and subsequently amended a long time ago. At the time, the insurance market was not as developed in our country as it is today, and the same goes for the awareness of individuals about the importance of insurance. Furthermore, some provisions of the Law on Contracts and Torts which regulated the subject matter of insurance are in some ways outdated and do not follow the needs of the market, or practice in the European Union, to which Serbia also aspires, because they do not adequately protect the rights of beneficiaries. This was also recognized by the NBS, so these provisions were included in the status Insurance Law and NBS by-laws;

Faster and easier passing of laws and simpler amendments

We are aware that work on the new Civil Code of Serbia is currently in progress and that the idea is to also integrate the provisions of insurance contract law in the Code. However, the fact is that the passing of the Code has been ongoing for years and it is still uncertain when it will be adopted. The needs of the insurance market, both of the insurer and the insured, require the fastest possible response by the regulator and legislator so that adequate regulations could make a good basis for the further market development. Also, changes in this legal matter require a faster response and, in our opinion, a difficult process of amending regulations should not be an obstacle to market development. During the pandemic, we witnessed a higher need for the issuance of insurance certificates instead of policies, for a higher volume of distance contracts, etc. Since the Civil Code will incorporate a larger scope of different types of civil law, it is not realistic to expect that it will be amended whenever a need for a single contract arises. We are therefore of the opinion that the subject matter of contractual insurance law should be included in a separate law.

Harmonization with the law of the European countries

A separate Insurance Contract Law is present in legislations world-wide (it exists in Germany, France, Italy, Spain, Belgium and a number of other developed countries) and has proven to be a good solution. The tendency of our country is to follow European standards and to aspire towards the European Union, so the passing of a special Insurance Contract Law would be another step forward in that direction. In this way, we would be the first state in the region to follow developed European countries in that area. The

tendency in the European Union to regulate the subject matter of insurance contracts separately is a sufficient indicator that there should also be a special law in our country regulating only the insurance contract.

Consolidation of the matter of contractual insurance law

Certain provisions of insurance contract law can be found in other regulations and laws, and not only in the Law on Contracts and Torts (in Insurance Law as a status law, in the NBS secondary legal acts, in the Law on Consumer Protection, the Law on Health Insurance, in the Law on Mandatory Traffic Insurance and in other regulations). In our opinion, it would be good to systematize and consolidate them into one regulation. The consolidation of the subject matter of insurance contract law would make this area more accessible, while at the same time minimizing the possibility of the lack of knowledge about the regulations. The comprehensive inclusion of this subject matter in a single law would certainly minimize the possibility of legal gaps arising in practice in the future.

The importance of insurance contract

Last, but not least, the legal and economic importance of insurance in the modern world, including our country, should not be ignored. This area is very specific, but at the same time also complex, so it should preferably be regulated by a separate lex specialis, which would regulate the insurance contract in a consolidated way and ensure a higher certainty of legal transactions, reducing the possibility of legal gaps to a minimum. Furthermore, regulation of the matter of insurance contract law in one place would improve the citizens' knowledge and raise awareness on the importance of insurance precisely because the state gave it importance by passing a special law.

FIC RECOMMENDATIONS

- The enactment of a special Insurance Contract Law that would consolidate the provisions of the contractual insurance law. Creation of a working group of prominent lawyers in this field (distinguished professors, experts, people from the insurance industry, lawyers specialized in insurance law, etc.) who know both theory and practice, but also tendencies in the European countries and who would make a significant contribution to the development of the insurance market in our country. A good basis can be the Draft Insurance Contract Law prepared by the UOS which fully protects the rights and interests of insurance service consumers in line with the highest EU standards.

MEDIATION AS A MANDATORY STEP BEFORE THE INSURANCE COURT DISPUTE

CURRENT SITUATION

The provisions of Article 15, paragraph 1 of the Insurance Law stipulate that the National Bank of Serbia mediates in the settlement of a compensation claim in order to prevent disputes arising from insurance, acts upon complaints of insurance service consumers regarding the work of insurance companies and protects the rights and interests of these persons.

The provisions of Article 2 stipulate that the insurance service consumer has the right to complain and protect his rights and interests before the National Bank of Serbia in relation to the work of insurance brokerage companies, companies for representation in insurance, insurance agents and legal entities from Article 98, paragraph 2 of this Law, while Article 4 prescribes that the National Bank of Serbia prescribes more precisely the manner of brokerage in handling compensation claims and filing of complaints by insurance service consumers, as well as acting on these complaints.

The NBS Decision on the procedure regarding complaints of insurance service consumers stipulates that, if the insurance service consumer is dissatisfied with the response of the insurance service provider to his complaint or the

response was not submitted within the deadline specified in the NBS Decision, the dispute between the insurance service consumer and insurance service provider may be resolved through mediation of the National Bank of Serbia. In addition, the Decision prescribes that the mediation procedure handled by the National Bank of Serbia is not subject to the provisions of the law regulating mediation in dispute resolution.

POSITIVE DEVELOPMENTS

None.

REMAINING ISSUES

Provisions on mediation are contained in the article of the Insurance Law stipulating protection of the rights and interests of insurance service consumers which primarily concern complaints. Also, the NBS Decision regulating brokerage services in insurance is in fact the Decision on acting on complaints filed by insurance service consumers. Mediation as such is not given the importance it could have in this matter.

In addition to the above, the NBS Decision stipulates mediation as an option, not an obligation. Insurance service consumer may reach out to NBS before initiating a court dispute, but are not obliged to do so.

Also, the provisions of Article 149 of the Law on Consumer Protection stipulate that out-of-court settlement of consumer disputes, in terms of this Law, does not apply to consumer disputes that are the subject matter of this Law, if the out-of-court dispute settlement is regulated by a separate law, especially in the field of providing electronic communication services, postal services, financial services, except for financial arrangements, travel services.

Accordingly, as far as the out-of-court settlement of consumer disputes is concerned, the Law on Consumer Protection does not apply to insurance (regulated by a separate law, NBS Decision, and it is also a financial service).

An increasing number of attorneys representing insurance service consumers file incomplete compensation/damage claims and when the insurance company requests a supplement because it is objectively unable to make a decision based on available documentation, they file a court case. These disputes often end quickly because the attorney provides in the court case the information that the insurance company requested as a supplement. This increases the number of court cases and costs for both insurance companies and insurance service users and creates mistrust in the insurance industry, all because of individuals who see it as an opportunity for quick and easy profit.

FIC RECOMMENDATIONS

- Stipulate insurance mediation as a mandatory step before proceeding to litigation.

LIFE INSURANCE – EXEMPTION FROM TAXABLE INCOME OF PERSONAL INSURANCE FEES

CURRENT SITUATION

The present Law on Personal Income Tax stipulates that a collective life insurance premium in case of death of employee due to illness which is paid by the employer for all employees shall not be considered as salary salary/wage. This legal solution is insufficient as an incentive for life insurance, given that life insurance has a social function – it provides stability and security to natural persons, ensures long-term savings for maintaining life standard in old age, while in this way, a natural person can ensure that, in the case of unforeseen life circumstances, he or the persons close to him are materially provided for.

POSITIVE DEVELOPMENTS

None.

REMAINING ISSUES

The proposed amendments to the Law on Personal Income Tax should encourage the citizens of the Republic of Serbia to independently provide funds for the future during their working age by setting aside part of their funds that are paid to insurance companies in the form of insurance premiums.

In addition to the benefits for natural persons who enter into insurance contracts, there are also numerous benefits for the state, as the growth of investment in life insurance would lead to an increase in tax revenues, since insurance premiums are subject to taxation as insurance companies' profit tax. On the other hand, the payment of life insurance would lead to an improvement in the standard of living of insurance beneficiaries, an increase in income in turn leads to an increase in consumption and therefore to an increase in collection of indirect taxes (value added tax, excise duty, customs duty). This leads to an inflow of funds into the budget of the Republic of Serbia which can be used for the achievement of budget goals.

The growth of life insurance premium payments has a direct impact on the development of the insurance market as an important factor of a country's economic growth. The more developed the insurance market, the faster and greater the economic growth that a country will experience. Namely, due to increased demand for life insurance products, new jobs are created in the insurance industry (besides unemployment reduction, the positive effect is also in the growth of funds collected in respect of income tax and contributions for mandatory social insurance). The industry's development leads to an increase in the number of insurance companies as important institutional investors on the market. Namely, insurance companies would invest the premium collected in government bonds, i.e., by issuing long-term government securities that reflect the long-term nature of life insurance contracts, while the Republic of Serbia would collect significant funds it could use to finance infrastructure and other projects of general importance for economic development. Collecting of insurance premiums achieves a mobilization of savings, which allows the reallocation of funds to projects that can generate higher returns. Likewise, raising citizens' awareness to enter into life insurance contracts and encouraging them to do so through proposed changes would also serve as a relief of social insurance funds.

There is a tendency around the world to introduce various tax incentives when it comes to taxation of insurance income. Steps in that direction have been made in the tax legislation of the countries in the region: for example, in Croatian legislation, as of 1 January 2019, the tax on income from insurance as such was abolished, so that this type of income of natural persons is not considered income. Namely, under the Law on Personal Income Tax ("Official journal" no. 115/16, 106/18, 121/19, 32/20) Article 8, paragraph 2, item 5 stipulates that indemnities not related to economic activities are not considered income and that payments in respect of insurance of assets, liability and property are considered indemnities, while paragraph 3 of the same article prescribes that proceeds arising from life insurance contracts and voluntary pension insurance are not considered income. Also, Article 64 of the Law defines what constitutes income from capital, also including interest income. Article 65 of the Income Tax Law prescribes that proceeds based on life insurance with a savings feature (insurance benefits above the paid insurance premiums) and benefits from voluntary pensions insurance are not considered interest.

FIC RECOMMENDATIONS

- Amendment of Article 9, paragraph 1, items 6) and 7) of the Law on Personal Income Tax which stipulate the exemption from taxable income the earnings of natural persons in respect of certain types of insurance benefits, extending the application of the stipulated exemption from taxation of all benefits from personal insurance and the deletion of Article 84, related to the taxation of a natural person's income generated from personal insurance, as follows:
  - In Article 9, paragraph 1, item 6) after the wording "except salary compensation", the following wording should be added "benefits from property insurance and benefits from personal insurance in accordance with the law regulating voluntary insurance;"
  - Article 9, paragraph 1, item 7) – to be deleted.
  - Article 84 – to be deleted.

ELIMINATION OF DOUBLE TAXATION FOR UNIT LINK PRODUCTS AND INVESTING IN INVESTMENT FUNDS

CURRENT SITUATION

Article 8, paragraph 1 of the Insurance Law ("RS Official Gazette", no. 139/2014 and 44/2021) defines classes of life insurance, specifying life insurance as a separate class of insurance linked to investment fund units. The specificity of life insurance contracts linked to investment fund units is that the insurance contract obliges the policyholder to pay the insurance premium whose savings component is used to purchase investment units of selected investment funds. Namely, when concluding an insurance contract, the policyholder chooses a combination of investment funds from the insurance company's offer (the structure of investing of the investment premium in investment funds is defined in the offer).

At the request of the insurance contract holder, the insurance company is obliged to pay the policy surrender value if the specific contract period for which insurance premium were paid from the beginning of insurance has elapsed. The number and value of investment units are established on the day of submission of request for the payment of surrender value.

When withdrawing funds, the insurance company actually submits a request for the purchase of investment units that the open investment fund is obliged to purchase from it. Under the currently applicable provisions of the Law, when the units are purchased by the investment fund, a capital gain (loss) arises for the insurance company, determined in accordance with Articles 27-29 of the Law, which is included in the base for the calculation of the insurance company's profit tax. Capital gain is determined as the difference between the sale price paid by the investment fund for the units and the purchase price determined as the net value of the open investment fund's assets per investment unit on the date of payment, increased by the purchase fee if such fee is charged by the company managing the fund.

Also, when the insured sum is paid to the insured person, a taxable income that is subject to personal income tax arises pursuant to the currently applicable Article 84, paragraph 2 of the Law on Personal Income Tax (LPIT). Namely, under Article 84, paragraph 2 of the LPIT, taxable income from personal insurance would represent the difference between the amount of benefit paid from personal insurance and the amount paid in respect of insurance premiums. In this particular case, if the result of multiplying the number of investment units and their value on the date of occurrence of the insured event or on the date of submission of the request for purchase in the event of termination of the contract would be higher than the sum of the paid insurance premiums, the difference between these two amounts would be subject to taxation by personal income tax at the rate of 15%.

POSITIVE DEVELOPMENTS

None.

FIC RECOMMENDATIONS

- Since the insurance company only has formal ownership of the investment fund units, i.e. cannot freely dispose of them and the payment of insurance benefit to a natural person (difference between the insured sum obtained from the sale of the fund units by the insurance company and paid premiums) represents a taxable income of a natural person, the Law on Corporate Profit Tax should be amended in a way that would exempt the income generated by the sale of investment units linked to life insurance from the calculation of capital gains in the tax balance sheet of the insurance company. In this way, double taxation is not completely eliminated, but the income generated from the sale of this type of investment units is only excluded from the calculation of capital gains, but it is nevertheless included in the insurance company's taxable profit as its "regular income".

- The Corporate Profit Tax Law should be amended as follows:
  - in Article 27, paragraph 1, item 4), after the wording "in accordance with the law regulating investment funds",

the following wording should be added "except in the case of purchase of investment units to which life insurance is linked in accordance with the law regulating voluntary insurance".

LAW ON PREVENTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM

CURRENT SITUATION

The Law on Prevention of Money Laundering and Terrorist financing began to apply on 1 April 2018, and has serious implications for the operation 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.

As regards Article 8, given the legal nature of such contracts which provide coverage against 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, (cashless transactions, bank payment), it is clear that the potential money laundering and terrorism financing risk as such is unfeasible and that it requires special treatment. Classification in the low-risk category and application of simplified procedures is not a mitigating circumstance, considering that significant resources are spent on the identification of the legal entity and beneficial owner.

Also, for insurance with a savings component, if a policyholder pays the insurance premium from the insured sum or mathematical reserve, or its part, based on the expiration or surrender of the existing life insurance contract, upon the conclusion of which the obligor has already performed the customer due diligence actions and measures in accordance with the law, the question is if taking actions in accordance with the Law is justified.

Article 18 of the Law stipulates that the customer's identity can be established and verified through a qualified electronic certificate, but the technical requirements prescribed by this article for this type of customer identification cannot be implemented in practice and no obligor applies it.

POSITIVE DEVELOPMENTS

None.

REMAINING ISSUES

Implementation of the Law in practice has led to difficulties in contracting some of the above-mentioned types of life insurance, more precisely all types of life insurance where the risk of pure endowment has not been insured or in the case of insurance without a savings component.

Having in mind the provisions of Articles 1 and 2 of the Law, it is clear that the Law prescribes actions and measures to be taken in order to prevent and detect money laundering and terrorism financing. The above unequivocally leads to the conclusion that the aim of the Law is to prevent harmful consequences that may arise, or more precisely, be assisted by a person's taking of illegal actions in terms of introducing the proceeds gained illegally into legal flows.

Based on the above, a necessary condition for the existence of danger is that at the time of performing actions that may give rise to money laundering and terrorism financing, the suspicion about the origin of funds and the suspicion of the intent/knowledge that the funds will be used for the financing of terrorism has not been removed.

All of the above, when it comes to implementation of the Law, shall be verified with regard to a person with the status of a policyholder. The logical assumption is that, if illicit actions should occur (money laundering and/or terrorism financing), a person who undertakes these actions (in this case a policyholder) will have a benefit or interest from it.

However, this is not the case with the "riziko" insurance, or life insurance contracts against the case of death. In these contracts, a policyholder, as a rule, is not the insurance beneficiary and he will not come into possession of the funds paid by the insurance company as the indemnity. Exceptionally, when a policyholder is the insurance beneficiary, before the payment of the insurance indemnity, the insurance company will apply the provisions of the Law.

When the policyholder is (a legal entity) and it contracts life insurance in case of death for a large number of insured persons (group insurance, and insurance beneficiaries are the legal heirs of the insured person, or banks where explicitly agreed up to the amount of outstanding loan, the application of the Law is meaningless and only causes difficulties for both insurance companies and insurance beneficiaries.

In addition to the above, it is often the case in practice that a new life insurance contract is concluded immediately after the expiration or surrender of an existing life insurance contract, where the insurance premium is paid from the insured sum or mathematical reserve or its part of the existing insurance contract. Considering that, when concluding the existing life insurance contract, the insurance company has already taken measures in accordance with Article 7 of the Law on Prevention of Money Laundering and Terrorism Financing, there is no justifiable reason to take the same measures again and check the origin of the funds. This would apply only on condition that, under the new insurance contract, the policyholder and beneficiary do not change.

FIC RECOMMENDATIONS

- Article 4 of the Law by adding a new paragraph 4 after paragraph 3 should be amended to read:

  "Notwithstanding the provisions of paragraph 1, item 6) of this Article, insurance companies that have a license to engage in life insurance, insurance brokerage companies when performing life insurance brokerage activities, insurance agencies, insurance agents and banks that have a license to perform the activities of life insurance shall not be considered entities liable for due diligence under this Law with regard to life insurance contracts that do not have a savings component (do not cover the risk of pure endowment)."

- Article 8 of the Law should be supplemented by adding a new paragraph 3 after paragraph 2 which reads:

  "Notwithstanding paragraph 1 of this Article, the liable entity from Article 4, paragraph 1, item 6) of this Law is not required to perform the measures from Article 7 of this Law when concluding a new life insurance contract when the insurance premium is paid from the insured amount or mathematical reserve or its part, based on expiration or surrender of the existing life insurance contract during the conclusion of which the liable entity has already performed the actions and measures of customer due diligence in accordance with the Law, provided that under the new insurance contract, the policyholder and beneficiary do not change."

- Article 18 of the Law should be amended in order to define the conditions for establishing customer identity via qualified electronic signature which are technically feasible in practice.

AUTO INSURANCE MARKET

CURRENT SITUATION

Auto Insurance (AI) is by far the most important segment of the insurance market (accounting for 30.9% of the total insurance premium in 2021) in Serbia, and the technical inspection facilities performing the mandatory annual inspection of all motor vehicles are definitely the most important distribution channels for these insurance policies. Articles 44 and 45 of the Law on Compulsory Traffic Insurance prohibit the payment of any commission to these technical inspection facilities – directly and/or through affiliated entities – which exceeds 5% of the gross insurance premium.

POSITIVE DEVELOPMENTS

Increased market surveillance by the National Bank of Serbia, which resulted in the fact that insurance companies have largely adjusted their operations to the laws and by-laws in this area.

FIC RECOMMENDATIONS

- Allow the possibility of issuing the compulsory auto liability insurance policy in electronic form as an e-Document.

LAW ON ROAD TRAFFIC SAFETY

CURRENT SITUATION

The existing Law on Road Traffic Safety does not regulate electric scooters. As their use and number in traffic are constantly rising, a need arose to regulate them legally. Electric scooters are also an increasingly frequent cause of traffic accidents, so it is necessary for the owners of these vehicles to conclude a contract on compulsory insurance for damage liability to third parties.

REMAINING ISSUES

Given that the use of electronic scooters is not regulated by the law, there is a problem in practice in the event that their use causes damage to third parties. If the owner of person operating the vehicle for any reason fails to pay the damage cause, the injured persons remain deprived of any compensation. Thus, they get into an unequal position compared to persons who sustained damages from any other means of transport for which it is obligatory to contract compulsory third-party liability insurance (motorcycle, passenger car, bus).

FIC RECOMMENDATIONS

- Article 7 of the Law on Road Traffic Safety should be amended to include a definition of electric scooters in paragraph 1, item 34a: „an electric scooter is a motor vehicle with two wheels, with its own electric drive".
- Obligation of third-party liability insurance should be introduced for electric scooter owners.

LAW ON TRANSPORTATION OF CARGO IN ROAD TRAFFIC

CURRENT SITUATION

The Law on Transportation of Cargo in Road Traffic does not stipulate an obligation of the carrier to have a professional liability insurance policy of the carrier, as in other countries.

REMAINING ISSUES

Carriers often do not have this insurance contracted, so the customers of transportation services cannot charge damages if caused by the carrier. This may lead to large-scale damage for transportation service customers as the entire load may be destroyed in transportation.

FIC RECOMMENDATIONS

- Article 7 of the Law on Transport of Cargo in Road Traffic should be amended to stipulate insurance policy of the carrier's professional liability as a mandatory requirement for obtaining a transport license.

VOLUNTARY HEALTH INSURANCE

1. HEALTHCARE LAW

CURRENT SITUATION

The current Healthcare Law does not provide for the possibility for health care providers to diagnose or prescribe treatment by telephone or through online consultation. The Rulebook on the nomenclature of health services at the primary level of health care stipulates only provision of advice in the telephone and Internet counseling service. This way of health care service provision has proved necessary, especially in the circumstances of the pandemic. Additionally, the development of technology that enables a health care worker and patient to also have visual contact and to exchange documents electronically, supports the idea that this type of treatment should be made available.

REMAINING ISSUES

Patients, holders of both mandatory and voluntary health insurance do not have the option to receive treatment or to be diagnosed by telephone or online consultations. Therefore, they must go to health care institutions in person.

This involves additional time and costs (transportation) for the health insurance holders. In circumstances of the pandemic, there is an additional risk from infection and concern regarding this risk.

For voluntary health insurance providers this means higher costs. An insured person must first visit the doctor to be prescribed which diagnostic procedures he should perform. If telephone or online consultations were permitted, the insured person could only get in touch with the health worker in that way. In this way, the cost for the insurer would also be lower because these services are less expensive than visits in person. In addition, they provide additional convenience and more user satisfaction to the insured persons.

FIC RECOMMENDATIONS

- Enable health care providers by the Healthcare Law to diagnose or prescribe treatment by telephone or online consultations.

2. LAW ON HEALTH INSURANCE

CURRENT SITUATION

The application of Article 179 of the Law on Health Insurance ("Official Gazette of the Republic of Serbia", no. 25/2019) is an obstacle to insurance companies in their daily work, primarily in the part referring to important data on the contracting parties, or holders of voluntary health insurance. The consequence is an increase in administrative costs for both insurance policyholders and insurance companies and, on the other hand, there are cases that do not meet the needs of policyholders with regard to persons whose employment was terminated or persons who entered into an employment contract during the term of the insurance contract.

Article 182 of the Law stipulates that an insurer issues a document on voluntary health insurance based on which the rights from voluntary health insurance are exercised. The issuing of the document makes sense only if the insured person exercises his/her rights from the contract directly at the health care provider in terms of coverage of the costs of treatment. In the case when an insured person is entitled to a lump sum payment from an insurer (as in the case of serious illnesses and surgical interventions), the document on voluntary health insurance is not required by an insurer as proof that the person is insured, which has been defined by the Law in the following way:

- "In the case when rights from the voluntary health insurance are exercised directly with an insurer, they are exercised based on the policy and the cover note".

It follows from the above that it is not logical to issue a document on voluntary health insurance to insured persons who do not use it to exercise their rights under the insurance contract, but the obligation to issue the document is nevertheless prescribed by the Law.

In addition to the above, the current Law on Health Insurance defines that the insurer of voluntary health insurance is the Republic Fund and the insurance company, but there are no penalty clauses for legal entities – health institutions involved in activities of voluntary health insurance taking the morbidity risks for a fee, although they are not registered for that in accordance with the regulations of the Republic of Serbia.

REMAINING ISSUES

The Law has also determined as important data, and thus mandatory data, the following personal data that are absolutely irrelevant for this type of insurance at the time of concluding the contract: date of birth, address of permanent or temporary residence in the Republic of Serbia (street name and number, place and municipality), contact information (phone number or email address). In the context of regulations governing the subject matter of personal data protection and especially the provision of Article 5, paragraph 1, item 3 of the Law on Personal Data Protection (Official Gazette of the Republic of Serbia number 87/2018), which as one of the principles prescribes that personal data must be "appropriate, relevant and limited to what is necessary with regard to the purpose of processing ("data minimization")", we believe that there is a justified basis for amending Article 179 of the Law.

Also, in some situations, the insurance company concludes a contract with employers on collective voluntary insurance of employees, where the insured persons are entitled to insurance indemnity payment directly from the insurance company and where the indemnity paid does not cover the costs of treatment, but satisfaction. Before the entry into force of the Law, this type of insurance was concluded without compiling a list of insured persons because the coverage was contracted based on official records of employees of the insurance policy holder. In this manner, automatic coverage was provided efficiently for all persons who met the criteria for the status of insured persons (who have concluded an employment contract with the employer), without the need to register for insurance separately, while coverage automatically ceased for all persons who lost the status of the insured person during the term of the insurance contract (persons whose employment contract ceased to be valid), also without the need to deregister from the insurance separately. The current Article 179 does not allow such a possibility and, in addition to the issue described in the previous paragraph related to Article 5, paragraph 1, item 3 of the Law on Personal Data Protection ("Official Gazette of the Republic of Serbia" number 87/2018) leads to the following problems:

- increase in administrative costs both for the insurance policyholder and for the insurance company due to the need to update the lists of insured persons during the insurance period (registration and deregistration from insurance must be made in writing);
- Occurrence of cases that absolutely do not meet the

needs of insurance policyholder that a person whose employment contract has been terminated still has the status of an insured person if a policyholder has not sent the deregistration request to the insurance company, or that a person who has concluded an employment contract does not have the status of an insured person if the policyholder has not sent the registration application to the insurance company on time.

FIC RECOMMENDATIONS

Amendment to the Law on Health Insurance so that:

- the text of the current Article 179 should be amended to read:

  "The contract on voluntary health insurance shall be concluded based on a previous offer for concluding a contract on voluntary health insurance (hereinafter: the Offer) given by an insurer to the person wishing to conclude a contract on voluntary health insurance.

  The offer referred to in paragraph 1 of this Article shall contain relevant information on voluntary health insurance policyholders, insurance start date, insurance waiting period, as well as the insurance end date, amount and deadlines for payment of insurance premium, maximum contracted amounts per coverage risks and other elements of importance for insurance contracting.

  Relevant information on the voluntary health insurance policyholders from paragraph 2 of this Article shall be:

  1. name and surname,
  2. Personal identification number, or registration number for foreign citizens.

  In the case of collective insurance, an insurer may submit a single consolidated offer containing the data from the previous paragraph of this article on each individual to be covered by collective insurance.

  The offer referred to in paragraph 1 of this Article, as well as the consolidated offer from paragraph 4 of this Article shall also contain as relevant the data on previous health condition of the voluntary health insurance policyholder which are necessary for the insurer to ass the insurance risk.

  Notwithstanding the provisions of this Article, when the insurance company concludes with a policyholder a contract on collective voluntary health insurance of employees, where the insured persons are entitled to the payment of insurance indemnity directly from the insurance company and where the paid indemnity does not cover treatment costs, the insurance contract can be concluded based on official records of employed insurance policyholders."

- the text of the existing paragraph 1 of Article 182 should be amended to read:

  „An insurer shall issue a voluntary health insurance document to any voluntary health insurance policyholder who does not use his insurance rights directly at the insurer on the date of issuing the policy and no later than 60 days from the date of issuing the policy."

  - Amend the Law on Insurance – introduce penalty clauses for all persons engaged in insurance activities or underwriting activities against a fee without a prior permission obtained from the competent authorities.

  - If the NBS considers the existing penalty clauses sufficient, introduce reinforced control of compliance with these clauses and their implementation if it is established that a person not holding a relevant permit is engaged in the insurance activities or underwriting activities.

LAW ON INJURIES AT WORK

CURRENT SITUATION

Article 53 of the Law on Safety and Health at Work defines the obligation of an employer to insure employees against injuries at work, occupational diseases and work-related illnesses in order to ensure compensation of damages.

The same article states that the terms and procedures of insurance against injuries at work, occupational diseases and work-related illnesses of employees shall be regulated by the Law.

The Law on Compulsory Insurance against injuries at work, occupational diseases and work-related illnesses has not been enacted to date.

POSITIVE DEVELOPMENTS

None.

REMAINING ISSUES

The Law has not been passed yet.

FIC RECOMMENDATIONS

- Occupational Safety and Health Directorate should propose the adoption of the Law on Insurance against Occupational Injuries, Occupational Diseases and Diseases Related to Work.

LAW ON PUBLIC PROCUREMENT ("RS OFF. GAZETTE", NO. 91/2019) AND PUBLIC PROCUREMENT PORTAL

CURRENT SITUATION

By abusing the legal concept of selection of a business entity in public procurement procedures whose subject are insurance services, the contracting authorities distort competition and prevent the participation of insurance companies that can adequately provide the insurance service which is the subject of public procurement in these procedures. Given the fact that insurance companies perform their activities based on the license issued by the National Bank or Serbia as a supervisory authority and that insurance companies are under the constant supervision of the National Bank of Serbia as a supervisory authority, they are deemed capable of providing any insurance service on the territory of Serbia. It is especially important to underline that the Law on Insurance very strictly prescribes all requirements for the performance of insurance activities, notably: minimum capital, business policy acts, organizational, staffing and technical capacities of such companies, technical reserves, solvency margin, retention, etc.

In addition, sometimes the Contracting Authorities distort competition by setting stricter requirements as criteria in certain areas defined by special regulations (laws or by-laws – e.g., confidentiality, IT system adequacy, professional and organizational staff, environmental protection) than the regulations require which is absolutely unjustified.

We believe that it is necessary to specify that economic and financial capacity can only be assessed based on the parameters confirming economic and financial capacity and not some other business indicators. In practice, contracting authorities define as financial capacity the criteria that have no relation to the financial capacity of insurance companies.

In the case of insurance services, it is specific that the time limits for settling claims involving the payment of insurance indemnities are defined by the Law on Contracts and Torts and by the Law on Compulsory insurance in Traffic

and they are quite short, so that defining longer time limits for the performance of the service would be contrary to the regulations, and defining shorter deadlines would be inexpedient and inapplicable, since the time limit for settling a claim depends on the submission of adequate documentation and reporting of the insured event.

POSITIVE DEVELOPMENTS

None.

FIC RECOMMENDATIONS

The following provisions of the Law on Public Procurement should be amended/supplemented: Article 114, Article 116 and Article 132 as follows:

- In Article 114, a new paragraph 6 should be added after paragraph 5, which would read:
  "Economic entities that perform activities that is the subject of public procurement on the basis of a special permit (license) of the competent authority on the territory of the Republic of Serbia shall be considered to meet all criteria for the selection of economic entities from paragraph 1 of this Article and the contracting authority for the public procurement of such services may not set special criteria when drafting public invitations and tender documents".
- In Article 114, a new paragraph 7 should be added after paragraph 6, which would read:
  "If special regulations for certain areas stipulate conditions that business entities should meet, the contracting authority may not set special requirements from these areas as selection criteria."
- In Article 116, a new paragraph 8 should be added after paragraph 7:
  "Financial and economic capacity shall only be assessed on the basis of financial and economic criteria of economic entities and not some other indicators and parameters that are unrelated to the financial and economic domain. "
- In Article 132, a new paragraph 3 should be added after paragraph 2 which would read:
  "If a special law for some services and works stipulates a deadline for the performance of a service and/or works, the Client shall not set the deadline for the performance of such service and/or works as a criterion for determining the most economically advantageous offer".

DATA ON COMPLAINTS AGAINST THE WORK OF INSURANCE COMPANIES AND VOLUNTARY PENSION FUNDS MANAGEMENT COMPANIES

CURRENT SITUATION

The National Bank of Serbia publishes data on complaints against the work of insurance companies and voluntary pension funds management companies on a quarterly basis. The report contains the total number of complaints filed to the NBS, but does not include the total number of complaints filed to insurance companies.

POSITIVE DEVELOPMENTS

None.

FIC RECOMMENDATIONS

- Given that insurance companies are required to provide the NBS on a quarterly basis with data on the number of complaints received in the previous quarter, NBS already has this data and, in our opinion, they could very easily and without much additional effort publish this data in the above-mentioned report so that they would also be available to the public.

LEASING

1.10

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, in the part related to interest taxation, and in terms of revoking VAT on the part of leasing fee related to interest.	2009			√
Amendment to the Law on Financial Leasing, which would explicitly transfer the obligation to pay for unpaid parking services to the lessee, and that this service legitimizes parking services to collect directly from lessees registered in the register of motor vehicles kept by the RS Ministry of Interior. Operating leasing should be regulated by the Law, i.e. financial leasing providers should be enabled to provide operating leasing services.	2016			√
The Law on Compulsory Insurance in Traffic should be harmonized with the Law on Financial Leasing, in terms of the provisions on the right of recourse of the Guarantee Fund upon payment of damage caused by a vehicle for which a contract on compulsory insurance has not been concluded, by the owner or registered user of the vehicle, so that the insurance company can claim the recourse right from the lessee instead of from the leasing company.	2012			√
Leasing and insurance companies should be in the same position as banks pursuant to Article 85 of the Law on Personal Income Tax, i.e., that in the case of a write-off of receivables they are not obliged to pay additional personal income tax if the conditions prescribed by law are previously met. The change would be to simply add "insurance company or lessor" next to the word "bank client".	2016			√
The capital threshold for performing leasing, the subject of which is real estate, should be reduced in order to make real estate leasing more attractive on the Serbian market. We suggest that for performing financial leasing operations, the monetary part of the lessor's founding capital cannot be below EUR 500,000 in dinars (RSD) for both financial leasing of movable and immovable property.	2015			√
To solve the problem of criminal-legal protection of financed leasing objects. Consistent application of the Law in court proceedings conducted in this legal matter and acting in accordance with the Law and the Constitution of the RS.	2018			√
Since through Business Register Agency (BRA) is possible for leasing companies to submit to the Ministry of the Interior the necessary data for authorization for registration by automated means (e.g., web service), it is necessary to further develop the solution by enabling communication with technical inspections.	2021		√	
Importing data from the Ministry of the Interior and the Parking Service in order to increase legal security in the country.	2020			√
To establish the Operating Leasing Register with BRA, within which the concluded operating lease agreements would be registered.	2021			√

CURRENT SITUATION

The development of leasing in Serbia is linked to the beginning of 2003 when the Law on Financial Leasing was adopted. Today, 16 leasing companies are registered Serbia, which are mainly affiliates of renowned financial institutions, leaders in the field of banking and financial operations in the markets of Central and Southeast Europe. These groups have implemented their knowledge and high corporate business standards in the Serbian market. As a result of market competition, the number of active leasing companies which operate in Serbia is decreased to 13 and adjusted to market needs and. It is consequence of the banking groups. The market concentration is high and over 70% of total assets of Leasing sector comes from 5 leasing companies. This will only bring the quality of the offer because the standard of leasing services that market leaders have implemented so far will be further confirmed.

POSITIVE DEVELOPMENTS

In the previous period, during 2021, the certain improvements were done. The National Bank of Serbia did not initiate the adoption of amendments to the Law on Financial Leasing, but adopted Decision for risk management of Leasing companies which arise for launch the new product by whom Financial leasing companies is allowed to render Operative Leasing services.

Regarding the recommendation related to the issuance of the Registration Authorization to Leasing Users, it is enabled the delivery via web service will be provided which is a good improvement by applying digitalization in business. However, the communication with technical checks should be enabled and it is was planned until the end year 2021, but it was not happened, project is in delay.

Regarding the recommendation that Financial Leasing is not included as a type of financing in some of the programs of state incentives in the economy, there have been significant changes. Positive examples are the Decrees of the Government of the Republic of Serbia on determining support to small enterprises for the procurement of equipment, which determine the Program of support to small and medium enterprises for the procurement of equipment. In addition to banks, this program also includes leasing companies and has been implemented very successfully.

REMAINING ISSUES

1. Interest in financial leasing is still taxable.

Law on Value Added Tax treats the products and services of financial institutions in different ways when defining the subject of VAT taxation.

Namely, in Article 4, item 2a) the Law clearly states that the supply of goods on the basis of a leasing contract is subject to VAT. According to the said Law, the basis for VAT is the value of the subject of leasing and interest.

On the other hand, the legislator provided in Article 25 of the same Law that credit operations and insurance services are exempt from VAT.

Different tax treatment of products and services of financial institutions has conditioned that financing through leasing in relation to other types of financing is more expensive for clients who are not in the VAT system, since VAT on interest is an additional cost that puts financial leasing companies at a disadvantage. It should not be forgotten that these are entrepreneurs, registered agricultural farms, and companies that are not in the VAT system.

2. The guarantee fund may have a recourse claim from the leasing company for the damage caused using the item by the lessee.

The Law on Compulsory Traffic Insurance stipulates that the Guarantee Fund of the Association of Insurers of Serbia has the right of recourse, upon payment of compensation from the owner of the means of transport, for the amount of damage, interest, and costs paid.

The Law on Compulsory Traffic Insurance is not harmonized with the Law on Financial Leasing, which introduced a legal deal into the legal system of the Republic of Serbia that, by definition and rules on liability for the use of leasing objects, conflicts with the existing rule on the recourse of the Guarantee Fund. The fact that the lessor is not able to influence the behavior of the lessee or other persons using the leased object and prevent the use of the vehicle in traffic without a compulsory insurance contract, as long as the leased object is located in the lessee's country, is completely ignored.

In the current situation, leasing companies face recourse claims from the Guarantee Fund of the Association of Insur-

ers of Serbia, which they reject referring to the Law on Financial Leasing, while on the other hand the Guarantee Fund, despite understanding the essence of the dispute, has no legal possibility to apply for recourse to the paid amount of damage to any person other than the owner of the means of transport and possibly their driver, according to the system of subjective liability of the inflictor for damages.

3. Leasing companies and insurance companies are obliged to pay personal income tax in case of a write-off of receivables from natural persons.

When a leasing company or insurance company makes a decision to write off claims from individuals who were previously sued, after an unsuccessful court procedure (due to poverty, inability to collect, etc.), they are obliged to calculate and pay personal income tax in the amount of 20%. Write-off receivables have the status of other income. This is defined by Article 85 of the Law on Personal Income Tax. Thus, a leasing company or an insurance company, in addition to having suffered a loss due to non-payment of obligations, has an additional obligation to pay personal income tax.

To make the paradox even bigger, this becomes the basis for the annual income tax of that natural person, so that a person who is unable to settle a debt to a leasing company or insurance due to poverty, can become a taxpayer if the value of the write-off together with other income exceeds the amount of 3,2 million dinars. This tax "illogicality" was noticed by the Ministry of Finance, and with the amendments to the Law on Personal Income Tax in 2013, an exception was made for banks as creditors. Other financial institutions that are also under the control of the NBS were then "forgotten".

4. The problem of the non-existence of criminal-legal protection of property of leasing companies.

As a precondition for the functioning of financial leasing as a financing model (in which leasing companies retain the right of ownership over financed objects), there is adequate and complete protection of financed leasing objects as assets of leasing companies. However, in addition to other obstacles facing the leasing industry in Serbia, a new obstacle has recently emerged that threatens to stifle leasing in Serbia. It is about the lack or complete absence of criminal legal protection of the property of the Financial Leasing Providers. Namely, the Supreme Court of Cassation in Judgment CA No. 42/16 dated 26 January 2016, took the position that in the case of evasion of the subject of financial leasing, there is no objective element of the criminal offense of evasion under Article 207 of the Criminal Code of RS, considering that the leasing contract by its nature leads to the acquisition of property rights, due to which non-compliance with contractual obligations falls within the domain of civil law and does not contain the essential elements of the said criminal offense. The Supreme Court of Cassation did not take into account that the civil law relationship has already been resolved by a court decision and that a contract that has been terminated can never lead to the acquisition of property rights. In the stated manner, the lessors of financial leasing in Serbia were deprived of the right to criminal-legal protection of their property contrary to the principles defined by the Constitution. If such a wrong position of the Supreme Court of Cassation continued to be applied by the competent public prosecutor's offices, rejecting criminal charges for the criminal offense of evasion of leasing objects, the result would certainly be a very rapid withdrawal of all leasing companies from the market of the Republic of Serbia. Also, the reaction to the mentioned Decision of the Supreme Court of Cassation can be a huge increase in the number of mentioned criminal acts, appropriation or alienation of other people's property in order to obtain illegal property gain, considering the absence of criminal sanction according to the practice taken by the Supreme Court of Cassation with the Judgment CA No. 42/16 dated 26 January 2016.

5. The current practice shows that vehicles that are on the warrant of the Ministry of the Interior, or whose registration has expired, are driven unhindered without authorization, until the moment when the police would stop them and do a detailed check. Only then, they would react to the search and seize the vehicle from the debtor, which is not a common case. Solving this problem would contribute to the protection of property, increase safety and legal security in the country, which, in addition to the general social significance, is also important for the business of leasing companies and insurance companies.

We believe that the import of the Parking Service system and the Ministry of the Interior would significantly help legal security, because parking service workers while performing their activities (issuing an additional ticket or parking ticket), could see that the vehicle is on-demand or registration has expired, and the vehicle is being driven, after

which they could call the representatives of the Ministry of the Interior and leave the towed vehicle in the police station until the dispute is resolved.

At the same time, the communal police, with a new method of recording traffic violations and illegal parking, can significantly contribute to a faster and more efficient finding of disputable leasing objects. Vehicle records through toll ways could help solve this problem.

6. The Decision for risk management of Leasing companies which arise for launch the new product adopted by the National Bank of Serbia, gave the opportunity to companies registered to perform financial leasing activities to, in addition, perform operational leasing activities. In order to protect the rights of the lessor, it was necessary to adjust the regulation of the existing register of financial leasing to the said Decision, in such a way as to form the Register of operating leases, within which the concluded operating lease agreements would be registered.

In that way, among other things, the excerpt from the register of operating leases kept by the Business Registers Agency would be an executive document, which would enable an urgent and efficient procedure for repossession of the subject of operating lease in case of termination of the operating lease agreement legal certainty for operating leasing entities.

FIC RECOMMENDATIONS

- Initiation of amendments to the Law on Value Added Tax, in the part related to interest taxation, and in terms of revoking VAT on the part of leasing fee related to interest.
- The Law on Compulsory Insurance in Traffic should be harmonized with the Law on Financial Leasing, in terms of the provisions on the right of recourse of the Guarantee Fund upon payment of damage caused by a vehicle for which a contract on compulsory insurance has not been concluded, by the owner or registered user of the vehicle, so that the insurance company can claim the recourse right from the lessee instead of from the leasing company.
- Leasing and insurance companies should be in the same position as banks pursuant to Article 85 of the Law on Personal Income Tax, i.e., that in the case of a write-off of receivables they are not obliged to pay additional personal income tax if the conditions prescribed by law are previously met. The change would be to simply add "insurance company or lessor" next to the word "bank client".
- To solve the problem of criminal-legal protection of financed leasing objects. Consistent application of the Law in court proceedings conducted in this legal matter and acting in accordance with the Law and the Constitution of the RS.
- Since through Business Register Agency (BRA) is possible for leasing companies to submit to the Ministry of the Interior the necessary data for authorization for registration by automated means (e.g., web service), it is necessary to further develop the solution by enabling communication with technical checks.
- Importing data from the Ministry of the Interior and the Parking Service in order to increase legal security in the country.
- To establish the Operating Leasing Register with BRA, within which the concluded operating lease agreements would be registered.

OIL AND GAS SECTOR

1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Introducing the marking of marine fuel sold to vessels in the domestic water transport.	2021			√
Reintroducing excise refund for marine fuel used in the domestic water transport.	2021			√
Applying a general VAT rate of 20% on CNG consumption, as well as an adequate level of excise taxation, in order to eliminate the effects of CNG's preferential status in relation to other motor fuels.	2021			√
Reducing the level of excise taxation for LPG in order to increase the consumption of this petroleum product.	2021			√
Concluding bilateral agreements on carriers' eligibility for VAT refund on fuel purchased in Serbia with Bulgaria, Turkey, Greece, North Macedonia and Montenegro, as well as with other countries from which trucks use Serbia as a transit country.	2021			√

CURRENT SITUATION

In 2021, the upward trend in the price of crude oil continues, as a result of the reduction of the negative effects of the COVID-19 epidemic and the acceleration of economic activities at the global level. The price of Brent crude oil recorded an upward trend in 2021, stimulated by the wider usage of vaccines, and therefore increased demand for petroleum products due to the lifting of emergency measures and movement restrictions, and reached its maximum of 85.53 USD/bbl in October 2021. A slight price drop followed, after which the price continued to rise, especially rapidly since the beginning of the conflict in Ukraine, reaching 127.98 USD/bbl at the beginning of March and 122,01 USD/bbl at the begining of June 2022. The average price in 2021 was 70.68 USD/bbl, which is 28.72 USD/bbl or 68% higher than the average price in 2020. The average price of Brent crude oil for the first 6 months of 2022 is 107.9 USD/bbl, which is 53% more than the average for 2021 and 2.5 times higher than the price in 2020.

The global increase in oil prices also affected the domestic market. The energy crisis in the world as well as the global disruption in the market of petroleum products resulted in the adoption of the Regulation on limiting the price of petroleum products (Regulation) by the Government of the Republic of Serbia on February 10th of 2022, in order to prevent major disruptions in that market and preserve the living standard freezing petroleum and diesel prices. From March 11, the implementation of the Rulebook on the Calculation of the Average Wholesale Price of Oil Derivatives Euro diesel and Euro premium BMB 95 came into force and the Regulation was amended, that stipulated that the price of petroleum products is adjusted on a weekly basis. It is important to note that because of price limitations, sales of petroleum products in border areas have increased, taking into account that prices in most countries in the surrounding area are higher than in the Republic of Serbia, which was the opposite trend in the previous period. In addition, due to limiting of the price of euro diesel for farmsteads at RSD 179 per liter at gas stations in accordance with the adopted Regulation, which is significantly below the prescribed retail prices, a high growth in the consumption of this petroleum product by farmers in 2022 was noticeable in comparison to the previous period, consequently questioning whether derivatives for agriculture were purposely used. Since no control has been established as to whether diesel fuel is actually used for agricultural purposes, and in the first two months there was no purchases restriction, there are indications on the market of inappropriate use of the preferential price for agricultural holdings, which also calls into question the adequacy of the implementing mechanisms for the preferential price for agricultural holdings.

In addition to limiting the prices of petroleum products, the Government of the Republic of Serbia also passed a Decision on the temporary reduction of excise duties on petroleum products in order to further reduce of the price of petroleum products in the country. The Decision first reduced excise taxes by 20%, and the reduction percentage in certain periods was -15 and -10%. The last measure

that was adopted was the ban on the export of Eurodiesel, which increased the available quantities on the domestic market by about 30,000 t per month.

During 2022, on several occasions, prices were determined by the Regulation that did not cover import costs, so that in May, imports were lower by about 53% than in May last year, in June by as much as 70% and in July by 64% compared to the same month in 2021. The imported goods availability was also affected by the measures taken by the governments of the countries in the region from which most of the imports arrive in Serbia under normal circumstances, as well as planned and unplanned overhauls of refineries, logistical restrictions, the low water level of the Danube, but also the rationalization of the quantities of importers who imports with a negative margin were replaced by a small but guaranteed margin in procurement from the domestic market. We would also point out that the state authorities in Serbia, at the initiative of business entities and in order to overcome some of the logistical restrictions, allowed foreign flags ships to Serbian river ports, in order to facilitate the import and transport of petroleum products into the country. All the mentioned factors affected in the supply structure of the market.

Everyone in the distribution chain, from importers, wholesalers, retailers and legal entities consumers, that relied on the import of Euro diesel found themselves in a difficult situation and with more or less success were forced to adapt to the new circumstances. The measure adopted by the Government in order to mitigate the impact of the global energy crisis will last most of the 2022, and given that they have lost their temporary character, they should be adapted as soon as possible to the new business conditions, in order to preserve the structure of the oil and oil derivatives market, so that security of supply is increased.

In addition to this, due to the sudden increase in the price of natural gas, the Regulation on the temporary measure of limiting the price of gas and compensation of the difference in the price of natural gas procured from imports or produced in Serbia in the event of a disruption in the natural gas market was adopted as well.

According to data published by the Energy Agency of the Republic of Serbia, the total consumption of crude oil and intermediates from domestic production, imports and stocks in 2021 stood at 3.945 million tons, which is a 9% increase on 2020. In 2021, about 0.817 million tons of crude oil was produced (20.7% of total consumption), while imports accounted for 3.128 million tons (79.3%).

The total consumption of motor fuels in 2021 was about 2.6 million tons, which is 10.8% more than a year before. In the structure of motor fuel consumption, gasoline accounted for 17.1%, diesels 77.6%, and LPG - 5.3%. Total gasoline consumption has increased by 11.6%, compared to 2020, consumption of Euro diesel increased by 11.9%, while Gas oil 0.1 was withdrawn from the market. The consumption of extra light Euro L Gas oil increased by 21.7%, while the consumption of liquid petroleum gases, including auto gas, decreased by 4.4%.

The annual production of natural gas, delivered to the country's transport distribution system in 2021, totaled 226 million m^3, which is 14.7% less than the production in the previous year. In 2021, a total of 3.105 million m^3 was available from import, domestic production and underground storage, and 2.853 million m^3 of natural gas was consumed, 14.9% more than in 2020. Most of the natural gas was imported from the Russian Federation in the amount of 2.294 million m^3, while domestic production of 226 million m^3 could meet only 7.9% of the demand.

IMPROVEMENTS

With the adoption of new laws in April 2021 by the National Assembly of the Republic of Serbia (four laws in the field of mining and energy, out of which two were new laws - the Law on the Use of Renewable Energy Sources (RES) and the Law on Energy Efficiency and Rational Use of Energy, and another two laws were amended - the Law on Energy and the Law on Mining and Geological Exploration) a new and improved legal framework was established.

The new legal framework will enable alignment with the EU's key goals in the field of energy and environmental protection, as well as directing Serbia in the direction of decarbonization of the energy sector.

The Law on the Use of Renewable Energy Sources will increase the share of RES in the total energy production, contribute to the preservation of the environment and reduce the costs of citizens.

The Law on Energy Efficiency and Rational Use of Energy regulates energy savings and contributes to the sustaina-

ble use of natural resources.

The Law on Energy ensures the security of energy delivery and supply, while the Law on Mining and Geological Exploration will create conditions for more efficient and sustainable management of Serbia's mineral and other geological resources, as well as conditions for increased investments in geological research and mining.

From the aspect of energy security, conditions have been created for raising of its level through the obligation to form operational reserves and defining the types of petroleum products that certain energy entities should hold.

REMAINING ISSUES

The price regulation of trade in oil derivatives in 2022 has led to a significant decrease in the profitability of importers and wholesalers of oil derivatives, dependent on imports, as well as retailers, especially in companies with a small number of gas stations. Consequently, price control in the long term reduces investment attractiveness in the oil and gas sector in the Republic of Serbia, and may lead to the gas stations number decrease.

Intensive controls are continuously carried out to stop illegal trading in petroleum products in the country. It is necessary to keep them in order to prevent a reduction in the volume of the grey economy. Accordingly, additional supervision is needed regarding marine fuel supply to vessels in the domestic traffic.

The high level of excise duties on liquefied petroleum gas (LPG), which is among the highest in the region, discourages the use of this environmentally friendly petroleum product, resulting in a continuous drop in annual consumption.

Conversely, the lack of excise duties and a lower tax rate of 10% for trading in compressed petroleum gas (CNG) makes it more competitive compared to other motor fuels.

In the international passenger and road freight transport, fuel is not purchased in Serbia, while on the other hand there is an increasing number of domestic carriers that buy fuel outside of Serbia due to a more favorable tax policy in the countries of the region.

Systematic control of imported petroleum products for re-export has not been established yet.

New regulations on the production and trade of explosives and other dangerous substances have not been adopted yet.

Due to the significantly lower price of euro diesel for farmsteads and the consequent increase in sales, and bearing in mind that there is no quantitative limit for purchases by farmers, as was the case in the system of subsidizing the purchase of fuel for agricultural production in previous years, the possibility opens up for non-purpose procurement and use of euro diesel.

Restrictions on the retail prices of oil derivatives, primarily during the 2nd quarter of 2022 when prices were at below reference international markets levels, as well as price fixing for agricultural holdings at levels far below market levels, led to a decline in the competitiveness of a part of oil companies in certain business segments, which resulted in significant changes in the market shares of oil companies.

FIC RECOMMENDATIONS

- Repeal the Regulation on the limitation of the price of oil derivatives.
- Introducing the marking of marine fuel sold to vessels in the domestic water transport.
- Reintroducing excise refund for marine fuel used in the domestic water transport.
- Reducing the level of excise taxation for LPG in order to increase the consumption of this petroleum product.

- Applying a general VAT rate of 20% on CNG consumption, as well as an adequate level of excise taxation, in order to eliminate the effects of CNG's preferential status in relation to other motor fuels.
- Concluding bilateral agreements on carriers' eligibility for VAT refund on fuel purchased in Serbia with Bulgaria, Turkey, Greece, North Macedonia and Montenegro, as well as with other countries from which trucks use Serbia as a transit country.
- Improve the system of support by state authorities to farmsteads in the procurement of petroleum products through the re-establishment of the system of subsidies for the procurement of petroleum products per hectare, with database improvement. The support system should be determined on market principles through discussion with the participation of interested competent state authorities, representatives of agricultural holdings as well as oil companies, all with the aim of finding an adequate solution for all stakeholders.

PHARMACEUTICAL INDUSTRY

1.71

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
ALIMS should:				
Adhere to the existing time frames established by the Law on Medicines regarding new registrations, renewals and variations of licences.	2017		√	
Provide for electronic submissions of all requests for medicines (new registrations, renewals and variations).	2017		√	
Revise and harmonize the amount of certain tariffs; PV tariffs based on the INN; reduce the amount of tariff for the documentation control for each imported series of a medicine.	2019			√
An additional number of professional executors should be hired in order to resolve cases faster within the legally prescribed deadlines and reduce huge delays, especially in resolving accumulated variations for medicines.	2021			√
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.	2018	√		
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.	2017			√
Ensure the settlement of the remaining outstanding debt of state healthcare institutions towards pharmaceutical wholesalers and suppliers for delivered medicines and medical devices, in order to ensure further continued supply for the institutions.	2017		√	
Ensure criteria and requirements in electronic business standardization, in order to harmonize the electronic business systems of state entities that are involved in the health system a) Technical (document size limit that can be inserted into the system, which are part of the standard procedures requirements) b) Administrative (defining the validity / acceptability of electronic documents vs. paper documents; acceptance or non-acceptance of electronic mail as a valid way of communication with records on the sending and receiving date; acceptance of electronic signature, etc.).	2020		√	
The NHIF should:				
Ensure the acquisition of the funds required from the central budget for introducing new medicines on the Reimbursement List.	2018	√		
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.	2013		√	

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Ensure greater flexibility regarding models for specific agreements, since every medicine has its own specific details that need to be incorporated into the agreement. Enable the electronic submission of introducing new medicines on the Reimbursement List, without submitting paper documentation.	2017	√		
Enable the electronic submission of introducing new medicines on the Reimbursement List, without submitting paper documentation.	2020			√
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.	2018		√	
With the aim of accelerating patients' access to medicines, allow the submission of documentation for obtaining the highest price of medicines for use in human medicine to competent ministries as of the moment the holder of the licence for the medicine 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: the final part of the process of obtaining a licence for placing a medicine on the market from ALIMS, and the process of publishing the maximum price of the medicine in a Decision on the highest prices of medicines for use in human medicine by the Ministry of Health.	2019			√
Urgently draft a new Law on Medicines in cooperation with industry representatives.	2019			√
Eliminate from the new Law on Medicines the issuing of approvals by ALIMS for the use of promotional materials and other documentation regarding the advertising of prescription medicines and/or promotional materials and other documentation intended for the professional public.	2019			√
Amend the Rulebook for acquiring basic knowledge about personal hygiene training program so that employers can conduct training for employees in the medicines production, trade and dispensing, as it is already regulated by other regulations.	2020			√
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.	2018	√		
Ensure an equal tax and customs treatment of raw materials and finished medicines.	2013			√
Abolish VAT on donations of medicines and medical devices to health care institutions.	2014			√
Amend the Law on Fees for the Use of Public Goods in the part of fees for medicines that remain in possession after the expiration date and are collected from citizens, so that compensation basis is determined by the amount of medicines collected from citizens, which needs to be disposed of as pharmaceutical waste and precisely determine the taxpayer.	2020		√	

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 62% of this amount (the National Health Insurance Fund (NHIF), the Ministry of Health and local governments), while the remaining 38% 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, 20% 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 average life expectancy in Serbia is 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.

It is completely clear that the NHIF, even with the assumption of the best resource management, is not able to adequately respond to all patients' needs for drug therapies from its own income. For that reason, purposeful and continuous intervention from the central budget is necessary, in addition to the existing allocations of the NHIF for medicines.

It is very important for stable pharmaceutical market functioning to continue the harmonization of the domestic legal framework with EU acquis, primarily through the Law on Medicines, which should be adopted. That way the practice inapplicability in some of its provisions and non-transparency in certain procedures should be eliminated.

Another problem is that time frames for important decisions are often too long and, even so, typically not observed 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. For example, therapies with drugs from List C, treatment drugs of rare diseases, as well as slowing down in regular vaccination process.

POSITIVE DEVELOPMENTS

- The NHIF, in coordination with the Ministry of finances and the Ministry of health, has provided additional dedicated funds for financing new medicines in the amount of 6 billion RSD. In the period between November 2021. and February 2022. An intensive negotiation process was carried out between the representatives of pharmaceutical companies and NHIF in accordance with the frameworks set by the Central commission for medicines (prioritization of therapeutic areas/medicines and projection of the number of patients). This process is successfully completed by concluding special contracts for 26 new medicines/indications and by the publication of the rule book of the list of medicines on the 23.03.2022. This way, a big improvement was made in terms of availability of modern therapies for patients who suffer from diabetes, oncology patients, cardiovascular patients, patients with psoriasis, hepatitis C, haemophilia, as well as haematological patients.

- The NHIF made available for pharmaceutical companies a new model of special contract which has as subject the arrangement of mutual financing of medicines which are issued in pharmacies thus significantly facilitating accessibility of medicines from the list A/A1.
- A visible improvement was made in terms of communication and team work of the representatives of the industry (PKS, Inovia and Genezis) and NHIF/Ministry of health concerning all questions of importance to business.
- The NHIF continued in 2022. with direct payments to suppliers by CJN for delivered medicines, and additionally, for more efficient management of the health care financing system and with the aim of improving and implementing the control of treatment costs as well as optimal management of procurement and supplies of health institutions, introduced a new information system.
- With the support of the Ministry of finances the issue of settling the issue of charging the majority has been resolved the debt of health institutions (pharmacies, community health centres and hospitals) to suppliers for delivered medicines and medical devices has been resolved to a large extent.
- The agency for medicaments in 20210. continued started the implementation of changes of the rule book of registration and issued a bigger amount of permanent permits for medicines in accordance with the provisions of the current drug law.

REMAINING ISSUES

1. A lack of a systemic solution for financing the introduction of new drugs on the Reimbursement List.

It is necessary to provide assigned funds transfer from the central budget to the NHIF every year, to maintain the continuity of the new drug introduction on the Reimbursement List. This should be preceded by a statement of all competent medical commissions within the MoH / NHIF, after which evaluating all submitted requests for placing drugs on the Reimbursement List would determine the exact amount that has to be transferred to meet the needs of patients in all therapeutic areas.

2. 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.

3. 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. for those medicines that are financed at the expense of mandatory.

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.

4. Resolving of remaining debt of state health care institutions to wholesalers and suppliers

It is necessary to continue with activities regarding settlement of remaining debts of healthcare institutions for delivered medicines, medical devices and other goods.

5. Administrative procedures and the issuing of licences for medicines

ALIMS is still considerably tardy when it comes to issuing certain/non-prioritized new registrations, as well as 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 the use of medicines both for doctors and for patients.

6. Regulations effecting business

Besides the fact that it's for five years in a row in the yearly Plan of work of the Ministry of health, the preparation of

the umbrella law in the area of the drug market – drug law, still hasn't started yet.

The amendments of the Law on Fees Use of Public Goods have not yet been implemented, regarding to harmful consequences of this regulation on manufacturers, drug holders and wholesalers. The effects of implementing the Law were not properly considered when the Law was prepared and adopted. Basis of special waste compensation- medicines that remain in possession after the date expiration and are collected from citizens are initially estimated as an additional burden of as much as EUR 37 million EUR.

Ministry of Environmental Protection has been open for amending the Law in part that determines the compensation basis as the "total drugs quantity produced in the Republic of Serbia and drugs imported into the Republic of Serbia". However, the adoption of the amendments is constantly delayed.

The Rulebook for acquiring basic knowledge about personal hygiene training program introduced an obligation for employees in the medicines production, trade and dispensing to undergo training organized and conducted by the Ministry of Health, with the prescribed fee payment. Ministry of Health did not take into account that the obligations and responsibilities of drug manufacturers, wholesalers and pharmacies in the part of hygiene training are already regulated by special regulations as well as strict requirements of the Guidelines for Good Manufacturing Practice (GMP) and Guidelines for Good Distribution Practice (GDP). Therefore applying the provisions of the Rulebook, everyone in the supply chain is additionally exposed to unnecessary costs and significant process delays.

FIC RECOMMENDATIONS

ALIMS should:

- Adhere to the existing time frames established by the Law on Medicines regarding new registrations, renewals and variations of licences.
- Provide for electronic submissions of all requests 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 control for each imported series of a medicine.
- An additional number of professional executors should be hired in order to resolve cases faster within the legally prescribed deadlines and reduce huge delays, especially in resolving accumulated variations for medicines.

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.
- Ensure the settlement of the remaining outstanding debt of state healthcare institutions towards pharmaceutical

wholesalers and suppliers for delivered medicines and medical devices, in order to ensure further continued supply for the institutions.

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. Enable the electronic submission of introducing new medicines on the Reimbursement List, without submitting paper documentation.

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 documentation for obtaining the highest price of medicines for use in human medicine to competent ministries as of the moment the holder of the licence for the medicine 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: the final part of the process of obtaining a licence for placing a medicine on the market from ALIMS, and the process of publishing the maximum price of the medicine in a Decision on the highest prices of medicines for use in human medicine by 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 approvals by ALIMS for the use of promotional materials and other documentation regarding the advertising of prescription medicines and/or promotional materials and other documentation intended for the professional public.
- Amend the Rulebook for acquiring basic knowledge about personal hygiene training program so that employers can conduct training for employees in the medicines production, trade and dispensing, as it is already regulated by other regulations.

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 care institutions.
- Amend the Law on Fees for the Use of Public Goods in the part of fees for medicines that remain in possession after the expiration date and are collected from citizens, so that compensation basis is determined by the amount of medicines collected from citizens, which needs to be disposed of as pharmaceutical waste and precisely determine the taxpayer.

TOURISM & HOSPITALITY

CURRENT SITUATION

The second decade of 21 century is characterized by a quantitative increase and qualitative improvement of accommodation tourist capacities in Serbia after the collapse of post-transitional tourism and the closure of many degrees in the first decade of this century. This period is characterized by the opening of a number of previously missing 4- and 5-star hotels, the start of a number of planned hotels in mountain and spa destinations, and the emergence of congress, spa, and other specialized hotels. On the other hand, the development of rural accommodation and different tourist capacities is flourishing.

The quality structure of accommodation capacities is continuously improving, given that the most significant number of newly opened facilities belong to higher categories. Despite these improvements, Serbian accommodation is not adjusted to the international market expectations, given that the share of hotel accommodation is only 29%[1] of the total accommodation capacity. It can be seen as a disadvantage, but it also represents the considerable opportunity for growth in this segment.

Tourism contribution to the national economy is increasing significantly, along with the increase in business activity. The number of arrivals and overnights continuously increased before the pandemic. Income generated from foreign tourists, approaching 1bn[2] in 2015, increased considerably in just four years to 1.436[3] bn or 51.96% in 2019. However, the other sectors of the economy were also rising, so tourism has kept its share in total export (6.1% in 2019%).

Regarding services, tourism is one of the most significant contributors to services export, participating in more than 1/5[4] of total service export in Serbia. The estimated share of the tourism industry (total) in BDP in 2019 was 6.9%[5]. In the same year, this industry had about 82.5 thousand employees[6]. These results would be even more significant, and the contribution of tourism to the national economy would be (formally) more outstanding if the grey economy's high share in the hospitality sector were reduced applying effective and continuous tourism and tax inspection supervision.

The mainly positive achievement was a substantial increase in foreign arrivals, overnights, and spending, influencing the Serbian foreign trade balance, traditionally in deficit and positively supported in the period of Tourism Development Strategy the Republic of Serbia 2016-2025 (TDS) implementation. From 2009 to 2019, Serbia recorded an increase in the relative share of foreign tourists in total volume. The number of international arrivals and overnights was growing on average at 11.11% (CAGR) and 10.61% (CAGR), respectively, and in 2019 foreign tourists reached a 50% share in total arrivals and 40% share in total overnights[7].

From the perspective of strategic planning, the valid TDS is still relevant in many of its segments: key target foreign markets and key tourist products were kept from the former strategy; geographical clusters of Serbian tourism supply are stable; in the process of tourism digitalization, critical step has been undertaken by E-tourist platform introduction. On the other hand, the TDS did not sufficiently cover the area of digital transformation of tourism business. Besides, market segments were not defined based on specific market research, so there is no explicit connection between tourist products and specific market segments for which these products are planned.

Further, key legal documents were upgraded in 2019 according to strategic intentions to support the SME sector and protect consumers starting with laws: Law on tourism and Law on hospitality. Further, in 2021, Strategic Marketing Tourism Plan of Republic of Serbia was adopted.

Investments in tourism have increased (from 280 mil EUR in 2015 to 700 mil EUR in 2020)[8], but at a much lower rate than projected. Namely, significant investments were registered as investments in infrastructure (which is in the function of tourism), buildings (in tourism function), etc. Considering the number of newly opened hotels, doubts about underestimating statistic became important.

1 E tourist, Statistical Office of the Republic of Serbia
2 NBS
3 NBS
4 Statistical Office of the Republic of Serbia
5 WTTC estimation based on Tourism Development Strategy of RS 2016-2025
6 WTTC estimation based on Tourism Development Strategy of RS 2016-2025
7 Statistical Office of the Republic of Serbia
8 WTTC Report

THE IMPACT OF CURRENT GEOPOLITICAL AND ECONOMIC CHALLENGES ON BUSINESS

Tourism and hospitality are one of the main drivers of economic development and global connectivity. The COVID-19 pandemic has been the worst crisis the global travel industry has faced in modern times. Lockdowns, travel restrictions, consumer fears and economic downturns led to a loss of $4.5 trillion in T&T GDP and 62 million jobs in 2020 alone[9].

COVID 19 harmed Serbian tourist traffic in 2020, which resulted in a drop in arrivals by 51% and overnights by 38%[10]. The foreign tourists' arrivals and overnights experienced a significant decline of 76% and 68%[11],respectively. The crisis particularly affects cities, including city hotels and other accommodation facilities. In 2021, tourist traffic partially recovered but primarily due to a temporary restructuring in the domestic tourist demand pattern (total number of arrivals and overnights accounted for 70% and 81% of those achieved in 2019, respectively, while foreign tourists reached 47% and 60% of arrivals and overnights from 2019, respectively). The positive trend of the Serbian tourism recovery continued in 2022 with the tendency of reaching and even overcoming figures from 2019.

Besides, European as well as Serbian tourism is facing another challenge. The Ukrainian crisis has forced many countries to reduce their forecasts for 2023, affecting the tourism industry in five ways[12]:

- A loss of Russian and Ukrainian tourists/markets;
- Certain restrictions on airlines and use of airspace;
- Rise in inflation;
- Higher food and fuel costs and
- A big hit to traveler confidence and disposable incomes.

REMAINING ISSUES

The key challenge of the tourism industry in Serbia is to improve its competitiveness and position of Serbia in the global tourism market as a recognizable, attractive, and authentic tourist destination, which creates new jobs, sustainably manages its development and is attractive for new investments.

1. Sustainable Tourism Development Vision and Measurable Strategic Goals are Not Defined

The importance of tourism development programming and integral planning was not sufficiently recognized and implemented in the previous period. Specific strategic vision and well-articulated strategic and measurable objectives, including implementation, and transparently monitoring mechanisms with the upgraded coordination and cooperation of all key stakeholders at all levels, are missing.

Consequently, it is necessary to define a new Tourism Development Strategy, which will consider the "new reality", and the need for redefine strategic and set measurable goals, including implementation and monitoring mechanisms that will ensure sustainable tourism development. Besides, improved coordination and cooperation of all key stakeholders at all levels with more significant participation of local communities in the tourism development process is needed.

The strategic framework has to respect the modern destination management concept, which implies introducing the legal possibility for tourist destinations to be managed by private companies and public-private partnerships.

2. Inadequate Methodology of the National Bank of Serbia for the Foreign Currency Income Assessment

Foreign exchange inflow is still calculated according to the inadequate methodology of the NBS for estimating foreign exchange inflow, which is one of the most important topics. The estimation of foreign exchange inflow is related to the work of exchange offices, so there is a discrepancy with tourist peaks. The estimation of the average consumption of foreign tourists based on such calculated foreign exchange inflow is highly unreliable. Consequently, there is no reliable calculation of the tourism industry's contribution to GDP. Furthermore, the budget for national tourism promotion and tourism, in general, is permanently underestimated and insufficient, directly affecting the insufficient promotion of Serbia as a tourist destination.

Modification of the NBS methodology for the assessment of the foreign exchange inflow of the tourism and hospitality industry and its contribution to the national GDP through the introduction of tourism satellite accounts. In this way, the quantification of the economic impact of tourism would be carried out using internationally recognized and accepted methodology.

9 UNWTO
10 Statistical Office of the Republic of Serbia
11 Statistical Office of the Republic of Serbia
12 Economist Intelligence Unit (EUI), WTTC and UNWTO

3. Unflexible legal framework that does not provide the possibility of employment in accordance with the Law on Simplified Employment of Seasonal Jobs in Certain Activities

Human resources present a significant barrier to further development in labor-intensive industries such as tourism and hospitality. The number of disposable workforces decreased, causing the rise in wages, and consequently causing an economically rational reaction of employers: part-time jobs, reduction of service (self-service, etc.), and even hiring unregistered employees to reduce labor costs. In addition, the structure of the labor force and the level of its education and training further deteriorated after the pandemic outbreak when a significant number of employees sought work in other industries. The insufficiently flexible legal framework does not recognize the needs of highly seasonal industries such as tourism and hospitality.

Hiring within this industry can be performed only in accordance with the Labor Law provisions ("Official Gazette of RS", no. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/ 2017 - US decision, 113/2017 and 95/2018 - authentic interpretation), i.e., in a way to come to establishing of employment relationship by concluding an Employment Contract or in such a way that the work takes place outside the employment relationship by concluding a Contract on Temporary and Periodical Jobs, a Purchase Order Contract or a Supplementary Work Contract.

Due to the special characteristics and expressed need for seasonal workers in tourism and hospitality, it is necessary to amend the Law on Simplified Employment of Seasonal Jobs in Certain Activities ("Official Gazette of RS," No. 50/2018) in terms of expanding the circle of employers from Article 2. of the Law on Simplified Employment in Seasonal Jobs in Certain Activities ("Official Gazette of the RS", No. 50/2018) in such a way as to include employers who perform activities in the tourism and hospitality sector.

In this way, it would be possible to implement a simplified procedure for the employment of persons and the payment of taxes and contributions for work on jobs of a seasonal nature and within the scope of activities of a hospitality and tourism nature.

This modality of work engagement would imply mutual benefits both for the employers and for potential seasonal workers. The expected advantages on the employer's side are as follows:

- The employer is given an opportunity of simpler employment procedure, which represents work outside the employment relationship, via a verbal contract on the performance of seasonal work, which is concluded from the moment the seasonal worker access to work.
- The employer can apply a simplified procedure for calculating and paying citizens' income tax and contributions for mandatory social insurance, which in this case only include rights from pension and disability insurance, as well as rights from health insurance, but only in case of injury at work and occupational diseases. The simplified procedure for paying taxes and contributions implies a pre-determined basis for calculating the obligations, regardless of the contracted hourly labor price of a seasonal worker. The stated base is always equal and amounts to a thirtieth part of the amount of the lowest monthly contribution base per day of engagement in seasonal jobs;
- The employer is only obliged, to submit in the stipulated period electronically to the tax administration the data required for the preparation of the evidentiary application, based on which the Tax Administration system automatically prepares and submits the individual tax return on calculated taxes and contributions.

The expected employees' benefits are as follows:

- Creating opportunities for persons in employment to earn additional income by concluding seasonal work contracts;
- Creation of the opportunity to generate additional income for beneficiaries of social assistance, given that the compensation for work received by a seasonal worker has no effect on the realization and use of the right to cash social assistance;
- Creating an opportunity for family pension users to earn additional income, given that there is no suspension of family pension payments if the contracted monthly compensation is realized in an amount lower than the lowest base in employee insurance, valid at the time of payment of contributions.

In addition, it should be emphasized that the law clearly prevents the possibility of abusing the simplified work engagement of a person, considering that a legal limitation of a maximum of 180 days is clearly introduced during the duration of the calendar year on the basis of the contract on performing seasonal work, as well as the relationship between this contract and the contract of Temporary and

Periodical Jobs, where it is prescribed that if the same person is engaged on the basis of both contracts in one calendar year, the total number of working days on the basis of both contracts cannot amount to more than 120 working days in the calendar year.

4. VAT High Tax Rate in Hospitality Sector

Even before the COVID-19 pandemic, most European countries reduced VAT rates on hospitality services which positively impacted competitiveness and boosted their tourism industry. In addition, after the COVID-19 pandemic outbreak, the vast majority of European countries significantly reduced the VAT rate. Serbia, with a 20% VAT rate on hospitality services, became even more uncompetitive, especially in MICE, when the tax burden is crucial for destination selection.

Furthermore, it is necessary to change the legal regulations in the direction that, within the scope of the activities now foreseen, which are taxed at a special, reduced VAT rate of 10%, (such as accommodation services), food consumption services within hospitality business entities should also be added. In this way, domestic tourism and hospitality competitiveness would be enabled compared to competitors primarily from the Region but also from the rest of Europe, especially in MICE tourism.

5. Inadequate Tariff Model Determination According to the Law on Copyright and Related Rights

The improvement of the competitiveness of Serbian tourism is additionally burdened by parafiscal burdens such as the payment of tariffs according to the Law on Copyright and Related Rights. Namely, regardless of whether the accommodation facilities (rooms) are occupied or not, the tariffs must be paid.

In accordance with the Law on Copyright and Related rights, business entities from the tourism and hospitality sector are charged a special fee according to the Tariff issued by the organization for the realization and protection of copyright and related rights.

The most common case of collection of these fees is collection in accordance with a flat rate. When determining the amount of the flat fee, the following criteria are considered:

- the type and method of exploitation of the subject of protection;
- geographic location of the user's headquarters;
- type and size of the space in which the objects of protection are used;
- duration and scope of use and prices of the user's services.

The criteria set in this way for determining the flat rate are inadequate and completely ignore the key circumstance, i.e., the occupancy percentage of the facility's accommodation capacity.

Instead, it is necessary to introduce a fee payment criterion based on the occupancy percentage of the taxpayer's accommodation capacity in the accounting period.

6. The Grey Economy's High Share

The grey economy's high share in the tourism and hospitality sector (reaches up to 40% - 50%, especially among individual owners' accommodation rental via various online platforms) negatively affects the profitability and quality of accommodation services and the overall competitiveness of Serbian tourism. Further, this practice allows unfair competition for facilities that work legally.

FIC RECOMMENDATIONS

- Adoption of a New Tourism Development Strategy with a Change of the Tourism Destination Management Concept
- Adoption of a New Assessing Methodology for the Tourism Foreign Exchange Inflow of Through the Application of the Tourism Satellite Accounts Methodology

- Amendments to the Law on Simplified Employment of Seasonal Jobs in Certain Activities Expanding the Provisions on Tourism and Hospitality Sector in terms of expanding the circle of employers from Article 2. of the Law on Simplified Employment in Seasonal Jobs in Certain Activities ("Official Gazette of the RS", No. 50/2018) in such a way as to include employers who perform activities in the Tourism and Hospitality sector.
- Amendments to the VAT Law to Expand Activities That Would be Taxed at a Special, Reduced Rate of 10%
- Amendments to the Law on Copyright Regarding the Method of Determining the Copyright and Related Rights Tariff to introduce a fee payment criterion based on the occupancy percentage of the taxpayer's accommodation capacity in the accounting period.
- Suppression of the High Level of the Grey Economy in Tourism and Hospitality Emphasizing Individual Accommodation Services Segment
  - It is necessary to strengthen the capacities of the tourism inspection at the local and national level and to carry out permanent education of inspectors.
  - Accommodation service providers (especially individual accommodation service providers) should be informed and educated about the rights and benefits provided by the legal framework through educational campaigns.
  - Effective and continuous tourism inspection (preventive and regular) supervision must be applied to minimize the grey economy and improve the use of E-tourist, especially among individual accommodation service providers.
  - The tourism inspection (at all levels) should adopt a Strategic and Annual Plan for suppressing the grey economy based on comparing the advertised accommodation facilities on various online platforms and the facilities in the E tourist system. The Annual Plan for the following year should be drawn up by December 15 of the current year.
  - The tourism inspection should make publicly available the Annual Report of the performed supervision according to the newly proposed Strategic and Annual Plan. The Annual Report should be quantified and contain at least the destination name, the number of inspections carried out, the types of facilities inspected, and the supervision results. The Annual Report should be published for the previous year by February 15 of the current year.
  - Legal entities and individual accommodation service providers not registered in the E tourist system cannot be beneficiaries of public funds at the national and local levels.

PRIVATE SECURITY INDUSTRY

1.17

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Continued monitoring of the Law on Private Security application, while continuously insisting that its implementing by-laws be harmonized with EU models of legislation to the extent possible, while at the same time taking into account local specificities. By-laws are specially needed for transportation of money services regarding insurance and special treatment in traffic regulation.	2009			√
Make a clear obligation for the user of private security services to have Risk Assessment act in accordance with the law under the threat of the same sanctions as for private security companies.	2020			√
Support the Ministry of Interior (MoI) in its commitment to inspect all entities that are in the grey area to ensure that they comply with the adopted law to the fullest extent.	2016			√
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 engagement that are permitted by the Labor Law will be treated equally as employer opportunities 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 license, the professional qualification requirement should be amended to allow persons with primary school to obtain a security officer license. Security clearance is another precondition for obtaining the license, prior to the commencement of the training programme, to avoid unnecessary administrative problems and unreasonable expenses related to persons who do not pass the security clearance. Prescribe the explicit obligation of the MoI to inform the employer about any changes in the status of the license of individuals, especially bearing in mind the fact that a security officers' IDs areissued upon request of the employer's company and returned to the MoI in case of the employment termination.	2017		√	
Due to the challenges on labour market allow candidates who completed the training to work with supervision of licenced officers until they do not obtain licence.	2020			√
Implement new regulations concerning service of transport of cash and valuables and increasing protection of people and assets such as Change of traffic law giving CIT vehicles access to pedestrian areas and yellow lines, mandatory electrochemical protection in CIT vehicles especially during payment transfer, introduce body worn cameras and make the number of CIT crew member subject to electrochemical protection specification.	2020			√

CURRENT SITUATION

In 2017 private security industry got a legal frame with adoption of Law on Private Security which was a subject of various discussions and amendments of the Law, eventually adopted in November 2018. New legislation of 2017 standardized and regulated market, which furthermore brought substantial value to society by providing minimum requirements and obligations on security providers. Despite positive developments in the field of legal framework, security industry is still affected by multiple challenges related to fair competition and legal compliance. Licensing process is a source of revenues for the state. However, the security market faces big challenges of noncompliance and not sufficient control measures, resulting in high number of security companies operating in the grey zone putting government in a position to strengthen the focus on facilitating level playing field for both local and foreign service providers. This will have a direct impact on improving tax collections but also pro-

viding more stable and safer business environment to the general population.

IMPROVEMENTS

The Ministry of Internal Affairs (MoI) has opened channels of communication with the industry which is of the utmost importance. State authorities promote bilateral communication in addition to forming an Expert Council for the improvement of private security, private investigator activities and public-private partnerships in the security sector. Also, new opportunities have emerged for the engagement of persons performing these tasks: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 deadlines for obtaining a license are slightly shortened, which continues to be an insurmountable challenge in practice. By adopting by-laws this year, the authorities of the 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. These become the key topic of the initiative by the members of the Association for Private Security of the Serbian Chamber of Commerce for amending some of the articles of the said Law. So far, the following issues have been identified as the most important:

- Lack of strong obligatory provisions for users of private security services to have Risk Assessment
- 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 legal and secondary legislation related to work and employment relations; administrative procedure for issuing private security licenses; providing security to public gatherings (i.e. sports events); handling firearms, etc.;
- The process of training and obtaining licenses for individuals is too lengthy, three months, on average, too rigid and lacking modern practice. During this time, such persons cannot perform private security operations, while companies providing security services have difficulties in engaging licensed employees.
- Service of transportation of money must be subject of more precise regulations through special bylaws
- The MoI is under no obligation to inform companies, as employers, whether their employees have obtained the license, or whether their licenses have been withdrawn due to failure to meet some of the requirements.
- COVID situation gave the companies more challenges in terms of employing people with licences.

Apart from general application of security Law regulations, there are three major challenges are in front of the private security companies:

- Risk Assessment requirements- According to the Law, risk assessment is the first step that needs to be completed to use services of private security companies for most of the clients. It represents the basis for concluding a contract and defines the elements especially regarding the scope and type of service. If the Risk Assessment has not been done, according to the Law, the sanction for the same is borne by the Private Security although without client's consent and engagement it is impossible to provide such an assessment.
- Manpower - procedures for obtaining a license in accordance with the Law takes 3 months on average, together with dramatic lack of workforce in the service sector, private security companies are in an unenviable situation. Positive practice examples from the region (Bosnia and Herzegovina, Croatia, and Slovenia) showed that the restrictions in terms of the required qualifications did not lead to positive trends in the security industry, on the contrary, they made it difficult to work in the private security industry for all of its stakeholders. Recognizing the benefits (increased employment rate, all private security companies doing business in accordance with the Law), the countries of the region decided to do away with the secondary education requirement as one of the criteria for obtaining a license.
- Transport of Cash and valuables – transport of cash and other valuables due to its nature is amongst most exposed security operations. However local legislation is very high level, which leaves room for different interpretations and these results in lower security standards in Serbia than corresponding standards in the EU. It is very important to mention that exposures in this industry have a direct impact on stability of economy, impact on the banking sector stability and general safety of the public. Amongst others most common legal challenge is lack of precise

regulations and standards towards the electrochemical and electronic protection of means of transport. To the contrary current legislation replaces above standards with more security crew members instead. This effectively makes this process more risky and less cost effective for the ultimate customer. It is in the interest of the economy to make cost of the cash logistics low, so that Serbia can benefit from the higher competitive economy and drive faster growth. Transport of money is an operation that needs to have obligatory insurance with precise types of policies that would be a general requirement for all the security companies. This issue needs strong regulations to protect general public and private business from unexpected and uninsured losses.

FIC RECOMMENDATIONS

- Continued monitoring of the Law on Private Security application, while continuously insisting that its implementing by-laws be harmonized with EU models of legislation to the extent possible, while at the same time taking into account local specificities. By-laws are specially needed for transportation of money services regarding insurance and special treatment in traffic regulation.
- Make a clear obligation for the user of private security services to have Risk Assessment act in accordance with the law under the threat of the same sanctions as for private security companies.
- Support the Ministry of Interior (MoI) in its commitment to inspect all entities that are in the grey area to ensure that they comply with the adopted law to the fullest extent.
- 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 engagement that are permitted by the Labor Law will be treated equally as employer opportunities 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 license, the professional qualification requirement should be amended to allow persons with primary school to obtain a security officer license. Security clearance is another precondition for obtaining the license, prior to the commencement of the training programme, to avoid unnecessary administrative problems and unreasonable expenses related to persons who do not pass the security clearance. Prescribe the explicit obligation of the MoI to inform the employer about any changes in the status of the license of individuals, especially bearing in mind the fact that a security officers' IDs areissued upon request of the employer's company and returned to the MoI in case of the employment termination.
- Due to the challenges on labour market allow candidates who completed the training to work with supervision of licenced officers until they do not obtain licence.
- Implement new regulations concerning service of transport of cash and valuables and increasing protection of people and assets such as Change of traffic law giving CIT vehicles access to pedestrian areas and yellow lines, mandatory electrochemical protection in CIT vehicles especially during payment transfer, introduce body worn cameras and make the number of CIT crew member subject to electrochemical protection specification

top

FIC MEMBERS

top

A1 SRBIJA D.O.O.
Milutina Milankovića 1ž, 11070 Beograd
Tel: 060 1234, Fax: 060 1231
E-mail: PR@a1.rs
Web: www.a1.rs

ADDIKO BANK A.D. BEOGRAD
Milutina Milankovića 7v, 11070 Beograd
Tel: +381 11 2226 000
E-mail: office.rs@addiko.com
Web: www.addiko.rs

ADECCO OUTSOURCING D.O.O.
Bulevar Milutina Milankovića 1i, 11070 Beograd
Tel: +381 11 7121 709, Fax: +381 11 6695 131
E-mail: info.srbija@adecco.com
Web: www.adecco.rs; www.adeccogroup.com; www.adecco.com

AIRPORT CITY BELGRADE
Omladinskih brigada 88a, 11070 Beograd
Tel: 011 2090 526
E-mail: office@airportcitybelgrade.com
Web:www.airportcitybelgrade.com

ALMA QUATTRO D.O.O. BEOGRAD
Dositejeva 20, 11000 Beograd
Tel: +381 11 2028 900, +381 11 2028 920
Fax: +381 11 2028 916
E-mail: office@almaquattro.rs
Web: www.almaquattro.rs

API BANK A.D. BEOGRAD
Bulevar vojvode Bojovića 6-8
Kalemegdan Business Center, 11000 Beograd
Tel: +381 11 3952 265
E-mail: info@apibank.rs
Web: www.apibank.rs

ARDAGH METAL PACKAGING SERBIA D.O.O.
Omladinskih brigada 88,
Airport City Business Park, 11070 Beograd
Tel: +381 11 7151 100
E-mail: amb.serbia@ardaghgroup.com
Web: www.ardaghgroup.com

AU APOTEKA BENU
Kosovska 4, 11000 Beograd
Tel: +381 11 35 38 100
E-mail: frontdesk@benu.rs
Web: www.benu.rs; www.benu.eu

BALL CORPORATION,
BEVERAGE PACKAGING EMEA, BEOGRAD
Batajnički drum 21A, 11080 Zemun – Beograd
Tel: +381 11 3770 600/602, Fax: +381 11 3770 752
Web: www.ball.com

BANCA INTESA A.D. BEOGRAD
Milentija Popovića 7b, 11070 Beograd
Tel: +381 11 3108 888
E-mail: kabinet@bancaintesa.rs
Web: www.bancaintesa.rs

BARRY CALLEBAUT SOUTH EAST EUROPE D.O.O.
Karađorđeva 2-4, 11000 Beograd
Tel: +381 11 3532 805
E-mail: jelena_vujnovic@barry-callebaut.com
Web: www.barry-callebaut.com

BAYER D.O.O. BEOGRAD
Omladinskih brigada 88b, 11070 Beograd
Tel: +381 11 2070 200
E-mail: office.support.rs@bayer.com
Web: www.bayer.rs

BDK ADVOKATI
Bulevar kralja Aleksandra 28, 11000 Beograd
Tel: +381 11 3284 212, Fax: +381 11 3284 213
E-mail: office@bdkadvokati.com
Web: www.bdkadvokati.com

BELAGA MANAGEMENT COMPANY D.O.O.
Kralja Milana 35, 11000 Beograd
Fax: +381 11 7555 700
E-mail: begbs_hotel@hilton.com
Web: local: Hilton Belgrade global: www.hilton.com

BELGRADE AIRPORT D.O.O.
47 Aerodrom Beograd Street, 11180 Beograd 59
Tel: +381 11 2094 802
E-mail: kabinet@beg.aero
Web: www.beg.aero

BOJOVIC DRASKOVIC POPOVIC
& PARTNERS A.O.D BEOGRAD
Francuska 27, 11000 Beograd
Tel: +381 11 7850 336
Web: www.bd2p.com
Mail: office@bd2p.com

BPI D.O.O. SOMBOR
Venac Radomira Putnika 1, 25000 Sombor
Tel: +381 25 5150 161, +381 25 5150 162
Fax: +381 25 5150 185
Web: www.bpi-holding.com

BRITISH AMERICAN TOBACCO SOUTH-EAST
EUROPE D.O.O. BEOGRAD
Bulevar Milutina Milankovića 1ž, 11070 Beograd
Tel: +381 11 3108 700
Web: www.bat.com

BRITISH-SERBIAN CHAMBER OF COMMERCE
6 Lower Grosvenor Place, SW1W 0EN London, UK
Dositejeva 15, 11000 Beograd
Tel: +44 020 7630 1777
E-mail: office@britserbcham.com
richard.robinson@britserbcham.com
Web: www.britserbcham.com

CARLSBERG SRBIJA D.O.O.
Proleterska 17, 21413 Čelarevo
Tel: +381 21 7550 600, Fax: +381 21 7550 658
E-mail: info@carlsberg.rs
Web: www.carlsbergsrbija.rs

CETIN D.O.O. BEOGRAD – NOVI BEOGRAD
Omladinskih brigada 90, 11070 Beograd
Tel: +381 63 444 222
E-mail: info@cetin.rs
Web: www.cetin.rs; www.cetin.eu

CTP INVEST
Bulevar Zorana Đinđića 64a, 11070 Beograd
Tel: +381 66 8772 860
E-mail: bojana.milicevic@ctp.eu
Web: www.ctp.eu

DAD DRÄXLMAIER AUTOMOTIVE D.O.O.
Skladišna hala 1, Zrenjaninski park
Lokacija Bagljaš Aerodrom, 23000 Zrenjanin
Tel: +381 23 519 340
Web: www.draexlmaier.com

DDOR NOVI SAD A.D.O.
Bulevar Mihajla Pupina 8, 21000 Novi Sad
Tel: +381 21 4886 000
Korisnički centar: 0800 303 301
E-mail: ddor@ddor.co.rs
Web: www.ddor.rs

DELOITTE ADVISORY D.O.O.
Terazije 8, 11000 Beograd
Tel: +381 11 3812 100
Fax: +381 11 3812 112
E-mail: ceyuinfo@deloittece.com
Web: www.deloitte.com/rs

DELTA HOLDING DOO
Vladimira Popovića 8, 11070 Beograd
Tel: +381 11 2011 611, +381 11 2011 921
E-Mail: office@deltaholding.rs
Web: www.deltaholding.rs

DEUTSCH-SERBISCHE WIRTSCHAFTSKAMMER (AHK SERBIEN)
Topličin venac 19-21, 11000 Beograd
Tel: +381 11 2028 010, Fax: +381 11 3034 780
E-mail: info@ahk.rs
Web: www.serbien.ahk.de/sr; www.serbien.ahk.de

DRAGER TEHNIKA D.O.O.
Radoja Dakića 7, 11080 Zemun-Beograd
Tel: +381 11 3911 222, Fax: +381 11 3911 333
E-mail: office.serbia@draeger.com
Web: www.draeger.com
www.draeger.com/en_seeur/Home/Locations/Serbia

EKO SERBIA A.D.
Member of Hellenic Petroleum group
Tošin bunar 274a, 11070 Novi Beograd
Tel: +381 11 2061 500, Fax: +381 11 2061 555
E-mail: office@hellenic-petroleum.rs
Web: www.ekoserbia.com

ERNST & YOUNG D.O.O. BEOGRAD
Vladimira Popovića 8a, 11070 Beograd
Tel: +381 11 2095 800
E-mail: ey.office@rs.ey.com
Web: www.ey.com/rs

ERSTE BANK A.D. NOVI SAD
Bulevar oslobođenja 5, 21000 Novi Sad
Erste Poslovni centar, Milutina Milankovića 3a, 11070 Beograd
Tel: 0800 201 201, +381 60 4848 000
E-mail: info@erstebank.rs
Web: www.erstebank.rs

EUROBANK DIREKTNA A.D. BEOGRAD
Vuka Karadžića 10, 11000 Beograd
Tel: 0800 1111 44, +381 11 2023 353
E-mail: office@eurobank-direktna.rs
Web: www.eurobank-direktna.rs

EUROPEAN INVESTMENT BANK
Vladimira Popovića 38-40, 11070 Novi Beograd
Tel: +381 11 3121 756
Web: www.eib.org

EVROPSKA BANKA ZA OBNOVU I RAZVOJ
Španskih boraca 3, 11070 Beograd
Tel: +381 11 2120 530, Fax: +381 11 2120 534
E-mail: kilibara@ebrd.com
Web: www.ebrd.com

EXLRT D.O.O.
Mornarska 7, 21000 Novi Sad
Tel: +381 21 6301 548, +381 21 6392 826
E-mail: info@exlrt.com; office@exlrt.com
Web: www.exlrt.com

FCA SRBIJA D.O.O. KRAGUJEVAC
Kosovska 4, 34000 Kragujevac
Tel: +381 11 3030 906, Fax: +381 11 3030 914
Web: www.fiatsrbija.rs; www.fiat.rs

FERRING PHARMACEUTICALS D.O.O. BEOGRAD-STARI GRAD
Gospodar Jevremova 47, 11000 Beograd
Tel: +381 11 4048 800
Web: www.ferring.com

FRESENIUS MEDICAL CARE SRBIJA D.O.O.
Beogradski put bb, 26300 Vršac
Tel: +381 11 3951 000, Fax: +381 11 3951 009
E-mail: vera.trunic@fmc-ag.com
Web: www.fmc-ag.com

FRIKOM D.O.O.
Zrenjaninski put bb, 11213 Beograd
Tel: +381 11 2074 100, Fax: +381 11 2074 148
E-mail: office@frikom.rs
Web: www.frikom.rs

G4S SECURE SOLUTIONS D.O.O.
Viline Vode 6, 11000 Beograd
Tel: +381 11 2097 900, Fax: +381 11 2097 946
E-mail: office@rs.g4s.com
Web: www.g4s.rs

GEBRÜDER WEISS D.O.O. DOBANOVCI
Beogradska 85, 11272 Dobanovci
Tel: +381 11 3715 200, Fax: +381 11 3715 201
E-mail: office.beograd@gw-world.com
Web: www.gw-world.com/rs
www.gw-world.com/at

GENERALI OSIGURANJE SRBIJA A.D.O.
Vladimira Popovića 8, 11070 Novi Beograd
Tel: +381 11 2220 555
Web: www.generali.rs; www.generali.com

GRAND CASINO D.O.O. BEOGRAD
Bulevar Nikole Tesle 3, 11080 Beograd
Tel: +381 11 2202 800, Fax: +381 11 2202 810
E-mail: info@grandcasinobeograd.com
Web: www.grandcasinobeograd.com

GRUNDFOS SRBIJA D.O.O.
Obilazni put Sever 21, 22320 Inđija
Tel: +381 22 367 300, Fax: +381 22 367 302
Web: www.grundfos.rs
www.grundfos.com

HAD BMP A.D. BEOGRAD (HYATT REGENCY BEOGRAD)
Milentija Popovića 5, 11000 Beograd
Tel: +381 11 301 1234
E-mail: belgrade.regency@hyatt.com
Web: local: hyattregencybelgrade.com
global: www.hyatt.com

HEINEKEN SRBIJA DOO ZAJEČAR
Železnička 2, 19000 Zaječar
Tel: +381 11 3538 600, Fax: +381 11 3538 691
E-mail: info.serbia@heineken.com
Web: www.heinekensrbija.rs

HEMOFARM A.D.
Beogradski put bb, 26300 Vršac
Tel: +381 11 3811 200
E-mail: svakodobro@hemofarm.com
Web: www.hemofarm.rs

HUAWEI TECHNOLOGIES D.O.O.
Omladinskih brigada 90D, 11070 Beograd
Web: www.huawei.com

IKEA SRBIJA D.O.O.
Astrid Lindgren 11, 11231 Beograd
Web: www.ikea.com

INOS BALKAN D.O.O.
Mirka Obradovića BB, 14000 Valjevo
Tel: +381 14 221 560
E-mail: contact@inosbalkan.com
Web: www.inosbalkan.com

INTESA LEASING D.O.O. BEOGRAD
Milentija Popovića 7b, 11070 Beograd
Tel: +381 11 2025 400, Fax: +381 11 2025 433
E-mail: ilbhead@intesaleasing.rs
Web: www.intesaleasing.rs

JANKOVIC, POPOVIC & MITIC A.O.D.
Vladimira Popovica 8A, Delta house, V floor
11070 Beograd
Tel: +381 11 2076 850, Fax: +381 11 2076 899
E-mail: office@jpm.rs
Web: www.jpm.rs

JELEN DO D.O.O. (CARMEUSE SERBIA)
Jelen Do bb, 31215 Jelen Do, Požega
Tel: +381 31 590 599, Fax: +381 31 590 570
E-mail: jelen-do@carmeuse.rs
Web: www.carmeuse.com

JT INTERNATIONAL A.D. SENTA
Subotički drum 17, 24400 Senta
Tel: +381 11 2050 300, Fax: +381 11 2050 301
Web: www.jti.com

K&F ADVOKATI
Knez Mihailova 17, 11000 Beograd
Tel: +381 11 3345 195
E-mail: office@kfadvokati.com
Web: www.kfadvokati.com

KARANOVIĆ & PARTNERS O.A.D.
Resavska 23, 11000 Beograd
Tel: +381 11 3094 200, Fax: +381 11 3094 223
E-mail: serbia@karanovicpartners.com
Web: www.karanovicpartners.com

KENTKART SOUTHEAST EUROPE D.O.O.
Makenzijeva 24, 11000 Beograd
Tel: +381 11 7155 171, Fax: +381 11 7155 171
E-mail: office@kentkart.rs
Web: www.kentkart.rs

KLEEMANN LIFTOVI D.O.O.
Obradovića Sokak 50, 22310 Šimanovci
Tel: +381 22 409 000
E-mail: serbia@kleemannlifts.com
Web: www.kleemannlifts.com

KNAUF INSULATION D.O.O.
Batajnički drum 16b, 11080 Beograd
Tel: +381 11 3310 800, Fax: +381 11 3310 801
E-mail: office.belgrade@knaufinsulation.com
Web: www.knaufinsulation.rs
www.knaufinsulation.com

KONSTRUKTOR KONSALTING
Oslobođenja 10, 11000 Beograd, Rakovica
Tel: +381 11 2562 231
E-mail: office@konstruktorgrupa.com
Web: www.konstruktorgrupa.com

KPMG D.O.O. BEOGRAD
Milutina Milankovića 1j, 11070 Beograd
Tel: +381 11 2050 500, Fax: +381 11 2050 550
E-mail: info@kpmg.rs
Web: www.kpmg.rs

LAFARGE BFC D.O.O.
Trg BFC 1, 21300 Beočin
Tel: +381 21 874 102
E-mail: lbfc.office@lafarge.com
Web: www.lafarge.rs
www.holcim.com

LAW OFFICE MIROSLAV STOJANOVIC IN COOPERATION WITH WOLF THEISS
PC Ušće, Bulevar Mihajla Pupina 6, 11070 Beograd
Tel: +381 11 3302 900, Fax: +381 11 3302 925
E-mail: beograd@wolftheiss.com
Web: www.wolftheiss.com

LEITNERLEITNER CONSULTING D.O.O. BEOGRAD
Kneza Mihaila 1-3, 11000 Beograd
Tel: +381 11 6555 105
E-mail: beograd.office@leitnerleitner.com
Web: https://www.leitnerleitner.rs/serbia/sr/about-us
https://www.leitnerleitner.com/de/at

LUKOIL SRBIJA A.D. BEOGRAD
Bulevar Mihajla Pupina 165d, 11070 Beograd
Tel: +381 11 2220 200, Fax: +381 11 2220 294
Web: www.lukoil.rs

MARSH D.O.O. ZA POSREDOVANJE U OSIGURANJU BEOGRAD
Omladinskih brigada 90a, 11070 Novi Beograd
Fax: +381 11 3130 409
E-mail: marsh.serbia@marsh.com
Web: https://www.marsh.com/rs/en/home.html
http://www.mmc.com/

MERCK D.O.O.
Omladinskih brigada 90v, 11070 Beograd
Tel: +381 11 2175 761, Fax: +381 11 2176 781
E-mail: merck@merck.rs
Web: www.merck.rs; www.merckgroup.com

MESSER TEHNOGAS A.D.
Banjički put 62, 11000 Beograd
Tel: +381 11 3537 200, Fax: +381 11 3537 291
E-mail: postoffice@messer.rs
Web: www.messer.rs

METROPOL PALACE D.O.O.
Bulevar Kralja Aleksandra 69, 11000 Beograd
Tel:+381 11 3333 100
E-mail: reception@metropolpalace.com
Web: www.metropolpalace.rs

MINI PANI D.O.O.
Hipodromska 2c, 24000 Subotica
Tel: +381 24 621 521, Fax: +381 24 621 522
E-mail: info@minipani.com
Web: www.minipani.com

MIRABANK A.D.
Španskih boraca 1, 11070 Beograd
Tel: +381 11 6355 400, Fax: +381 11 6355 404
E-mail: office@mirabankserbia.com
Web: www.mirabankserbia.com

MOBI BANKA A.D. BEOGRAD
Omladinskih brigada 88, 11070 Beograd
Korisnički servis: 063 9005
Tel/Fax: +381 11 4409 670
E-mail: banka@mobibanka.rs
Web: www.mobibanka.rs

MORAVACEM D.O.O.
Branka Ristića 8, 35254 Popovac
Tel: +381 35 572 200, Fax: +381 35 572 207
E-mail:general-info@moravacem.rs
Web: www.moravacem.rs; www.crh.com

MS RAJICEVA D.O.O. (MAMA SHELTER)
Kneza Mihaila 54a, 11000 Beograd
Tel: +381 11 3333 000
Web: global: www.mamashelter.com

NAŠA AIK BANKA A.D. BEOGRAD
Bulevar Mihaila Pupina 165g, 11070 Novi Beograd
Contact Center: 19909
E-mail: info@nasaaikbanka.rs
Web: www.nasaaikbanka.rs

NESTLÉ ADRIATIC S D.O.O.
Železnička 131, 11271 Beograd-Surčin
Tel: +381 11 2019 301, Fax: +381 11 3132 022
E-mail: info@rs.nestle.com
Web: www.nestle.rs

NIS A.D. NOVI SAD (NAFTNA INDUSTRIJA SRBIJE)
Narodnog fronta 12, 21000 Novi Sad
Tel.: +381 21 4811 111
E-mail: office@nis.eu
Web: www.nis.eu

NLB KOMERCIJALNA BANKA AD BEOGRAD
Svetog Save 14, 11000 Beograd
Tel: 011/3080 100. Fax: 011/3441 335
E-mail: kontakt.centar@nlbkb.rs
Web: www.nlbkb.rs

NOKIA SOLUTIONS AND NETWORKS SERBIA D.O.O. BEOGRAD
Đorđa Stanojevića 14, 11070 Beograd
Belgrade Office Park, Building II, Gallery Floor
Web: https://www.nokia.com/networks/

OGRANAK SERBIA PRIME SITE ONE AG BEOGRAD
Vlajkovićeva 12, 11000 Beograd
Tel: +381 60 8800 106
Web: local: www.serbiaprimesiteone.com
global: www.jangroup.ch

OLAF & MCATEER D.O.O.
Mišarska 10, 11000 Beograd
Tel: +381 11 3342 955
E-mail: office@olafmcateer.rs
Web: www.olafmcateer.rs

OTP BANKA SRBIJA A.D. NOVI SAD
Trg slobode 5, 21000 Novi Sad
Tel: +381 21 421 077, +381 11 3011 555
Fax: +381 11 3132 885
E-mail: Retail banking: stanovnistvo@otpbanka.rs
Corporate clients: privreda@otpbanka.rs
Web: www.otpbanka.rs

OTP LEASING SRBIJA
Headquarters: Bulevar Zorana Đinđića 50 a/b
Post and work with clients:
Bulevar Mihajla Pupina 111, 11070 Beograd
Tel: +381 11 2221 369, Fax: +381 11 2221 388
E-mail: otpleasing.srbija@otpsrbija.rs
Web: www.otpleasingsrbija.rs

PEPSICO
Đorđa Stanojevića 14, 11070 Beograd
Tel: +381 11 3637 000, Fax: +381 11 3637 069
E-mail: belgrade.office@pepsico.com
Web: www.pepsico.com; www.pepsico.rs;
www.facebook.com/PepsiCoZapadniBalkan;
twitter.com/PepsiCoZB; LinkedIn: PepsiCoZB

PERNOD RICARD SRBIJA D.O.O.
Bulevar oslobođenja 211, 11000 Beograd
Tel: +381 11 3091 500, Fax: +381 11 3974 380
Web: www.pernod-ricard.com

PETRIKIĆ & PARTNERI A.O.D. IN COOPERATION WITH CMS REICH-ROHRWIG HAINZ
Krunska 73, 11000 Beograd
Tel: +381 11 3208 900, Fax: +381 11 3208 930
E-mail: belgrade@cms-rrh.com
Web: www.cms-rrh.com

PHILIP MORRIS SERVICES D.O.O. BEOGRAD
Bulevar Zorana Đinđića 64a, 11070 Beograd
Tel: +381 11 2010 800, Fax: +381 11 2010 824
Web: www.philipmorrisinternational.com

PHOENIX PHARMA D.O.O. BEOGRAD
Bore Stankovića 2, 11030 Beograd
Tel: +381 11 3538 100, Fax: +381 11 3538 200
E-mail: office@phoenixpharma.rs
Web: www.phoenixpharma.rs

PRICEWATERHOUSECOOPERS D.O.O.
Airport City Belgrade
Omladinskih brigada 88a, 11070 Beograd
Tel: +381 11 3302 100, Fax: +381 11 3302 101
E-mail: rs_pwc_office@pwc.com
Web: www.pwc.rs

PRIGAN D.O.O. BEOGRAD
Bulevar Vojvode Mišića 15 a, 11000 Beograd
Tel: +381 11 369 9802
E-mail: office@soravia.rs

PROCREDIT BANK
Milutina Milankovića 17, 11000 Beograd
Tel: +381 11 2077 906
E-mail: srb.info@procredit-group.com
Web: www.procreditbank.rs

RAIFFEISEN BANKA A.D. BEOGRAD
Đorđa Stanojevića 16, 11070 Beograd
Tel: +381 11 3202 100
E-mail: info@raiffeisenbank.rs
Web: www.raiffeisenbank.rs

RAIFFEISEN LEASING D.O.O.
Đorđa Stanojevića 16, 11070 Beograd
Tel: +381 11 2207 400, Fax: +381 11 2289 007
E-mail: info.leasing@raiffeisen-leasing.rs
Web: www.raiffeisen-leasing.rs

RAUCH SERBIA D.O.O.
Šesta Lička 2, 15220 Koceljeva
Tel: +381 15 361 800
E-mail: office.serbia@rauch.cc
Web: www.rauch.cc

RIO TINTO RIO SAVA EXPLORATION D.O.O.
Milutina Milankovića 1i, 11070 Beograd
Tel: +381 11 4041 430
Web: www.riotinto.com
www.riotintoserbia.com

ROCHE D.O.O.
Vladimira Popovića 8a, 11070 Beograd
Tel: +381 11 2022 803, Fax: +381 11 2022 808
E-mail: serbia.office@roche.com
Web: www.rochesrbija.rs
www.roche.com

SAVA NEZIVOTNO OSIGURANJE A.D.O. BEOGRAD
Bulevar vojvode Mišića 51, 11000 Beograd
Tel: +381 11 3644 888
E-mail: info@sava-osiguranje.rs
Web: www.sava-osiguranje.rs

SGS BEOGRAD D.O.O.
Jurija Gagarina 7b, 11070 Beograd
Tel: +381 11 7155 275, +381 11 7155 277
Fax: +381 11 2284 241
E-mail: sgs.beograd@sgs.com
Web: www.sgs.rs

SLADARA SOUFFLET SRBIJA D.O.O.
Industrijska zona 2, 21400 Bačka Palanka
Tel: +381 21 752 910, Fax: +381 21 6042 399
Web: www.soufflet.com

STEEL IMPEX LLC
Rada Končara 1, 21131 Petrovaradin
Tel: +381 2182 0691
E-mail: info@steelimpex.rs
Web: www.steelimpex.rs

STMG CONSULTANCY D.O.O. BEOGRAD
Bulevar Zorana Đinđića 144v, 11070 Beograd
Tel: +381 11 3535 400, Fax:+381 11 3535 401
E-mail: info@stmgconsultancy.com,
sasa.trajkovic@stmgconsultancy.com
Web: www.stmgconsultancy.com

TELEKOM SRBIJA A.D.
Takovska 2, 11000 Beograd
Tel: +381 11 2111 114
E-mail: fic.telekom@telekom.rs
Web: www.telekom.rs

TETRA PAK PRODUCTION D.O.O. BEOGRAD
Milutina Milankovića 9ž, 11070 Beograd
Tel: +381 11 2017 333, Fax:+381 11 2017 380
Web: www.tetrapak.rs

THE COCA-COLA COMPANY (BARLAN S&M D.O.O.)
Batajnički drum 18, 11080 Beograd
Tel: +381 11 3081 100, Fax: +381 11 3081 166
E-mail: mvukojicic@coca-cola.com
Web: www.thecoca-colacompany.com

THE INTERNATIONAL SCHOOL OF BELGRADE
Temišvarska 19, 11000 Beograd
Tel: +381 11 2069 999, Fax: +381 11 2069 944
E-Mail: isb@isb.rs
Web: www.isb.rs

TIGAR TYRES D.O.O. PIROT
PREDUZEĆE ZA PROIZVODNJU GUMA
Nikole Pašića 213, 18300 Pirot
Tel: +381 10 2157 000
E-mail: office.serbia@michelin.com
Web: www.michelin.rs

TITAN CEMENTARA KOSJERIĆ D.O.O.
Živojina Mišića 50, 31260 Kosjerić
Tel: +381 31 590 300, Fax: +381 31 590 398
Web: www.titan.rs

TOYO TIRE SERBIA D.O.O. INĐIJA
Industrijska 3 no. 5, 22320 Inđija
Tel: +381 66 8087 898
E-mail: nevena.lestaric@toyotires.rs
Web: https://www.toyotires-global.com/

UNICREDIT BANK SRBIJA JSC
Rajićeva 27-29, 11000 Beograd
Jurija Gagarina 12, Belgrade Business Center, 11070 Beograd
Tel: +381 11 3777 888
E-mail: kontakt@unicreditbank.rs
Web: www.unicreditbank.rs

UNIFIEDPOST SOLUTIONS D.O.O.
Tošin bunar 185, 11070 Beograd
Tel: +381 11 7150 748
E-mail: office.rs@unifiedpost.com
Web: www.unifiedpost.rs

UNIQA NEŽIVOTNO OSIGURANJE A.D.O.
Milutina Milankovića 134G, 11070 Novi Beograd
Tel: +381 11 2024 100
E-mail: info@uniqa.rs
Web: www.uniqa.rs

WEST PHARMACEUTICAL SERVICES
BEOGRAD D.O.O.
Crvenka 76, 26220 Kovin
Tel: +381 13 2156 101
E-mail: kovin.office@westpharma.com
Web: www.westpharma.com

WIENER STÄDTISCHE OSIGURANJE
A.D.O. BEOGRAD
Trešnjinog cveta 1, 11070 Beograd
Tel: +381 11 2209 800, Fax: +381 11 2209 900
E-mail: office@wiener.co.rs
Web: www.wiener.co.rs

YAZAKI SERBIA
Nova 7 bb, 15000 Šabac
Tel: +381 15 7195 241
E-mail: YSD.Communications@yazaki-europe.com
Web: www.yazaki-europe.com

YETTEL D.O.O.
Omladinskih brigada 90, 11073 Beograd
Mob: +381 63 9000
Web: www.yettel.rs

ZIVKOVIC SAMARDZIC A.O.D. BEOGRAD
Makedonska 30, 11000 Beograd
Tel: +381 11 2636 636, Fax: +381 11 2635 555
E-mail: office@zslaw.rs
Web: www.zslaw.rs

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Publisher:
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47 Gospodar Jevremova Street, IV floor
11000 Belgrade
Serbia
e-mail: office@fic.org.rs
www.fic.org.rs

Layout, realization, production:
Metropolis Co. d.o.o.
Admirala Vukovića 16
11000 Belgrade
Serbia
www.metropolis.rs