Transparency Serbia

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Priorities in the fight against corruption in Serbia 2020 – 2024 and main tasks for 2020/2021

Believing that the prevention of corruption is a matter of undeniable public interest, that the fight against corruption means the implementation of activities, the choice of which depends to a lesser extent on ideologies, and more on the readiness to implement **widely accepted principles and mechanisms proven in practice** by taking into account possible differences between political actors, international commitments and adopted strategic acts, importance given to the fight against corruption in the context of EU integrations, assessments by relevant national and international organizations, citizens and businessmen of the current situation, Transparency Serbia (a national non-governmental organization and member of the global anti-corruption network Transparency International) calls on Government and Parliament to include the following proposals into their action programmes, and all active political groups to accept these priorities as their own or to state the reasons for opposing them:

1. **Preserving the unity of the legal order and legal security:** it should not happen that the Government proposes, that the Parliament adopts or that the President of the Republic promulgates any law if being warned with arguments that that act is **at odds with the Constitution**;for this very reason, no law **that disrupt the legal system** bybeing in conflict with previously enacted laws or by enacting a general one-off legal act should be proposed, adopted or promulgated;the Government should not pass any regulation that would contradict the law, nor should regulate matters through its conclusions that can only be regulated by law, and especially not through the conclusions that are not published in the "Official Gazette".State officials **must not leave any doubt about the legal nature** of the work undertaken by the state and whether agreements and contracts have already been concluded and what obligations Serbia has undertaken, especially when it comes to arrangements with potential investors or the construction of infrastructure facilities.

2. **More transparency and participation in decision making process:**
   a) it should never happen that the Government proposes a law or a public policy act that has not been the subject of **public debate**; before the public hearing, it is necessary to publish an analyses of the effects which requires sufficient time to be done, having in mind that all concrete proposals**must be considered**and that the ministry preparing the act must **explain why it accepts or rejects them.** In order to achieve this goal, the Rules of Procedure of the Government should be amended, the obligation to conduct a public debate should be determined when the law is not proposed by the Government, but also the legal mechanism for protection of citizens' rights should be prescribed in the event that state bodies prevent public debate.

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b) It is necessary to cease the bad practice in the Parliament whichviolates the constitutional civil rights, when **draft laws submitted as people's initiatives or by MPs from the opposition parties are not considered at all**–it is needed to set a deadline so that such proposals would fit into agendainto that time frame. The practice of merging the parliamentary debate on unrelated acts within one item of the agenda and making the legislative procedure meaningless **should be terminated** by submitting amendments with non-normative content.

c) Through public hearings, the Parliament should review**the effects of the current implementation of the anti-corruption laws** and a need for new ones. When considering draft laws, the Government and the Parliament should carefully assess corruption risks identified by the Anti-Corruption Agency, as well as problematic provisions indicated by other independent state bodies, and request additional explanations from the relevant ministry on how the risks will be removed.

d) The legal framework for **lobbying**should be amended to address **any attemptto influence public sector decision-making**, regardless of whether it is done through professional intermediaries or by directly interested persons, whether it concerns the content of regulations or decision-making process in individual cases, whether it is performed in the prescribed procedure or through informal contacts. There is also a need to increase transparency of information on formal and informal lobbying and the decision-making process.

e) The legal obligation to **consider the risk of corruption** in regulations should be extended so as to include all proposers and all regulations andnot only those related to certain pre-determined areas and those prepared by ministries.

f) **Minutes and discussions from Government sessions should become public, as a rule**; in addition to making decisions on nominations, dismissals, appointments and recommendations for staffing, the Government should publish **explanations**for its decisions; similarly, the Government should publish **explanations of draft** by-laws it adopts (decrees) and proposals of conclusions on the basis of which it adopts guidelines, reports, plans and other acts;

g) All submitted amendments along with the reasons why the proposer (usually the Government) and the parliamentary committees accept or reject the amendments should be published on the Parliament’s website;

h) It is necessary to regulate negotiation process and transparency of information **regarding the conclusion of interstate agreements and credit arrangements**so that MPs and the public can see **whether the potential benefits outweigh the damage caused by non-implementation of public procurement and public-private partnership regulations.**

i) State administration bodies **should make public data on their supervisory activities** so that it wouldbe evident to what extent control plans are realised. More importantly, it should be evident from the published data whether the inspections were equally carried out towards all taxpayers of the same type.

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3. **Caution with regulatory and financial interventions:** Each regulatory or financial intervention of the state, especially when it influences the economy, results in an increased danger of corruption. Therefore, such interventions should be sought only when necessary and with the implementation of measures for the protection of corruption that is, only when clear and relevant criteria for allocating funds have been set in advance, when all relevant decisions have been published and when supervision of actions of the authorities granting state aid and supervision over the fulfilment of the obligations of the recipients of such aid are provided.Reform of regulations should also be continued in order to eliminate procedures that burden the work of the economy and citizens without a justifiable reason. It is also necessary to enable, as wide as possible, the use of electronic communication means, and opening and connecting databases.The practice of giving privileges to business entities through forgiveness or by taking over their debts should be terminated. It is also important to **publish a comprehensive calculation of possible benefits from financial incentives given through state aid**versus the consequent costs in the budget and in the part of the economy that does not receive subsidies.

4. **A strategic approach to the fight against corruption:** Parliament should adopt a new national anti-corruption strategy as soon as possible and determine the reasons for non-fulfilment of the goals of the Strategy that was valid in the period 2013-2018. The Government and the Parliament should regularly monitor the implementation of the Action Plan for Chapter 23 of the negotiations with the EU, the "Operational Plan for the Prevention of Corruption in the Areas of Particular Risk" and other strategic acts adopted or to be adopted by the Government and the Parliament (related to judicial reform, public administration, public procurement, financial investigations, financial controls, etc.) based on reports from theAnti-Corruption Agencyand other competent authorities.The Action Plan for Chapter 23 should be amended in the parts where the activities have not been formulated ambitiously enough or precisely enoughand where no substantial progress has been made despite the fact that the measures have been implemented.The Government and the Parliament should regularly initiate the procedure for determining the responsibility of the **chief executives of bodiesthat have not fulfilled the tasks** from the strategic acts. Action plans in the field of European integration should be used as an incentive to accelerate reforms, and not as a excuse for postponing or not resolving problems that have been identified in Serbia and which the EU has not highlighted as a priority.On the other hand, the findings of the EU bodies' report on weaknesses in the rule of law and decisions that lead to a slowdown in Serbia's negotiations with the EU should be used as an incentive to improve the situation. The government should regularly review reports on the implementation of action plans and determine measures to address the identified problems at the next session, instead of doing so exclusively through a complex mechanism of the two government coordination bodies.

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5. **Public sector reforms** should comprehend, among others, the following measures: the adoption of the Law on Ministries, where the division of jurisdiction is in sole function of the efficiency of work, and does not satisfy the need of coalition partners; decreasing the **number of members in Government**; the decrease of the total number of public sector employees, that is predominantly the consequence of party employment, to a number that is comparable to European countries of a similar size, but also to the possibilities of budget financingand whereby priority should be given to the priority activities of public administration, public services and public enterprises; the termination of the practice of **increasing the public sector** with the unnecessary relocation of state affairs to public agencies and organized firms with an unclear legal status; the **analysis of public administration needs** and the **publishing of findings**; the review of current job classifications and their **harmonization with the actual needs** of organs for fulfilling legal tasks, and not with the existing situation; the introduction of **clear and objective criteria** for employment and advancement, as well as the reconsideration of the expertise of those currently employed; the introduction of measures for the resolving of conflicts of interest within public services (health, education etc.), in organizations of obligatory social insurance (health and retirement fund), and in public enterprises, along with control over the implementation of such measures in state administration and municipalities; the appointing of heads of public enterprises and public services **on the basis of competition** and the quality of proposed programs of work; the regular consideration of the business programs of public enterprises, and reports on their realization as well as the consistent implementation of legal norms or the accountability of the directors for failing to implement the program and to publish these documents; the strengthening of organs that perform supervision within the executive authority, and especially regarding **budget inspection**.

6. **The full respect and strengthening of the status of independent state bodies in the fight against corruption:** As one of its first tasks, the Parliament should regularly discuss the annual work reports of the State Audit Institution, Ombudsman, Anti-Corruption Agency, Commissioner for Information of Public Importance and Personal Data Protection, Republic Commission for the Protection of Rights in Public Procurement Procedures and Fiscal Councilin order to obligate the Government to resolve the issues indicated in previous reports or those that will be highlighted in their future reports (e.g. non-compliance with binding solutions, insufficient powers, non-harmonized laws).This implies, among others, an amendment to the Law on Free Access to Information, but in a way that does not diminish any existing rights of citizens; an amendment of the Law on Financing of Political Activities, in order to solve the problems that were identified in 2013; supplementing the Criminal Code with criminal offenses that are now in special laws (contrary to good practice), and introducing criminal prosecution for persons who obstruct the collection of evidence in proceedings conducted by independent bodies. The fact that the Parliament failed to

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check compliance with its previous conclusions, to formulate conclusions that would lead to solving the problem, to hold accountable members of the Government who did not respect the binding decisions of independent bodies, unwarranted attacks by MPs of the majority on leaders of the institutions who were critical of the authorities and the disputed election decisions had a negative impact on the exercise of authority of independent bodies and the oversight role of the Parliament.

7. The implementation of existing rules and their amendments where necessary, in order to ensure: complete **termination of the practice of buying media influence or squandering public funds**by spending money on promotional actions of public enterprises, ministries, provincial and local authorities, as well as through public procurement of information services with a primary purpose of political promotion; transparent **determination of the public interest** that should be achieved through the financing of media content and the **distribution of funds** for that purpose; the provision of transparency over **media ownership and other data that can indicatethe influence** over editorial policy (e.g. data on the largest advertisers). Adoption of **comprehensive and consistent rules on state and political advertising**, through amendments to the Law on Public Procurement, the Law on Advertising, media and election regulations. The solution of these problems will be partly influenced by the implementation of the new Media Strategy, but it depends to a large extent on the quality of the Action Plan, which is being drafted.Adoption of comprehensive and consistent rules on state and political advertising, through amendments to the Law on Public Procurement, the Law on Advertising, media and election regulations. The solution of these problems will be partly influenced by the implementation of the new Media Strategy, but it will largely depend on the quality of the Action Plan, which is being drafted.

8. Ensuring full implementation and improvement of the **Public Procurement Law (PPL)**in order to reduce corruption in all three phases (planning – implementation of procedure – contract execution), as well as the implementation of the PPL rules to public-private partnerships, measures to reduce the risk of corruption solutionsemerging from new legal solutions (especially raising the thresholds),through capacity buildingand clearer definition of tasks of monitoring and supervisory bodies, greater transparency of all data on budget spending, the use of electronic public procurements, elimination of unnecessary conditions and other factors that unreasonably reduce competition, strengthening control of restrictive agreements, the improvement of the system for theprotection of rights, efficient functioning of the system for misdemeanor punishment, annulment of null and void public procurement contracts and the termination of the practice of implementing the largest infrastructural projects without administering this law.

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9. **The completion of judiciary reform:** It is necessary to improve the practice of publishing data on**how the criteria for selection and evaluation** of the work of judges and prosecutors have been applied in each specific case.The Government, Parliament and politicians should not interfere in the work of the judiciary,neither by preventing criminal prosecution,nor by demanding someone tobe prosecuted, especially not by disclosing information on arrests and criminal proceedings or placing such data in selected media.It is necessary to ensure the responsibility of judges and public prosecutors for their work, greater transparency in the implementation of these mechanisms, as well as the responsibility of members of the HJC and the SPC. In this regard, a change in regulations is needed.It should be ensured that the number of public prosecutors and judges dealing with corruption cases is appropriate to the scale of this form of crime and that the Prosecutor's Office for organised crime and special departments of higher public prosecutor's offices are responsible for all corruption offenses. Without waiting for the announced constitutional reforms that will exclude the Minister of Justice and the President of the Parliament Committee for Justice from the High Judicial Council (HJC) and the State Prosecutorial Council (SPC), political officials should give up their participation in the work of this body or participation in voting. Similarly, the Government and the Parliament can fully respect the proposals of the HJC and the SPCin practice, even when the current constitutional norm authorizes them to act differently.

10. **More reported and investigated cases of corruption:** Since the main problem in the fight against corruption in Serbia is that only a small part of these crimes is reported, it is necessary to take measures to change this situation. **The Law on the Protection of Whistleblowers**, which was passed for the above-mentioned reason, did not bring significant changes, judging by the statistics of reported corruption. The norms of this law should be improved, especially in the part related to the actions of the authorities with which the whistleblowers shared their knowledge about corruption and other problems, as well as in relation to the whisteblowingwhen the information marked as confidential are presented.In order to achieve that goal, it is also necessary, instead of optional release from punishment, to prescribe **mandatory release from criminal liability** of a bribe-giver who could not otherwise exercise his rights within a reasonable time and who reports the case.Another necessary measure is a much **more active approach** to investigating corruption by the police, prosecutors and other bodies.Public prosecutors should investigate whether there corruptionoccurred even before receiving a criminal report - by reading publicly available media reports, studying reports published by the state bodies (SAI reports, for example), or based on submitted information on suspected corruption (from the Anti-Corruption Agency and the Government’sAnti-Corruption Council, for example) but also on the basis of already established patterns of behaviour (e.g. on the basis of data on abuses in the area of construction land or by examining public procurement practices in two or more different cities which apply the same regulations).The third set of measures includes **amending criminal legislation**in order to more effectively detect corruption (e.g. introducing "illicit enrichment" under Article 20 of the UN Convention against

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Corruption), **using mechanisms for the cross-check of assets and income** (i.e. mechanisms under the Law on Examination of the Origin of Property and the Special Tax) by the Tax Administration so that potential participants in corruption are examined as a matter of priority, specifying the powers and obligations of theAnti-Corruption Agency (ACA) in checking **the accuracy and completeness of data on property and income of public officials**, wider use of **special investigative techniques** and financial investigations in detecting corruption and**informing the public about the application and outcome** of such investigations, confiscation of illicit benefits gained from corruption, as well as the implementation"prosecutors opportunity" mechanisms and plea agreements.

11. **Clear and comprehensive work plans, work reports, budget execution reports and their reviews**: The Government submits annual reports on its work, but they are not completely comparable to work plans. The Parliament should review these reports but that has not been the case so far. When reviewing this report, as well as the report on the final account of the budget, it is necessary to determine whether the non-financial indicators from the program budget have been achieved.The respective ministries and the Government should carefully review **the work programmes and work reportsof public companies** and other institutions, and make the reviewed results available to the public.

12. The clear **division of the jurisdiction and powers of anti-corruption state bodies:** In this sense, it is especially important to ensure that there is **nojurisdictional overlap** between the Government coordination body and the Anti-Corruption Agency (when it comes to prevention), or the police departmentsfor fight against organized crime and corruption and security services (when it comes to detecting corruption).

13. The Government should regularly**review the reports and recommendations of its Anti-corruption Council** and take steps to address problems identified in these reports. Once the Council's reports are published, the Government should inform the public how it has acted in addressing systemic problems (amending regulations for example), in resolving individual problems (for examplespeeding up or stopping the procedure, replacement of responsiblemanagers, inspections, criminal charges)or in further verification of facts.The Government should enable the Council to work steadily by making adecision on the appointment of new members,who were proposed by the existing ones, in accordance with good practice established in the period 2003-2014.

14. **Regarding the elections and the election campaign,** the Government and the Parliament should contribute to ensuring the respect for existing rules and their improvement**.**Here, weremind that the following bodies are responsible for compliance with regulations in the election campaign, some of which only partially fulfilled these obligations during previous election cycles: the Anti-Corruption Agency (regarding campaign financing and conduct of public officials in the election campaign, including

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a separation of state function from a party functions), the Regulatory body for Electronic Media (regarding the violation of equality in advertising and representation of election participants in the media and respect for the rules on the manner, time and place of political representation), the State Audit Institution (related to the use of public resources during the campaign), the public prosecutors' office (in relation to the misuse of public resources and bribery in connection with voting and possible crimes related to illegal financing), Republic Electoral Commission (regarding the regularity of the election process), Fiscal Council (regarding pre-election promises that may have an impact on the fiscal balance), and The Supervisory Board (for elections), established by the Parliament before the last parliamentary elections – in accordance with established good practice – which failed to react in questionable situations for which no other body was competent.We also believe that the legal framework for the election campaign should be amended, primarily by limiting the promotional activities of public officials during the campaign, by setting rules regarding campaigns ran by the third parties in connection with the election, by providingtransparency of information on fundingwhile the campaign is still on and by introducing more logical rules for the allocation of budget funds.We remind here that Serbia received recommendations for amending the rules from the ODIHR and EU TAIEX experts, that deadlines for changes in laws from national strategic acts have expired on several occasions and that certain issues have been raised within the dialogue on election conditions, but many problems still remain unresolved.

15. **The change of the Constitution** is currently planned within the framework of European integration, based on GRECO recommendations which focus on strengthening the independence of the judiciary (changing the composition of the High Judicial Council and the State Prosecutorial Council), but currently proposed solutions contradict thegoal that is set; it should be borne in mind that the amendment of the highest legal act isalso necessary for a more effective fight against corruption in order to, among other things,toreducethe excessively broad immunity from prosecution, to regulate the number of MPs and their positions as well as the status of autonomous state bodies,to prevent violations of the rules on the disposal of public finances through excessive borrowing and international agreements, better regulation in dealing with conflict of interests and providing stronger guarantees for the publicity of the work of government bodies.The procedure of amending the Constitution (public debate) and financing areferendum campaign that precedes the confirmation of constitutional changes is not regulatedand it should be resolved before the citizens vote at the referendum.

Transparency – Serbia

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Priorities for 2020/2021 –fight against corruption

Transparency Serbia (part of Transparency International) believes that for the rest of 2020 and during 2021, the following issues will be of the utmost importance for a more successful fight against corruption:

Political corruption:

- Investigation of all cases of misuse of public resources and use of public office in connection with the campaign for June 2020 election, as well as all irregularities related to the election process itself;
- Limiting the possibilities of public officials toconducti a "functionary campaign", that is, to seemingly carry on with regular activities but for the purpose of political promotion and establishing functional independent oversight;
- Introduction of rules on financing the referendum campaign;
- Ensuring greater transparency of influence on the enactment of regulations and individual decisions and the implementation of the Law on Lobbying;

Anti-corruption plans:

- Identifing the reasons why the goals from the National Anti-Corruption Strategy 2013-2018 were not achieved, and the adopt of a new Strategy that will include measures for accountability;
- Establishing effective monitoring of the implementation of the revised Action Plan for Chapter 23 EU Integration and the Operational Plan for Prevention of Corruption in Areas of Special Risk;

Prosecution and punishment of corruption:

- Investigating all cases of suspected corruption when relevant documents have been disclosed or direct accusations made, without the public prosecutor waiting for someone to file a criminal complaint, and publishing information on the outcome of the interrogation, including a justification in case it is established that there is no criminal responsibility;
- Providing all conditions for prosecuting corruption by applying special investigative techniques, for conducting financial investigations together withthe criminal ones and for being proactive in investigating corruption;
- Amendments to the Criminal Code, the Criminal Procedure Code and the Law on the Organization and Competence of the State Bodies in the Suppression of Organized Crime, Terrorism and Corruption in order to more effectively prosecute certain types of corruption;
- Improvement and comprehensive supervision over the implementation of the Law on Protection of Whistleblowers;
- Drawing up a control plan based on the Law on the Examination of the Origin of Property and the Special Tax, which will primarily include persons who have had the opportunity to abuse public office and authority, reviewing the constitutionality of

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that law before its implementation and publishing data on implementation in order to reduce doubts about arbitrariness;

Prevention of corruption - transparency of work:

- The Government of Serbia should ensure the execution of the decision of the Commissioner and to start acting regularly on the received requests;
- The right of access to information must not be diminished by any amendment to the Law on Free Access to Information of Public Importance (including current proposals concerning information on the work of indirect state-owned enterprises), or by provisions of other laws, it should rather be extended to other entities that have significant public assets (for example, joint ventures within a public-private partnership);
- The authorities should publish all information in an open format, and state control bodies should cross-reference data from these databases when determining their work plans and conducting supervision;
- The obligation to prepare and publish explanations for decisions should be introduced, where it does not currently exist (in certain Government conclusions, for example).

Public Finances:

- Setting effective supervision over the planning, implementation and execution of public procurement;
- Ensuring full transparency in public - private partnerships;
- Cessation ofthe practice of concluding such interstate agreements which could exclude transparency and competitionin the connection with public procurement contracts, public-private partnerships and the sale of public property;
- Cessation of the practice of conducting procurements on the basis of special laws adopted for infrastructure projects;
- Publishing complete and comprehensive information, monitoring and examining the expediency of measures taken to combat the consequences of the COVID-19.

Transparentnost – Srbija

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