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Transparency Serbia

BUSINESS INTEGRITY COUNTRY AGENDA

ASSESSMENT REPORT SERBIA

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INTRODUCTORY **INFORMATION**

Transparency International (TI) is the global civil society organization leading the fight against corruption. Through more than 100 chapters worldwide and an international secretariat in Berlin, we raise awareness of the damaging effects of corruption and work with partners in government, business and civil society to develop and implement effective measures to tackle it.

Transparency Serbia (TS) is non-partisan, non-governmental and non-for profit voluntary organization established with the aim of curbing corruption in Serbia. The Organization promotes transparency and accountability of the public officials as well as curbing corruption defined as abusing of power for the private interest.

Transparency Serbia is national chapter and representative of Transparency International in Republic of Serbia.

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ACRONYMS AND **ABBREVIATIONS**

ACA	Anti-Corruption Agency
APC	Agency for Prevention of Corruption
AEO	Authorized Economic Operator
AFS	Annual Financial Statement
AFR	Annual Financial Report
AML/CFT	Anti-Money Laundering/Combating the Financing of Terrorism Coordination Body
APML	Administration for Prevention of Money Laundering
BO	Beneficial Ownership
BIRN	Balkan Investigative Reporting Network
CC	Criminal Code
CEE	Central and Eastern Europe
CESID	Centre for Free Elections and Democracy
CINS	Centre for Investigative Journalism of Serbia
CPC	Commission for Protection of Competition
CSO	Civil Society Organization
EBU	European Broadcasting Union
FATF	Financial Action Task Force
FIC	Foreign Investors Council
GOPAC	Global Organization of Parliamentarians against Corruption
GRECO	Group of States against Corruption
HJC	High Judicial Council
IAASB	International Auditing and Assurance Standards Board
ICFJ	International Centre for Journalists
IFAC	International Federation of Accountants
IFRS	International Financial Reporting Standards

IJAS	Independent Journalists' Association of Serbia
IJAV	Independent Journalists' Association of Vojvodina
INTOSAI	International Organisation of Supreme Audit Institutions
ISA	International Standards on Auditing
ISAE	International Standard on Assurance Engagements
ISQC	International Standard on Quality Control
LA	Law on Accounting
LCRBO	Law on the Central Records of Beneficial Owners
PPL	Law on Public Procurement
MOM	Media Ownership Monitor
NALED	National Alliance for Local Economic Development
NUNS (IJAS)	Independent Journalists' Association of Serbia
POB	Audit Public Oversight Board
PPO	Governments' Public Procurement Office
PPP	Purchasing Power Party
RATEL	Regulatory Agency for Electronic Communications and Postal Services
RCC	Regional Cooperation Council
RSD	Serbian Dinar, dinars
RSF	*Reporters sans Frontières*/Reporters Without Borders
RTS	Radio Television of Serbia
RTV	Radio Television Vojvodina
SABRA	Serbian Business Registers Agency
SAI	State Audit Institution
SME	Small and medium enterprises
SNS	Srpska napredna stranka /Serbian Progressive Party
SOE	State-owned enterprises
TOR	Terms of Reference
UNS (AJS)	Association of Journalists of Serbia
VOICE	Vojvodina Research and Analytical Centre
WB	Western Balkans
WP	Whistleblower Protection

TABLE OF **CONTENTS**

LIST OF **TABLES**

LIST OF **FIGURES**

ABOUT THE BICA **ASSESSMENT**

The role of business integrity in fighting corruption

Transparency International defines business integrity as "adherence to globally-recognised ethical standards, compliance with both the spirit and letter of the law and regulations, and promotion of responsible core values (for example honesty, fairness and trustworthiness)."[1]

This shows that business integrity, in the broadest sense, encompasses the full range of good business practices commonly associated with corporate social responsibility. More narrowly, it reflects a commitment to abide by minimum legal requirements and norms of ethical business conduct. Organisations that act with integrity follow the law and ethical norms, they treat their employees, customers and business partners fairly and respectfully, they abide by their commitments, and they generally conduct their affairs in a socially responsible manner.

Transparency International recognises that companies are often seen as the supply side of the corruption equation, using corrupt payments to gain undue advantages (for example, in public tenders). Companies can also be victims of weak governance in countries where doing business with integrity may result in losing contracts to corrupt competitors, and victims of extortion requests by corrupt public officials or other business partners. Thus, countering corruption in and from the business sector must target both perspectives: demand side (the public sector) as well as supply side (the business sector). Civil society has an important role in preventing, reducing and responding to corruption. In order to achieve greater business integrity, it is necessary to understand various factors that affect it.

Firstly, it is important to assess what (corruption-related) laws and regulations the public sector provides and how they are enforced. Secondly, companies also engage with the public sector in their day-to-day operations, such as obtaining operating licenses and other public services, paying taxes, enforcing contracts, and so on. These processes provide risks for business integrity as well. For example, high discretionary power in granting operating licenses to companies can result in extortion requests by public servants.

In addition, businesses have their own responsibility to act with integrity. Following the notion of corporate social responsibility, companies not only need to comply with laws and regulations; it is increasingly expected that they should also adhere to globally recognised ethical standards and expectations from society (which might even go beyond the law) as part of their business activities. Assessing whether companies implement anticorruption ethics and compliance programmes within their own operations, promote integrity in their supply chains, publicly report on their anti-corruption endeavours, or engage in collective action initiatives with their peers or other stakeholders is therefore also relevant to understanding where a country stands on business integrity.

There is a strong interdependency between these two perspectives. It is therefore important to look at both stakeholder groups – the public sector and the business sector – and understand what each of them is contributing to a situation in which companies do business in a clean and fair manner.

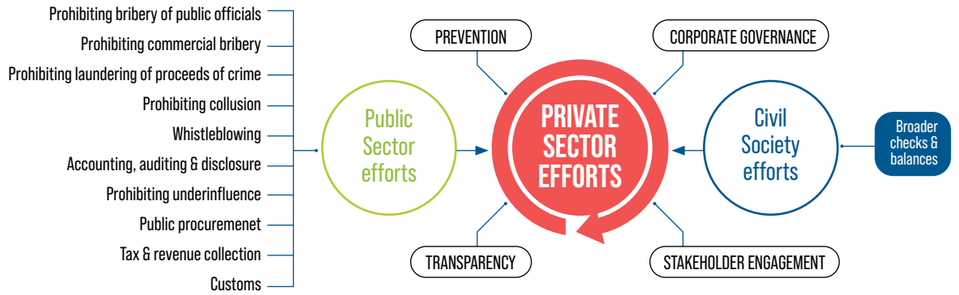
Methodology

The Business Integrity Country Agenda (BICA) is an initiative developed by Transparency International (TI) that seeks to reduce corruption in the business environment. It comprises two stages: first, an assessment of the business integrity environment in the country, resulting in the BICA Assessment Report and, second, the translation of the assessment's key findings into an operational reform agenda to be implemented through collective action. BICA is based on the idea that collective actions, involving government, business sector and civil society are more effective in promoting business integrity than actions by individual stakeholders or stakeholder groups acting alone. The involvement of these three stakeholder groups is thus crucial in both stages.

The major objective of the BICA is to propose a reform agenda that seeks to improve the business integrity environment in the country and ultimately reduce corruption in the country's business sector. To achieve this, BICA will assess not only thematic areas that influence the regulatory and societal environment in which companies are operating, but also the way in which companies themselves contribute to doing business with integrity. BICA therefore offers a comprehensive and unique approach for gathering all the relevant information to provide a credible foundation for action.

[1]Transparency International, Policy Position, Building Corporate Integrity Systems to Address Corruption Risks, #4/2009

Figure 1. BICA Assessment framework



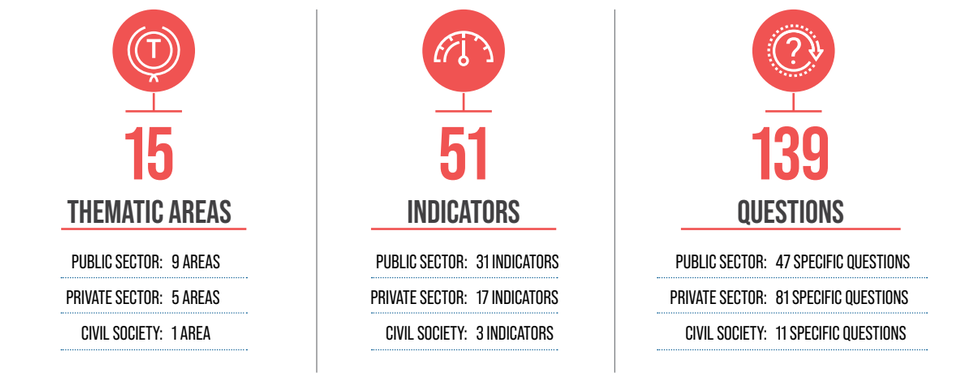
Source: Transparency International BICA Framework

Within the framework of business integrity recognising the importance of the interactions between stakeholders in the public and private sectors and the civil society, this assessment considers:

- the environment that is set by the public sector for companies to do business
- the public sector's interactions with the business sector
- private sector transparency and self-regulation
- collective and sectorial initiatives already existing at the level of the stakeholders in the public and private sectors as well as civil society

The three main stakeholder groups, that are public sector, business sector and civil society, are assessed based on thematic areas. There are nine thematic areas or assessment categories for the public sector, and five thematic areas or assessment categories for the private sector, and finally, civil society has just one thematic area or assessment category. Each thematic area is then further broken down and assessed using key indicators.

Figure 2. BICA Assessment thematic areas, indicators and questions



The BICA assessment indicators comprise a general question and a set of follow-up guidance criteria to be answered with information and evidence. The BICA indicators offer a quantitative summary assessment of the researched data. However, in order to offer a general view of the business integrity situation, the assessment also includes a colour coded scoring system. A numerical scale of a 0 to 100 is used, where the minimum value (0) indicates the total absence of the elements assessed and the maximum value (100) indicates fulfilment of all the criteria assessed, based on the follow-up questions. In order to facilitate communication, the results are visualised through common and easily understood "traffic light" symbols: red indicates 0 score, orange stands for 25, yellow for 50, yellow-green for a score of 75 and green for 100.

Table 1. BICA scoring rules

SCALE	COLORS	COMMENT
0		The scoring question is answered with **"No, not at all"**. The evidence collected for the assessment criteria indicates that there are requirements are not met at all.
25		The scoring question is answered with **"To a limited extent"**. The evidence collected for the assessment criteria indicates that few of the requirements are met or that many requirements are met to a limited extent.
50		The scoring question is answered with **"To some extent"**. The evidence collected for the assessment criteria indicates that roughly half of the requirements are met or that most requirements are met to some extent.
75		The scoring question is answered with **"Largely"**. The evidence collected for the assessment criteria indicates that many of the requirements are met or most requirements are met to a large extent.
100		The scoring question is answered with **"Yes, fully"**. The evidence collected for the assessment criteria indicates that (almost) all of the requirements are met.

Source: Transparency International BICA Assessment, Supplement #1: Assessment Process

The BICA Assessment Report Serbia is based on evidence gathered from multiple sources: desk study of the relevant existing information (legislation, official documents, studies), documents collected under free access to information requests, analysis of corporate anti-corruption measures, related disclosure practices adapted from TI's Transparency in Reporting on Anticorruption (TRAC) tool[2] and expert interviews to supplement and/or validate information obtained through the desk study (approximately 50 expert interviews).

A key feature of BICA is that multiple stakeholders must discuss and validate the researchers' assessments and observations. For the purpose of this research, a National Advisory Group (NAG) was created. It includes 13 members, comprising representatives of all stakeholder groups.

The research was not able to evaluate the business sector in its entirety. The indicators of this stakeholder area reflect the reality of large companies operating in the Serbian economy[3]. The same case is with indicators related to the enforcement of legal requirements and practices. These disclaimers point to the fact that this study is a starting point and although it gives broad directions about where should be the focus of legislation, enforcement, companies and civil society, there are particularities not considered in this research due to its limitations.

The BICA assessment process in Serbia began in April 2019 and ended in July 2020. This included an initial meeting of the National Advisory Group (NAG), sampling enterprises and research that led to the production of evidence, an assessment of BICA indicators and the writing of the report, NAG, as well as EBRD and TI-S review and validation of the research findings and analysis.

[2]Transparency in Corporate Reporting (TRAC) evaluation can be seen as a diagnostic study to understand the reporting practices of companies operating in the country. TRAC only assesses the disclosure of information by companies and does not capture the implementation of these practices. The report is entirely based on information that is available on company websites. The Serbian TRAC includes 25 of the largest Serbian companies in terms of income in 2016.
[3]Top 20 company by business revenue in 2018 according to data of the Serbian Business Registers Agency

EXECUTIVE SUMMARY

The Business Integrity Country Agenda – BICA Assessment Report Serbia is a comprehensive analysis that seeks to reduce corruption in the business environment. This analysis assesses the three main stakeholders that are the public, private and civil society actors, in mutual interaction, and examines not only thematic areas that influence the regulatory and societal environment in which companies operate, but also the way in which they contribute to doing business with integrity. BICA Serbia therefore offers a comprehensive and unique approach for gathering all the relevant information to provide a credible foundation for action. The Business Integrity Country Agenda – BICA Assessment Report Serbia is developed based on the methodology that was developed by Transparency International (TI) and until 2020 was implemented in more than 10 countries.

The analysis is structured into 15 thematic areas, comprising a total of 51 indicators and 139 general questions and a set of follow-up guidance criteria to be answered by referring to information and evidence. The assessment involves scoring and attributing a colour code to each indicator, based on compliance with the requirements of the questions.

The score range is as follows: 0 or red for no positive answer; 25 or orange when few requirements are met; 50 or yellow when half of the answers are positive; 75 or yellow-green when most of the requirements are fulfilled; and 100 or green when all requirements are met.

The BICA Assessment Report Serbia is based on evidence gathered from multiple sources: a desk study of the relevant existing information (legislation, official document and studies), an analysis of corporate anti-corruption measures of the companies operating in Serbia, the related disclosure practices adapted from TI's Transparency in Reporting on Anticorruption (TRAC) tool that is applied on a sample of companies with the highest operating income and interviews with experts. The process included the selection of a National Advisory Group (NAG) that includes 13 members, comprising representatives of all the stakeholder groups.

The research was conducted in the course of 2019 and updated in the spring of 2020 (in cases of substantial changes to the legal framework). Every effort was made to verify the accuracy of the information contained in the report. All information was believed to be correct as of July 2020.

PUBLIC SECTOR ASSESSMENT

The public sector thematic area covers business integrity issues such as bribery of public officials, bribery in the private sector, money laundering, illicit arrangements that undermine economic competition, undue influence on decision-making processes, public tendering and tax administration. Legal provisions in Serbia for most thematic areas provide a solid basis to foster and maintain business integrity. However, there are still legal loopholes and their consequences are significant.

The enforcement of existing rules is an even greater concern. The main problem is the small number of cases that have been investigated by the relevant authorities. One reason for such a situation is the insufficient capacity of institutions in charge of the oversight over both the public and the private sector. Another factor is the exposure of law enforcement agencies to political influence, resulting with unequal treatment of businesses in similar situations. When public oversight institutions engage in control (inspections for example) they utilise many of their capacities to achieve formal compliance with regulations (for example in the field of money laundering), while substantial wrongdoings (collusion, for example) remain largely unchecked. Finally, the general focus of citizens' anti-corruption demands is still on the public sector and its officials, whose capacity to support, enable and facilitate lawful as well as unlawful private sector operations is huge. Consequently, the efforts of law enforcement bodies on cracking down on corruption in the private sector is significantly lower than in cases where corruption is examined through the public-private interaction.

Table 2. Sectoral assessment

PUBLIC SECTOR	0	25	50	75	100
1.1 PROHIBITING BRIBERY OF PUBLIC OFFICIALS	**75**				
1.1.1 Laws prohibiting bribery of public officials					
1.1.2 Enforcement of laws prohibiting bribery of public officials					
1.1.3 Capacities to enforce laws prohibiting bribery of public officials					
1.2 PROHIBITING COMMERCIAL BRIBERY	**75**				
1.2.1 Laws prohibiting commercial bribery					
1.2.2 Enforcement of laws prohibiting commercial bribery					
1.2.3 Capacities to enforce laws prohibiting commercial bribery					
1.3 PROHIBITING LAUNDERING OF PROCEEDS OF CRIME	**75**				
1.3.1 Laws prohibiting laundering of proceeds of crime					
1.3.2 Enforcement of laws prohibiting laundering of proceeds of crime					
1.3.3 Capacities to enforce laws prohibiting laundering of proceeds of crime					
1.4 PROHIBITING COLLUSION	**83**				
1.4.1 Laws prohibiting collusion					
1.4.2 Enforcement of laws prohibiting collusion					
1.4.3 Capacities to enforce laws prohibiting collusion					
1.5 WHISTLE BLOWING	**50**				
1.5.1 Whistleblower laws					
1.5.2 Enforcement of whistleblower laws					
1.6 ACCOUNTING, AUDITING AND DISCLOSURE	**56,2**				
1.6.1 Accounting and auditing standards					
1.6.2 Enforcement of accounting and auditing standards					
1.6.3 Professional service providers					
1.6.4 Beneficial ownership					
1.7 PROHIBITING UNDUE INFLUENCE	**58,3**				
1.7.1 Laws on political contributions					
1.7.2 Enforcement and public disclosure on political contributions					
1.7.3 Laws on lobbying					
1.7.4 Enforcement and public disclosure on lobbying					
1.7.5 Laws on other conflicts of interest					
1.7.6 Enforcement and public disclosure of other conflicts of interest					
1.8 PUBLIC PROCUREMENT	**62,5**				
1.8.1 Operating environment					
1.8.2 Integrity of the contracting authorities					
1.8.3 External safeguards					
1.8.4 Regulations for the private sector					
1.9 TAXES AND CUSTOMS	**50**				
1.9.1 Operating environment					
1.9.2 Integrity of the tax administration authorities					
1.9.3 External safeguards					

Recommendations for public sector

- The capacities of law enforcement agencies need to be strengthened in order to secure the prosecution of corruption and economic crimes fully and to implement wide range of proactive investigations
- Enforcement authorities should demonstrate independence in their work, while political decision makers should refrain from any interference
- The Commission for the Protection of Competition, the Public Procurement Office and the Republic Commission for the Protection of Rights in Public Procurement Procedures should cooperate with each other as well as with the private sector in order to identify an increased number of cases of collusion and to impose dissuasive sanctions. It is necessary to improve their knowledge of sectoral standards, in order to distinguish what is the rigging of a tender from the legitimate need to purchase goods of a certain quality.
- The Law on Whistleblower Protection need to be amended in order to penalize appropriately all forms of retaliation and to place one agency in charge of general and comprehensive oversight of the law's implementation
- The Ministry of Justice (which now partially monitors the Law on Whistleblower Protection) should closely analyse the effectiveness of law enforcement and transparency of other bodies in this area. This monitoring should focus not only on the protection granted to whistleblowers, but also on acting on information provided by them
- The Law on the Prevention of Corruption should be amended so as to prevent all forms of so-called officials' campaigns (and not just direct misuse of public resources and public officials' meetings for the benefit of political parties)
- The Law on the Financing of Political Activities should be amended in order to:
  - increase transparency and improve rules on political party financing and other election participants (donations and non-financial contributions, payment of loans, deferred payment of campaign costs, third party campaigning, etc.)
  - introduce the duty for the APC to prepare and publish report on the control of the financial statements of political parties and election participants, as well as obligation to publish all information about identified wrongdoings and the measures taken by the APC
- The Law on Lobbying should be amended so as to clarify whether informal attempts to influence the adoption of laws and other regulation is allowed
- The government should increase the transparency of the negotiation process and the transparency of information related to bilateral agreements and credit arrangements with other countries, in particular when such agreements may affect the application of the Public Procurement Law and the Public Partnership Law for major infrastructure projects
- The current Law on Public Procurement should be revised to include a provision from the previous law (2012) that restricted post-employment of civil servants in former suppliers' companies, provided for the mechanism of the independent Civil Supervisor, rules for contract approval in conflict of interest cases and duty to report violation of competition. The Law should make mandatory for purchasing entities to justify their actions for tenders where they received one bid only.
- The transparency of the work of the Tax Administration should be significantly increased by publishing annual reports on regular basis, information on agreements with national and multinational companies, and by providing access to information about the TA's activities in accordance with the law
- The Ministry of Finance should revise regulations and practices of the TA and the customs administration in order to:
  - clarify legal provisions and thus reduce the need for further regulation through the institute of legal opinions, issued by the MF
  - reduce the discretionary powers of tax and customs officials
  - further limit the level of interaction between taxpayers and customs officers who directly inspect goods (for example by increasing the amount of data that may be analysed before inspection)
  - boost the capacities of tax inspection in order to reduce opportunities for unequal treatment of controlled subjects bearing a similar control risk
- in order to fully secure the enforcement of accounting standards and rules, the role of accounting and audit needs to be strengthened; this includes, among other things, the introduction, through the law, of an obligation for a greater number of companies to use the services of qualified accountants and for accountants to be co-liable for fraud in financial reporting
- Non-financial reporting rules should include integrity and anti-corruption activities
- The institutions in charge of overseeing the application of accounting and auditing rules should significantly increase the transparency of information about their findings
- Introduction of compliance function in the public sector should be considered

PRIVATE SECTOR ASSESSMENT

There are significant differences in standards adopted and applied in the private sector, depending on the size of the business, share of international capital, professionalism of the management and the industry in question. Where standards and policies are developed, which remains the case with a minority of companies, they cover most of the relevant issues. There is also a legal provision aimed to ensure standards of good corporate governance, mainly through mandatory internal structures, external audit and protection of the rights of shareholders. However, the implementation of these standards faces a range of obstacles, including the understanding of these rules as bureaucratic requirements, formal compliance and incompatibility with some of the widespread cultural models that influence business in the country.

There are still no sufficient incentives for the private sector in Serbia to promote integrity in its activities. There is a public odium again corruption throughout the private sector, but it is still not articulated into an action in the common interest. In part, such a situation is the consequence of a high influence of the public sector on the national economy and the dependence of businesses on their connections with those in power, in particular when it comes to small enterprises at the local level. Business associations may help resolve that problem by greater promotion and channelling of anti-corruption initiatives of the business sector.

Table 3. Private sector assessment

PRIVATE SECTOR	0	25	50	75	100
2.1 INTEGRITY MANAGEMENT	**31,25**				
2.1.1 Provision of policies					
2.1.2 Implementation of practices					
2.1.3 Whistleblowing					
2.1.4 Business partner management					
2.2 AUDITING AND ASSURANCE	**33,3**				
2.2.1 Internal control and monitoring structures					
2.2.2 External audit					
2.2.3 Independent assurance					
2.3 TRANSPARENCY AND DISCLOSURE	**18,7**				
2.3.1 Disclosure of anti-corruption programmes					
2.3.2 Disclosure on organisational structures					
2.3.3 Disclosure on country-by-country operations					
2.3.4 Additional disclosure					
2.4 STAKEHOLDER ENGAGEMENT	**33,3**				
2.4.1 Stakeholder relations					
2.4.2 Business-driven anti-corruption initiatives					
2.4.3 Business associations					
2.5 BOARD OF DIRECTORS	**33,3**				
2.5.1 Oversight					
2.5.2 Executive remuneration					
2.5.3 Conflicts of interest					

Recommendations for the business sector

- New national strategic anti-corruption documents should provide for a greater role of the private sector in the prevention of corruption, including incentives for businesses to support anti-corruption activities of other stakeholders and to engage in joint initiatives of the public sector, private sector and civil society;
- All companies operating on the Serbian market and Serbian companies operating abroad should establish and publish clear and comprehensible formal policies to prevent corruption that may arise in their relations with the public sector, as well as corruption that occurs in the relations between different companies and their employees. These policies should focus in particular on areas not fully regulated or elaborated in the law (conflict of interest, political and charitable contributions, sponsorships, gifts, hospitality and expenses, collusion);
- Anti-corruption programmes of companies should rely on best international standards and good practices but should also address sector specifics and challenges of the local context, and to emerge from internal consultations involving all stakeholders;
- The implementation of anti-corruption programmes of the private sector should be encouraged by the Chamber of Commerce and other company associations and supported through the activities of the Agency for Prevention of Corruption, Ministry of Economy, international and national financial organizations and civil society;
- Companies should provide stakeholders with information about implementation of their anti-corruption programmes and periodically review these programmes and their effects;
- The discussion on implementation of whistleblower protection rules in the private sector should be organised in order to identify best practices along with major concerns and obstacles. Discussions should cover all aspects of potential whistleblowing and similarities and differences of this concept with other coexisting mechanisms, such as compliance procedures, consumer protection, protection of company trade secrets and reputation, protection of labour rights, measures for the protection of public interest from corruption and collusion, environmental protection and food safety mechanisms;
- There should be a legal mechanism in place at the national level to track the implementation of whistleblower protection rules in the private sector;
- Companies and the public authorities should both consider rewarding whistleblowers when they helped protect financial and other legitimate interests of companies or the public interest;
- Companies raising awareness about corruption or collusion should be protected from any retaliation by having the case effectively investigated, as well as through compensation for the incurred damages;
- The role of corporate lawyers in combating corruption that affects private sector or occurs in the private sector should be strengthened both in the law and through internal anti-corruption policies of companies;
- Companies should encourage their business partners and subsidiaries to adhere to the same anti-corruption policies that they promote;
- The engagement of companies in multi-stakeholder anti-corruption initiatives should be promoted by public authorities, the media, civil society and business associations;
- Companies and business associations should more actively promote anti-corruption initiatives of the private sector. The government (ministries) and the parliament should foster such initiatives by organising open debates and public hearings about the implementation of legislation that affects business sector. Such discussions should focus on compliance with the rules in areas where public-private sector interaction is most common, such as inspections, licensing and contracting with the state authorities;
- Business associations should, on the basis of their members' experiences, initiate changes in law and practice aimed to decrease corruption risks;
- Business associations should be transparent about their lobbying activities and Government should incite voluntary disclosure through stimulative measures (for example to include in the consultative process associations that disclosed their lobbying targets)
- Legal requests when it comes to the transparency of the operations of companies and reporting should be more detailed in order to cover the elements that are currently missing;
- The Business Registers Agency should make information about beneficial ownership in companies available within the general company register

CIVIL SOCIETY ASSESSMENT

Despite the fact that anti-corruption is one of the frequent topics in Serbian civil society and media, business integrity texts and initiatives are rare exceptions. There is a huge potential to improve that situation through collective actions. However, the question is to what extent business people would be willing to commit to such actions since those activities may bring them immediate commercial damage (it could reduce their chances of getting government contracts) while the commercial payoff of the anti-corruption activities remains uncertain.

Most media outlets cannot function independently of the government and commercial advertisers, which prevents them from fulfilling their role completely in the fight against corruption. However, there are journalists and media outlets in Serbia that investigate corruption in the public sector and that could investigate the business sector as well.

Table 4. Civil society sector assessment

CIVIL SOCIETY	0	25	50	75	100
3.1 BROADER CHECKS AND BALANCES	**25**				
3.1.1 Independent media					
3.1.2 Civil society engagement in business integrity					
3.1.3 Civil Society monitoring of business integrity					

Recommendations for civil society

- Civil society should cooperate with the business sector and other potential donors and build its capacities in the field of business integrity;
- Civil society should enhance its capacities and activities in the field of research and monitoring of business integrity, identifying and promoting best practices and advocating for the adoption of related national policies and laws;
- Civil society organisations should cooperate more broadly with the business sector and in particular with small and medium enterprises in identifying the major obstacles they face, the effects of corruption and weaknesses of state oversight mechanisms;
- The media should actively promote integrity in the business sector and report on good practices in order to create a public demand for ethical behaviour;
- Budget support should be provided for media programmes of public interest covering specific cases, the types and damageable effects of corruption and collusion, as well as the effectiveness of state oversight mechanisms; such budget support should not be provided to media that do not respect professional standards;
- Donor support for the media reporting on corruption should include more frequently informative and analytical media and journalists;
- Media and journalists associations should draft and adhere to their own codes regarding the relations with the private sector and potential conflicts of interest.

COUNTRY CONTEXT

Population and political context

According to the Statistical Office of the Republic of Serbia, the estimated number of population in the Republic of Serbia in 2018 was 6,982,604.[4] Among the population, approximately 66 per cent are between 15 and 64 years old and constitute the economically active population. The population average age is 43.2 years.[5] Observed by gender, 51.3 per cent are women and 48.7 per cent are men. The rate of natural increase equals -5.5‰.[6]

In 2018, 59.4 per cent of the Serbia's population resided in urban settlements. Observed by regions, the largest number of population lives in the Sumadija and West Serbia region – (28.3 per cent), while the fewest people live in the South and East Serbia region (21.7 per cent). Belgrade is Serbia's capital and largest city, populated with 1,690,193 people.[7]

According to the Constitution from 2006, "the Republic of Serbia is a state of the Serbian people and all citizens who live in it, based on the rule of law and social justice, the principles of civil democracy, human and minority rights and freedoms, and commitment to European principles and values." Serbia is a parliamentary constitutional republic with an electoral democracy. The Parliament is the supreme representative body and the holder of constitutional and legislative power in Serbia[8]. The Parliament is unicameral, with 250 members, elected to four-year terms in a proportional election system, from political party lists. The President, elected by the citizens to a five-year term, plays a largely ceremonial role under to the constitution. However, he has important political and appointive functions and commands the army. According to the constitution, the Government is the holder of executive power[9]. The president proposes the candidate for prime minister and the parliament elects the PM and the cabinet, selected by the PM, by a majority vote of the parliament. According to the constitution, the judiciary is independent of the executive and the legislature. On proposal of the High Judicial Council (HJC), the parliament elect as judges persons who are elected to the post of judge for the first time, while the HJC elect judges to the permanent posts. Prosecutors are elected by the parliament, at the government's proposal, for a six-year term. The State Prosecutorial Council proposes candidates to the government.

There is separation of powers into branches, each with separate and independent powers and areas of responsibility: a legislature, an executive, and a judiciary. The constitution prescribes that the relationship between these three branches of power shall be based on balance and mutual control.[10]

Following the fall of communism in 1990, Serbia entered into a period of multi-party political pluralism, while wider democratic reforms followed only in the aftermath of the wars in the former Yugoslavia and the demise of Slobodan Milosevic's crypto-communist regime in late 2000. Since 2014, the country has been negotiating its EU accession.

Serbia has suffered from democratic backsliding in recent years, having dropped in ranking from "free" to "partly free" in the 2019 Freedom House report[11]. As the report stated, "Serbia's status declined due to deterioration in the conduct of elections, continued attempts by the government and allied media outlets to undermine independent journalists through legal harassment and smear campaigns, and President Aleksandar Vucic's de facto accumulation of executive powers that conflict with his constitutional role. Vucic has remained the dominant figure in government despite the presidency's limited executive powers under the constitution. The independence of the judiciary is compromised by political influence over judicial appointments, and many judges have reported facing external pressure regarding their rulings. Politicians regularly comment on judicial matters, including by discussing ongoing cases or investigations with the media." The World Justice Project depicts Serbia in its 2019 Rule of Law Index as a country with a very weak rule of law, especially in the area of improper government influence.[12] International sources describe the country's judiciary as very prone to political influences. The World Economic Forum ranks Serbia as 101 out of 141 countries in its Global Competitiveness Report 2019 in the category "Judicial independence".[13]

[4]https://www.stat.gov.rs/en-us/vesti/20190628-procenjen-broj-stanovnika-2018/?s=1801
[5]https://www.mdpp.gov.rs/demografija-aktuelni-pokazatelji.php
[6]https://www.mdpp.gov.rs/demografija-aktuelni-pokazatelji.php
[7]Estimation as of June 2018, Statistical Office of the Republic of Serbia
[8]The Constitution of Serbia, Article 98
[9]The Constitution of Serbia, Article 122
[10]The Constitution of Serbia, Article 4
[11]https://freedomhouse.org/report/freedom-world/2019/serbia
[12]https://worldjusticeproject.org/sites/default/files/documents/ROLI-2019-Reduced.pdf
[13]http://www3.weforum.org/docs/WEF_TheGlobalCompetitivenessReport2019.pdf

ECONOMIC SITUATION

Introduction

Serbia is an upper-middle income country of seven million people with GDP per capita of €6,600 euros (US$7.200)[14] or 17,400 international dollars when expressed in PPP terms.[15] The country is the largest market in the Western Balkan region (comprised of Serbia, Albania, Montenegro, Macedonia, Bosnia and Herzegovina and Kosovo*), looking to join the EU block. It is a work-in-progress open market economy, with an aging population, large outflow of young workforce (brain drain) and strong expat community contributing to the homeland.

The fallout from the dissolution of Yugoslavia and the turmoil of the 1990s has seen Serbia emerge as an economically eroded but fast growing country in the first years of the 21st century, only to be hampered by a series of political and economic setbacks leading to decelerated growth and perpetually lagging structural reforms. However, following a period of austerity, the economy has finally started to pick up in the last couple of years. The fate of a handful of large, failing state-owned enterprises has been resolved and macro stability achieved.

Serbia remains a go-to destination for foreign investments in the region. Serbia is also a regional net exporter, has a strong agricultural sector, rapidly growing IT sector and a fast developing tourism. Despite all this, it is still one of the least developed countries in CEE.

Macroeconomic landscape

In 2019, gross domestic product reached €45.9 billion[16], making Serbia by far the largest economy among its peers in the WB[17] but smaller then Montenegro in per capita terms.[18] Since 2013, the country has enjoyed low inflation (1.9 per cent in 2019)[19], albeit with the central bank regularly undershooting the target until it changed the goals in 2017. Currently, inflation target is set to 3±1.5per cent, with April inflation falling short of the mark at 0.6 per cent.[20] The official currency in Serbia, the Serbian dinar (RSD), is in a free-floating regime, but the exchange rate stayed broadly stable since the end of 2017, at around 117 to 118 dinars for 1 euro. The National Bank of Serbia intervenes on the interbank exchange market to prevent excessive daily volatility of prices, although there were claims that the bank was in effect acting as a guardian against depreciation of the dinar.[21] Even though these claims have subsided in recent times due to favourable market conditions for the local currency, they might have re-emerged after the President of Serbia announced in March 2020, in light of the Covid-19 pandemic, that "we are ready to protect the exchange rate and stability".[22] The independence of the central bank has also been brought into question before: at one occasion when the President ordered or suggested to the governor to buy more gold reserves, with the latter proceeding to fulfil the request[23], and before that, in 2012, when the then Governor Dejan Soskic resigned from the post, immediately before the parliament enacted the changes to the Law on the Central Bank, seen by him and others as infringing on the bank's independence.[24]

Interest rates in Serbia are at their minimum, with the central bank's benchmark rate set at 1.25 per cent - a record low and a continuation of an unbroken downward trend lasting since February 2013, when the benchmark was at 11.75 per cent.[25] Net foreign currency reserves are at €10.77 billion[26], near their historical maximum.

Serbia runs a tight fiscal policy, with the consolidated general government deficit at 0.2 per cent of GDP in 2019[27], following two years of surpluses and with the goal of maintaining 0.5 per cent deficit in the 2020-2021 period.[28] Public debt stands at 57.6 per cent of GDP[29], in line with the Maastricht criteria for joining the EU, but still well above Serbia's fiscal rule ceiling of 45 per cent. EU and CEFTA remain dominant trading markets for the country. Exports were growing at an annual rate of 8 per cent in 2019 and imports at 7.8 per cent.[30] The year of 2020 so far has seen external trade deficits expanding, due to a pandemic-driven drop in both exports and imports, with exports covering 70.7 per cent[31] of imports as of March this year.

Given the global impact of the Covid-19 outbreak, the macro landscape is expected to undergo significant changes later in the year and in the near future.

Fiscal Consolidation

The current fiscal health of the Serbian economy came after a prolonged period of forced austerity. Having failed at its first attempt to rein in state finances (2012-2014), the authorities embarked on a second fiscal consolidation programme (2014-2017), this time with significantly better results. The year 2012 saw Serbia as a country in recession, with negative growth of -0.7 per cent, inflation of 12.2 per cent, weakening currency reserves, unemployment rate of nearly 24 per cent, consolidated budget deficit of -6.4 per cent, surging public debt (about 53 per cent vs. 43 per cent

This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

[14]2019 data, National Bank of Serbia (GDP) and Statistical Office of the Republic of Serbia (population) https://www.stat.gov.rs/en-us/vesti/20190628-procenjen-broj-stanovnika-2018/?s=1801https://www.nbs.rs/export/sites/default/internet/latinica/80/osnovni_makroekonomski_indikatori.xls
[15]https://data.worldbank.org/indicator/NY.GDP.PCAP.PP.KD?locations=RS
[16]https://www.nbs.rs/export/sites/default/internet/latinica/80/osnovni_makroekonomski_indikatori.xls
[17]https://ec.europa.eu/eurostat/tgm/web/_download/Eurostat_Table_tec00001FlagNoDesc_ca0e99d7-f1d7-4914-9ba0-9a433469f3e8.xls
[18]https://ec.europa.eu/eurostat/tgm/web/_download/Eurostat_Table_tec00001FlagNoDesc_2cec48b8-6e19-485c-9c06-6afa22a8ece9.xls
[19]https://www.nbs.rs/export/sites/default/internet/latinica/80/osnovni_makroekonomski_indikatori.xls
[20]https://www.nbs.rs/internet/latinica/30/30_9/kretanje_inflacije.html
[21]http://rs.n1info.com/Biznis/a136250/NBS-brani-kurs-dinara.html
https://ekonomskevesti.com/srbija/nbs-ne-brani-dinar-ali-je-za-potrosila-166-milijardi-evra/
[22]https://www.blic.rs/biznis/vesti/spremni-smo-da-stitimo-kurs-i-stabilnost-vucic-ocekuje-nas-tesko-vreme-ali-niko-nece/e1emwnd
[23]https://www.blic.rs/biznis/vesti/srbija-kupuje-10-tona-zlata-vucic-porucio-jorgovanki-kupuj-jer-srbija-mora-biti/6r51bjj
[24]https://www.rts.rs/page/stories/sr/story/13/ekonomija/1150336/soskic-podneo-ostavku.html
[25]https://www.nbs.rs/export/sites/default/internet/latinica/30/30_4/30_4_5/istorijski_pregled.xls
[26]https://www.nbs.rs/internet/cirilica/scripts/showContent.html?id=15487&konverzija=no
[27]https://www.mfin.gov.rs/wp-content/uploads/2020/04/Table-3-Consolidated-General-Government.xlsx
[28]https://www.mfin.gov.rs/UserFiles/File/strategije/2019/REVIDIRANA%20FISKALNA%20STRATEGIJA%202020-2022.pdf
[29]http://www.javnidug.gov.rs/upload/Kvartalni%20izvestaj%20stanja%20i%20strukture%20javnog%20duga/2020/Kvartalni%20izvestaj%2030.09.2020.xlsx
[30]https://www.stat.gov.rs/en-US/vesti/20191229-ekonomska-kretanja-2019
[31]https://www.stat.gov.rs/en-us/vesti/20200430-spoljnotrgovinska-robna-razmena-za-tekuci-period-i-mart-2020/?s=1701

of GDP the year before) and with the dinar losing 11 per cent of its value against the euro.[32] The country was locked in a debt spiral, even failing to honour its commitments to the IMF with respect to budget spending, leading an already active programme with the Fund to fall apart early in the election year of 2012.

An ambitious programme set in motion after the elections, fell heavily short of expectations. Despite raising taxes and reducing public wages and pensions, Serbia ended up with an even higher public debt, at one point reaching 73 per cent. Analysis conducted by the Fiscal Council, an independent body in charge of monitoring government spending, concluded that "primarily due to a jump in tax indiscipline and huge budget expenditures for state-owned enterprises and banks, measures taken in the period 2012-2013 ended up as a futile sacrifice".[33]

A new attempt was launched in 2014, focusing on strict spending cuts, tax enforcement and suppression of the informal sector, as well as structural reforms - which would fail, yet again, to take off. Hence, the success was actually a serendipitous encounter of favourable external forces and internal savings on pensions and public wages.

As noted in a working paper issued for a business conference in 2018:[34]

"From a huge fiscal deficit in 2014 of 6.6 per cent of GDP, Serbia had arrived in 2017 to a structurally balanced budget. However, in addition to undeniable achievements, fiscal consolidation also had many weaknesses...Fiscal results did not come solely as a consequence of planned measures and reforms (reforms had almost completely underperformed) but were in greater part a consequence of unforeseen circumstances leading to strong growth in public revenues... just from the rise in revenues and decrease in debt interest expenditure... came €2.3 billion of unplanned 'savings', which practically made the success of fiscal consolidation in Serbia possible... a larger part of these fiscal improvements came from the outside, as a consequence of favourable international factors (global drop in prices of oil and gas, decrease in interest rates in Europe and stronger economic recovery in the EU)... On the other hand, initially planned savings measures were practically reduced only to cuts in pensions and public wages... Planned reforms in education, healthcare, public enterprises, privatisation of state-owned enterprises, increase in public investments etc., did not happen".

Nevertheless, the change in the state of public finances was clear. By 2019, the GDP growth recovered to 4.2 per cent (on top of 4.4 per cent the year before), inflation stood at 1.9 per cent, unemployment dropped to 10.4 per cent, budget was nearly balanced (with primary budget in surplus) and public debt returned to safer levels.

GDP Composition

In 2019, the Serbian GDP reached €45.9 billion.

The country's economy is dominated by manufacturing, followed by wholesale and retail trade, real estate activities and agriculture. Information and communication technologies, and construction also significantly contribute to GDP. [35]

Manufacturing includes notable sectors such as food products, basic metals, motor vehicles, chemicals, rubber and plastic products, machinery and electrical equipment. All of these significantly contribute to Serbian exports.[36] A number of important segments overwhelmingly rely on a single player or just a few players to drive the whole industry, such as "Fiat-Chrysler" for motor vehicles, "Hesteel" for basic metals (together with "Zijin") or "NIS Gazpromneft" for petrochemicals.

Three quarters of the Serbian GDP is created in the private sector[37], and 28 per cent of GDP comes from small and medium enterprises and entrepreneurs.[38]

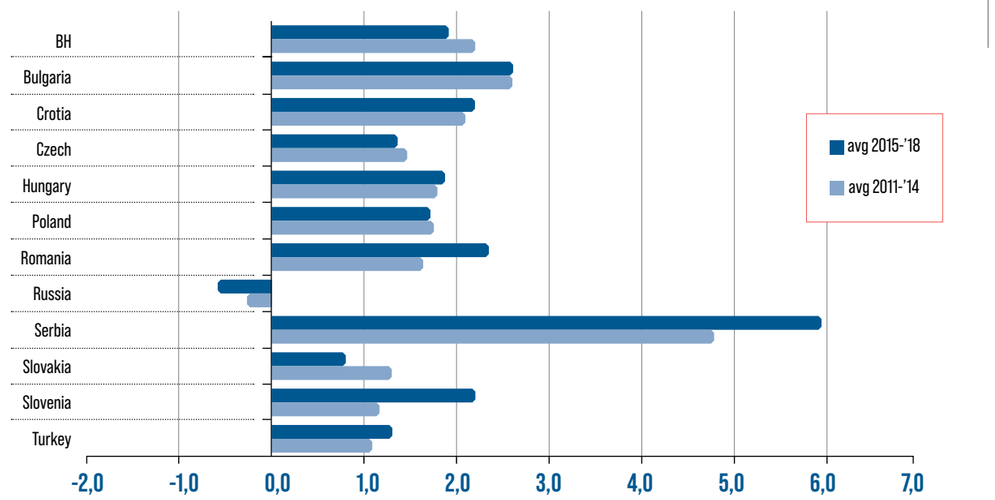
FDI & Remittances

As the largest market in the Western Balkans, with stable finances, inexpensive labour, favourable geographic position and relative political stability, Serbia attracts a lion's share of foreign direct investment in the region. In 2019, net FDI reached €3.58 billion or 7.8 per cent of GDP. More than 80 per cent of foreign investment comes from Europe, with the Netherlands being the top source (due to a specific tax regime, the Netherlands is often chosen by corporations as a nominal investment country, meaning that many of the FDIs formally from that country actually have a different origin). In 2019, the Netherlands was followed by the Russian Federation, Hungary, Switzerland, Germany, Austria, France and China[39] on the Serbian market. FDIs remain a very important component in Serbia's development, representing both an opportunity (in bringing jobs, production, export markets, global best practices and know-how) and a risk (as disproportionate reliance on FDI may hamper development of local businesses and pose a challenge in times of crisis when businesses tend to focus on their core domestic markets and reduce expansion plans).

Remittances are another external component helping Serbia boost its economy. While a large brain drain hurts the country's potential to grow, leaving it without some of its most talented individuals, it simultaneously lowers the pressure on the labour market (hence lifting the local wages) and brings in foreign currency in the form of assistance to the relatives who stayed in Serbia. By sending back some of the money earned abroad, expats help raise living standards in Serbia, help drive the economy by boosting local expenditure and help level out the balance of payments imbalances. In 2019, total received remittances amounted to €3.52 billion[40], roughly equal to total FDIs.

[32]https://www.nbs.rs/export/sites/default/internet/latinica/80/osnovni_makroekonomski_indikatori.xls
[33]http://www.fiskalnisavet.rs/doc/analize-stavovi-predlozi/fiskalna_konsolidacija_2012-14_vs_2015-17.pdf
[34]http://www.fiskalnisavet.rs/doc/istrazivacki-radovi/FS%20radni%20dokument%20(2018-01).pdf
[35]https://publikacije.stat.gov.rs/G2019/PdfE/G20191267.pdf
[36]https://publikacije.stat.gov.rs/G2020/Pdf/G20203003.pdf
[37]https://www.danas.rs/ekonomija/privatnici-stvaraju-tri-cetvrtine-srpskog-bdp-a/
[38]https://www.blic.rs/biznis/vesti/mala-preduzeca-u-srbiji-stvaraju-trecinu-ukupnog-bdp-zaposljavaju-214-hiljada-ljudi-i/y64ckmt
[39]https://www.nbs.rs/export/sites/default/internet/latinica/80/ino_ekonomski_odnosi/platni_bilans/fdi_po_zemljama_2010_2019.xls
[40]https://www.nbs.rs/export/sites/default/internet/latinica/80/ino_ekonomski_odnosi/platni_bilans/platni_bilans_2007_2019_detaljna.xls

Figure 3. Foreign Direct Investments



Source: UniCredit Group

Growth drivers

Serbia relies on exports to drive its long-term growth. In order to succeed, the country counts on its strong position in regional trade, continued inflow of FDIs, and development of fast growing, export-oriented business sectors, such as IT and tourism. It also has potentials in mining, agriculture and auto-industry.

Though its external trade balance overall is in deficit, Serbia is a net exporter in the CEFTA region.[41] CEFTA countries are Serbia's second major trade partner after the EU, with €2.97 billion of exports in 2019 and €0.95 billion of imports, constituting a surplus of over €2 billion, or an export-import ratio of 311 per cent. When contrasted with Serbia's overall export-import ratio of 73.4 per cent (net importer) on total exports of €17.5 billion, the importance of the region becomes even more evident. The CEFTA surplus is mainly due to the exports of agricultural products (cereals and produces thereof), oil and oil derivatives, electrical machines and apparatus, road vehicles and beverages.[42]

IT and tourism represent some of the most promising opportunities for Serbia. It is estimated that the IT sector now contributes about 6 per cent to GDP[43] (up from 4.8 per cent in 2018[44]), and with annual growth rates of about 20 per cent, mainly driven by exports, it is expected to gain even more significance in the coming years. In 2019, IT exports amounted to €1.4 billion, while 2018 data show total revenues of IT companies reaching €2.5 billion[45], including domestic revenues and non-IT revenues of IT companies. Somewhat fewer than 30.000 people work in IT, although estimates vary, and go up to 60.000 people if IT experts in non-IT companies and freelancers are included. The sector is dominated by SMEs, with only 11 large IT companies in the country, 80 per cent of which are foreign owned.

The Serbian IT industry is significantly more profitable than other industries – a profitability index per employee is 636 per cent of the overall economy profitability index, and gross wages stand at 150 per cent of the national average.[46]

"In terms of capacities, the IT sector is at the ninth place of the ranking list that statistically follows 14 sectors. In terms of profitability, it is among the four leading industries in Serbia, with rates of growth, revenue, and employment significantly above the overall average. In five to six years, when IT becomes one of the five leading sectors in terms of capacities, the economic turning point can be expected - the opportunity that Serbia must not miss" (ICT in Serbia At a Glance, 2020).[47] Even though Serbia still does not have any "unicorns", some of its locally grown companies are now worth tens and hundreds millions of euros, with "Frame" (sold for US$165 million to "Nutanix"), "Nordeus" (Top Eleven football game with more

[41]Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, Serbia, UNMIK (on behalf of Kosovo) and Moldova
[42]https://publikacije.stat.gov.rs/G2020/DocE/G202018002.docx
[43]https://www.economist.com/europe/2020/02/27/an-unexpected-tech-boom-in-serbia
[44]https://publikacije.stat.gov.rs/G2019/Pdf/G20191267.pdf
[45]https://vojvodinaictcluster.org/wp-content/uploads/2020/05/ICT-in-Serbia-At-a-Glance-2020.pdf
[46]Ibid
[47]Ibid, p. 67

than 100 million registered users) and "CarGo" (Uber-like carpooling service) as some of the most recognisable names.

Similar to the IT sector, tourism also beats GDP growth rates year after year, albeit by a smaller margin. Since 2010, the number of overnight stays recorded every year rose by 49 per cent. Counting foreign visitors only, the percentage is 173 per cent. In fact, in the last 10 years only once has the number of overnight stays by foreigners been lower than the year before, and that was in 2010. By this criterion, foreign tourism has been growing at an average rate of 10.7 per cent annually.[48]

In 2019, 1.8 million foreign tourists visited Serbia, spending 3.89 million nights in the country and contributing some €1.5 billion [49] to the economy, equal to 3 per cent of GDP. Though there has been a rapid development of hotel capacities, especially in the capital of Belgrade and several popular mountain resorts, there is still much room for growth, given the significant and neglected natural spa resources, opportunities in congress tourism and growth on new markets such as China.

Market Participants

The Serbian market is characterised by a large public sector, with powerful state-owned (SOE) or co-owned enterprises still dominating many areas, even after the process of privatisation, which transferred most of them to private owners. Foreign capital is dominant in the financial sector, with most of the banks now in hands of large European players. There is a diversified landscape of foreign direct investments, with many companies in work-intensive fields setting up factories in Serbia, lured by the country's proximity to main European markets and comparatively low wages. FDIs in technologically more advanced sectors, with high added value, have generally been less inclined to come to Serbia, although the country has been able to attract a number of high-profile investors in telecommunications, IT, engineering and automobile industries, such as "Telenor"[50], "Mobilcom", "Microsoft", "Continental", "Siemens", "Fiat" etc.

Recently, the authorities have succeeded in finding a buyer for several of the largest loss-making SOEs, including the steel plant "Zelezara Smederevo" (now in the hands of "Hesteel group" from China), "RTB Bor" (majority stake sold to "Zijin", also from China) and "Air Serbia" (minority stake sold to "Etihad"). The Belgrade airport has been given under concession to French "Vinci Group", and the oil company NIS is co-owned by Russia's "Gazprom". Fiat's factory in Serbia is also a joint operation, with the government holding a minority share. The biggest telecom company is still the state-owned "Telekom Srbija" and electricity production is almost entirely in the hands of EPS, also owned by the state.

Apart from SOEs and FDIs, there are large local players, often seen to owe their success to political connections; however almost all companies remain private. The Belgrade stock exchange is undeveloped, with few large listings and low volume of trades.

There are some 232,000 registered companies in Serbia and 272,000 sole proprietors. Of these, just 417 are large companies but they employ more than 360,000 people.[51] On the other hand, SMEs create 28 per cent of GDP, employ 44 per cent of total registered workforce, with a subset of micro enterprises accounting for as many as 415,000 workers.[52]

Privatisation

As a country of socialist heritage, Serbia came out of the 1990s with a burden of thousands of loss-making firms owned by the state. Quickly following political changes of 5 October 2000, the authorities embarked on a fast-paced journey to privatize most of these companies. The new Law on Privatisation was introduced in 2001 and the first privatisations soon followed. From 2002 to 2016, Serbia sold more than 2,400 companies. However, speed, weak regulations requiring little investigation into the quality of the buyer prior to sale with few conditions placed on the buyer, led to the privatisation process being now seen as a failure and a source of endemic corruption. Not only was it a frequent practice for an investor to purchase a company for the sole purpose of acquiring valuable land at a fraction of a true cost, leading to the closure of many companies and loss of jobs, but it was also a way for shady capital from tax heavens to return to Serbia as clean.[53] The process was so poorly managed that almost a third of all privatisations had to be cancelled[54] and companies returned to the state, usually in even worse condition then before the sale.[55]

In 2011, the European Union asked the Serbian government to investigate 24 suspicious privatisations, compiling a list that drew heavily on the work of the government's own Anti-Corruption Council, whose findings the government previously ignored (see the chapter on corruption below).

In 2014, Serbia changed its privatisation law to make it easier to resolve bad businesses with no hope of recovery, resulting in the reduction of the portfolio of firms in the process of privatisation from 556 in 2014 to 186 in 2016. Today, there are still 73 companies left to be privatized.[56]

Subsidies

In order to attract FDIs, Serbia has been running subsidy programmes for many years. Incentives are available for each worker employed and vary as per the size of the investment, location of the enterprise (with higher subsidies offered for investing in less developed parts of the country) and strategic importance of the project. Big investors can often get free land for their factory or have the local authorities build the necessary infrastructure with no charge. There are also various tax breaks, including for start-ups and incentives for self-employment.

[48]Calculations based on data in UT10, Tourist Turnover publications, for December each year, Statistical Office of Serbia https://www.stat.gov.rs/publikacije/?a=22&s=2202&d=&r=
[49]https://talas.rs/2019/09/19/kako-ogroman-rast-turizma-utice-na-privredu-srbije/
[50]The Norwegian operator recently withdrew from the region, including Serbia
[51]https://www.apr.gov.rs/upload/Portals/0/GFI_2020/Bilten/Prezentacija_BILTEN_SI2019.pdf
[52]https://www.ekapija.com/news/2490068/mala-i-srednja-preduzeca-u-srbiji-stvaraju-trecinu-ukupnog-bdp-i-zaposljavaju
[53]See for instance https://novaekonomija.rs/arhiva-izdanja/broj-10-maj-2014/od-privatizacije-do-gra%C4%91evine or https://www.rtv.rs/sr_lat/politika/privatizacija-perionica-pokradenog-novca_32065.html
[54]https://www.021.rs/story/Info/Srbija/190927/Gotovo-svaka-treca-privatizacija-ponistena.html
[55]See "Jugoremedija" as a case in point: https://www.blic.rs/biznis/privreda-i-finansije/sunovrat-jednog-giganta-kako-je-farsom-od-privatizacije-duge-16-godina-sistematski/qdv2qqf
[56]http://www.priv.rs/Naslovna

Even though Serbia is not alone in such practices, as other countries in the region have similar programmes, subsidies in Serbia remain a highly contentious issue among economists and policymakers.

The cause for the ongoing debate is the opacity surrounding the process of granting the subsidies and monitoring their effects. While programmes are nominally open to all investors, and many local companies have indeed been given incentives, subsidies to large investors are directly negotiated with the government, making the process closed to the public and potentially subject to corruption. Despite a liberal Law on Free Access to Information of Public Interest, and despite strong and persistent inquiries from the media and the civil society, the government has repeatedly failed to make the contracts with large investors available to the public. Because of this, not only is the public kept in the dark about the conditions under which foreign investors agree to come to Serbia, but it is also unable to assess properly the usefulness of such arrangements.

Another point of contention is the economic effectiveness of subsidies as such. The authorities have never published any report on the results achieved by offering financial incentives for investors. The media's attempts to patch together available information paint less than a bright picture. For example, the daily newspaper Danas reported in 2017 that three out of four workers in companies receiving subsidy per employee, lost their jobs after the programmes expired. The research based on data received through National Employment Agency showed that out of 7.732 people who were employed under one of the programmes in 2011, 2012 and 2013, only 2.058 or 27 per cent kept their jobs after the government stopped paying incentives[57]. Another research by the same outlet showed that the carmaker "Fiat" received incentives equal to €150.000 per employee, while the Austrian juice manufacturer "Rauch" received €73.000 per worker.[58] Moreover, all this is happening in a country where the average monthly net salary is €500.

Fiat's example highlights how the lack of transparency in contractual details can hide the true scale of the incentives given to investors. Officially, the auto giant received only €10.000 for each worker, but when all other direct and indirect payments by the state and city authorities are taken into account, the figure skyrockets.

Informal Economy

Shadow economy is present in Serbia, with estimates going up to 30 per cent of GDP. Analyses conducted for the purpose of formulating national policies to fight shadow economy found that in 2012, 28.4 per cent of registered businesses engaged in some form of shadow economy, but that this number dropped to 16.9 per cent by 2017. However, a survey among Serbian businesses found that there are also 17.2 per cent of unregistered enterprises competing with them, meaning that nearly every third company in Serbia still operates in the shadow economy.[59]

The reduction of the informal sector is credited to a better macroeconomic landscape in Serbia, stricter enforcement and improved moral attitudes towards the issue of paying taxes.

Enforcement was helped by a new Law on Inspection Oversight, granting larger powers to inspectors, who can now coordinate their activities and monitor unregistered economic agents, and not just registered firms like before. Tax collection is improved and the government announced that 2017 and 2018 would be the years of fighting against shadow economy.

A large part of the informal sector consists of unregistered employment, which stood at 19.5 per cent in 2018. The new National Programme to Suppress the Grey Economy aims to reduce this number to 17.5 per cent this year. Other goals are to reduce the share of unregistered economic entities from 17 to 15 per cent and to cut grey economy in registered companies as share of GDP from 14.9 to 14.5 per cent.[60]

Labour Market

There are 2.17 million registered workers in Serbia, earning €505 on average per month. The unemployment rate has dropped to 9.7 per cent in 2019, helped by a strong outflow of workers to other countries and by Serbia's fight against informal employment. The new Labour Law from 2014 made it easier to hire and fire workers and the new Law on Agency Employment from 2019 has regulated the so-called "leasing of workers" for the first time.

Due to fiscal consolidation, the government until recently adhered to its decision not to allow new employment in the public sector, a measure with unintended consequence of encouraging emigration and leaving many crucial positions unfulfilled after existing workers retired.

Corruption

Serbia ranks as 91st out of 183 countries in the Corruption Perception Index[61], having dropped four places compared to last year's report. By this measure, Serbia appears more corrupt than any other country in its region, apart from Albania and Bosnia. A recent survey by USAID and CeSID[62] confirms the impression of widespread corruption in the country, with 55 per cent of interviewees stating that corruption is present in either large or very large measure.

The institution seen as the most corrupt is by far the healthcare system, followed by various inspections, the police and the courts. Two of the most common corruption activities as seen by the public are using friendly relationships with someone in the public sector in order to get a job done more quickly and easily, and using one's position to hire one's friends or relatives. Asked whether they had to engage in corruption in the last 12 months in the institution they had contact with, 15 per cent of respondents said that they had given a present to someone in a healthcare institution and 9 per cent had bribed the police.

Moreover, while most of the general population is likely to encounter petty corruption situations only, the phenomenon extends to higher echelons as well. Serbia began to build its anti-corruption mechanisms starting from the po-

[57]https://www.danas.rs/ekonomija/nsz-tri-cetvrtine-radnika-dobije-otkaz-kad-isteknu-subvencije/
[58]https://www.danas.rs/ekonomija/top-lista-srpskih-subvencija-fijat-rauh-mislen-tigar/
[59]https://naled.rs/images/preuzmite/Nacionalni_program_Akcioni_plan_SE_2019-2020.pdf
[60]Ibid.
[61]https://www.transparency.org/en/cpi/2019/results
[62]http://www.cesid.rs/wp-content/uploads/2019/12/CeSID_USAID_GAI_2019.pdf

litical changes in 2000. One of the first institutions formed was the Anti-Corruption Council.

Meanwhile, the Council has been deprived of any meaningful authority, but remains a thorn in government's side. In addition, a number of independent state authorities have been established, such as Commissioner for Information, Ombudsman, State Audit Institution, Agency for Prevention of Corruption , Republic Commission for Protection of Rights in Public Procurement Procedures, and important anti-corruption regulations have been enacted (on public procurement, financing of political parties, prevention of conflict of interest, free access to information).

Dissatisfaction with the conditions in the country because, inter alia, of corruption, led to a change of government, which was at that time very vocal about fighting corruption and had promised to solve 24 cases of suspicious privatisations.

A decade ago, the Anti-Corruption Council informed the EU about 24 privatisations it investigated and found suspicious. The findings were previously presented to the government but the latter did not take any action. Notably, in its reports, the council made allegations that included the highest levels of government. Following the request from the EU, official investigations were opened. At one point, more than 100 police officers worked on the cases. The elections in 2012, however, brought a change of government and with the new people in power, the situation changed. As for the investigations, "after several months, the fairy-tale ended", as police officers working on the case later reported: the police were given instructions to arrest as many people as possible, but those arrested were "cannon fodder, marginal persons who literally didn't have money to buy bread".[63] A task force formed to lead investigations kept working for two more years, before it was dissolved as part of austerity measures.

As reported by CINS, an investigative media outlet[64], since 2019, the outcome of these cases is as follows: out of 24 suspicious privatisations, 10 are still unsolved. Of the remaining 14, 12 cases were found to either involve no criminal act or the verdicts ended in acquittal. There were two guilty verdicts, but one was crushed on appeal. That left one case, of a businessperson who was sentenced to a year of house arrest.

Apart from these cases, the authorities were conducting mass arrests in other cases linked to corruption related crimes, while the political officials informed the public about these events, using them for their own self-promotion.

At the time when the fight against corruption was still high on the government's list of priorities, the National Anti-Corruption Strategy for the period 2013-2018 was adopted, as well as the Law on the Protection of Whistleblowers, and, as a response to suggestions from the Group of States against Corruption (GRECO), a Law on Lobbying. In 2016, Serbia opened the negotiations on Chapter 23 and enacted an action plan for fulfilling the chapter's criteria for the period until the end of 2018. However, these plans from 2013 and 2016 have in large measure remained unfulfilled, while the fight against corruption has significantly fallen on the government's list of priorities.

The latest major changes have been made on the repressive side of the fight against corruption with the establishment of four special departments of the Higher Prosecutor's Office, with jurisdiction covering a majority of corruption crimes and corporate financial crimes. This led to an increase in the number of verdicts in this area, mainly based on admission of guilt agreements. In addition, for over a decade, the Prosecutor's Office for Organised Crime has been in charge with prosecuting the most serious cases of corruption. However, in the field of sanctioning high ranked public officials, Serbia persistently gets unsatisfactory assessments from the European Commission.

In other areas of corruption, Serbia is achieving better results. It has managed to reduce the grey economy, while the Commission for the Protection of Competition has had some success in uncovering and fining cartels, although it has shied away from using its full powers to punish the offenders with large fines.

The business community has worked through various associations, such as the Foreign Investors Council (FIC) and NALED (National Alliance for Local Economic Development) to promote good governance and regulatory best practices, with FIC issuing a "White Book", an annual publication tracking changes and making proposals for advancing the business environment, including drafting suggestions for the suppression of illicit trade and improving inspection oversight. NALED is involved in drafting much legislation, including the National Programme for Countering the Shadow Economy, as well as the action plan for implementing the programme.

The business community has also been very actively involved in fighting illicit tobacco production and trafficking, working jointly with the police, customs and other stakeholders to prevent illegal trade. Similar initiatives exist in the oil industry in order to prevent unfair competition from oil smugglers.

As of 2020, 43 Serbian companies are members of the Global Compact, a UN initiative to promote corporate sustainability through support for human rights, respect for workers and fight against corruption.

The Covid-19 crisis and related economic outlook

The global Covid-19 pandemic affects all markets, including the Serbian one. The first case of the new virus was recorded on 6 March in Serbia, and the country went into full lockdown on 15 March. With strict measures of social distancing including quarantine for all persons above 65 years of age, closed hotels, restaurants, coffee shops, clubs, gyms and betting houses, closed public transportation and intercity travel by bus and train, distancing in factories and other workplaces, it is certain that the Serbian economy will be strongly affected.

However, Serbia is expected to come out of the crisis less bruised than most of the other European countries. IMF projects the country to experience a fall in GDP of - 1.5 per cent this year[65], followed by a growth of 5 per cent in 2021, coupled with an increase in unemployment from 10.9 per cent to 13.4 per cent this year and 13 per cent in 2021.[66] This GDP trajectory would make Serbia the best performing country in Europe in the 2020-2021 period. This is explained by generally better results in fighting Covid-19 in the whole region compared to the Western Europe and with a significant share of mutual trade of the Balkan countries. Another point is a relatively low share of tourism in GDP, compared to countries such as Montenegro, Greece, Croatia, Italy and Spain, which in this particular crisis comes out as an advantage.

Serbia itself expects a recession of 1 per cent this year[67]. As of May 2020 authorities are implementing an ambitious assistance package to help the economy, covering the minimum salaries of all employees in the SME sector for three months, guaranteeing for bank loans aimed at bridging liquidity issues many are facing and directly distributing 100 euros to each person over the age of 18. The purpose of the programme is to prevent massive layoffs, to allow for quick rebound of economic activity as soon as the social distancing measures are withdrawn and to help boost consumer demand. Having deferred many of the companies' tax obligations for next year in order to further lessen their burden, and with an expected fall in public revenues due to sudden stops in economic activity and potentially slow demand recovery, and with the previously unforeseen funds needed to finance stimulus, the country was forced to take more debt by issuing €2 billion of bonds, with yields of 3.37 per cent[68], the double of what Serbia was paying for new debt immediately before the crisis. Economists expect the virus to drive the debt to GDP ratio back to about 60 per cent from current levels.

Figure 4. Cumulative GDP Growth by the end of 2021, IMF projections

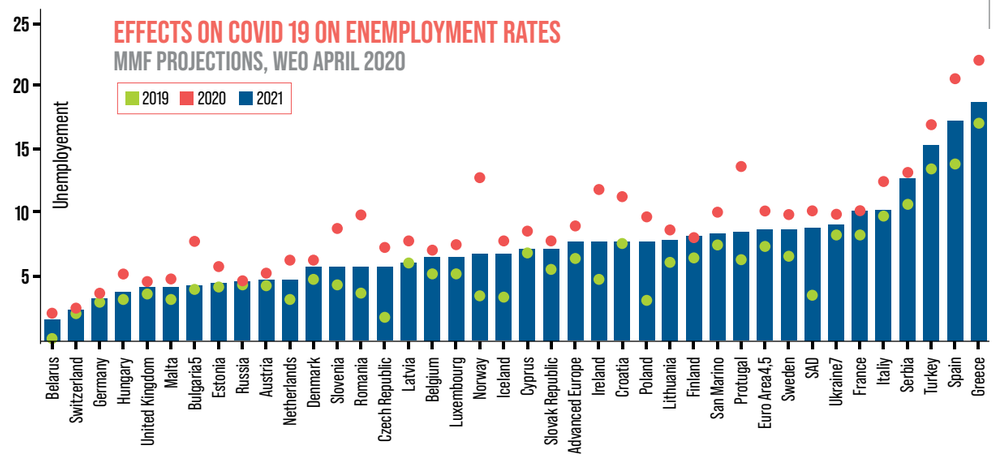
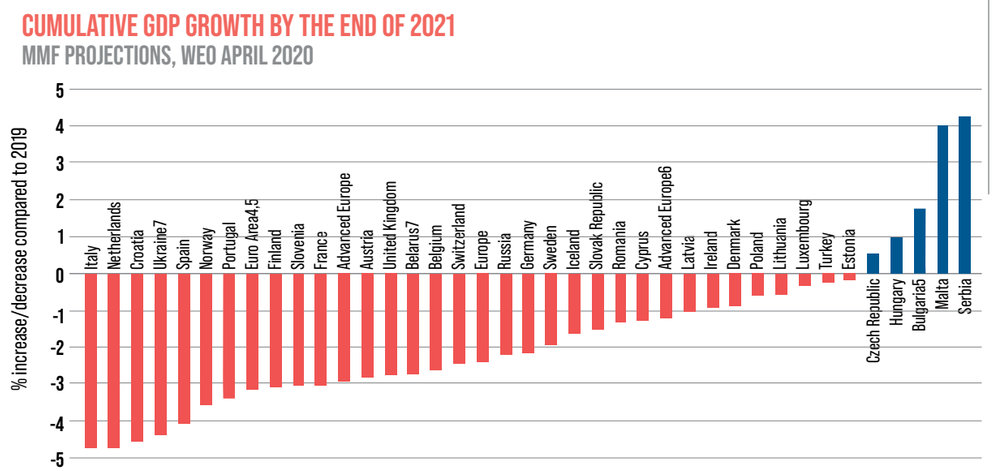


Figure 5. Effects of COVID 19 on unemployment rates



[63]https://www.slobodnaevropa.org/a/sporne-privatizacije-u-srbiji/29570703.html
[64]https://24slucaja.cins.rs/sr
[65]https://www.imf.org/en/News/Articles/2020/10/16/pr20317-serbia-imf-staff-completes-a-virtual-review-mission-to-serbia
[66]https://www.imf.org/~/media/Files/Publications/WEO/2020/April/English/StatsAppendixA.ashx?la=en

[67]https://www.b92.net/biz/vesti/srbija.php?yyyy=2020&mm=10&dd=08&nav_id=1744886
http://rs.n1info.com/English/NEWS/a673415/NBS-GDP-growth-projection-for-2020-from-1.5-to-1-pct-one-of-best-results-in-Europe.html
[68]https://www.nbs.rs/internet/cirilica/scripts/showContent.html?id=15475&konverzija=no

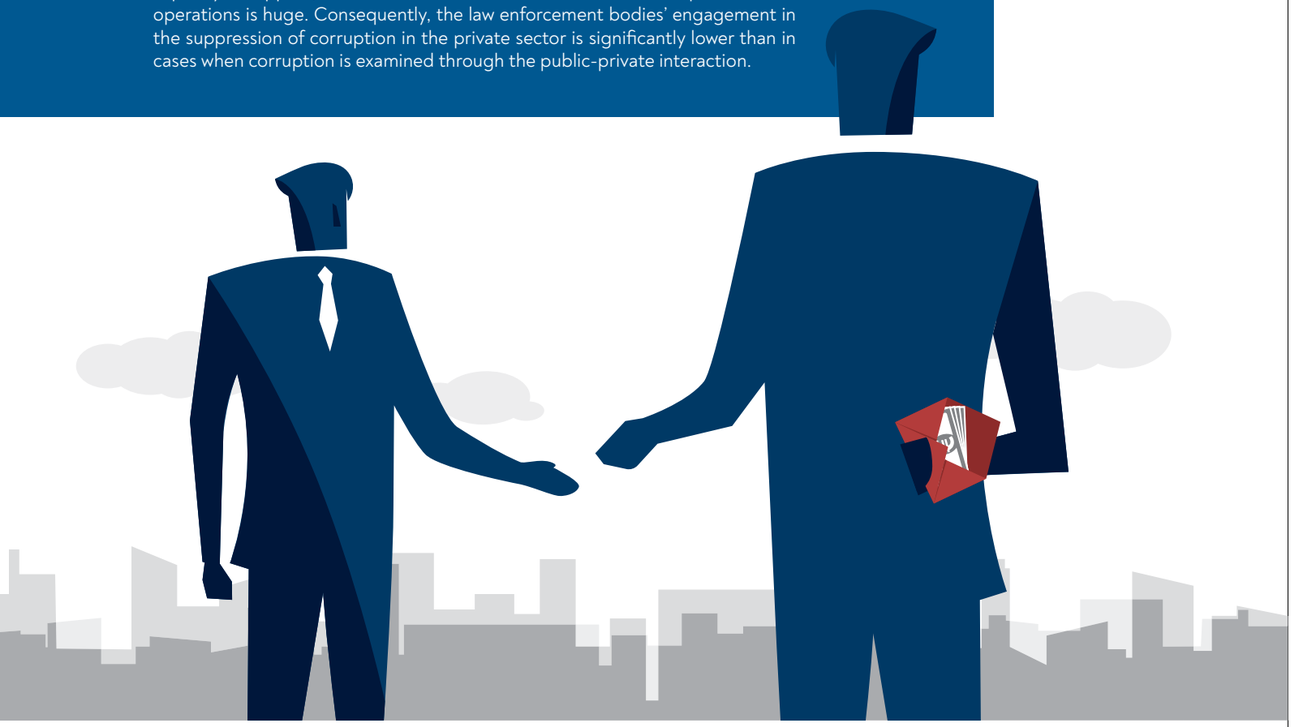
BICA
ASSESSMENT PART I

PUBLIC SECTOR ASSESSMENT

Overall assessment

The public sector thematic area covers business integrity issues such as bribery of public officials, bribery in private sector, money laundering, illicit agreements which reduce economic competition, undue influence on decision-making processes, public tendering and tax administration. Legal provisions in Serbia for most thematic areas provide a solid basis to foster and maintain business integrity. However, there are still legal loopholes and the amount of their consequences is significant.

The enforcement of existing rules is an even greater concern. The main problem is the small number of cases that have been investigated by the relevant authorities. One reason for such a situation is the insufficient capacity of institutions in charge of the oversight over both the public and the private sector. Another factor is the exposure of law enforcement agencies to political influence, resulting with unequal treatment of businesses in similar situations. When public oversight institutions engage in control (inspections for example) they utilise many of their capacities to achieve formal compliance with regulations (for example in the field of money laundering), while substantial wrongdoings (collusion, for example) remain largely unchecked. Finally, the general focus of citizens' anti-corruption demands is still on the public sector and its officials, whose capacity to support, enable and facilitate lawful as well as unlawful private sector operations is huge. Consequently, the law enforcement bodies' engagement in the suppression of corruption in the private sector is significantly lower than in cases when corruption is examined through the public-private interaction.



THEMATIC AREA 1:
PROHIBITING BRIBERY OF PUBLIC OFFICIALS

Laws prohibiting bribery of public officials

The Serbian legislation prohibiting the bribery of public officials can be assessed at 100 out of 100 as the existing provision of the Criminal Code provides for the prohibition of:

- active bribery of national and foreign public officials as well as officials of a public international organisation (offering, promising, giving of an undue advantage), including direct and indirect bribery
- passive bribery of national and foreign public officials, as well as officials of a public international organisation (accepting, soliciting an undue advantage), including direct and indirect bribery
- undue advantages offered to or requested from public officials, which are not limited to financial benefits or other material goods
- facilitation payments to national and foreign public officials, as well as officials of a public international organisation

The Serbian Criminal Code (CC) prohibits both active and passive bribery of national and foreign public officials.

According to the definition of active bribery, this criminal offense shall be committed by one who makes or offers a gift or other benefit (not necessarily financial) to an official (direct bribery) or to another person, which is related to the official (indirect bribery). The purpose of bribing relates to some actions or omissions of the official, "to perform, within his/her official competence or in relation to his/her official powers, an official act that should not be performed or not to perform an official act that should be performed; to perform, within his/her official competence or in relation to his/her official powers, an official act that he/she is obligated to perform or not to perform an official act that he/she may not perform". Under the Law, the actions of intermediaries in bribery are also prohibited/criminalised.

For passive bribery, the law says that this kind of offense will have been committed by "an official who directly or indirectly solicits or accepts a gift or other benefit, or promise of a gift or other benefit for himself or another person. The purpose of bribery is the same as in with active bribery. The criminal offense will have also been committed by "an official who, after performing or failing to perform an official act, solicits or accepts a gift or other benefit in relation thereto."[69]

Influence peddling will have been committed by "whoever solicits or accepts either directly or through a third party a reward or any other benefit for themselves or another in order to use their official or social position or their real or assumed influence to intercede for the performance or non-performance of an official act." Also, "whoever abuses their official or social position or actual or perceived influence to intercede in the performance of an official act that should not be performed or for non-performance of an official act that should have been performed will have committed this offense."[70]

Besides, there are other criminal offences (where the public officials are the only "party"), considered as corruption offences, including the most general one - "abuse of office" (Article 359 of CC).

Undue advantages offered to or requested from public officials in corruption offences are defined broadly as "a gift or other benefit", "reward or other advantage", "benefit", thus not limited only to financial benefits or other material goods.[71]

According to the Serbian Criminal Code, an official is considered to be:

1. a person who performs official duties in a state body
2. an elected or appointed person in a state body, local self-government body or a person who permanently or occasionally performs official duties or official functions in those bodies a notary and arbitrator, as well as a person in an institution, company or other entity entrusted with the exercise of public authority, which decides on the rights, obligations or interests of natural or legal persons or on the public interest
3. a person who is actually entrusted with the performance of certain official duties or tasks will also be considered an official
4. a military person

Furthermore, the Criminal Code provides for the term of foreign official. A foreign official is a person who is a member, functionary or officer of a legislative or executive authority of a foreign country, a person who is a judge, juror, member, functionary or officer of a court of law in a foreign country or international court, a person who is a member, functionary or officer of an international organisation and its bodies, as well as an arbitrator in foreign or international arbitration.

A foreign official who commits an offence will be punished by the penalty prescribed for that offence.[72]

[69] Ibid, Article 367,
[70] Ibid, Article 366,
[71] The Criminal Code (Official Gazette of RS, No. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016), Art. 366 and Art. 367
[72] Criminal Code of the Republic of Serbia, Articles 366, 367 and 368

The deductibility of bribes for tax purposes is illegal, although not explicitly criminalised. Namely, companies may not record bribes as operational costs they incurred and may be liable for a criminal offence.[73] However, a company may falsely present a bribe as a legitimate cost of operation (for example a fee, reimbursement of costs). If such wrongdoing is disclosed, the company may be liable for tax evasion[74], forgery of an official document [75] or "unfounded tax refund and tax credit claims".[76]

Payments to employees in public administration or public utility companies, in order to speed up their actions, also fall under the definition of bribery in Serbian law. The Law on Public Service Employees prohibits receiving gifts in the public service. The law provides that "an employee, that is, a person hired under an out-of-work contract may not solicit or receive gifts, services or any benefit to himself or to related parties, which may or may appear to affect the impartial or professional conduct of the business, that is, which may be regarded as a reward in connection with the performance of their affairs, except for protocol gifts and appropriate gifts of small value".[77] So, no gift may be allowed if it relates to the actual performance of the public sector employee. Gifts considered as a matter of socially acceptable relations may be accepted and kept and only if the individual value of the gift is less than five per cent of the average monthly salary and if the total value of gifts received in the course of one year is less than the average monthly salary in Serbia. Furthermore, such gifts cannot be received in cash or in securities.

Similar rules are provided for by the Law on Civil Servants.[78]

The enforcement of laws prohibiting bribery of public officials

The score for Serbia can be assessed at 50 out of 100, as:

- law enforcement agencies show active enforcement in only a limited number of cases of bribery of public officials
- while effective sanctions are applied to certain cases of bribery of national officials, foreign public officials and officials of public international organizations have not been prosecuted for crimes in Serbia
- there has been no sanctioning for insufficient oversight/violation of supervisory duty by any person who manages, in any capacity, a private sector entity, or against legal persons
- the statute of limitations is long enough and adequate
- there are proportionate mitigation incentives in the form of reduced or suspended sanctions for legal and natural persons (for example, leniency programmes). However, such incentives have not been sufficiently persuasive and effective

The police, prosecutor's offices, courts and other agencies are responsible for combatting bribery of public officials in Serbia. The police, prosecutor's offices and courts conduct criminal investigations and proceedings in a way that is more or less similar to other European countries. There is a special prosecutor's office for organised crime in charge of the most severe cases of corruption and four regional prosecutor's offices for combating corruption and financial crime.

The Agency for Prevention of Corruption (APC) conducts, inter alia, an administrative procedure when performing tasks within its competence and does so either ex officio (for example, plan-based control of property reports of public officials) , detection of irregularities committed by individuals and/or groups, handling petitions and reports of legal entities and individuals. It is not entitled to conduct criminal investigations, but may find evidence of corruption and other crime while performing its duties.

The APC points to a relatively small number of potential corruption cases, especially given the public perception of the prevalence of this phenomenon, as well as unrealistic public expectations based on the name of this state body that can create a misconception of its competencies. In 2019 the Agency submitted 9 reports to other competent state authorities (compare to 13 in 2018) - four to the Tax Administration, five to the Administration for the Prevention of Money Laundering, on the grounds of suspicion that the officials whose property and revenues were subject to verification committed another criminal offense within the competence of that body.[79] In the same time the Agency submitted 10 requests for initiating misdemeanour proceedings on the grounds to untimely submission of reports on property and income.[80] In 2019, Agency informed public prosecution offices about 11 public officials that committed the crime by concealing their assets or providing fake data.

In 2018 the Agency submitted 13 reports (two to the competent prosecutor's offices, two to the Tax Administration and nine to the Administration for the Prevention of Money Laundering) on grounds of suspicion that officials whose assets and income were subject to checks committed criminal offenses (bribery, tax evasion, money laundering, etc.)[81] According to a different source of information and based on the Agency's actions in processing complaints, six indictments were filed for various offenses in 2018 - tax evasion for example, but none for the crime of bribery.[82]

Similarly, the number of prosecuted cases is far from the actual level of corruption. From 1 March 2018, the newly formed Special Department for Combating Corruption in four higher public prosecutors' offices (Belgrade, Novi Sad, Nis and Kraljevo) became operational, along with Prosecution for Organised Crime. In 2019, 150 indictments were raised for active bribery (100 in 2018) and 60 (72 in 2018) for passive bribery. There were also 36 indictments for trading in influence (11 in 2018).[83] On the other hand, according to the surveys' results, there are dozens or even hundreds of thousands bribery cases every year. For example, according to the latest opinion polls, 9 per cent of citizens that have been in contact with the police and 4 per cent of those who dealt with healthcare institutions claimed they gave cash bribes during the last 12-month period.[84]

While the number of prosecuted bribery cases is relatively low, there are many instances where trials resulted in dissuasive, proportionate and effective sanctions. For example, on June 14, 2019 the president of the Commercial Court in Zajecar was convicted of trading in influence to two and a half years of imprisonment. Furthermore, he was prohibited from exercising his duties for a period of five years.[85]

On the other hand, a prominent case of non-effective implementation of the law is the case known as "Index" for which the trial began on December 1, 2008. This trial is the most comprehensive process in the history of the Serbian judiciary (37 persons were charged for passive bribery and 49 persons for active bribery). This case is also particularly significant because it benefited from an undercover investigator for the first time in the history of the Serbian judiciary. The largest number of defendants were professors (one of whom is a former dean of the Faculty of Law in Kragujevac), students and staff of several law faculties. The case is an example of the non-effective implementation of the law due to the fact that the trial lasted more than 10 years and the proceedings for more than half of the accused were time-barred due to the statute of limitations.[86]

While there are no specific statutes of limitations for these offenses, general ones apply. Limitation periods depend on the prescribed penalty. The time limit for the most severe form of active bribery is five years and 15 years for passive bribery. For the criminal offense of "Influence peddling" the time limit is 10 years. These statutes of limitations would be quite adequate if the criminal proceedings lasted for a reasonable length of time.

The most significant challenge with the implementation of the law is the failure of the prosecution to proactively investigate publicly exposed suspicions of corruption. For example, there was no investigation following media reports on a company that donated a car and an apartment to the brother of the former Belgrade mayor after being awarded contracts for the city's biggest infrastructure project (the Belgrade Waterfront).

Statistical data on the enforcement of laws prohibiting bribery of public officials do not contain any information on sanctions for insufficient oversight/violation of supervisory duties by any person who manages, in any capacity, a private sector entity, nor against legal persons.

According to the available statistics for 2019, out of 137 persons convicted of bribery, there were 29 prison sentences (only 5 for active bribery).[87] Unfortunately, in the publication for 2019 there is no data available on the amount of imprisonment and fines imposed. In 2019, 2 persons were found guilty and relieved from punishment (1 for active and 1 for passive bribery).[88] The sentence was conditional in 74 cases (only 2 for passive bribery), and 32 persons were sentenced to house arrest.[89]

In the same year, a plea bargain agreement was concluded with 250 persons (compare to 262 in 2018) for a criminal offense against official duty, of which the largest number of agreements (103) were concluded for the criminal offense of active bribery.[90]

In 2018, 15 foreign citizens were convicted of some of the criminal offences against official duty.[91] However, there is no publicly available information on whether any of them is a foreign official, or if any of them committed active or passive bribery.

According to the available statistics for 2018, out of 71 persons convicted of bribery, there were 17 prison sentences (only one for active bribery). While most of the offenders convicted (five) of bribery were sentenced to imprisonment

[73] Ibid, Articles 367 and 368
[74] Ibid, Article 225
[75] Ibid, Article 357
[76] Tax Procedure and Tax Administration Act ("RS Official Gazette" No. 80/02, 84/02, 23/03, 70/03, 55/04, 61/05, 85/05, 62/06, 61/07, 20/09, 72/09, 53/10 101/2011, 2/2012, 93/2012, 47/2013, 108/2013, 68/2014, 105/2014, 91/2015, 112/2015, 15/2016, 108/2016, 30/2018, 95/2018 and 86/2019, article 173a: "Whoever, in the intent to realise the right to unfounded tax reimbursement or tax credit, files a tax return of untrue content, in which they express an amount for reimbursement exceeding RSD 1,000,000, shall be punished by imprisonment in the duration from six months to five years and a fine" (or higher, when the amount exceeds three RSD million, i.e. RSD10 million). An entrepreneur and a responsible person in the taxpayer may be prohibited to perform an independent activity, profession, business or duty of from one to five years.
[77] The Law on Public Service Employees, Article 27.
[78] The Law on Civil Servants, Article 25.

[79] Annual Report of the Anti-Corruption Agency for 2019, pages 22 and 23.
[80] Ibid
[81] Annual Report of the Anti-Corruption Agency for 2018, page 13, http://www.acas.rs/wp-content/uploads/2019/04/ACAS-izvestaj-web.pdf
[82] Ibid, This is an identical situation to the one in 2017.
[83] Acting on these, the courts issued first instance judgments for 140 (in 2018 only 29) active bribery and 53 (71 in 2018) for passive bribery cases. In contrast to the judgments for passive bribery, the judgments for active bribery are mostly conditional. Report on the Work of Public Prosecutor's Offices on Crime Prevention and the Protection of Constitutionality and Legality in 2019, pages 104-108. http://www.rjt.gov.rs/docs/RAD_JAVNIH_TUZILASTAVA_2019.pdf
[84] https://www.odgovornavlast.rs/wp-content/uploads/2020/01/USAID-GAI-Deliverable-Citizens%E2%80%99-Perceptions-of-Anticorruption-Efforts-in-Serbia-December-2019.pdf, graphs 12.2 and 12.3.
[85] http://www.politika.rs/sr/clanak/431869/Bivsi-predsednik-suda-osuden-na-dve-i-po-godine-zatvora
[86] Index Affair: Over a decade, the proceedings for more than a half of the defendants are barred due to the statute of limitations, https://insajder.net/sr/sajt/tema/11143/
[87] https://publikacije.stat.gov.rs/G2020/Pdf/G20201202.pdf
[88] Ibid, page 11
[89] Ibid
[90] http://www.rjt.gov.rs/docs/RAD_JAVNIH_TUZILASTAVA_2019.pdf, page 134
[91] https://publikacije.stat.gov.rs/G2019/Pdf/G20195653.pdf, Unfortunately, the same publication from 2020 does not show data on the citizenship of persons convicted during 2019. https://publikacije.stat.gov.rs/G2020/Doc/G20201202.docx

between six and 12 months, four offenders were sentenced to imprisonment between one and two years.[92] The highest fine imposed was in the range from RSD10,000 (less than €1,000) to RSD100,000 (less than €10,000).[93]

In 2018, five persons were found guilty and relieved from punishment (three for active and two for passive bribery).[94] The sentence was conditional in 28 cases, and 24 persons were sentenced to house arrest.

In the same year, a plea bargain agreement was concluded with 262 persons for a criminal offense against official duty, of which the largest number of agreements (82) were concluded for the criminal offense of active bribery.[95]

The new Law on the Organization and Competences of State Bodies in the Suppression of Organised Crime, Corruption and Other Particularly Serious Crimes was passed in 2016. The law introduced a Financial Forensic Scientist as a person who assists the public prosecutor in analysing cash flows and financial transactions for the purpose of criminal prosecution. In addition, the law has improved the system of cooperation between the repressive and other state bodies through innovation, introducing liaison officers and strike groups. The possibility of temporarily reassigning these liaison officers to the Prosecutor's Office for Organised Crime is provided for, at the request of the competent public prosecutor.[96] In this way, the law established a mechanism that mostly functions effectively.[97]

Capacities to enforce laws prohibiting bribery of public officials

The capacities to enforce laws prohibiting bribery of public officials in Serbia can be assessed at 75 out of 100 as:

- funding and staff for enforcement authorities is not fully available
- enforcement authorities enjoy operational independence, but often resort to "self-restraint"
- national anti-corruption agencies, prosecutor's offices, competition and tax authorities, and financial regulators cooperate on enforcement
- national authorities cooperate with foreign law enforcement authorities on investigations and enforcement (mutual legal assistance)

There is a difference in the capacity of various bodies that may contribute to fighting corruption.

In 2019, the Technical Service of the Agency for Prevention of Corruption had 80 employees, out of 163 envisaged, which represents 49 per cent of occupied job positions.[98] The total execution of the budget in that year amounted to RSD 240.009.147, which is 94,26 per cent of the approved funds.[99]

In 2018, the Technical Service of the Agency for Prevention of Corruption had 80 employees, out of 139 envisaged, which represents 57.5 per cent of occupied job positions. The total execution of the budget in that year amounted to RSD276,163,321, which is 76 per cent of the approved funds.[100]

According to data of the High Judicial Council in 2019 the total number of judicial positions in all courts in the Republic of Serbia was 3,022, of which 2,703 positions were occupied (compared to 2,588 in 2018) and 2,531 judges acted effectively in the courts.[101] In 2019, as in the previous two years, it was in the court system again vacant judicial positions (264 in 2017, 411 in 2018 and 319 in 2019), first as consequence of the ban on the election of new judges imposed by the Constitutional Court and harmonisation of regulations on the election of judges, and then due to the implementation of the amended rules on the selection of judges for a three-year period, taking tests by large number of registered candidates, etc.[102] According to the Law on the Budget for 2019, all courts were financed from the budget with a total of RSD24.506.060.000 or approximately €192 million (in 2018 that amount was RSD22,304,078,000).[103]

According to data of the High Judicial Council in 2018, the total number of judicial positions in all courts in the Republic of Serbia was 2,999, of which 2,588 positions were occupied (compared to 2,626 in 2017). This reduced number of employees in courts is the result of a long-standing ban on employment (which was in force until the end of 2019), and denying approval for filling out vacant positions in accordance with the current job classifications, which additionally increases the workload of the employees who remain in the system. According to the Law on the Budget for 2018, all courts were financed from the budget with a total of RSD22,304,078,000 or approximately €190 million (in 2017 that amount was RSD20,985,969,000).

The situation was quite different with deputy public prosecutors. According to the Decision of the State Prosecutors Council, the number of deputy public prosecutors was increased so that in 2019, 716 deputy public prosecutors and 68 public prosecutors served, while 22 deputy public prosecutors performed the function of the public prosecutor.[104] Under the Law on the Budget of the Republic of Serbia for 2019, funds for the work of the public prosecutors amounted to RSD3.324.967.000,00 (approximately €27,706,783). The total realization in 2019 amounted to 97,62 per cent.[105]

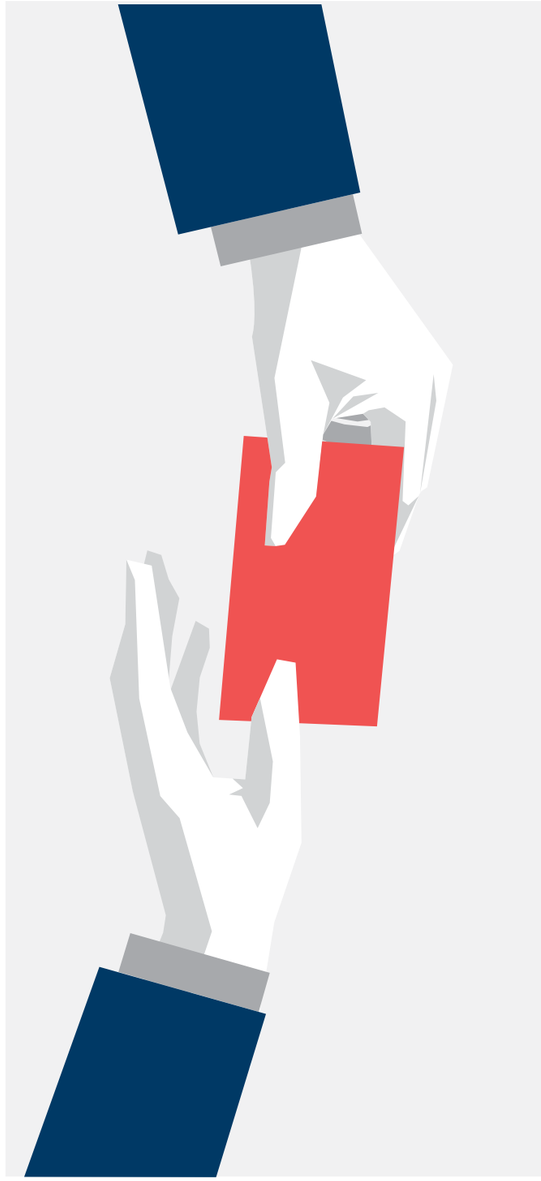
According to the Decision of the State Prosecutors Council, the number of deputy public prosecutors was increased so that in 2018, 708 deputy public prosecutors and 71 public prosecutors served, while 19 deputy public prosecutors performed the function of the public prosecutor.[106] Under the Law on the Budget of the Republic of Serbia for 2018, funds for the work of the public prosecutors amounted to RSD3,019,774,000 (approximately €25,164,783). The total realization in 2018 amounted to 94.46 per cent. Data on the percentage of unspent funds seems to suggest that none of these institutions had problem with financial resources. Slightly less budget spending than planned could be associated with the inability to hire all planned staff.The judicial setup for investigations has also improved. From March 2018, the newly-formed Special Department for Combating Corruption in the Higher Public Prosecutor's Office started working in four cities.[107]

The number of judges has not increased.[108]

Public prosecution reports do not provide information on cooperation with foreign jurisdictions, but, according to information, we obtained from police officers and prosecutors, some types of operational cooperation usually function even without necessitating the launch of formal procedures under mutual legal assistance agreements, in particular within the region of the former Yugoslavia.

Serbia has significantly strengthened its capacity to fight organised and transnational crime by signing an Agreement with Eurojust in 2020.[109]

Even if all institutions involved enjoy operational independence, their performance is affected[110] by "self-censorship" in "politically sensitive" cases[111], some of them being brought by investigative media[112] or CSOs.[113] Furthermore, capacities of institutions are not planned so to implement a wide range of proactive investigations, but rather to deal with existing levels of criminal charges.



[92] Ibid, page 70
[93] Ibid, page 76
[94] Ibid
[95] http://www.rjt.gov.rs/docs/SKM_C65819040214590.pdf, page 149
[96] N. Nenadic, "Special anti-corruption departments - transparency, results and what to change", page 5
[97] https://www.dri.rs/mediji/Odrzani-sastanci-oficira-za-vezu-VRI-Mreze-i-VRI-EU.n-397.107.html
[98] Annual Report of the Anti-Corruption Agency for 2019 http://www.acas.rs/wp-content/uploads/2020/03/ACASizvestaj2019WEB.pdf, page 11
[99] Ibid
[100] Annual Report of the Anti-Corruption Agency for 2018, page 57, http://www.acas.rs/reports/annual-reports/
[101] https://www.vk.sud.rs/sites/default/files/attachments/Godisnji%20izvestaj%20o%20radu%20sudova%20u%202019.pdf, page 2
[102] Ibid, page 3
[103] Ibid, page 4
[104] Report on the Work of the State Prosecutorial Council for 2019, page 10, http://www.dvt.jt.rs/izvestaji/
[105] Ibid, page 20
[106] Report on the Work of the State Prosecutorial Council for 2018, page 12, http://www.dvt.jt.rs/izvestaji/
[107] Belgrade, Novi Sad, Nis and Kraljevo, Report on the work of Public Prosecutors' Offices on Crime Prevention and Protection of Constitutionality and Legality in 2018, page 1, http://www.rjt.gov.rs/docs/SKM_C65819040214590.pdf
[108] The total number of all judicial positions in all courts in the Republic of Serbia is 2,999 of which 2,588 positions were filled in 2018, Annual Report on the Courts in Serbia for 2018, page 2 - https://www.vk.sud.rs/en/annual-report-work-courts
[109] http://europa.rs/eurojust-i-srbija-potpisali-sporazum-o-saradnji/
[110] https://www.danas.rs/drustvo/vladavina-prava/posle-miodraga-majica-na-meti-hajke-je-goran-ilic-neka-se-pripreme/
[111] https://www.danas.rs/drustvo/misterija-ministrovog-oca/
[112] https://freedomhouse.org/country/serbia/nations-transit/2020
[113] http://nadzor.org.rs/analiza_efekata_rada_gradjanskih_nadzornika.htm

THEMATIC AREA 2:
PROHIBITING COMMERCIAL BRIBERY

Laws prohibiting commercial bribery

- **Prohibition of commercial bribery in Serbia can be assessed at 100 out of 100 when it comes to the legal framework:**
- both active and passive commercial bribery in all forms (offering, promising, giving of an undue advantage to any person who manages, in any capacity, a private sector entity)
- acceptance, solicitation of an undue advantage by any person who manages, in any capacity, a private sector entity, including direct and indirect bribery
- undue advantages offered to or requested from private sector entities are not limited to financial benefits or other material goods
- deductibility of bribes for tax purposes is not explicitly prohibited nor separately penalized, but it would be considered illegal as any other illegal payment

Serbian law recognises and prohibits commercial bribery as a criminal offense. An entrepreneur/businessperson or any other person (an agent, for example) who gives, offers or promises a bribe (money, property, gift and other benefit) to another person in relation to a business activity, has committed that crime. Such a bribe may be related to contracting or other acts and omissions that would be detrimental for another firm, in favour of that person's firm, or related to the interests of a third party.[114] This is called active commercial bribery.

Likewise, if an employee in a legal entity requests or receives, indirectly or directly, for himself or another person, a gift or other benefit or promise of gifts or other benefits, in order to conclude a contract or to reach an agreement to the detriment of their employer, to provide (or to fail to provide) a service, they have committed a crime.[115] This is defined as passive commercial bribery.

Both crimes shall have been committed even if the contract is ultimately concluded or an agreement is reached in favour of the employer. Requesting or receiving a bribe does not necessarily precede the conclusion of a contract, it can happen later as well, but milder penalties are provided for such offenders.[116]

The deductibility of bribes for tax purposes is illegal, although not explicitly criminalised. Namely, companies may not account for bribes they have paid, and may be liable for a crime.[117] However, companies may falsely present the bribe as a legitimate cost of operation (fee, reimbursement of costs, etc.). If such wrongdoing is detected, companies may be liable for tax evasion[118], forgery of official document[119] or other criminal offence.

Enforcement of laws prohibiting commercial bribery

The enforcement of laws prohibiting commercial bribery in Serbia can be assessed at 50 out of 100, because:

- law enforcement agencies show active enforcement of a limited number of cases of commercial bribery
- dissuasive, proportionate, effective sanctions are applied to commercial bribery cases, but their effectiveness is significantly weaker due to a low number of investigated cases. Those sanctions are less frequently imposed for bribery against any person who manages, in any capacity, a private sector entity
- for insufficient oversight/violation of supervisory duty by any person who manages, in any capacity, a private sector entity; and almost never against legal persons
- the statute of limitations for these crimes is long and adequate
- in some instances, proportionate, persuasive and effective mitigation incentives in the form of reduced or suspended sanctions for legal and natural persons are applied

[114] The Criminal Code, Article 231 (Official Gazette of RS, No. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016)
[115] Ibid, Article 230
[116] Ibid.
[117] Ibid, Articles 367 and 368
[118] Ibid, Article 225
[119] bid, Article 357

Based on the results achieved, one may question whether there is a will and interest in the justice system and state bodies to deal with commercial bribery. The relatively few court proceedings initiated by the aggrieved parties seem to bring into question their actual motivation to resort to judicial protection of their rights violated by these crimes. Namely, only 10 indictments were raised for active bribery and 5 for passive commercial in 2019[120] (in 2018 there were only two indictments raised for active bribery and four for passive commercial bribery[121]). However, according to official data from the Statistical Office of the Republic of Serbia the situation is even worse when it comes to court decisions. In 2019, 5 persons were convicted of the criminal offense of accepting bribes in performing economic activities and 3 for the criminal offense of giving bribes in performing economic activities.[122] The structure of convictions is such that 4 suspended sentences, 2 prison sentences (only for passive bribery) and 2 house arrest sentences were Imposed.[123]

In 2018, 17 persons were convicted of the criminal offense of accepting bribes in performing economic activities and one for the criminal offense of "giving bribes in performing economic activities". The structure of convictions is such that 13 suspended sentences, four prison sentences and one house arrest sentence were imposed.[124]

One of the opposite examples for a generally poor track-record is a trial for corruption involving the national supplier of gasoline and gas, the company "NIS". In 2013, former directors of the company were accused of passive commercial bribery and the director and co-owner of the private company "BMR Group" of active commercial bribery in this case.[125] The court found all the defendants guilty and they were imprisoned. Furthermore, the court imposed the security measure of expulsion from the country against the directors who are foreign nationals (India and Russia) for a period of five years. Although the amount of money and imposed penalties is very high, this case – one of the very few court cases concerning commercial bribery – drew very little media attention.

While there are no specific statutes of limitations for these offenses, general ones apply. Limitation periods depend on the prescribed penalty. The time limit for the most severe type of active commercial bribery is three years and 10 years for passive commercial bribery.

As regards leniency programmes in 2019 and 2018, there was no person convicted of active or passive commercial bribery and relieved from punishment.[126] Prosecutors resorted to plea-bargaining once with those involved in passive commercial bribery in 2019 (twice in 2018[127]) and the court accepted that agreement.[128]

As for information on cooperation with foreign jurisdictions, the situation is the same as for bribery of public officials.

Capacities to enforce laws prohibiting commercial bribery

Serbian score is 75 out of 100, having in mind that:

- adequate funding and staff for enforcement authorities is not fully available
- enforcement authorities enjoy operational independence, but avoid "pushing it too hard" in "sensitive cases"
- national anti-corruption agencies, prosecutor's offices, competition and tax authorities and financial regulators cooperate on enforcement
- national authorities cooperate with foreign law enforcement authorities on investigation and enforcement (mutual legal assistance)

The same institutions are in charge of enforcing both the laws on the public sector and on commercial bribery and their capacities are fully elaborated in the chapter "Capacities to enforce laws prohibiting bribery of public officials".

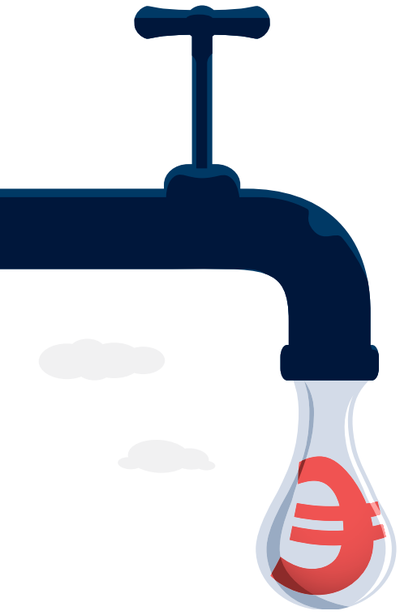
[120] According this source, the structure of judgments for active and passive bribery is similar – 4 imprisonment sentences and 3 conditional sentences for passive bribery compared to 4 imprisonment sentences and 8 conditional sentences for active bribery. In contrast to that, a fine was ruled as accessory punishment only for active bribery (1 person) while the measure of confiscation of benefits, the security measure of expulsion of a foreigner from the country, as well as the plea bargain agreement are present only when passive bribery,
Report on the Work of Public Prosecutors' Offices on Crime Prevention and Protection of Constitutionality and Legality in 2018, pages 95-96, http://www.rjt.gov.rs/docs/RAD_JAVNIH_TUZILASTAVA_2019.pdf
[121] Acting on these, courts ruled first instance judgments - two for active and four for passive bribery. In contrast to the judgments for active commercial bribery, where only imprisonment was ruled and a fine as accessory punishment, the judgments for passive commercial bribery are different - imprisonment was pronounced in two cases, conditional sentence imposed in two cases and in two cases a fine as accessory. Report on the Work of Public Prosecutors' Offices on Crime Prevention and Protection of Constitutionality and Legality in 2018, pages 94-95, http://www.rjt.gov.rs/docs/SKM_C65819040214590.pdf
[122] https://publikacije.stat.gov.rs/G2020/Pdf/G20201202.pdf, page 9
[123] Ibid
[124] Statistics of the judiciary, Republic Statistical Office, http://publikacije.stat.gov.rs/G2019/pdf/G20191192.pdf
[125] NIS directors made an arrangement with the director and co-owner of "BMR Group" to receive 10 per cent of the value of works and services provided to NIS, a total of €22,834.105, as well as to be disclosed information about prices and services of their competitors
[126] https://publikacije.stat.gov.rs/G2020/Pdf/G20201202.pdf
https://publikacije.stat.gov.rs/G2019/Pdf/G20195653.pdf, page 74
[127] Report on the Work of Public Prosecutors' Offices on Crime Prevention and Protection of Constitutionality and Legality in 2018, pages 95-96 http://www.rjt.gov.rs/docs/SKM_C65819040214590.pdf
[128] Report on the Work of Public Prosecutors' Offices on Crime Prevention and Protection of Constitutionality and Legality in 2019, http://www.rjt.gov.rs/docs/RAD_JAVNIH_TUZILASTAVA_2019.pdf

THEMATIC AREA 3:
PROHIBITING THE LAUNDERING OF PROCEEDS

Laws prohibiting the laundering of proceeds of crime

Serbia earns a full score because the laundering of the proceeds of crime is prohibited under national law, including:

- the conversion or transfer of assets, knowing that such assets are the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the assets
- the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights to the assets, knowing that such assets are the proceeds of crime
- the acquisition, possession or use of assets, knowing, at the time of receipt, that such assets are the proceeds of crime
- the participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the above offences



All forms of money laundering are covered by the criminal offense of money laundering. There are two definitions of the money laundering crime in Serbian law, both punishable by a fine and imprisonment. According to the Criminal Code, money laundering is defined as the "conversion, transfer, acquisition, possession or use of assets, from a criminal offense, for the purpose of concealing or disguising the illicit origin of the assets."[129] Originally, there was also a condition for incrimination – "knowledge that the assets originate from a criminal offense", but it was later replaced with a more flexible condition – "knowledge that the assets originate from criminal activity" (not any particular criminal offense).[130]

The law prescribes a minimum of six months in prison for the least severe form of the crime and a maximum of 12 years and a cumulative fine for the most serious crimes committed in/by a group (a group as defined by the law consists of at least three persons connected to the persistent or occasional commission of crimes).[131]

The Criminal Code defines aiding, abetting and facilitating the commission of offences as criminal acts, which are all punishable. In particular, the following is considered as aiding in the commission of a criminal offense: giving advice or instructions on how to commit a criminal offense, making the perpetrator available for the commission of a criminal offense, creating conditions or removing obstacles to the commission of a criminal offense, as well as promising in advance the concealment of a criminal offense etc. Money and property used to commit this crime shall be confiscated.[132]

The Law on the Prevention of Money Laundering and the Financing of Terrorism[133] contains a similar definition, with a more precise and comprehensive description of what can be concealed or disguised as the "real nature, origin, location, movement, disposal, ownership or right in relation to property, money or rights, from criminal offense". Various actions contravening the provisions of this law, are defined as economic offenses and misdemeanours. The lowest fine that can be imposed on a legal entity for an economic offense is RSD50,000 (approximately €420) and the maximum is RSD3,000,000 (compared to 10.000 as a minimum and 500.000 as a maximum sentence for misdemeanour).[134]

[129] The Criminal Code, Article 245 (Official Gazette of RS, No. 85/2005, 88/2005, 107/2005, 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016)
[130] Ibid.
[131] Ibid.
[132] Ibid
[133] Art. 2 The Law on the Prevention of Money Laundering and the Financing of Terrorism (Official Gazette of RS, No.113/2017)
[134] Art. 117 to 120 The Law on the Prevention of Money Laundering and the Financing of Terrorism (Official Gazette of RS, No.113/2017)

The enforcement of laws prohibiting laundering of proceeds of crime

The enforcement of money laundering laws in Serbia can be assessed at 50 out of 100, as:

- law enforcement agencies show active enforcement of cases of laundering of proceeds of crime in a limited number of cases;
- dissuasive, proportionate, effective sanctions are applied for laundering of proceeds of crime in a limited number of cases:
  - against any person who works in any capacity for a private sector entity
  - against legal persons
- long and adequate statute of limitations periods apply
- proportionate, persuasive and effective mitigation incentives in the form of reduced or suspended sanctions for legal and natural persons are applied in a limited number of cases.

According to data from the annual reports of the Administration for the Prevention of Money Laundering (APML), 2019 was (as in 2018) a year of intensive cooperation between the APML and the public prosecutors' offices.[135]

On the other hand, cooperation with the police indicates that the Ministry of the Interior is more likely to request information from the APML than vice-versa.[136] On the contrary, APML received a smaller number of requests for information from foreign FIUs, than it sent them.[137]

When it comes to the judiciary, there have been no major cases and results in prosecution for years. Less than one-fifth of the cases of money laundering in Serbia ended up before a court of law and those offenders who were convicted received symbolic punishment.[138] Although the law prescribes a minimum of six months in prison for the lightest form of the crime and a maximum of 12 years and a cumulative fine sentence for the most severe form, the minimum sentence imposed was three months. It was hence below the legal minimum, (the minimum fine was RSD10,000 which is €85) and the maximum was three years of imprisonment and RSD 5,000,000 (approximately €42.530).[139]

In 2014, the Special Court in Belgrade convicted, for the first time in history, legal persons of money laundering. Under the same verdict, 11 people were convicted of committing several criminal acts of extortion, as part of an organised criminal group.[140] Certainly, the best-known case related to money laundering, aspects of which are still unsolved, is the so-called "Balkan Warrior".[141] It resulted in the prosecution and the trial of Darko Saric, as the ringleader, and 16 group members accused of laundering €22 million of cocaine.[142] The trial lasted for more than eight years. The reason is that Saric had revoked all the powers of attorney from his lawyers. He also filed a request for the exemption of a judge due to "bias".[143] In 2018, Saric was sentenced to a maximum penalty of 15 years in prison for organising a criminal group in order to smuggle 5.7 tons of cocaine from Latin America to Western Europe. The appellate court confirmed the sentence in November 2020.[144]

Statistics are somehow better in the more recent period, with the number of prosecutions for money laundering in 2019 increased significantly compared to previous years. In the course of 2019, criminal charges were filed against 213 (previously year 90) persons for the crime of money laundering and 74 persons were charged (compared to 34 in 2018).[145] The courts handed down 65 verdicts, 63 of which were convicting, one acquitting and one dismissal.[146] According to the structure of convictions, there were more suspended sentences (44) than prison sentences (four). Four fines as accessory punishment and 6 security measures related to the confiscation of objects were also imposed.[147] [148]

There is a number of "politically sensitive" cases where enforcement authorities failed to react to publicly disclosed deals potentially involving corruption or rejected charges against public officials without providing convincing arguments[149]. It includes failures of prosecutors to investigate severe claims brought to light by investigative media reports. Among others, in one such case, the former Belgrade mayor and current Minister of Finance is suspected of being involved in money laundering.[150]

[135] The number of requests received by the APML were 186 (compared to 144 in 2018) and the information provided to the competent Public Prosecutors Offices (158) is significantly higher in 2019 (compare to 75 in 2018), APML Annual Report for 2019, http://www.apml.gov.rs/uploads/useruploads/Documents/Godisnji%20izvestaj%20o%20radu%20Uprave%20za%202019.%20godinu.pdf, page 20
[136] The number of requests received from the Ministry of the Interior in 2019 was significantly higher -217 (compared to 117 in 2018), while the number of requests sent by the APML to the Ministry considerably lower – 85. page 22, Ibid
[137] 105 received requests compare to 224 sent. Requests mainly involved Serbian citizens holding bank accounts abroad who were suspected to have links with criminal activities, or foreign citizens holding bank account in Serbian commercial banks or being involved in criminal activities in Serbia. Page 24, Ibid.
[138] https://javno.rs/analiza/pranje-novca-bez-velikih-slucajeva-i-rezultata
[139] In the period from January 1, 2008 to December 31, 2017. 567 criminal charges were filed for the criminal offense of money laundering, and only 77 verdicts were passed for 102 defendants. https://javno.rs/analiza/pranje-novca-bez-velikih-slucajeva-i-rezultata
[140] A company was convicted because its owner as a loan founders, deposited money resulting from the coercion and thus money that is derived from the execution of the offense hidden. The court has imposed a fine of RSD1,5 million and confiscated money laundering in the amount of RSD21 million, https://www.021.rs/story/Info/Srbija/84026/Prva-presuda-pravnom-licu-zbog-pranja-novca.html
[141] https://insajder.net/sr/sajt/vazno/15547/
[142] https://insajder.net/sr/sajt/vazno/15547/
[143] According to the indictment, the money from the sale of cocaine to the purchaser in the countries of South America, through offshore companies, transferred to Serbia and paid into the accounts of domestic companies and some banks, Ibid.
[144] https://nova.rs/vesti/hronika/darko-saric-osuden-na-15-godina/
[145] Report on the Work of Public Prosecutors' Offices on Crime Prevention and Protection of Constitutionality and Legality in 2018 and 2019 http://www.rjt.gov.rs/docs/SKM_C65819040214590.pdf http://www.rjt.gov.rs/docs/RAD_JAVNIH_TUZILASTAVA_2019.pdf
[146] Ibid
[147] Ibid
[148] Based on the data from the 2018 Annual Report of Republic Public Prosecutor http://www.rjt.gov.rs/docs/SKM_C65819040214590.pdf
In 2018 the courts handed down 11 verdicts, nine of which were convicting and two acquitting. According to the structure of convictions, there were more suspended sentences (five) than prison sentences (four). Two security measures related to the confiscation of objects were also imposed.
[149] https://freedomhouse.org/country/serbia/freedom-world/2020
[150] http://rs.n1info.com/Vesti/a317345/Zlatko-Minic-o-Sinisi-Malom.html

Capacities to enforce laws prohibiting laundering proceeds of crime

Serbian capacities are estimated 75 out of 100 because:

- adequate funding and staff for enforcement authorities is mostly available
- enforcement authorities enjoy operational independence
- national anti-corruption agencies, prosecutor's offices, competition and tax authorities, and financial regulators mostly cooperate on enforcement
- national authorities cooperate with foreign law enforcement authorities on investigation and enforcement (mutual legal assistance)

In addition to the prosecutors and courts, the third pillar of the fight against money laundering is the Administration for the Prevention of Money Laundering (APML). It is an administrative body within the Ministry of Finance. Its powers are governed in the Law on the Prevention of Money Laundering and the Financing of Terrorism (AML/CFT Law). In accordance with the AML/CFT Law, the APML performs financial-intelligence activities: it collects, processes, analyses and disseminates to the competent authorities' information, data and documentation obtained in line with the AML/CFT Law, and performs other activities related to the prevention and detection of money laundering and terrorism financing in accordance with the law.

According to the Constitution of the Republic of Serbia, the Public Prosecutor's Office is an autonomous state body. Similarly, the Courts are autonomous and independent in their work.

When it comes to capacities of key institutions, the courts are understaffed. This is the result of a long-standing ban on employment and denying approvals for filling out vacant positions in accordance with the current job classifications, which additionally increases the workload of the employees who remain in the system.[151] Under the Law on the Organization and Jurisdiction of State Bodies in Combating Organised Crime, Terrorism and Corruption, implemented since 1 March 2018, special departments for combating corruption was established in the Higher Public Prosecutor's Office in Belgrade, Novi Sad, Kraljevo and Nis.[152]

The APML increased its budget for 2019 compared to the previous year - the total amount earmarked for the activities of APML was RSD120.475.000 (approximately €1,010,525)[153] while in 2018 it was RSD115,294,000 (approximately €968 858).[154] At the same time, the recruitment of new employees in order to fill all capacities to the newly formed organizational unit did not occur as planned.[155]

In addition to the positions of the acting director and two-acting assistant directors, who were appointed by the Government, the Rulebook on the Internal Organisation and Classification of Jobs in the APML provides for 34 posts to be filled with 42 civil servants. Of the overall number of positions envisaged (42), 34 staff members are currently employed, meaning that 80.95 per cent of the APML's HR capacities were filled in 2019.[156] The APML has highly qualified staff in its structure, with 90 per cent having university-level qualifications.

In 2018, the Government established an additional control mechanism known as the Anti-Money Laundering/ Combating the Financing of Terrorism Coordination Body (AML/Coordination Body). The deputy prime minister and minister of the interior chair the AML/CFT coordination body, and it comprises representatives of the Ministry of Finance, Ministry of Justice, Ministry of Interior, Prosecutor for Organised Crime, Republic Public Prosecutor's Office, Security Information Agency, National Bank of Serbia, Customs Administration and Tax Administration.

According to APML's annual reports, the number of requests received by the APML (186) and information provided to the competent Public Prosecutors Offices (158) is significantly higher in 2019 compared to the previous year.[157] Similarly, the number of requests received from the Ministry of Interior in 2019 was significantly higher (217), compared to 117 in 2018, while the number of requests sent by the APML to the Ministry considerably lower (85). The APML frequently exchanges information with the Tax Administration and the National Bank.

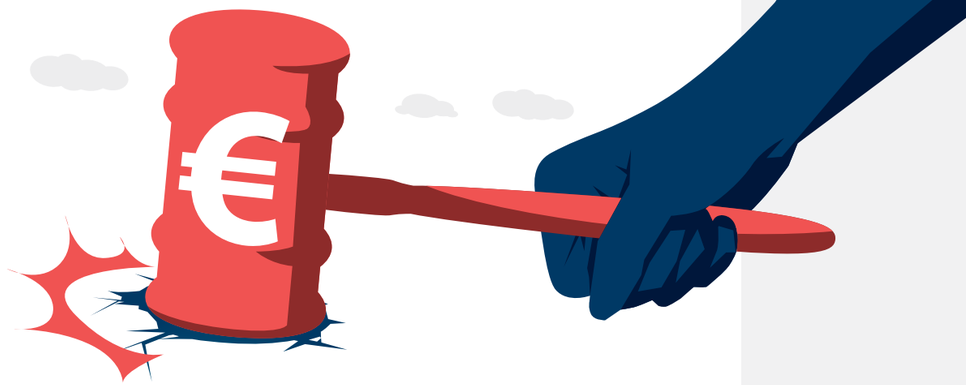
In 2019, the APML responded to 105 requests for information from foreign FIUs (compared to 80 requests in 2018). The requests for information mainly involved Serbian citizens holding bank accounts abroad who were suspected of having links with criminal groups or criminal activities, or foreign citizens holding bank account in Serbian commercial banks/involved in criminal activities in Serbia. Whilst investigating its own cases, the APML sent 224 requests for information to foreign FIUs (150 requests in 2018). The requests for information mainly involved non-residents with bank accounts or business activities in Serbia, whose origin of funds or business raised suspicion.[158] In addition, during 2018 some of the requests were sent to foreign FIUs in order to identify the assets of Serbian citizens abroad.

In 2018, the Government of Serbia adopted the document "Risk Assessment of Money Laundering and Risk Assessment of Terrorism Financing". This document is the result of intensive work and cooperation between the competent authorities of the Republic of Serbia and representatives of the private sector (financial and non-financial). A total of 154 representatives of the public and private sectors collected data in accordance with the World Bank methodology.[159]

When it comes to the origin of laundered income, it was found that the largest number of crimes in the period from 2013 to 2017 were committed in the national jurisdiction, while crimes committed in foreign jurisdictions occurred somewhat less frequently.[160]

Despite the comprehensive normative framework, the chief weakness lies in the lack of coordination due to the formal way of exchanging data between the Customs Administration and the Anti-Money Laundering Administration. In this regard, the signing of a cooperation agreement between the Customs Administration and the Anti-Money Laundering Administration has been identified as a priority measure, which will enable better connectedness and exchange of data, but also provide training for customs officers in identifying money-laundering risks.[161]

The Ministry of Justice is the central body for forwarding letters of request, while domestic courts and public prosecutor's offices are the bodies responsible for providing international legal assistance. Based on the analysed data, it was noticed that international cooperation is more intensive from year to year, as well as that the Serbian judicial authorities resort to international legal assistance often. Data of the Ministry of the Interior, the Tax Administration and the APML point to the same trend. As for international cooperation, the lack thereof was identified as a shortcoming in accordance with FATF Recommendation No. 40, in the part where there are no concluded agreements.[162]



[151] According to data of the High Judicial Council in 2019 the total number of judicial positions in all courts in the Republic of Serbia was 3,022, of which 2,703 positions were occupied (compared to 2,588 in 2018) and 2,531 judges acted effectively in the courts. According to the Law on the Budget for 2019, all courts were financed from the budget with a total of RSD24.506.060.000 or approximately €192 million (in 2018 that amount was RSD22,304,078,000).

[152] According to the Decision of the State Prosecutors Council, the number of deputy public prosecutors was increased so that in 2018, 708 deputy public prosecutors and 71 public prosecutors served, while 19 deputy public prosecutors performs the function of the public prosecutor. Under the Law on the Budget of the Republic of Serbia for 2018, funds for the work of the public prosecutors amounted to RSD 3.019.774.000,00 (about 25 164 783 euro). Total realization in 2018 amounted to 94,46%.

[153] APML Annual Report for 2019, http://www.apml.gov.rs/uploads/useruploads/Documents/Godisnji%20izvestaj%20o%20radu%20Uprave%20za%202019.%20godinu.pdf, page 55

[154] APML Annual Report for 2018, page 44, http://www.apml.gov.rs/REPOSITORY/2685_2018-annual-report.pdf

[155] APML Annual Report for 2019

[156] Ibid, page 49

[157] According to APML's annual report for 2018, the number of requests received by the APML is 144 and information provided to the competent Public Prosecutor's Offices is 75. In contrast, the number of requests received from the Ministry of Interior in 2018 was considerably lower (117) compared to 2017 (320), while the number of information provided to that ministry in 2018 (124) was similar to that in 2017 (116). The same trend can be noticed in the cooperation with the Security Information Agency.

[158] APML Annual Report for 2019, http://www.apml.gov.rs/uploads/useruploads/Documents/Godisnji%20izvestaj%20o%20radu%20Uprave%20za%202019.%20godinu.pdf, page 24

[159] http://www.apml.gov.rs/srp2253/novost/Procena-rizika-od-pranja-novca-i-procena-rizika-od-finansiranja-terorizma.html
The Republic of Serbia made the first national risk assessment in 2013 while the assessment from the 2018 is the latest one according from the data available at the APML web-site, last accessed in August 2020.
http://www.apml.gov.rs/english/national-ml-tf-risk-assessment

[160] http://www.apml.gov.rs/uploads/useruploads/Documents/2254_1_sazetak-nra-za-javnost%20-%20cir..pdf, page 23

[161] Ibid, page 30

[162] Ibid, page 31

THEMATIC AREA 4:
PROHIBITING COLLUSION

Laws prohibiting collusion

Serbian legislation prohibiting collusion can be assessed at 100 out of 100, as general and specific legislation provides for the prohibition of:

- price fixing
- making rigged bids (collusive tenders), considered also a criminal offence of establishing output restrictions quotas
- sharing or dividing markets by allocating customers, suppliers, territories or lines of commerce

Administrative and commercial law prohibiting collusion

Since 1996, there is a special anti-monopoly (competition) law in place in Serbia.[163] The legislation was completely replaced in 2005[164] and 2009[165], the current one being amended the last time in 2013. In 2017, the Ministry of Trade, Tourism and Telecommunications established a working group for the drafting of the Law on the Protection of Competition,[166] partly aimed to transpose European law, but no official draft has been published yet.

The general rule, as stated in Article 10 of the current law, provides that "restrictive agreements" are prohibited and null and void, except if excluded from prohibition pursuant to this law. Such agreements are made by participants in the market with an objective or a consequence to considerably limit, violate or prevent competition on the territory of the Republic of Serbia. These agreements can be in the form of contracts, specified or implicit contract clauses, concerted practices, as well as decisions of associations of undertakings. The above forms must, to be prohibited, fix the purchase or sale prices or other conditions of trading; limit or control the production, market, technical development or investments; unequal conditions of operations are applied to the same activities for different undertakings; the contract or agreement is made conditional on the acceptance of additional obligations, not related with the subject matter of the agreement; divide markets or procurement sources.

Possible exemptions include situations where competition on a relevant market is not substantially undermined, which contributes to production and trade[167], individual exemptions approved by the competition authority for a period of up to eight years[168], certain categories of agreements based on Government decrees (block exemptions)[169] and agreements of minor importance.[170]

Under the Law on Public Procurement of 2012[171], as well as the new law (implemented from 1 July 2020)[172], the "declaration of an independent bid" is part of tender documents, by which the bidder confirms "under full financial and criminal responsibility" that the bid was submitted without any agreement with other bidders or interested parties[173]. In case of reasonable doubt in the veracity of the declaration, the contracting authority shall immediately notify the Commission for the Protection of Competition. Each person employed or in any other way engaged by the potential bidder has the duty to report such a violation. The whistleblower shall be protected. A contract resulting from such collusion shall be terminated.[174] The new Law on Public Procurement does not provide for special rules on alerting in such situations, because the general Law on Protection of Whistleblowers has been adopted in the meantime.

Criminal law prohibiting collusion

The Criminal Code,[175] in an article introduced in December 2012,[176] provides for the penalty of imprisonment from six months to five years for a responsible person in a company or other business enterprise or entrepreneur, who, in relation to public procurement, submits an offer based on false information, or colludes with other bidders, or undertakes other unlawful actions with the aim of influencing the decision of the contracting authority. The penalty is higher for those colluding in more valuable (RSD150 million, approximately €1.2 million) public procurements (one to 10 years).

Another criminal offence related to the crime of "Abuse of monopolistic position" existed until 1 March 2018 in Article 232. The intention was to punish the responsible officer in an enterprise who "by way of abuse of monopolistic or dominant market position or by entering into monopolistic agreements, causes market disruptions or brings that entity into a more favourable position in relation to others, thus acquiring material gain for that entity or for a different entity or causes damage to other business entities, consumers or service users". This poorly formulated criminal offence is now replaced by the crime of "Concluding restrictive agreements"[177]. This criminal offence is intended to punish representatives of enterprises involved in price fixing, limiting production or sale, or dividing the market. It is punishable by six months to five years of imprisonment and a fine.

The crime of "conclusion of a restrictive agreement" incriminates any person in a commercial entity that concludes a restrictive agreement, which agreement is not exempted from the prohibition under the competition protection legislation and which fixes prices, limits production or sales or divides markets. Therefore, the new provision omits the "abuse of monopolistic or dominant market position" and incriminates only the conclusion of the restrictive agreement that is not exempted from prohibition according to the Law on the Protection of Competition[178], and which fixes prices, limits production or sales or divides markets.

Additionally, the Code provides for another novelty within the same article - the possibility of abolishment of sanctions under certain circumstances, and therefore putting an offender in a more favourable position than he/she would have been in before the amendment. Namely, the new law stipulates that, should the offender qualify for the abolishment of the "measures" (that is, fines) imposed on the basis of the Law on Protection of Competition (in accordance with Article 69) the abolishment of the sanctions in Article 229 of the Code may apply as well. The sanction (imprisonment from six months to five years as well as a fine) has not changed through the amendments.[179]

The enforcement of laws prohibiting collusion

Serbian law enforcement capacities for prohibiting collusion can be assessed at 50 out of 100, given that:

- the law enforcement agency – the Commission for the Protection of Competition – shows active enforcement of collusion cases
- dissuasive, proportionate, effective sanctions are applied in collusion cases, but the number of such sanctions that are actually imposed is relatively low
- long but not always adequate statute of limitation periods apply
- there are proportionate and persuasive incentives to report such cases through the mitigation of sentences, but they haven't proven to be fully effective in order to generate a higher number of reported wrongdoingsa

Active enforcement

The Commission for the Protection of Competition (CPC) is an independent organisation, accountable to the Parliament, to which it presents its annual report.[180] The Parliament also elects the members of the CPC Council, based on a public call, for a five-year period.[181] The CPC decides on the rights and obligations of undertakings, imposes administrative measures, enacts instructions and guidelines for the implementation of the law, monitors and analyses the situation related to competition on particular markets and in particular sectors, etc.[182]

In 2018, the last year for which the report was published, the commission acted ex officio in a total of 27 cases (eight from the previous period) and enacted a total of nine decisions, in three of which it established an infringement of competition. The number of cases was higher than in the previous year. In 2018, the CPC identified collusion of companies that bided for the Ministry of Defence tender for "consumables for hygiene maintenance" and price fixing of automobile sellers. It also dealt with possible "restrictive agreements" of tobacco companies (price fixing), 170 companies involved in the import and sale of baby equipment (price fixing), collusion of two companies for selling milk and dairy products in public procurements, collusion of direct competitors (importers of machines for a electricity company), companies colluding when biding for haemophilia medicines procurement, for companies involved in collusion in selling of office equipment and against credit card companies[183].

The Commission also received 36 initiatives for opening proceedings for rigging public procurements, but found no grounds to proceed, as it could not establish or identify the collusion of bidders with purchasing entities.

In 2019, the Commission had one decision published[184] in which collusion and price fixing for procurements of office equipment was established.

[163] Anti-monopoly Law ("Official Gazette of FRY", no. 29/96 and "Official Gazette of RS", no. 85/2005 – as amended)
[164] Law on the Protection of Competition ("Official Gazette of RS", no. 79/2005)
[165] Law on the Protection of Competition ("Official Gazette of RS", no. 51/2009 and 95/2013)
[166] Ministry of European Integration, NATIONAL PROGRAMME FOR THE ADOPTION OF THE ACQUIS, third revision, October 2018, http://www.mei.gov.rs/upload/documents/nacionalna_dokumenta/npaa/third_revision_npaa_18.pdf
[167] LPC, Article 11
[168] Ibid, Article 12
[169] Ibid, Article 13
[170] Ibid, Article 14
[171] Law on Public Procurement ("Off. Gazette of RS", no. 124/2012, 14/2015 and 68/2015)
[172] Ibid ("Off. Gazette of RS 91/2019)
[173] Ibid, 2012, Article 26
[174] Ibid, Article 27
[175] Criminal Code ("Off. Gazette of RS", no. 85/2005, 88/2005, 107/2005., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, 35/2019)
[176] Misfeasance in Public Procurement, originally Article 234a, since 2016 amendments, Article 228.
[177] CC, Article 229.
[178] Official Gazette of RS, no. 51/2009 and 95/2013
[179] "The conclusion of a restrictive agreement is a new criminal offence in the amended Criminal Code of Serbia", Bojović & Partners, 2016.
[180] LPC, Article 20.
[181] Ibid, articles 23 and 24, Official Gazette of RS, no. 51/2009 and 95/2013
[182] Ibid, Article 21
[183] The Annual Report of CPC for 2018 (last available in November 2020), http://www.kzk.gov.rs/kzk/wp-content/uploads/2019/06/GI-2018-eng13.pdf
[184] http://www.kzk.gov.rs/kzk/wp-content/uploads/2019/10/27-09-2019-56-Resenje-o-povredi-konkurencije-Original-Konica-Minolta-i-ostali.pdf

Effective sanctions

In cases of violation of the law, the CPC is empowered to impose administrative measures (a certain percentage of the annual turnover of companies that have violated the law). In 2018 and 2019, the CPC penalized companies involved in collusion in three cases. The total value of imposed measures was more than RSD100 million (approximately €850,000).

Collusion investigated in these cases occurred mostly during 2015, 2016 and 2017, and the proceedings before the Commission usually lasted more than a year. Although it takes some time to establish infringements of the competition rules, the justice here is much faster than in typical criminal proceedings. The CPC also resolves its rather complicated cases more efficiently than other administrative bodies, when implementing their para-judicial "investigations".

Collusion for restrictive business agreements was reported as a crime only 2 times in the year 2019[185]. According to the available statistics for 2019, there was 1 prison sentences and one sentence was conditional.[186] In the same time, abuse of monopolistic position was reported once.[187] Abuse in public procurement was reported in 12 cases during the whole year 2019. According to the structure of convictions, there were more suspended sentences (3) than prison sentences (1) and home arrest (1).[188]

Public prosecutors identified as many as 262 criminal charges for alleged corruptions in public procurement in 2019, 11 court verdicts, 9 convicting judgments, one acquitting and one dismissal.[189] According to the structure of convictions, there were more suspended sentences (5) than prison sentences (4).[190] For restrictive agreements, there were no criminal charges and verdicts in 2019.

Collusion for restrictive business agreements was reported as a crime only three times in 10 months of the year 2018,[191] and in all cases perpetrators agreed with the prosecutor to do work in the public interest in exchange for "delay of prosecution" (such work in the public interest, when performed, will lead to discharge of criminal liability).[192] In the first two months of the year, "abuse of monopolistic position was reported four times, and one charge was rejected. Abuse in public procurement was reported in 28 cases during the whole year 2018, but in 21 instances the charges were rejected by the public prosecutor. Two perpetrators agreed to confess to the offense and to do work in the public interest in order to avoid prosecution.

Prosecutor's offices and courts dealt with cases reported in earlier years. Therefore, in total there were 15 indictments for misfeasance in public procurement (10 persons were found guilty) and 32 for restrictive agreements (17 found guilty). Prison sentences were imposed in only five cases of restrictive agreement and in one of public procurement. According to the law, six months of imprisonment is the minimum penalty for both crimes.

It is worth noting that public prosecution statistics[193] differ. They identified as many as 202 criminal charges for alleged corruptions in public procurement in 2018 (out of 251 criminal charges they dealt with), 17 court verdicts, 14 convicting judgments and six prison sentences. One criminal charge was against an enterprise, based on the Law on the Liability of Legal Persons for Criminal Offences. For restrictive agreements, there were four criminal charges and two verdicts.

Adequate statutes of limitation

According to the Criminal Code[194] statute of limitations, for all the above-mentioned criminal offences it would be five years after the crime is committed or 10 years if bid rigging is related to a public procurement of higher value. In general, such a period is long enough to conduct necessary legal actions against the perpetrators if the case is reported in a timely manner.

When it comes to the measures (infringement fines) that the CPC may apply, they cannot be imposed after the lapse of five years from the day of the commission of the act or failure to fulfil commitments.[195] Bearing in mind that the two statutes of limitations run in parallel, it means that perpetrators of criminal offences can avoid liability if the prosecutor waits for the CPC to establish all the relevant facts in their procedure and initiate its procedure thereafter.

Mitigation incentives

Mitigation incentives exist in both laws. Competition regulations[196] provide for a possible relief of competition protection measures. The participant in a restrictive agreement, who is the first to provide evidence on the basis of which the Commission passed a decision on infringement, is to be relieved of pecuniary fines, under the condition that the CPC did not have information about the given agreement at the moment of the submission of evidence, or it had information, yet without sufficient evidence to initiate the procedure. If the person is not eligible for relief of a pecuniary fine, but still contributes to the decision on infringement, they may be fined to a lesser degree. The relief measure shall not apply to the participant that initiated the forbidden agreement.[197]

The Criminal Code provides for the possibility to relieve a person of punishment if the latter meets the requirements provided for by competition legislation.[198] Similarly, a perpetrator who voluntarily discloses that the bid in public procurement is based on false information or collusion, prior to the issuance of decision on selecting the bid, may be remitted from punishment.[199]

[185] Republic of Serbia, National Statistics Institute, statistics for judiciary area, adult perpetrators of criminal offences, 2019. https://publikacije.stat.gov.rs/G2020/Pdf/G20201202.pdf
[186] Ibidem
[187] Ibidem
[188] Ibid
[189] Report on the Work of Public Prosecutors' Offices on Crime Prevention and Protection of Constitutionality and Legality in 2019, http://www.rjt.gov.rs/docs/RAD_JAVNIH_TUZILASTAVA_2019.pdf
[190] Ibidem
[191] Republic of Serbia, National Statistics Institute, statistics for judiciary area, adult perpetrators of criminal offences, 2018. https://publikacije.stat.gov.rs/G2019/Pdf/G20195653.pdf
[192] The legal institute, known as "prosecutors' opportunity" is regulated in Article 283 of Criminal Procedure Code, and may be used in instances where possible punishment does not exceed five years of imprisonment. The perpetrator who fulfil his/her part of the deal within one year will not be prosecuted. Funds collected through this mechanism are distributed by the Ministry of Justice for various social programmes, once a year.
[193] Annual report on work of public prosecution offices in Serbia, published by the State Prosecutor's Office for 2018.
[194] CC, Article 103.
[195] LPC, Article 68.
[196] LPC, Article 69.
[197] These requirements are further regulated in the Government's DECREE ON THE CONDITIONS FOR DISCHARGE FROM THE OBLIGATION TO PAY THE PECUNIARY AMOUNT OF THE MEASURE OF COMPETITION PROTECTION ("Official Gazette of RS", no. 50/2010).
[198] CC, Article 229, para 2.
[199] CC, Article 228, para 4.

The capacities to enforce laws prohibiting collusion

The Serbian institutions' capacities to enforce laws prohibiting collusion can be assessed at 100 out of 100 given that:

- adequate funding and staff for enforcement authorities is available for the most important agencies (CPC) but not all of them (prosecutor's offices)
- enforcement authorities enjoy operational independence
- national anti-corruption agencies, prosecutor's offices, competition and tax authorities and financial regulators cooperate on enforcement
- national authorities cooperate with foreign law enforcement authorities on investigation and enforcement (mutual legal assistance).

Funding and staff for enforcement authorities

The law[200] provides that the commission shall be financed according to the financial plan prepared by the CPC, which the Government has to approve. Until the approval, financing is performed under the limit of expenditure in the previous year. If, according to the annual statement of income and expenses, the total income of the CPC exceeds the expenses, the difference, after the allocation of funds to reserves shall be paid into the budget of the Republic of Serbia. Similarly, if the functioning of the commission is jeopardized due to insufficient income, the CPC shall provide information and propose measures to the Government, including the possibility of budget support. In view of the possibility to generate its own income, the CPC enjoys substantial financial independence in its activities, unlike "traditional" budget beneficiaries that depends highly on budget restrictions and instructions imposed by the Ministry of Finance. However, some limits also apply here, in particular when it comes to the possible increase of salary level that was limited since 2014 in the whole public sector.

In practice, the CPC had RSD523 million (€4.4 million) of income in 2019 (10 per cent more than the year before). Total expenditures were less than half of that amount (RSD252 million or €2.13 million).[201]

In 2018, the CPC had RSD472 million (€4 million) of income (12 per cent more than the year before), as a result of the increased income for approval of concentration on the market. Total expenditures were less than half of that amount (RSD227 million or €1.93 million).[202]

The commission has a Council with four members and the President of the CPC who is the fifth member in the council. The council passes all decisions and acts, unless stipulated otherwise by the law and statute. The members are elected among eminent economic and legal experts, with at least ten years of work or professional experience and substantial achievements and/or practice in the relevant area, particularly in the field of competition protection and acquis communautaire, and with the "reputation of objective and impartial persons" (at least two lawyers and economists).

The officials of the CPC are elected and dismissed by the parliament, at the proposal of the parliamentary committee in charge of commerce. The election is done through a public contest called by the speaker of the parliament, at least three months before the expiry of the five-year term of office.[203] However, even if there is a public competition and the possibility for professionals to apply for the posts, there are no further rules when it comes to the parliamentary committee among those fulfilling conditions (evaluation and ranking based on qualifications and relevant experience of candidates). Therefore, there is neither a guarantee that the best candidates will be nominated, or procedural safeguards if they are not, which makes it more likely for those having closer ties with ruling parties to be nominated.

Officials of the CPC may not perform any other public duties or professional activity during their term of office and may not conduct any other public or private affairs with a fee, including consultant and advisory services, except for scientific activity, teaching at the university and running specialized training. They may not be political party officials or "promote the programme or political views of political parties in public."[204]

The staff of the commission is employed based on general labour regulations (different than the ones for civil servants), which gives the CPC management flexibility when it comes to employment and salaries. However, when it comes to the lawful acting, expertise, political neutrality, impartiality, qualifications for employment and training, as well as office management, regulations relevant for public administration shall apply. The secretary, appointed by the council, manages the staff of the commission.[205]

As of 25 May 2020, the number of the employees of the CPC reached a total of 56 employees. On the other hand, the Rulebook on Internal Organisation and Job Classification itemizes 70 job positions.[206] The CPC report for 2018, however, does not explain how this situation affects the fulfilment of the roles of the CPC, including an identified need

[200] LPC, Article 32.
[201] Information Booklet of CPC, May 2020, http://www.kzk.gov.rs/kzk/wp-content/uploads/2015/04/kzk-informator-2020-05-lat.pdf
[202] Annual Report of CPC for 2018.
[203] LPC, Articles 22 and 23.
[204] Ibid, Article 27.
[205] Ibid, Article 26
[206] Information Booklet of CPC, May 2020, http://www.kzk.gov.rs/kzk/wp-content/uploads/2015/04/kzk-informator-2020-05-lat.pdf

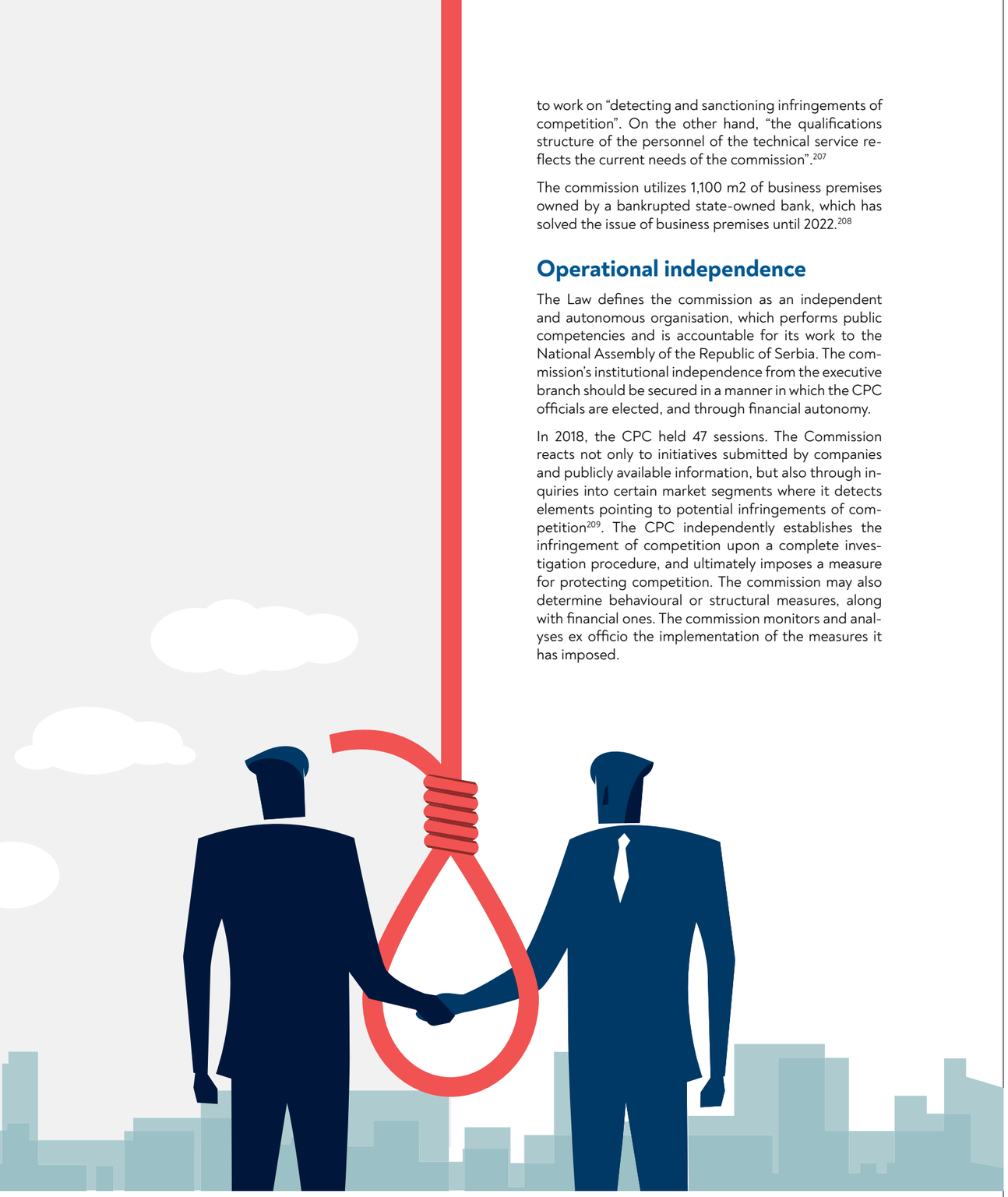
to work on "detecting and sanctioning infringements of competition". On the other hand, "the qualifications structure of the personnel of the technical service reflects the current needs of the commission".[207]

The commission utilizes 1,100 m2 of business premises owned by a bankrupted state-owned bank, which has solved the issue of business premises until 2022.[208]

Operational independence

The Law defines the commission as an independent and autonomous organisation, which performs public competencies and is accountable for its work to the National Assembly of the Republic of Serbia. The commission's institutional independence from the executive branch should be secured in a manner in which the CPC officials are elected, and through financial autonomy.

In 2018, the CPC held 47 sessions. The Commission reacts not only to initiatives submitted by companies and publicly available information, but also through inquiries into certain market segments where it detects elements pointing to potential infringements of competition[209]. The CPC independently establishes the infringement of competition upon a complete investigation procedure, and ultimately imposes a measure for protecting competition. The commission may also determine behavioural or structural measures, along with financial ones. The commission monitors and analyses ex officio the implementation of the measures it has imposed.



[207]CPC, Annual report for year 2018.
[208]Ibid and Information Directory, updated in September 2020, http://www.kzk.gov.rs/kzk/wp-content/uploads/2015/04/kzk-informator-2020-09-cir.pdf
[209]Ibid

The president of the CPC issues the order to initiate the ex officio procedure and no appeal is allowed against it. The CPC shall provide information on the outcome of the initiative to the person that submitted it within 15 days of its submission.[210] Where the trend rigidity of prices or other circumstances suggest that competition may be limited or distorted on the market, the commission may conduct its inquiry into a particular sector of the economy or into a particular type of agreements across various sectors.[211]

In 2018, the commission "had reasonable grounds to believe that the infringement of competition has occurred in 19 cases". By acting ex officio in 27 cases in order to establish the infringement of competition, the commission enacted nine decisions, out of which in three it established the infringement, while in three conclusions, the CPC suspended further proceedings.[212]

According to the law[213], president of CPC and council members are considered public officials and have to submit assets declarations to the Agency for Prevention of Corruption and to respect other conflict of interest rules. Former officials have a two-year cooling-off period. The commission also adopts a Code of Ethics that includes standards of conduct, aimed to preserve the dignity of the organisation, independence and impartiality, raise the awareness about responsibility in its activities, as well as to protect and promote professional integrity.[214]

Institutional and international cooperation

The CPC also sets the procedural penalty measure that "has facilitated, as an efficient mechanism, establishing the full, complete and relevant facts in all cases of violations of procedural discipline in investigation procedures, committed either by the parties to the proceedings or by third parties, by not complying with the commitment to cooperate with the Commission."[215]

The CPC is authorised to collect documents needed from the parties[216], but may also submit a request for information to other state entities and organisations.[217] State entities and organisations are due to cooperate with the commission and to proceed within the given deadline, or to provide an explanation about the subject matter of the request. It includes specifically entities, statistical organisations, tax authorities, local self-government authorities, organisations, chambers of commerce and other organisations that perform public authorities. In case of a lack of cooperation, CPC may inform an oversight body or the public. At the request of the commission, the police will assist in certain actions in the procedure, and particularly with inspections and provisional repossessions.[218]

The Commission considers as valuable its protocols of cooperation signed with various institutions, including the National Bank, Ministry of Interior, Energy Agency, Regulatory Agency for Electronic Communications and Postal Services – RATEL, Business Registers Agency, Serbian Chamber of Commerce and Industry, Agency for Prevention of Corruption, Republic Commission for the Protection of Rights in Public Procurement Procedures and most recently and the Regulatory Body for Electronic Media and Customs Administration.[219] The CPC also opened talks on closer cooperation with the Tax Administration. In practice, the CPC did not have trouble obtaining the necessary information from other state institutions.[220]

In the Serbian legal system, public prosecutors can ask for the support of the CPC when investigating potential crimes of collusion, and not vice versa. Therefore, the CPC would typically indicate potential criminal liability when investigating restrictive agreements and provide evidence and expert knowledge about the case. It is interesting that the CPC is not explicitly named as one of the public authorities that have to provide "officers for cooperation" for task forces of special prosecutorial units fighting corruption, organised and economic crime[221], even if special prosecutor's offices are in charge for both public procurement and other types of collusion when they constitute criminal offence as well. However, the CPC may be asked to do this and to contribute with its knowledge to investigations conducted by the competent public prosecutor.

At the international level, the CPC cooperates with UNCTAD, ICN, OECD, EBRD, CEFTA, WTO and various national authorities with a similar purview in other countries.[222] However, the report of this institution does not point to the need to establish mutual legal assistance in potential cases of restrictive agreements. According to findings from an interview with a former CPC staff member, the CPC obtains necessary information in communication with its peers in other countries; therefore, there is no need in practice to open the formal procedure of mutual legal assistance.

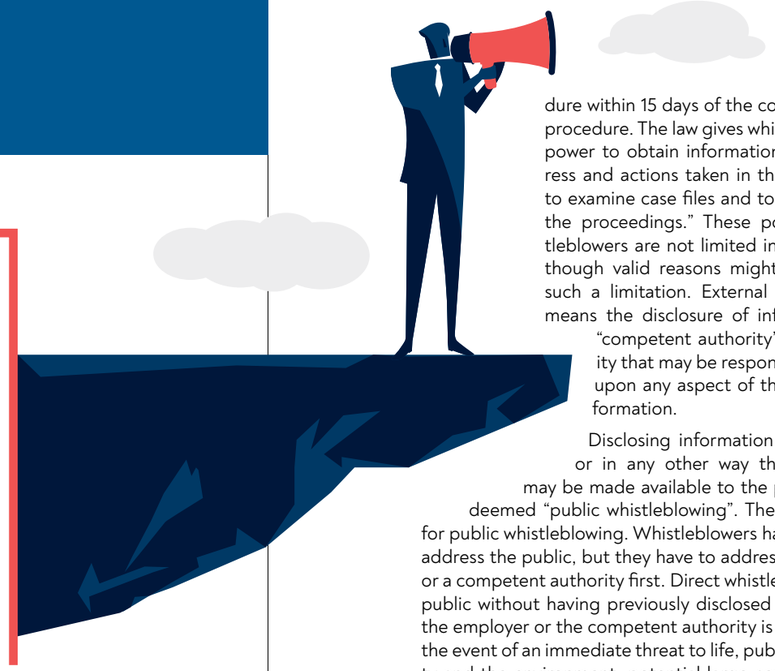
[210]LPC, Article 35
[211]Ibid, Article47
[212]CPC report, 2018
[213]LPC, Article 28
[214]Law on the Protection of Competition (LPC), Art 28a.
[215]CPC report for 2018.
[216]LPC, Article 44, 47, 48.
[217]Ibid, Article 49
[218]Ibid, Article 50.
[219]CPC report for 2018
[220]According to the interview with a former CPC member.
[221]Law on the Organisation and Jurisdiction of Government Authorities on the Suppression of Organised Crime, Terrorism and Corruption ("Official Gazette of RS", no. 94/2016 i 87/2018 – state law)
[222]CPC annual report for 2018

THEMATIC AREA 5:
WHISTLEBLOWING

Whistleblower laws

The Serbian Law on the Protection of Whistleblowers can be assessed at 75 out of 100, given that it:

- offers comprehensive coverage of whistleblowing in both the public and private sector
- gives a broad definition of reportable wrongdoings that could be the subject of whistleblowing, including those harming or threatening the public interest
- gives a broad definition of a "whistleblower" whose disclosures are protected (including employees, contractors, volunteers, users of services rendered by authorities, whistleblower-associated persons, information seekers, wrongly identified as whistleblowers)
- provides requirements for organisations to adopt internal disclosure procedures, but those requirements are not comprehensive enough since they do not include details on how internal investigation procedures should work
- recognises a wide range of disadvantaged positions in which a whistleblower might need protection
- offers remedies available to whistleblowers but only in trials (under urgent procedure, possibility of interim relief, reversed burden of proof to the defendant, etc.)
- the law does not provide for criminal and comprehensive disciplinary sanctions against those responsible for retaliation.



Whistleblower Law coverage

The Law on the Protection of Whistleblowers[223] (adopted in 2014, implemented since 5 June, 2015) provides for the protection for persons who disclose information violations of regulations and other wrongdoings defined by the Law, both in the public and private sector.

The obligations in the case of whistleblowing rests with all "employers", which includes any authority of the Republic of Serbia, provincial or local self-government units, holder of public authorities or public services, legal entity or entrepreneur employing one or more persons, where the violation of regulations or public interest took place and what the whistleblower wants to point out.

Broad definition of reportable wrongdoing

Within the meaning of the law, "whistleblowing" is disclosure of information about violations of regulations, violation of human rights, exercise of public authority in contravention of the purpose for which such authority was entrusted, threats against life, public health, security, the environment, as well as in order to prevent large-scale damage. This definition of whistleblowing is broader than the standard set by the Council of Europe Recommendation and Resolution 1279.

Definition of "Whistleblowers"

A "whistleblower" under the law means an individual who blows the whistle about a matter related to their work engagement, employment procedure, use of services rendered by the authorities, holders of public authority or public services, business cooperation and ownership right in a company.

Also, there are categories of persons who are not whistleblowers in the legal sense, but for whom the law provides for the same protection as for the whistleblowers – „associated persons" (persons who have suffered harmful consequences due to association with a whistleblower), officials (a person who has delivered the information in the performance of official duties), and information seekers (individuals who collect information pointing to a potential threat or injury to the public interest against which an adverse action has been taken for searching for such information). Protection is also provided to the "wrongly identified" whistleblowers and "wrongly identified" associated persons (situations in which a damaging action has been undertaken against an assumed whistleblower). According to the law, the status of whistleblowers can only be granted to natural persons, although in practice legal entities can sometimes also act as whistleblowers (a citizens' association, company or media).

Requirements for organisations

It is a general obligation of all employers, regardless of the number of employees, to provide employees with a written notice of their rights under this law, as well as to appoint a person authorized to receive information and conduct procedures related to whistleblowing. Furthermore, employers that have 10 or more employees are obligated by law to adopt a general act regulating the internal whistleblowing procedure.

An internal whistleblowing procedure shall be initiated by the disclosure of information to an employer, which is by the law obligated "to immediately act upon any whistleblowing disclosure and at the latest within 15 days of receiving such disclosure." Furthermore, the law obligates the employer to notify the whistleblower of the outcome of the procedure within 15 days of the conclusion of the procedure. The law gives whistleblowers the power to obtain information on the progress and actions taken in the proceedings, to examine case files and to "be present at the proceedings." These powers of whistleblowers are not limited in any way, even though valid reasons might be found for such a limitation. External whistleblowing means the disclosure of information to a "competent authority" – any authority that may be responsible for acting upon any aspect of the disclosed information.

Disclosing information to the media, or in any other way that information may be made available to the public, shall be deemed "public whistleblowing". The law sets limits for public whistleblowing. Whistleblowers have the right to address the public, but they have to address the employer or a competent authority first. Direct whistleblowing to the public without having previously disclosed information to the employer or the competent authority is allowed only in the event of an immediate threat to life, public health, safety and the environment, potential large-scale damage, or if there is an immediate threat of destruction of evidence. Another important limit regarding public whistleblowing is that the law excludes the possibility of alerting the public in cases of information that contain classified data.

Protection and remedies

The law sets the conditions that need to be met in order for a whistleblower to enjoy legal protection. The first condition is that the whistle should be blown to a specific actor (if to the whistleblower's employer – internal whistleblowing, if to the competent authority – external whistleblowing, or to the public). The second condition refers to deadlines. The subjective deadline is one year of becoming aware of the "performed action", and the objective deadline is ten years after the event. The third condition refers to the truthfulness of the information, or, more precisely, the belief in the veracity of information. The disclosed "information" do not necessarily have to be true in order for a whistleblower to receive protection. At the time of whistleblowing, the veracity of the disclosed information has to be credible to a person possessing the same average level of knowledge and experience as the whistleblower.

A whistleblower, as a person who mainly protects the public interest, must not suffer adverse consequences. The "employer" has two related obligations - to protect whistleblowers from adverse actions (taken by the employer or by another person) and to take measures to stop the harmful actions (warning other employees to stop harassing a whistleblower, for example). The third obligation consists of eliminating the consequences of harmful actions (for example damage compensation). The law prescribes a prohibition for the employer to put, by acting or failure to act, a whistleblower or related person at a disadvantage due to their whistleblowing, and then prescribe the most common situations in which a whistleblower is put at a disadvantaged position such as: employment, acquisition of the capacity of trainee or volunteer, out-of-work, education, training or vocational training, promotion, evaluation, acquisition or loss of title, disciplinary measures and penalties, working conditions, termination of employment, earnings and other benefits from employment, participation in the employer's profits, payment of bonuses and severance payments, job scheduling or transfer to another job, failure to take measures to protect against harassment of the whistleblower, referral to mandatory health examinations or referral for health assessment and the like.

A whistleblower is entitled to compensation for the damage he/she has suffered because of the whistleblowing in accordance with the Law on Contracts and Torts[224]. It is foreseen that a whistleblower who has been adversely affected by the whistleblowing action is entitled to judicial protection in the form of a lawsuit for protection in relation to the whistleblowing filed with the competent court, within six months from the day of finding out about the harmful action taken, that is, three years from the day when the harmful action was taken. Whistleblower protection cases are subject to the Civil Procedure Code and its provisions relating to labour disputes. A temporary measure, which temporarily eliminates the harmful effects caused to a whistleblower, during the course of the court proceedings, may be ordered. In this way, a whistleblower is protected during the court proceedings as well. According to the LCT, the court awards monetary compensation to injured persons when such compensation is requested, unless the circumstances of the case justify the restoration to the original condition.

Penal provisions of the law do not stipulate criminal offenses. For violations of certain norms that relate mainly to the obligations of employers, the legal entity (the entrepreneur), and the responsible person in the legal entity shall be fined a minimum of RSD10,000 to a maximum of RSD500,000 (approximately €85 to €4,250). Some of the prescribed misdemeanours are the failure to adopt a general act on internal whistleblowing, failure to protect a whistleblower from damaging action, failure to submit a written notice of rights under this law to all employees, failure to designate a person authorized to receive information and conduct proceedings in relation to whistleblowing, failure to act on the information within the prescribed period, failure to notify the whistleblower on the outcome of the proceedings within the prescribed period, failure of the employer to provide information to whistleblowers on the progress and actions taken in the proceedings.

Unfortunately, misdemeanour proceedings are not prescribed for violations of many other important duties and bans (such as preventing whistleblowing, failure to protect the personal information of whistleblowers, failure of the competent authority to act within 15 days of receiving "information", the abuse of whistleblowing, etc.) The law prohibits any damaging action, which is defined very broadly, but sanctions against persons responsible for retaliation are not prescribed in this law. Common to all these cases is that such harmful actions are always prohibited, regardless of the fact that they are taken against a whistleblower. In such cases, there is usually some other legal mechanism that should be applied in order to stop the threat against or violation of rights.[225]

[223]The Law on the Protection of Whistleblowers (Official Gazette of RS, no. 128/2014).

[224]https://www.mpravde.gov.rs/files/The%20Law%20of%20Contract%20and%20Torts_180411.pdf
[225]The Law On the Protection Of Whistleblowers - what is the meaning of norms and where can it be improved?, Transparency Serbia, 2017

Enforcement of the whistleblower law

Serbian enforcement of the whistleblower law can be assessed at 25 out of 100 due to:

- questionable effectiveness of some reporting channels (prescribed by the law) in practice
- insufficient transparency and accountability for the enforcement of the law
- lack of information on the internal disclosure procedures used by public and private organisations to adequately protect employees who report wrongdoing and the results of these procedures, as well as lack of information on the outcomes of the procedures
- lack of or insufficient promotion of channels available for employees to anonymously report sensitive information
- lack of or insufficient promotion of independent agencies that would investigate whistleblowers disclosures

Reporting channels

The Law on the Protection of Whistleblowers provides for a range of reporting channels and prescribes their "sequence order": the internal channels, blowing the whistle to the appointed person authorized to receive the information and conduct proceedings in relation to whistleblowing, and the external whistleblowing, i.e. the disclosure of information to a specific competent authority, which includes many bodies, given the responsibilities they have and the complexity of the issues indicated by whistleblowers, and finally disclosure to the public (under certain conditions[226]). Although various reporting channels exist in the law, their effectiveness in practice is barely known. Namely, no data is available on how often and in what way these channels are used, nor what happens after the whistleblower's report. No special authority has been established to oversee the implementation of the law in this regard.

Transparent and accountable enforcement of the whistleblower law

There is no comprehensive statistical data on the Law implementation.[227] Based on data from the Ministry of Justice report for the first year of the implementation of the law, all ministries have appointed a person authorized to receive information and conduct the internal alarm procedure. From the adoption of the law in 2015 until the end of 2018, there were a total of 622 cases regarding the protection of whistleblowers in accordance with the Law, out of which 533 were resolved. In the same period 107 cases of internal whistleblowing have been recorded, while the most was in 2018, a total of 41.[228]

In the courts of the Republic of Serbia, at the end of 2019, there were 60 pending cases regarding the protection of whistleblowers from retaliation for disclosure of information in accordance with the Law on the Protection of Whistleblowers. In 2019, 152 incoming cases were received. The courts disposed 160 cases out of the total caseload of 220. Regardless of the urgency, at the end of 2019 there are still 13 cases in which the proceedings have not been completed even after three years, counting from the date of the filing of the initial act.[229]

Although the number of cases in the courts has slowly been increasing, there are reports of various problems in the implementation of the law (that is the Administrative Court ignores the LPW by not taking into account the allegations of retaliation suffered due to whistleblowing[230]).

Internal disclosure procedures and anonymous channels

There is no comprehensive information of the internal disclosure procedures used by public and private organisations to adequately protect employees who report wrongdoings and the results of these procedures, nor information at the level of individual authority.

The Law provides for the possibility for anonymous whistleblowing, but is inconsistent as it also provides for the option that the identity of a whistleblower may be revealed to a competent authority if actions of that authority cannot be undertaken without revealing the identity of such whistleblower.[231] Thus, the whistleblower must have in mind that his or her identity might be revealed.

Responsible institutions and independent oversight

A large number of institutions and organisations can receive whistleblowers' disclosures depending on the type of the disclosure and the wrongdoings reported. However, there is, no special oversight by an independent body to determine whether whistleblowers' allegations have been investigated and protection provided.

[226]The Law on WP, Article 19
[227]Part of the data can be found in the Ministry of Justice report of the implementation of the law for the first year only, while data on judicial protection can be found in judicial annual statistics.
[228]Minister of Justice, Ms Nela Kuburovic on September 9, 2019, https://www.glasamerike.net/a/podr%C5%A1ka-za-ja%C4%8Danje-za%C5%A1tite-uzbunjiva%C4%8Da/5075932.html
[229]Annual Report on the Courts in Serbia for 2019, page 43, https://www.vk.sud.rs/sites/default/files/attachments/Godisnji%20izvestaj%20o%20radu%20sudova%20u%202019_0.pdf
[230]https://pistaljka.rs/home/read/815
[231]The Law the Protection of Whistleblowers, Article 10(3)

THEMATIC AREA 6:
ACCOUNTING, AUDITING AND DISCLOSURE

Accounting and auditing standards

Serbian accounting and auditing standards can be assessed at 75 out of 100, given that:

- companies employing more than 10 persons are required to prepare regular financial statements that follow internationally recognised accounting standards, such as the International Financial Reporting Standards; other companies apply the rulebook that does not fully correspond to such standards
- standards prohibit inappropriate accounting acts
- companies are required to maintain accurate books and records that properly and fairly document all financial transactions, and make them available for inspection
- companies are required to maintain effective systems of internal financial control; where it is warranted by size or risk levels, companies also have to maintain an internal audit function
- companies that are publicly trading, as well as large non-listed or privately held companies with substantial international business operations, are required to have accounts externally audited and published on an annual basis according to internationally recognised auditing standards, such as the International Standards on Auditing (ISA)

Regulation of accounting

Serbia currently has two laws on accounting: one adopted in 2013[232], still in force for financial reporting for the next two years, and the new one[233] that became effective on 1 January 2020.

The law[234] obligates legal persons and sole proprietors (entrepreneurs) to submit the regular annual financial statements for the given reporting year to the Agency for Business Registers, no later than 30 June of the following year. Parent legal persons prepare consolidated annual financial statements, no later than 31 July. Financial statements have to be signed with a qualified electronic signature of the legal representative and entered in a special information system submitted to the agency in electronic form. Financial statements are publicly available on the agency website.[235] Financial reporting and accounting should adhere to relevant international standards that are IFRS or IFRS for small and medium-sized enterprises (SME).[236] However, the law does not provide for the mandatory application of these standards in companies with less than 10 employees, in other legal entities (associations) and in entrepreneurs. They apply a rulebook for micro and other legal entities (2013)[237] that should be replaced by a new one during 2020. This concept is not justified as it carries the risk of non-compliance with the relevant international accounting standards.[238] What makes this concern serious is the fact that the rulebook (and not the standards) will apply in about 95 per cent of those required to prepare financial reports. These legal entities participate in the total income, employment and assets of the Serbian economy with approximately 20 per cent.[239]

Legal entities and entrepreneurs have to keep business records and books, to confirm and evaluate assets and liabilities, income and expenditures in accordance with the Law on Accounting.[240]

Regulation of internal controls and audits

The law requires big companies to have internal controls. The accounting system has to include internal accounting control mechanisms.[241] Public joint stock, public limited liability companies or those willing to become so-called public business associations are also required to include information on elements of internal control and risk mitigation in financial reporting in their annual corporate management report.[242]

Internal supervision (oversight) is, according to the law, the task of companies' supervisory boards or board of directors. Companies additionally regulate the manner of performing internal supervision by a statute or other act. In public joint-stock companies at least one person out of those in charge for internal supervision of operations shall meet the requirements prescribed for an internal auditor. Such

[232]Law on Accounting ("Official Gazette of RS", no. 62/2013, 30/2018 and 73/2019 – as amended)
[233]Law on Accounting ("Official Gazette of RS", no. 73/2019)
[234]Law on Accounting 2013, Article 32
[235]Ibid, Article 36
[236]Ibid, Article 2
[237]A Rulebook on Financial Reports of Micro and other Legal Entities (2013) Full title in Serbian: Правилник о начину признавања, вредновања, презентације и обелодањивања позиција у појединачним финансијским извештајима микро и других правних лица ("Сл.гласник РС", бр.118/13 и 95/14)
[238]Interview with the representatives of the Association of Accountant and Auditors of Serbia
[239] https://www.apr.gov.rs/upload/Portals/0/GFI_2020/Bilten/Bilten2020.pdf
[240]Ibid, Article 5
[241]LA 2019, Article 8
[242]LA 2019, Article 35

auditor may not perform any other duty in the company.[243] Similarly, under the Law on Auditing, it is mandatory for big legal persons and companies listed on financial markets to have an audit committee and to employ a certified internal auditor.[244]

External auditing is mandatory for some legal entities, as defined in law.[245] In the Law on Companies[246], such duty is established for public joint stock companies, where rules are prescribed for dealing with audit reports. The new law on auditing, in force since 1 January 2020, provides for a mandatory audit of annual financial reports of big and medium legal entities. Furthermore, all public companies - those present on financial markets - should be audited, regardless of their size. Finally, an audit is mandatory for any other company or entrepreneur that earned more than €4.4 million in previous business year. It is also mandatory to organise an audit of consolidated financial reports for parent companies.[247]

According to accounting legislation[248], medium size legal entities are those employing more than 50 people on average, which earn more than €8 million or have total active assets of at least €4 million (at least two out of three conditions should be met). Some institutions are considered big legal entities by definition, such as financial institutions.

Audit is also mandatory for national and local public enterprises and other state-owned companies to which the Law on Public Enterprises applies.[249] However, it is estimated that external audit is mandatory for only 2 or 3 per cent of entities that have to prepare financial reports.

Under the law, International Standards on Auditing are applicable to all audits. The Law on Audit recognises[250] in that regard the International Standards on Auditing (ISA0), International Standards on Quality Control (ISQC) and the related standards published by the International Auditingand Assurance Standards Board (IAASB) and the International Federation of Accountants (IFAC). The law also envisages a direct application of all standards published by those entities in the future, but only if the Ministry of Finance releases the translations of such standards.

Inappropriate accounting and auditing

Violations of accounting and auditing rules is considered a criminal offence, economic offence or misdemeanour. In the case of economic offences, the Law on Accounting[251] imposes RSD100,000 to RSD3 million (€850 to €25.520) fines for legal entities and a fine of between RSD20,000 and 150,000 (€170 to €1,276) for legal entity representatives. There is a special system for punishment of accounting violations if committed by financial institutions. Entrepreneurs may be fined between RSD100.000 and 500.000.

The Law on Audit also provides for, in the case of economic offences[252], fines ranging from RSD300.000 and RSD3 million (€2,550 – 25,550) for their representatives (RSD20,000 to 200,000 - €170 to 1,700). There are also fines for entrepreneurs and natural persons.

The Law on Companies[253] also prescribes several criminal offenses (giving a false statement, concluding a legal transaction or taking action where personal interest is involved, violation of the duty to avoid conflicts of interest and violation of the duty of representatives to act in accordance with the powers of representation) and economic offenses.

The Criminal Code also provides for a legal basis to punish various crimes that may be related to the violation of accounting rules, such as: "Fraud in service", "Abuse of powers in business", "Obstructing the performance of control" and "Forging a document". All of these criminal offences assume intent to conduct such wrongdoing.

[243] Law on Companies, articles 451 and 452
[244] Law on Auditing, articles 53 and 54
[245] Law on Auditing ("Off. Gazette of RS", no. 73/2019)
[246] Law on Companies, (Off. Gazette of RS", no. 36/2011, 99/2011, 83/2014 – as amended, 5/2015, 44/2018, 95/2018 and 91/2019), Article 453
[247] Law on Audit, Article 35
[248] Ibid, Article 6
[249] Law on Public Enterprises, ("Official Gazette of RS", no. 15/2016 i 88/2019), Article 65
[250] Law on Audit, Article 2
[251] Law on Audit 2019, Article 57
[252] Law on Audit, Article 114
[253] Articles 581-588

The enforcement of accounting and auditing standards

Serbian enforcement of accounting and auditing standards can be assessed at 50 out of 100, given that:

- law enforcement agencies in charge of controlling non-adherence to accounting and auditing standards show active enforcement of some but not all cases
- the country's institutional oversight system contributes partly to the effective enforcement of accounting and auditing standards
- effective, proportionate and dissuasive civil, administrative and criminal penalties for failure to keep, or for omissions and falsification of books, records and accounts, are applied, but concealing corruption is rarely investigated
- not all enforcement activities are reported to the public

Active enforcement and institutional oversight system

The enforcement of accounting standards and rules is only partly ensured. The problem is systemic, since there is no institution with overall supervisory powers and duties, or clear division of roles of various stakeholders.

Clearly, legal entities and entrepreneurs would be liable for non-adherence to the rules, but such liability is not ensured through systematic oversight in all aspects. Some mechanisms function very well, such as basic level control of whether companies have submitted their financial statements in a timely manner and whether there is any formal non-compliance. The Business Registers Agency collects such reports and financial statements and registers automatically in its database of business entities if a company is overdue. The agency initiated 10,631 business offence procedures in 2019 based on that rule.[254]

Other public authorities that may be involved in such control perform their supervision mostly in the context of their prevalent role (for example, the Tax Administration investigates potential tax frauds either through proactive controls or based on received information) or in the context of criminal investigations (the police, public prosecutor's office). Such controls are usually partial (focused only on VAT or income tax) and the range of controlled subjects is limited.

There is no entity in charge of ensuring adherence to the standards of the accountant profession with appropriate powers to do this. Legal entities regulate internally what qualifications a person in charge of accounting and financial reporting should possess. Engaging an external service provider is one of the options. There should be a registry of such service providers. In order to be registered, service providers should obtain their licences from the Chamber of Certified Auditors. One of the conditions for having such a licence would be the employment of at least one accountant with professional qualifications obtained in an organisation, which accountant is a member of the International Federation of Accountants. Therefore, the standards' implementation may be jeopardised by the possibility that professional service providers operate with an insufficient number of qualified accountants.

There are currently two institutions, members of IFAC – the Association of Accountants and Auditors (full member) and the Chamber of Certified Auditors (associate member). In the case of violation of anti-money laundering rules, the Chamber may withdraw such a licence.[255] The law also provides for the establishment of the National Committee for Accounting, the role of which is to oversee the implementation of international standards, propose solutions for the identified problems, provide opinions to the Chamber, consider its reports etc.[256] In general, supervision of the activities of legal entities and entrepreneurs is vested with the Tax Administration and to the National Bank of Serbia when it comes to financial and other similar institutions.[257] The registry of professional providers of accounting services will be operational from 1 January 2021.

Although the National Commission for Accounting exists since 2006 and is obligated, inter alia, to submit monthly reports to the Ministry of Finance, there is neither a webpage of the Commission, nor can information about such reports be found the webpage of the ministry.

Liabilities and sanctions

As noted, there are several types of liability for violating accounting rules. Firms and their directors may be fined for economic (business) offences. Individuals and firms may also be responsible for crimes where violation of accounting rules is one of the elements.

Having in mind that legal entities are fully responsible for their accounting and financial statements, there is no solid mechanism that would ensure the liability of individual accountants for their adherence to the standards.

Liability for some type of wrongdoings involving the violation of accounting and auditing rules is ensured in the practice. In 2019, firms were reported for business offences 7,764 times (allmost 15 per cent less than in 2018), mostly by the Business Registers Agency. So, the vast majority of procedures was related to the failure of companies to submit financial reports. Violations were reported 749 times by various inspections

[254] Annual report for 2019, the Serbian Business Registers Agency, https://www.apr.gov.rs/o-agenciji/interna-dokumenta/godisnji-izvestaji-o-radu.1910.html
[255] LA 2019, articles 14-19
[256] Ibid, Article 53
[257] Ibid, Article 56

and 41 times by the police. In 2018, procedures before the Commercial Court lasted mostly less than six months and more than one third of reported violations were committed by entities involved in trade (no such information for 2019).

The percentage of those who were found liable for the offence is around 70 per cent (year before, 80), while the process was abandoned (for example, due to the statute of limitations of termination of the legal entity) in 20 per cent of cases. A total of 6,208 legal persons were sentenced in this procedure, out of which 1,872 to unconditional sentences. A fine higher than RSD300,000 (€2,550) was imposed in 33 instances (in 2018 only 10). There is no information on imposed protective measures in 2019. In 2018, they were imposed in only 98 cases, and only one of them was the publishing of the judgment. Approximately 15 per cent of offenders in 2018 had committed some business or criminal offence before.[258]

The statistics of the Criminal Court do not provide for a possibility to fully distinguish crimes related to the violation of accounting rules from other types of crime covered by the same criminal offence. However, there is a track record for offenses relevant for this type of economic crime, presented in the table:

Table 5. Adult perpetrators of some criminal offences in the Republic of Serbia, 2018 and 2019 - Crime reports, charges and convictions (Source: Republican Institute for Statistics)

ADULT PERPETRATORS OF SOME CRIMINAL OFFENCES IN THE REPUBLIC OF SERBIA, 2018 AND 2019
(where available- Crime reports, charges and convictions[260])

	REPORTED ADULT PERPETRATORS	PROSECUTORIAL REMISSION DUE TO LACK OF CONDITIONS (PROSECUTORIAL OPPORTUNITY DECISIONS)	CHARGE SUBMITTED	CONVICTING SENTENCE – PRONOUNCED GUILTY	CONVICTED ADULT PERPETRATORS
FRAUD IN PERFORMING ECONOMIC ACTIVITY	63/41	3	19	16/14	16
EMBEZZLEMENT IN PERFORMING ECONOMIC ACTIVITY	33/73	3	26	32/55	32
TAX EVASION	967/777	135	384	266/274	266
UNPAID WITHHOLDING TAX	39/22	9	22	6/12	6
MISFEASANCE IN BUSINESS BY A RESPONSIBLE PERSON	343/280	12	159	165/182	165
PREVENTING CONTROL	12/13	1	3	0/5	0
ABUSE OF AUTHORITY IN THE ECONOMY	139/32	19	38	47/28	47

Enforcement activities and sanctions reported publicly

There is no practice in place to report on enforcement activities when it comes to the accounting rules in general. However, it is possible to find some information in the annual reports of various institutions and in court statistics used in this report.

Individual sanctions, as a matter of additional measures against perpetrators, are published extremely rarely. Even statistics on the sanctions imposed are published most comprehensively by the Statistics Institute and not by the bodies in charge of supervision.

[258] Republic Institute for Statistics, legal persons and responsible persons that committed business offenses in 2018, https://publikacije.stat.gov.rs/G2019/Pdf/G20195655.pdf and
Republic Institute for Statistics, legal persons and responsible persons that committed business offenses in 2019, https://publikacije.stat.gov.rs/G2020/Pdf/G20201228.pdf
[260] https://publikacije.stat.gov.rs/G2019/Pdf/G20195653.pdf, pages 19, 20, 43 and 67
https://publikacije.stat.gov.rs/G2020/Pdf/G20201202.pdf, pages 5 and 9.

Professional service providers

Serbian professional accounting and auditing service providers can be assessed at 50 out of 100, given that:

- professional service providers (including trust and company service providers) are subject to formal licensing, but only when it comes to auditors while for accountants the system is not fully established yet
- professional service providers perform their services autonomously, which makes them independent from government agencies and companies
- professional oversight bodies perform technical oversight and to impose sanctions for poor performance and unethical behaviour, but only when it comes to auditors

Licensing of professional services

Each business entity may decide to make a member of its own staff responsible for accounting or to engage a professional service provider. The licencing of professional service providers in the field of accounting is regulated under the new Law on Accounting that came into force on 1 January 2020. However, the registry of professional service providers will be established in 2021[260], while the process of licencing will occur in the meantime.

In the field of audit, licencing and membership in the Chamber of Certified Auditors (for Serbian auditors) is a prerequisite for professional service providers.[261] The Ministry of Finance issues licences for auditors.[262] An exam is organised by the chamber (established by the Law on Accounting and Auditing from 2006), according to a programme approved by both the ministry and the Securities Commission. The ministry also issues a licence to the audit companies.

It is estimated that Serbia has about 8,000 providers of accounting services and 260,000 of those are obligated to submit financial reports. It would be therefore impossible to ensure a full coverage and application of accounting standards. The risk is even greater bearing in mind that the Code of Ethics of Professional Accountants is mandatory only for those who have obtained their qualifications from organizations which are IFAC members.[263]

Autonomy of service providers

The Law on Auditing provides for the conditions and methods of auditing of financial statements, including the independence of the auditor, which needs to be proven when the latter is entered in the register and then verified through external supervision, carried out by the Securities Commission.

Article 20 stipulates that each audit company has to ensure the independence and objectivity of the certified auditor. Internal quality control mechanisms, effective procedures for risk assessment as well as effective control and protection mechanisms for the information system are also prescribed. That includes the tracking of the adequacy and effectiveness of the internal quality control system and mechanisms as well as keeping records and preparing reports.

Independence and objectivity are regulated in more detail in articles 29 and 45 of the law where potential conflict of interest situations are described, along with the measures for prevention, with the obligation of keeping records and submitting reports. During the audit process, an audit company, licenced certified auditor or any other person that may directly or indirectly influence the result of the audit, must be independent from the audited entity and should not participate in decision-making. It is necessary to ensure the independence in the period covered by the audited financial statements, as well as in the period of the performance of the legal audit until the issuance of the audit report.

The audit companies and independent individual auditors submit an annual report to the Chamber of Certified Auditors and Securities Commission. The SC is an independent and autonomous organisation of the Republic of Serbia, established in January 1990. There are five commissioners, elected and dismissed by the Parliament at the proposal of its Finance Committee. The SC's main roles are to safeguard the functioning of the capital market, enhance investor protection and ensure the integrity, efficiency and transparency of the market.[264]

The chamber is an independent professional organisation and membership is mandatory.[265] The Chamber has several public powers assigned by the law, including organising exam programmes, conducting continuous training of auditors, running the registry of certified auditors and audit companies, the registry of imposed measures, and conducting investigative and disciplinary procedures. The chamber has a service in charge of control. Since 2015, this body has imposed measures and raised initiatives in cases where violations of the provisions of the law and other rules of the audit profession are identified. The chamber has duty to notify the ministry and the SC about disciplinary procedures and to inform the public about its activities.[266] Since 2016, the chamber has published 13 measures issued against audit companies and 28 against individual auditors in its registry.[267] The ministry and the SC oversee the work of the chamber.

[260] LA 2019, Article 17
[261] LA 2019, Article 4
[262] Law on Audit, Article 6
[263] Interview with representatives of the Association of Accountant and Auditors of Serbia
[264] http://www.sec.gov.rs/index.php/en/about-us/general-information/legal-position,-powers-and-authorities
[265] Law on Audit, Article 56
[266] Ibid, Article 73
[267] https://www.kor.rs/registar_mera.asp

The SC, based on its own methodology, performs quality control over audit activities. In May 2020, the SC adopted a new rulebook on controlling the quality of the performed audits, the quality of the work of auditing companies, independent auditors and licensed certified auditors, as well as a methodology for checking the quality of the performed audits, the quality of the work of auditing companies, independent auditors and licensed certified auditors. The methodology itself has been updated and adjusted in accordance with the revised international auditing standards and the provisions of the Law on Audit. The methodology elaborates in details the principle of auditors' independence. It also clearly refers to international standards.

The SC may also impose measures in the process of control. At a minimum, it will check the complete documentation of one selected audit process.[268] Extraordinary control is also possible, based on information from the National Bank, the chamber, courts, other bodies, shareholders or at its own initiative.[269] The SC may impose a fine of up to 10 per cent of the annual income of the audit company, or issue disciplinary measures against auditors.[270] It may also withdraw a licence based on the proper legal grounds (stated in the law).[271] It also notifies on yearly basis the Committee of European Audit Oversight Bodies about imposed measures. The SC also oversees the exams, licencing and the application of international standards, implementation of the Code of Professional Ethics, and conducts investigative and other procedures of the chamber.[272]

Oversight bodies

The Audit Public Oversight Board (APOB) provides expert support to the Securities Commission and approves the SC's acts. It is composed by seven members, five of which are nominated by the Ministry of Finance, one by the National Bank and one by the SC.[273] The SC was established in 2013. APOB used to have a broader scope of powers, which were transferred to the SC from 1 January 2020 (scope of powers: oversee the quality control of the work of auditors and audit companies; propose concrete measures imposed on audit companies and auditors for violations; supervise the work of the chamber; supervise exams and professional education, supervise the licencing of auditors and audit companies). Therefore, the POB issued in the period from 2013 to 2018 twelve measures against audit companies, including two withdrawals of licences in five years and 26 measures against auditors that violated professional rules, including four withdrawals. In 2018, POB controlled 16 audit companies, with 30 auditors and 36 audit procedures performed by the controlled subjects[274]

In the field of accounting, there is a National Committee for Accounting. This body is authorised to follow the implementation of standards, propose solutions for identified problems, monitor the implementation of the law and propose solutions when needed to the Ministry of Finance, as well as to analyse information received from the Business Registers Agency and the chamber.[275] It will also consider the proposals of the chamber about licencing and withdrawal of licences to accounting service providers. There is no available information whatsoever about the work of this body, not even about its current members.

There is also the Professional and Voluntary Association of Accountants and Auditors of Serbia with a long-standing tradition (it was established in 1955), particularly active in training and providing standardisation and advocacy services for improving the legal framework.[276] However, it does not have powers under the law when it comes to supervision.

Beneficial ownership

Serbian beneficial ownership regulations can be assessed at 50 out of 100, given that:

- public registers showing beneficial ownerships of companies are not available in user-friendly formats. A register of beneficial ownership is accessible for free, but only to those who register and obtain an electronic signature.
- The law provides that data will be made available to the National Bank and the authorities of Serbia
- the register, by law, includes the full name, birth date, nationality, address of the registered office, as well as the description of how the ownership or control is exercised (such as the percentage of the shares held)
- when it comes to trusts, there is a duty to provide information on who is a settlor, trustee, protector, the beneficiary and the person who has a dominant position in controlling the trust; on the other hand, trustees are not required by BO legislation to make information about beneficiaries and settlors accessible to tax and law enforcement authorities and to report suspicious activities
- directors or shareholders are disclosed on record, including the name of the beneficial
- owner behind the nominee
- wilful misrepresentation of beneficial ownership information provides grounds for criminal penalties and fines, including the possibility of imprisonment
- disguising the beneficial owner provide grounds for criminal penalties, including the possibility of imprisonment and fines

[268] Law on Audit, Article 76
[269] Ibid, Article 77
[270] Ibid Article 93-96
[271] Ibid, Article 98
[272] Ibid Article 103-105
[273] Ibid, Article 108
[274] POB Annual Report for 2018, https://www.mfin.gov.rs/dokumenti/odbor-za-javni-nadzor-nad-obavljanjem-revizije/
[275] LA 2019, Article 53
[276] http://www.srrs.rs/

Registers of beneficial ownership

The Central Records of Beneficial Owners was established in the Serbian Business Registers Agency (SABRA) on 31 December 2018, in accordance with the Law on the Central Records of Beneficial Owners (LCRBO).[277] The law defines in details the term "beneficial owner". [278]

The Central Records is a public electronic database of information about natural persons - beneficial owners of legal entities and other entities registered in the Republic of Serbia. Authorised persons in legal entities were obligated to record information in the Central Records until 31 January 2020 (initial deadline was the end of January 2019). The law applies to companies (except public joint-stock companies), cooperatives, branch offices of foreign companies, business associations, citizens' associations (except for political parties, trade unions, sports organisations and religious communities), foundations and endowments, institutions; offices of foreign legal entities.

The records are maintained in electronic form, via the webpage of SABRA. To gain access, a user has to obtain a qualified certificate for electronic signature, install an electronic card reader and the relevant application, and create her/his user account.

Content of the beneficial ownership register

The Central Records shall contain data on the company (among other things, the address of the registered office; address for receiving mail by post, as well as an e-mail address).[279]When it comes to the beneficial owner, mandatory information includes name, unique personal identification number and country of permanent residence (for Serbian citizens). For foreigners, it also includes citizenship, passport number, date and place of birth. For all beneficial owners, the information is required on the grounds on which the capacity of beneficial owner of the registered entity is acquired, that is why the person is considered a beneficial owner of the company.

Information on beneficiaries of trusts

When it comes to trusts, the law requires registration of information pertaining to a settlor, trustee, protector, beneficiary, and to the person who has a dominant position in controlling the trust. According to the law, each of them are obligated to submit documents and information at the request of the competent state authority and the National Bank of Serbia, with available data from the respective documents. The Minister in charge of economic affairs prescribes in detail the manner, and shows the electronic exchange of data between the BRA, state bodies and the National Banks of Serbia, in order to maintain records of the actual owners of the Registered Entity.[280]

Nomination of directors or Shareholders

Even before the adoption of the law regulating "ultimate ownership", most of the information requested was already available in public registers operated by either the same central agency or the Securities Commission. It includes names of shareholders and capital, legal representatives and in some cases (depending on legal requirements for various types of legal persons or their willingness to disclose additional information) management of companies, associations and other legal persons.

The legislation before LCRBO (that is now enforced complementary with LCRBO) did not however ensure the availability of information about ultimate owners of companies that are registered abroad. However, the effect of this new measure (to make information on shareholders, capital, legal representatives and in some cases management of companies, associations and other legal persons disclosed in public registers) remain limited. For example, if an indirect owner of a Serbian company is actually another company, registered in the country that allows hidden ownership, the effect of this law would be exposing the company's authorised representatives, while the ultimate owners may still be unknown. Another possible benefit of this law is the registration of those who have significant influence on decision-making process based on their financing of the legal entity.

Penalization

Oversight of implementation of the law, since 2019 amendments, is performed by the Business Registers Agency.[281]

The law provides for one criminal offence and a set of misdemeanours. The provision describing the unnamed criminal offence stipulates that one who intends to disguise the beneficial owner and therefore fails to record data, provides inaccurate data, modifies or deletes true data shall be punished by imprisonment of three months to five years.[282]

Misdemeanours are punishable by fines ranging from RSD500,000 (€4,250) to 2,000,000 (€17,000) for legal persons and from RSD50,000 to 150,000 (€ 425 to €1,275) for the responsible officers in the legal entity.

[277] Official Gazette of RS no. 41/18 and 91/19; Art. 4, the Law on the Central Records of Beneficial Owners
[278] LCRBO, Article 3, 4: The Beneficial owner can be a natural person who: owns, directly or indirectly, 25 per cent or more of the share, shares, has a voting right or other rights; has a dominant influence over the management of business or decision-making; has provided or provides funds to a registered entity in an indirect manner, and thus significantly influences the decisions; is a settlor, trustee, protector, beneficiary if designated, of a trust, and the person who has a dominant position in controlling the trust or any other person under foreign law; represents cooperatives, associations, foundations, endowments and establishments, if the authorised representative has not reported any other natural person as the beneficial owner. If the natural person cannot be identified in the prescribed manner, the person registered to represent or registered as a member of a body of the registered entity is considered the "beneficial owner".
[279] LCRBO, Article 5.
[280] LCRBO, Article 10
[281] LCBRO, Article 12
[282] Ibid, Article 13

THEMATIC AREA 7:
PROHIBITING UNDUE INFLUENCE

Laws on political contributions

Serbian laws on political contributions can be assessed at 75 out of 100, given that:

- there is a transparent mechanism to determine direct public funding for electoral campaigns but the distribution criteria are set in favour of elections winners
- the use of state resources in favour of or against political parties and individual candidates is prohibited, but there are loopholes in the legal framework
- there is a ban on receiving anonymous contributions, but some contributions can remain non-transparent
- financial and in-kind contributions, as well as loans to political parties and individual candidates must be reported
- there are limits on corporate donations to political parties and individual political candidates

While under the law, political parties are financed from the budget of Serbia, Vojvodina autonomous province, cities and municipalities and the amounts and criteria are transparent, they are not always set-up to serve the purpose best. The legal framework guarantees a system of relatively high levels of public financing, which gives a strong advantage to the parliamentary parties. It is very difficult for new parties and those who fail to reach the parliamentary threshold to ensure sustainable financing.[283] The amount intended for financing of regular activities is divided between parliamentary parties in proportion to the number of votes won at the last elections.[284] At the same time, the law enables parties to use in the election campaign money intended for the financing their regular activities.[285] Furthermore, public financing for election campaigns is set at 0.07 per cent of the tax-based budget income.[286] In this way, large parties benefit twice – they get more money for regular activities, which can also be used for financing election campaigns and after the campaign they receive the bulk of the money intended for campaign financing.

For opposition parties it is difficult to receive private donations[287], because very few donors would give donations for ideological reasons.[288] On the other hand, donors who are looking for potential benefits mostly rely on keeping good relationships with the ruling parties.

Election campaigns

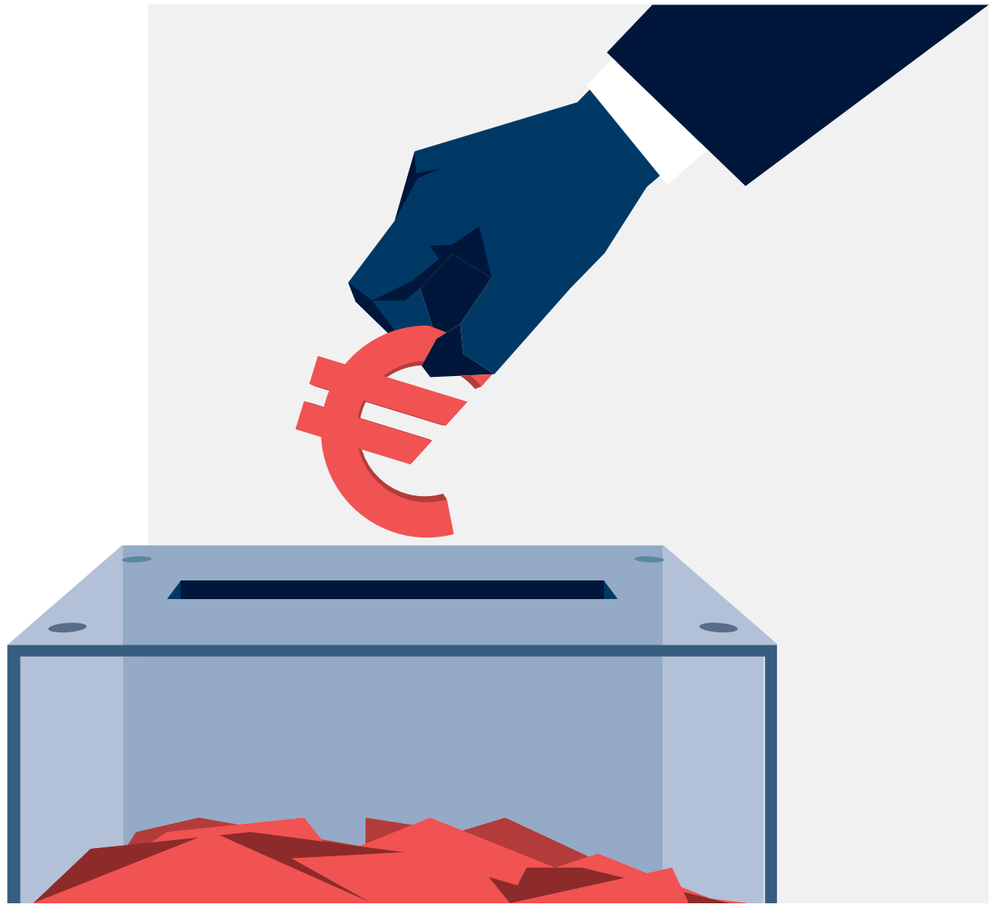
There is a legal ban on anonymous contributions for campaign financing. Even the smallest amount has to be paid through the bank accounts of the donor. However, when it comes to transparency, only donations higher than average salary are published within eight days on political party web pages.[289] The rest becomes publicly available once the Agency for Prevention of Corruption publishes election campaign expenditure reports, usually more than a month after the elections. Some types of contributions are not fully transparent. In particular, this is the case with the third-party financing of activities that either contributes to one or harms another election campaign.

The law stipulates that all contributions to the election campaign have to be reported to the Agency for Prevention of Corruption within a month after the elections.[290] According to the law, discounts and free services are also considered contributions.[291] Political parties or other political subjects that run the campaign, namely coalitions or citizen groups, have to report loans they have obtained from the bank or other financial institution for the purpose of the campaign.[292] Although not explicitly said in the law, loans from other natural or legal persons are not considered as an acceptable source of income. In Serbia, individual candidates may not collect funds for campaign financing, which means that even for the presidential elections, there is always a political subject that is running the campaign and not the candidate themselves.

Implementation of provisions

Currently, the biggest problem is the implementation of the provisions governing the campaign of public officials. Formally, an official may not use public resources and public meetings, which he/she attends in the capacity of a public official in favour or for the promotion of any political party and individual candidate.[293] Although it is not explicitly prescribed, by argument of analogy one can interpret that it is equally forbidden to use public resources against a political party and individual candidates. In addition, the law prescribes a broad exception to the rule that says that "exceptionally, an official may use public resources to protect personal safety".[294] Persistent criticism by national or international organizations have failed to cause any fundamental changes to the rules pertaining to the "officials' campaign". Some of the amendments to the law adopted in December 2019 increased the responsibility of parties for violations of campaign financing rules.[295] The rules aimed at preventing abuse of public office and public resources were also slightly improved in the election campaign context.[296] At the same time, amendments to the Law on Public Companies prescribed that the directors must be dismissed if they misuse their position and the resources of their company for political promotion purposes.[297]

However, these changes of legislation are not comprehensive enough and still leave a room for abuse. The law stopped short of restricting potential abuse by public officials of administrative public resources for the purpose of political promotion. Therefore, even after the latest legislative changes, public officials are free to organise as many promotional activities as they wish during the election campaign and ensure media coverage of these activities, as they are part of the regular activities of public authorities and are not political campaigning. Furthermore, the law did not put any limit when it comes to the increase in public spending or relinquishing public income, distribution of goods to citizens and similar methods of buying support from voters.[298]



[283] Ibid.
[284] Parties with up to five per cent of votes are slightly positively discriminated, with 0 - 5 per cent of the votes' count multiplied by a quotient of 1.5 (compared to over five per cent of the votes' count multiplied by a quotient). http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/TS_report_NIS_2015.pdf
[285] Law on the Financing of Political Activities, Article 19
[286] Ibid, out of this amount, 20 per cent is allocated in equal shares to submitters of proclaimed election lists who at the time of submission declared to be using the funds from public sources to cover election campaign costs. The remaining 80 per cent of funds is allocated to submitters of election lists based on the number of parliament seats won.
[287] Apart from members and "donations", that is the "party tax" paid by MPs and other officials: there exists a tacit agreement that, once elected to public office, they will donate a pre-agreed amount to their political party.
[288] http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/TS_report_NIS_2015.pdf
[289] Law on the Financing of Political Activities, Article 10
[290] Ibid, Article 29
[291] Ibid, Article 9
[292] Ibid, Article 25
[293] Ibid, Article 19
[294] Ibid, Article 9
[295] Ibid, Article 25: The Serbian Government adopted the Law on Amendments to the Law on Anti-Corruption Agency and the Law on Amendments to the Law on the Prevention of Corruption.
[296] Violation of this prohibition is regulated and a fine for a public official may be imposed, RSD100,000 to 150,000 http://www.rts.rs/page/stories/sr/story/9/politika/3736328/predlozeni-penali-za-funkcionere-koji-koriste-javne-resurse-za-kampanju--.html
[297] https://www.blic.rs/biznis/izmene-zakona-o-javnim-preduzecima-direktori-ce-snositi-posledice-funkcionerske/l3c3x12
[298] http://preugovor.org/upload/document/preugovor_amendments_to_set_of_laws_improving_the_.pdf

Enforcement and public disclosure on political contributions

Serbian enforcement and public disclosure on political contributions can be assessed at 50 out of 100, given that:

- the Agency for Prevention of Corruption (APC), which is an independent institution under the law, monitors political financial reports but it does not use all its legal powers to enforce implementation
- the reports of political parties and individual candidates itemise contributions and expenditures, both during and outside campaign periods, but the accuracy of such reporting is questionable
- citizens can easily access the financial information of all political parties and individual candidates, as the reports are published on the APC website
- the findings of controls or audits performed by the authorities are published albeit selectively and without a clear deadline

The Agency for Prevention of Corruption (APC) is in charge of controlling the validity of the financial reports of political parties, while another independent body, the State Audit Institution (SAI), may audit these reports.[299] The APC also has the right of direct and free access to bookkeeping records and documentation, as well as to financial reports of political parties.[300] "After conducting controlling the financial reports of a political entity", the APC may forward a request to the SAI to audit these reports, in accordance with the law governing the competencies of the SAI.[301]

In 2019, a total of 248 political entities, of which 113 political parties and 135 citizen groups, were required to submit their 2018 Annual Financial Reports (AFR) to the APC.[302] The legal obligation was fulfilled by 135 political entities: 80 political parties and 55 citizen groups. Verification was based on the comparison of electronic and paper forms of reports. During the control process, it was observed that, as in previous years, the most common violation of the law was the failure to submit annual financial reports to the APC.[303] Another most common violation was a failure to submit the opinion of the certified auditor together with AFS.[304] The Agency initiated 15 proceedings against political entities for violating the provisions of the Law on Financing of Political Activities. Due to the violation of the provisions of the Law, the Agency submitted 96 requests for initiating misdemeanour proceedings before the competent court against political parties and responsible persons in political parties and responsible persons of citizen groups. Two reports were submitted to the competent prosecutor's offices due to the suspicion that responsible persons in political entities committed criminal acts. Based on final judgments, 59 decisions were made on the loss of the right to receive funds from public sources intended for financing regular work for 2020.[305]

While it is clear that the APC monitors financial information of political parties and other participants in the elections, the time frame, scope and depth of such controls are not pre-defined and comprehensive. Therefore, the agency actually decides on the timing and scope of its further actions, such as misdemeanour procedures, withdrawal of budget subsidies or the filing of criminal charges against the violators.

Political parties comply with their duties to report about donors and expenditures. Compliance is almost complete for national election finance reports and for annual reports of parliamentary political parties. However, there are serious problems with the annual reports of small non-parliamentary parties[306] and expenditure reports on local elections.[307] Still, that assessment applies only to the income and expenditures collected and spent in a lawful manner. There are, however, very clear indications that there are unreported expenditures[308] and illicitly obtained income, either in-kind[309] or in cash, or income obtained allegedly in a lawful manner but with falsified contributors' names.[310]

The APC made these finance reports public soon after receiving them. However, the very form of the Agency's register of financial report is not very user-friendly and machine-readable. Furthermore, there are doubts about the comprehensiveness of these reports as well, which reduces the value of such disclosures (as explained).

The agency does not have any deadline or provision regulating the content of their control reports. Publishing decisions in individual cases was regulated only recently (December 2019) and only when the APC dealt with complaints during the election campaign (not ex officio or outside the campaign period). As a result, there is neither a legal guarantee nor an established practice to publish information about all identified wrongdoings and measures taken by the APC.

[299] Annual Report of the Anti-Corruption Agency for 2018, Page 37, http://www.acas.rs/wp-content/uploads/2019/05/ACAS-2018-REPORT.pdf
[300] The Law on financing political activities, (Official Gazette of RS, No. 43/2011 I 123/2014), Article 32
[301] Ibid, Article 34
[302] Annual Report of the Anti-Corruption Agency for 2019, Page 19, http://www.acas.rs/wp-content/uploads/2020/03/ACASizvestaj2019WEB.pdf
[303] Ibid.
[304] Ibid.
[305] Ibid.
[306] http://www.acas.rs/wp-content/uploads/2020/01/Izve%C5%A1taj-o-kontroli-finansiranja-politi%C4%8Dkih-subjekata-za-2018..pdf
[307] http://www.acas.rs/wp-content/uploads/2019/09/Izvestaj-lokalne-kampanje-jun-2018-izmenjen-.odt
[308] https://www.cins.rs/srpska-napredna-stranka-prikrila-troskove-izborne-kampanje/
[309] https://www.cins.rs/nedozvoljena-donacija-sns-u-od-13-miliona-evra/
[310] https://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/9740-treci-covek-iz-kafane

Laws on lobbying

The lobbying legislation can be assessed at 75 out of 100 as:

- lobbying regulations do not define lobbyists broadly enough; the regulations include corporate lobbyists, professional associations and trade unions, while other categories are considered as "unregistered lobbyists" and their activities are not sufficiently regulated
- lobbying regulations define lobbying targets relatively broadly, including members of national and sub-national legislative and executive branches, and high-level officials in national and sub-national public administrations; however, the definition does not include all members of working groups for the drafting of laws nor decision-makers in state-owned companies that compete on the market
- a mandatory public register for lobbyists is required
- lobbyists are required to submit an annual report to the APC, in which they must, inter alia, disclose relevant personal and employment information, information on lobbying objectives and clients that they are targeting, as well as information on what they are advocating for, but not lobbying expenditures reports
- when drafting a law, an enactment procedure is required, but there is no obligation to document all contacts (time, persons and subject) between the legislator and the lobbyist or interested person; in an "explanatory note" for the draft law, it is mandatory to provide information on public debates and general information on whether stakeholders have been consulted.

The implementation of the Law on Lobbying, the very first one in the history of Serbia, started in August 2019, nine months after its adoption. Nevertheless, it can already be concluded that its anti-corruption capacity is small. Lobbying is considered rather as a formalized activity of interested firms or professional mediators, performed in a specific way. The law does not deal with any informal attempt to influence the legislators. Specifically, lobbying is an activity that exerts influence on the authorities of Serbia, autonomous regions and local authorities, regulatory bodies established by the Republic of Serbia, autonomous province or local government (hereinafter referred to as the authority), in the process of passing laws, regulations and general acts within the jurisdiction of those authorities, in order to achieve the interests of the lobbying client, in accordance with the law.[311] The result is that all activities conducted without compliance with legal procedures remain out of reach because the law does not tackle in any manner the types of lobbying that are beyond the legal definition. Furthermore, this law does not cover lobbying aimed to influence a decision in individual cases (unlike general regulation).

Performing lobbying

The law recognises three categories of those performing lobbying:

1. beneficiaries lobbying for themselves
2. representatives of an association of lobbying beneficiaries (Chamber of commerce, for example)
3. professional lobbyists

However, the extremely formal definition of "lobbyist"[312] recognise only professional lobbyists, while two other categories are considered "unregisters lobbyists", whose activities are not sufficiently regulated.

The law explicitly excludes from the definition of lobbying some activities related to the public relations, consultancy services for legislative drafting and citizens' initiatives. Many of those who actually perform lobbying activities are excluded from the scope of the law, including various "opinion-makers" such allegedly "independent experts" who provide public statements aimed to influence decision-making process.

Only registered lobbyists have to file a request for registering, hire a certified lobbyist and report on their activities. The absence of reporting obligations will result in a lower transparency level when lobbying is performed directly by interested persons and their associations.

Lobbying definition

The definition of lobbying targets is broad and includes, in addition to the influence on MPs, direct lobbying to public officials and civil servants (elected, appointed and employed persons) in executive bodies. An important disadvantage of this definition is that it includes only employed or otherwise engaged persons (for example, ministers' advisors) in the government bodies, but not all persons who participate in the process. This definition leaves out professors and other experts who are engaged to draft laws within the task force but not hired by the public authority.

In addition, it is good that the definition includes lobbying at different levels of government (republic, provincial, local

[311] The Law on Lobbying, Article 2 (Official Gazette of RS, . 87/2018)
[312] Ibid, Article 4, "an individual who is registered as lobbyists according to the law and a company or association, which is registered in the register of legal entities that perform the lobby in accordance with the law"

self-governments) as well as in cases when it is aimed at those who exercise public powers. A disadvantage is that it does not include lobbying in state-owned companies that do not exercise public authority (but compete on the market).

However, the law failed to prescribe a duty to publish institutions' reports on lobbyists that approached them. Similarly, there is no obligation to include data on the performed lobbying in the rationale for draft laws, nor the duty of targeted persons to report informal lobbying and attempted lobbying.

Publicity

The law provides for a mandatory public register for lobbyists and it is managed by APC (keeping the Register of lobbyists and the Register of legal entities engaged in lobbying - enrolment, changes and deletion from the register - as well as keeping a special record of foreign individuals and legal entities engaged in lobbying). The agency should also make it accessible online but not in a machine-readable format. Following trainings and certification process, there are 24 individual lobbyists and 2 lobbyists' firms registered.[313]

Some "legislative footprint" exists, but does not cover all issues relevant for tracking the lobbying activities. The Serbian law on public administration and the government's rules of procedure provide for public debates before the law is adopted. There is also a duty to provide explanatory notes for each draft law.[314] These explanatory notes should contain information on inputs and comments provided in the public debate as well as information about consultative process with the stakeholders.

Enforcement and public disclosure on lobbying

Serbia can be assessed 25 out of 100 when it comes to the enforcement and public disclosure on lobbying, as:

- an independent mandated oversight body exists and manages registration of lobbyists, offers guidance to individuals and organisations, and investigates apparent breaches (Agency for Prevention of Corruption), but it is not very well-resourced
- there is a mandatory public register for lobbyists available online but data are not published in a machine-readable format
- first lobbyists were certified only recently, and the practice is yet to be established; they should regularly disclose relevant personal and employment related information, information on lobbying objectives and clients, who they are targeting, what they are advocating and lobbying expenditures
- the lobbying legislation does not provide for a "legislative footprint" which would document time, person and subject of a legislator's contact with a lobbyist or stakeholder

As of August 2019, when the Law on Lobbying came into force, the Agency for Prevention of Corruption (APC) had new authorities and powers as a supervisory body based on this law. The APC is now authorized to manage registration of lobbyists and publish relevant data from the register of lobbyists, offer guidance to individuals and organisations, conduct trainings, check the Lobbyist Report and investigate apparent breaches or anomalies. In the period after the adoption of the law and its entering into force, the agency conducted some preparatory activities including the adoption of a series of by-laws, adaptation of software applications, extension of employees' capacity through trainings on international standards, lobbying regulation as a mechanism for preventing corruption as well as principles and practices in this domain.[315] However, APC capacities and resources still need to be increased in this area.

Regarding the disclosure on information about registered lobbyist and their activities, there is no possibility to make any comments or conclusions yet.

According to the research of Transparency Serbia based on requests for free access to information, the Law on Lobbying, in force since August 2019, did not have any effect on improving transparency of the legislative process until February 2020. Allegedly, no ministry or MP had contacts with "unregistered lobbyists", although it would be reasonable to expect that such meetings occur on a daily basis.[316]

[313] http://www.acas.rs/pretraga_registra/#/acas/registarLobista, assessed in October 2020.
[314] More details in: GIZ, Survey on the Improvement of the Legislative Process in the Republic of Serbia, Dr. Dobrosav Milovanović, N. Nenadić and V. Todorić, Belgrade, 2012. https://www.transparentnost.org.rs/images/dokumenti_uz_vesti/Javne_rasprave_-_izmene_propisa_i_praksa_sprovo%C4%91enja_tokom_2018.pdf
[315] http://www.acas.rs/lobiranje/
[316] https://www.transparentnost.org.rs/images/dokumenti_uz_vesti/TS_-_istra%C5%BEivanje_o_primeni_Zakona_o_lobiranju.pdf

Laws on other conflicts of interest

Serbian laws on other conflicts of interest between private and public sector can be assessed at 75 out of 100, given that:

- public officials and senior civil servants need to regularly declare their paid and unpaid positions in private sector entities (for example, as a strategic advisor or a board member), their financial investments in companies, gifts, benefits and hospitality received from private sector entities) to the Agency for Prevention of Corruption
- public officials have to transfer their managerial rights in companies to another, not related person, during their term;
- there is a two-year "cooling-off" period for public officials (elected or appointed) and senior civil servants moving to the private sector (post-public employment), in case that there is a connection between their previous jobs and a new employer
- there is no "cooling off" period for corporate executives entering into senior public offices and posts in governments (pre-employment), although there may be some limits for their actions in concrete cases (duty to abstain from decision-making process affecting a former employer's interests)

The undue influence in the form of other conflicts of interest between private and public sector is prohibited by law and controlled to a certain extent. The definition of conflict of interest is broad "as a private interest that affects, or may affect or may be perceived to affect actions of an official so as to endanger the public interest" and it is in line with global best practice.[317] A definition of officials is also broad and includes different levels of government (republic, provincial, local self-government) as well as public services, institutions and companies.[318]

Public declarations

The law prescribes the obligation to declare regularly their paid and unpaid positions in private sector entities (for example, as a strategic advisor or board member), their financial investments in companies and gifts, benefits and hospitality received from private sector entities).[319] In some instances these reports are submitted to the Agency for Prevention of Corruption yearly. Such an obligation will exist if the official's assets increase or decrease by a certain amount during the previous year. If there are no such significant changes, the reporting would take place at the beginning and end of the mandate.[320]

Declarations are to be checked by the Agency for Prevention of Corruption, based on the agency's plan or complaint. However, only a small part of such declaration is made public (real estates, vehicles, income from public funds), while the rest is available only to the supervisory body (APC) for control purposes.

Revolving doors situations and "cooling-off" periods

- there is a two-year "cooling-off" period for public officials (elected or appointed) and senior civil servants moving to the private sector (post-public employment), in case that there is a connection between their previous jobs and a new employer.[321] During a period of two years after the termination of public office, an official whose function has ceased may not take an employment or establish business relations with a legal entity, entrepreneur or international organisation engaged in activities related to the position he held, except when approved by the agency. The official, whose term expired, prior to such new employment or business relations, shall seek approval from the agency, which shall issue a decision upon this request within 15 days. Should APC fail to issue a decision within the deadline, it shall be deemed that approval for employment or business cooperation has been given.[322]
- there is no "cooling-off" period for corporate executives entering into senior public offices and posts in governments (pre-employment), although there may be some limits for their actions in concrete cases (duty to abstain from decision-making process affecting former employer's interests).

[317] The Law on the Anti-corruption Agency, Article 2 (Official Gazette of RS, No. br. 97/2008, 53/2010, 66/2011, 67/2013, 112/2013 i 8/2015), The Law on Prevention of Corruption, (Official Gazette of the Republic of Serbia , No. 35/19 and 88/19), Article 2.
[318] Ibid: Any person elected, appointed or nominated to the authorities of the Republic of Serbia, autonomous province, local self-government bodies of public enterprises and companies, institutions and other organizations whose founder or member of the Republic of Serbia, autonomous province, local self-government and another person elected National Assembly.
[319] The Law on Anti-corruption Agency, Articles 30 – 42, The Law on Prevention of Corruption, Articles 57-66.
[320] Ibid, Article 44, Ibid. Articles 67-69.
[321] Ibid, Article 37, Ibid. Article 55.
[322] Ibid, Article 38, Ibid. Article 55.

Enforcement and public disclosure of other conflicts of interest

Enforcement and public disclosure of other conflicts of interests can be assessed to 50 out of 100, having in mind that:

- conflicts of interest are monitored by the Agency for Prevention of Corruption (APC), that is legally established as an independent oversight authority, but in some cases this independence has been disputed
- officials and senior civil servants rarely declare to the public their relationship with the private sector (paid and unpaid positions in private sector entities, financial investments in companies, gifts or other benefits given by the companies), but many of them comply with the lawful duty to report such interests to the agency. There are, however, instances of identified incompliance indicating that a "dark figure" (the amount of unreported or undiscovered cases) for this type of wrongdoing is much higher than what is uncovered through the APC's control
- the "cooling-off" period of two years for a post-public employment is monitored by the agency, but only if an official asks for approval of post-employment, reports such engagement post festum, or on the basis of complaint. There is no mechanism to perform pro-active controls of that kind on regular basis

The conflict of interest is a constitutional category and the agency has the general authority to decide on conflicts of interest of public officials, pursuant to the Constitution and the Law on the agency.[323] Other bodies may be in charge of resolving certain types of conflict of interest, for example, the judicial authorities when it comes to the reasons for excluding a judge from the trial based on his or her relationship with the parties.

The task of APC, with its decisions or opinions, as well as positions taken, is to prevent, resolve and eliminate the consequences of conflicts of interest in holding public offices arising from the performance of other engagements, exercise control over the transfer of management rights and entrusting management.

The numbers show increased activities of APC every year. Due to a violation of the provisions of the Law on the Agency in the field of conflict of interest, a total of 31 in 2018 requests (it has increased by 55 per cent compared to 2017) were submitted for the initiation of misdemeanour proceedings, for violation of prohibitions to engage in other activities, to establish a business company or public service or to start a private engagement.[324] In 2019, the Agency received 1.427 new cases of a violation of the provisions of the Law on the Agency in the field of conflict of interest and imposed 295 measures.[325] However, there are still a very small number of cases, especially when it comes to initiating infringement procedures.[326] That impression further increases after analysing the measures that the agency imposed.[327]

On the other hand, the fact that APC failed to analyse all relevant aspects of certain cases with potential conflicts of interest and decided in favour of public officials makes its factual independence disputable.[328]

In 2019, there was an increase in requests for approval sent to the agency (for the performance of other engagements or activities, for the establishment of employment or business cooperation after the termination of public office - pantouflage) and for the transfer of managerial rights.[329]The agency monitors compliance with the "cooling-off" period after the post-public employment, but only to the limited extent. Namely, the agency will be able to investigate such cases only if a former official asks the agency whether starting such a position is permitted, or if it receives a report that someone has ignored the rules. There is no mechanism to perform pro-active controls of that kind on a regular basis.

Public officials and senior civil servants rarely disclose their relationships with the private sector to the public (for example, paid and unpaid positions in private sector entities, financial investments in companies, gifts, benefits and hospitality received from private sector entities). Many of them comply with the duty to report such interests to the agency, as the law provides for. There are, however, instances of identified incompliance[330], thus indicating that the „dark figure" (the amount of unreported or undiscovered cases) for this type of wrongdoing is much higher in comparison with what is uncovered through APC's control.

[323]The Constitution of Republic of Serbia, Article 6, The Law on Anti-corruption Agency, Articles 1 and 5, The Law on Prevention of Corruption, Articles 1 and 6.
[324]Annual Report of the Anti-Corruption Agency for 2018, Page 34, http://www.acas.rs/wp-content/uploads/2019/05/ACAS-2018-REPORT.pdf
[325]Annual Report of the Anti-Corruption Agency for 2019, page 23, http://www.acas.rs/wp-content/uploads/2020/03/ACASizvestaj2019WEB.pdf
[326]Ibid
[327]In 2018, the Agency imposed 42 (compare to 2017 = 40) measures of public announcement of the recommendation for dismissal, 40 (compare to 2017 = 51) measures of public announcement of the decision on violation of the Law on the Agency, and 31 (compare to 2017 = 34) measures of caution, Annual Report of the Anti-Corruption Agency for 2018, Page 16, http://www.acas.rs/wp-content/uploads/2019/05/ACAS-2018-REPORT.pdf
[328]For example, the case publicly known as affair "Krusik" where whistleblower discovered that father of the Ministry of Interior and Vice-president of the Government was involved in arms trade, where ACA brought decision that there is no conflict of interest of the Minister, without analysing some of publicly available information, relevant for the case:
https://www.dw.com/en/serbian-leaders-rattled-by-krusik-arms-export-scandal/a-51565172
https://balkaninsight.com/2018/11/22/serbian-minister-s-father-mediated-weapon-sales-to-saudis-11-22-2018/
http://www.rts.rs/page/stories/sr/story/125/drustvo/3766666/agencija-stefanovic-nije-u-sukobu-interesa.html
[329]In 2018, a total of 1431 new cases were registered, of which 557 requests and 5 notices on the transfer of managerial rights, Annual Report of the Anti-Corruption Agency for 2018, Page 34, http://www.acas.rs/wp-content/uploads/2019/05/ACAS-2018-REPORT.pdf
[330]https://pistaljka.rs/home/read/594
https://www.cins.rs/milutin-mrkonjic-dobio-na-poklon-firmu-u-crnoj-gori-koju-nije-prijavio-agenciji/
https://www.danas.rs/drustvo/sta-milutin-jelicic-jutka-nije-prijavio-agenciji-za-borbu-protiv-korupcije/
https://pistaljka.rs/home/read/242
https://www.krik.rs/agencija-ponovo-proverava-da-li-je-radojicic-na-vreme-prijavio-vikendicu/
https://www.vreme.com/cms/view.php?id=1711567

THEMATIC AREA 8:
PUBLIC PROCUREMENT

Operating environment

Serbia's operating environment for public procurement can be assessed at 75 out of 100, given that:

- most of the information regarding key aspects of the public procurement process is made publicly available, either proactively on the basis of procurement legislation or on the basis of free access to information requests, and some of the information is published in a user-friendly manner
- administrative processes limit the scope for discretionary decision-making when it comes to the selection of bids, but arbitrariness still exists in the planning and execution of procurements, although these issues are further regulated through internal acts of purchasing entities
- contracts between the procuring agency and its contractors, suppliers and service providers do not require from the parties to explicitly comply with strict anti-corruption policies, but legal provisions related to anti-corruption make such contract clauses unnecessary
- procurement contracts above a certain threshold, defined in the law, are subject to competitive bidding
- "Integrity pacts" are not envisaged in the Serbian legislation, but until recently it was obligatory to engage a "civic supervisor" for public procurements of higher value (higher than RSD1 billion (€8.5 million). The institute of "civic supervisor" was removed from the new PPL, which is in effect since 1 July, 2020.

Transparency of procurement processes

Public procurement law (PPL) of 2012[331] was in force until 1 July 2020, while the law of 2019[332] entered into force on 1 January 2020 with delayed application from 1 July 2020, with several provisions pending Serbia's EU accession.

Both laws ensure a high level of transparency of public procurement processes, as one of its key principles. Contracting authorities are obligated to publish information on public procurements both on their webpages and on the centralized Public Procurement Portal (PPP)[333], operated by the governments' Public Procurement Office (PPO). The amount of information published on the portal, established 14 years ago, significantly increased in 2013, with the inclusion of public procurement plans and reports, terms of reference and information on small value procurement and negotiating procedures. Significant information generated from the portal is also available in an open data format but such information is not fully reliable, since it is marred by mistakes in data entering by the contracting authorities. New Portal with additional features is in place since July 2020.[334]

The law makes it mandatory to publish various notices for each procurement[335], including calls for the submission of bids, notices on the initiation of the negotiating procedure, notices on concluded contracts and results of the tender, notices on cancelling of the procedure, notices on amendments to the public procurement contract, notices on submitted requests for the protection of rights etc. It is also mandatory to publish answers to all questions related to the terms of reference. Furthermore, the portal contains annual plans of contracting authorities and PPO opinions regarding the conditions for organizing negotiating procedures. It also contains information on public-private partnerships and concessions. The Commission for the Protection of Rights in Public Procurement Procedures (CPR) publishes information about appeal procedures on its web page.[336]

Quarterly reports of contracting authorities (till mid-2020) contained information on all conducted public procurement procedures, procurements that were excluded from the application of the law, costs of preparation of bids, concluded contracts, unit prices, amended contracts and implementation of public procurement contracts. The PPO prepared aggregated reports and released them annually and biannually.[337] PPL 2019 envisages annual reporting of purchasing entities about exempted procurement contracts only.[338] Public Procurement Office should also publish its reports annually.[339]

However, many important documents are not available in that way and may be obtained only based on free access to information requests. These include the actual public procurement contracts (model contracts are part of the terms of reference), requests for protection of rights, individual bids, minutes from the bid opening, market analyses and other documents relevant for the preparation of the bid, documents related to the execution of the contract etc.

Moreover, documents on some public procurements are not published, which is the case with those considered confidential. One of the biggest problems in the area of transparency is the fact that the government widely uses bilateral agreements with other states to exclude entirely the application of the public procurement law for its major infrastructure projects, which is also one of biggest obstacles to progress in ne-

[331]Public Procurement Law ("Official Gazette RS", no. 124/2012, 14/2015 i 68/2015)
[332]Public Procurement Law ("Official Gazette RS", no. 91/2019)
[333]http://portal.ujn.gov.rs/
[334]https://jnportal.ujn.gov.rs/
[335]PPL 2012, Article 55, PPL 2019, Article 105.
[336]PPL 2019, Article 179.
[337]Ibid, Article 132 and 133.
[338]PPL 2019, Article 181.
[339]PPL 2019, Article 179.

gotiation with the EU in Chapter 5. Similarly, some projects are organised under procedures set in "lex specialis", with a decreased level of transparency in decision-making.

The new law envisages improved features of the Public Procurement Portal[340] that would improve overall transparency. However, raising the thresholds will result in a substantial increase of procurements awarded without a tender, which will then result in a significant decrease of the amount of information available online. During the first months of implementation of the new law, the number of published procurements dropped considerably.[341]

Procedures limiting the scope for discretionary decision-making in public procurement

The law provides for a set of mandatory conditions[342] that have to be met by bidders in each public procurement (for example, proof of paid taxes and that the legal entity in question has not been punished for some wrongdoing), but also leaves to the contracting authority to set its own conditions that will apply to the concrete procurement (for example a specific technical and financial capacity, previous experience). Potential bidders may appeal against the conditions they consider too extensive or discriminatory, before taking part in the procedure.

With regards to the criteria of evaluation, PPL 2012[343] provided purchasing authority for the possibility to decide on the grounds of the lowest price offered or "economically most advantageous bid". These criteria should be defined clearly based on elements such as the offered price, discount to the prices, deadline for delivery or performance within the maximum acceptable time, cost effectiveness, quality, technical and technological advantages, environmental advantages, energy efficiency, after-sale servicing and technical assistance, warranty period, functional characteristics, social criteria, service life costs etc. In tender documents, the contracting authority assigns the relative significance (weight) to each element of the criterion and method of proof. This leaves little or no space for discretion in the evaluations of bids. An interested party may appeal over potential discrimination of the bidders due to the specific evaluation criteria that have been set forth. In practice, contracting authorities avoid this criterion, as it is more demanding to prepare and justify such term of reference, and rather opt to complain afterwards that "they have been forced by law" to procure the cheapest product of poor quality.

The new law[344] limits discretion regarding the conditions for bidding (now called "criteria"). Best value for money will now be the criterion for bid evaluation[345] and will be judged based on several components, including lifetime cycle costs.

The new law will also bring a much extensive application of the PPP, including direct submission of bids and opening of bids.[346] While electronic auctions are envisaged, they are optional.[347]

However, the main unaddressed areas of discretion are related to discretion in planning (what will be procured, when, how much), as such decisions are only exceptionally based on pre-defined standards. To a lesser but still significant extent, the contracting authority enjoys discretion when deciding about measures to be taken during the problematic execution of contracts. Some of those issues may be resolved through the implementation of internal acts of contracting authorities. In practice, in many cases they are adopted without an intention to be implemented in practice, as these acts are just a copy-paste model developed by the PPO. PPL 2019 brings another concern, as PPO would not further regulate the content of contracting authorities' internal acts anymore.[348]

Anti-corruption clauses or programmes

There are no mandatory anti-corruption clauses in public procurement contracts, but such clauses are not necessary in view of the direct application of legal provisions and the legal principle ignorantia iuris nocet ("not knowing the law is harmful"). However, the "declaration of independent bid" is a mandatory element of the bid, where the bidder confirms under full financial and criminal responsibility that the bid was submitted independently, without any agreement with other bidders or interested parties.[349]

The law from 2012, presented as a key element of the new ruling party's anti-corruption agenda, brought a whole chapter of anti-corruption provisions and mechanisms. In general, the "contracting authority shall take all necessary measures to prevent corruption in the course of public procurement planning, public procurement procedure, or during the implementation of public procurement contract, in order to timely reveal corruption, to remedy or mitigate the adverse consequences of the corruption, and to sanction the actors of corruption in compliance with the law."

This law included the following measures:[350]

1. All internal and external communication about public procurement has to be in writing.
2. Civil servants are protected if they refuse to participate in unlawful actions.
3. Bigger contracting authorities have to draft an internal plan for preventing corruption in public procurement.
4. All contracting authorities have to adopt and publish an internal act that regulates the manner of procurement planning (criteria, rules, the way for determining the subject matter of public procurement and estimated values, method of market analysis and research), responsibility for planning, public procurement procedure targets, the manner of fulfilling the obligations in the procedure, the manner of ensuring competition, conducting and controlling public procurements, the manner of monitoring the implementation of public procurement contract.
5. The person, who has participated in the planning of the public procurement and the person related to him/her, may neither act as a bidder or as a bidder's subcontractor, nor cooperate with bidders or subcontractors.
6. If a bidder has given, offered or promised a benefit or tried to find out confidential information or to influence in any way the contracting authority's actions, the contracting authority shall urgently notify the competent government bodies.
7. The person engaged in public procurement or any other person employed by the contracting authority, as well as any interested person who possesses information on corruption in public procurement, shall immediately notify the PPO, the Agency for Prevention of Corruption and the prosecutor and enjoy legal protection from dismissal (provision adopted before the general whistleblower protection law).
8. Restrictions on post-employment in former suppliers' companies.
9. The civil supervisor as an independent oversight mechanism for procurements estimated to over RSD1 billion (€8.5 million).
10. Broad rules on conflict of interest prevention and prohibition to conclude contracts with related companies without pre-approval and under specified conditions (at least 10 per cent better bid than the next one, for example.)
11. The new Law, however, has abandoned or weakened many of the above-mentioned anti-corruption measures instead of clarifying or further developing those that did not prove to be sufficiently effective.

The new PPL no longer enacts special rules for whistleblower protection, the duty for large contracting authorities to develop an internal plan for preventing corruption in public procurement, restrictions for post-employment in former supplier's companies, the mechanism of the independent civil supervisor oversight mechanism for procurements of higher value, special rules for approval of contract in conflict of interest cases and the duty to report violations of competition.

The new law envisages [351] monitoring of the implementation that should be performed by the PPO with the purpose to prevent, uncover and remedy wrongdoings. Monitoring is performed based on the annual plan. It should also cover ex officio cases where some types of negotiation procedure are applied. Monitoring could also be triggered based on a received complaint from a legal entity, natural person or other public authority. Monitoring does not prevent an ongoing public procurement procedure from continuing. There is a 15-day deadline for all authorities to deliver the requested documents to the PPO.

The new law retained the concept where each purchasing entity should adopt an internal act, which will further regulate the process of planning, conducting and monitoring the implementation of the public procurement contracts, including procurements where the law did not apply (for example below the threshold, state-to-state agreement). This act should be published on the webpage of the purchasing entity. There is also an unchanged general clause of each contracting authority when it comes to anti-corruption.

Competitive bidding

The law of 2012 provides for competitive bidding as a rule. The threshold to organise public procurement is RSD500.000 without VAT (approximately €4,000). Previously, "small value procurement" (bellow RSD5 million) was quasi-competitive, as the contracting authority did not have to publish an announcement, but just to request three bids (from whoever). However, the new Law of 2019 might draw things back again. Namely, the overall general threshold is doubled and for works increased six times, to RSD3 million (nearly €25,400). The threshold is even higher for "sectoral contracting authorities". There are also other ways to exclude competitive bidding, such as additional or recurring works, increase of the amount of procurement etc.

Another obstacle for competitive bidding are bilateral agreements and "special laws", where the Government enters into contract with a partner either with no competition at all, or under a procedure that significantly reduces competition.

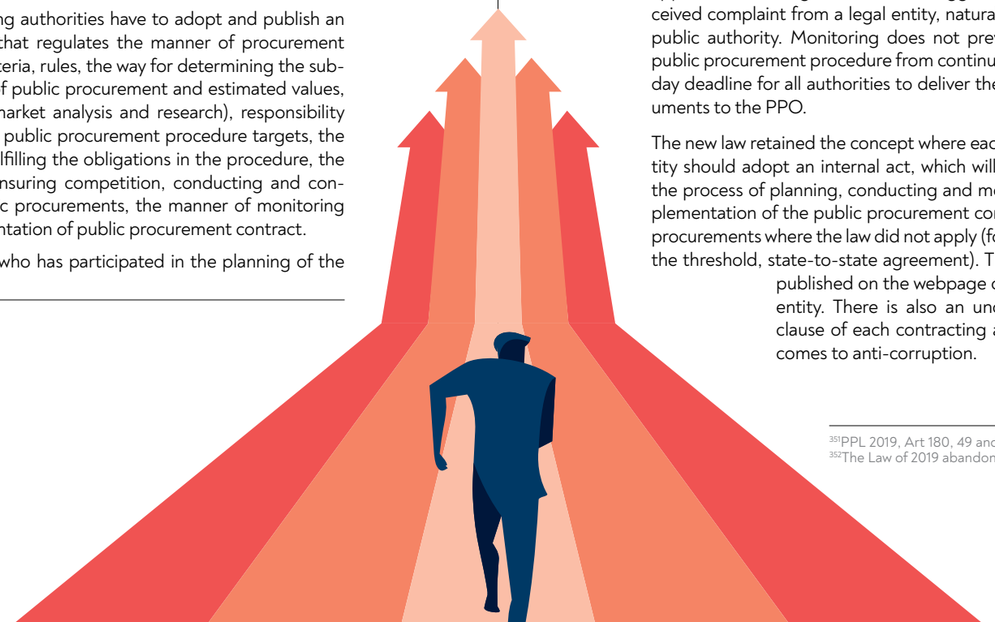
Weak competitiveness is the biggest single problem of the Serbian public procurement system, as most procedures include between one and three bids. It is partly a consequence of legal restrictions and paperwork for bidders, but even more of a widespread perception or past experience based on the assumption that it is not possible to get the contract without previously made a tacit arrangement with the authorities.

Integrity Pacts

The law does not require integrity pacts, but there were some efforts in that direction in the past. An interesting but not fully developed concept of civic supervisor in the period 2013 - 2020[352] bears some similarities. Where the contracting authority conducts a public procurement with an estimated value that exceeds RSD1 billion (nearly €8.5 million), a civil supervisor had to be appointed to monitor the procedure. Such a supervisor may be an individual that is a prominent expert in the domain of public procurement or in the field related to the subject of public procurement or a NGO dealing with public procurement, prevention of corruption or prevention of conflict of interest.

According to the PPL 2012, the PPO, based on procurement plans, appoints a civil supervisor and the contracting authority may not initiate the procurement procedure before the appointment of the civil supervisor. The latter has permanent insight in the procedure, documents and communication between the contracting authority and the bidders. Where the supervisor has reason to doubt in the legality of the public procurement procedure, he/she notifies the competent government bodies and the public. Most importantly, the civil supervisor is authorised to initiate a request for protection, free of charge, before the CPR. The supervisor has to report to the Finance Committee of the Parliament and is not entitled to remuneration for his/her work.

The concept was confronted with many problems in the practice, including a lack of follow up by the parliament and other authorities when supervisors established wrongdoing. Moreover, the supervisors were not knowledgeable enough to engage in such activities without being asked to be appointed for a specific assignment in a specific period, without specific knowledge about the topic of procurements and without remuneration of their costs while performing this function in the public interest.



[340] https://www.srbija.gov.rs/vest/en/145530/government-passes-public-procurement-bill.php
[341] https://naled.rs/vest-naruciоci-pozurili-da-nabavke-oglase-po-starom-zakonu-3981
[342] PPL 2012, Articles 75. and 76, PPL 2019, Articles 111-113.
[343] Ibid, Article 85.
[344] PPL 2019, Article 114-117
[345] PPL 2019, Articles 132-134
[346] PPL 2019, Article 183
[347] PPL 2019, Article 71
[348] PPL 2019, Article 49, vs. PPL 2012, Article 22.
[349] PPL 2012, Article 26
[350] PPL 2012, Art 21-30
[351] PPL 2019, Art 180, 49 and 50.
[352] The Law of 2019 abandons this concept entirely.

The integrity of contracting authorities

The integrity of contracting authorities in Serbia can be assessed at 50 out of 100, given that:

- the contracting authorities and their employees are committed to a strict anti-corruption policy as part of mandatory legal provisions and in some cases to codes of conduct too
- some contracting authorities and their employees receive training on the anti-corruption policy, but most do not; this topic is not in the focus of trainings provided for the application of public procurement rules
- internal control and auditing bodies, where they exist, operate independently from various purchasing departments, but not from the top management
- senior managers of contracting authorities submit assets and income reports, which are, however, only partly accessible to the public
- the whistleblower protection law provides for potentially safe and anonymous mechanisms for reporting wrongdoings, but contracting authorities make very little effort to encourage whistleblowers
- dissuasive, proportionate sanctions are in place for contracting authorities and their employees if a court finds the existence of corruption, but this rarely happens
- there are not specific provisions regarding the remuneration of positions in public procurement and in practice their salary usually does not differ from the rest of civil servants/ employees with similar experience and education level

Anti-corruption policy and codes of conduct

Committing to anti-corruption policies is a matter of mandatory law, rather than soft legislation, such as codes of conduct. While there have been efforts to develop an ethical code for civil servants working in public procurement, it was never adopted. Some codes of conduct that apply to certain categories of officials also contain provisions that are related to procurement or public finances in general (code of conduct of local government officials, for example).

The current legal provisions of the PPL, along with the Criminal Code, the Law on the Budget and other legislation should be sufficient for all public procurement practitioners to avoid any corruptive behaviour. The new law is less detailed in that regard and thus it will be important to develop more rules through internal acts of each contracting authority or through models developed nation-wide.

Integrity training

In Serbia, training in ethics is occasionally available for civil servants and other public sector employees. They are organised by public authorities, NGOs or within international cooperation programmes. Participation is not mandatory but depends on the level of interest of civil servants the level of understanding of their managers of the importance of anti-corruption.

There is an even bigger number of trainings in the area of public procurement, provided mostly on commercial basis by specialized companies, but also by state authorities, the Chamber of Commerce and NGOs. However, these trainings rather focus on solving dilemmas regarding the preparation of bids, procedural steps and the like, than on integrity issues.

Internal control and auditing bodies

According to the Budget System Law[353], an internal audit department (IAD) shall be established in all budget beneficiaries, which is the responsibility of their managers. It is independent from all other departments and directly accountable to the manager. The IAD decides independently about the subject of the audit (based on risk assessment), type of audit to be conducted and reporting.

The internal act of the contracting authority[354] should regulate in detail various control steps and the division of responsibilities when it comes to public procurement in all its phases. In practice, the mechanism did not prove to be very effective, as the oversight of the quality and implementation was poor. Most institutions did not implement the internal act and adopted the model act without substantial modification. While the old law had some ineffective mechanisms for the quality control of internal acts, the new law (2019) does not have any mechanism.

Assets, interest disclosure, and the control of conflict of interest

In Serbia, only elected, appointed and nominated public officials have the duty to disclose their assets and income to the Agency for Prevention of Corruption. Disclosure is made at the beginning and at the end of the term of office, and annually, in the case of more substantial changes. Only parts of these declarations is public (concerning real estate, vehicles, income from the public sector), while the rest is used only in the process of control by the agency or other state bodies. One of the elements of the report on assets is the disclosure of ownership in companies, but there is no obligation to report whether those companies have public procurement contracts concluded with public sector institutions at the moment of taking office.[355]

Conflict of interest rules, however, exist, both as part of general and public procurement legislation. The Law on Public Procurement 2012 provided that conflict of interests exists when the relationship between the representative of the contracting authority and the bidder may influence the impartiality of the contracting authority in making decision in the public procurement procedure. The law recognised three grounds of such conflict of interest (the third one removed in PPL 2019):

1. if the contracting authority's representative or person related to her/him is involved in the management of the bidder in question
2. if the contracting authority's representative or person related to her/him holds more than 1 per cent of bidder's share or stocks
3. if the contracting authority's representative or person related to her/him is employed by or working for the bidder under different arrangements or has a business relationship with the bidder

According to the PPL 2012, the contracting authority may not enter into a contract with the bidder in case of a conflict of interest if this conflict has influenced or could have influenced the decision-making. The person involved in the conflict of interest may not be a subcontractor. The Republic Commission for the Protection of Rights in Public Procurement Procedures (RCPR) may approve contracts where a conflict of interest exists, for the protection of rights in public procurement procedures. The grounds for that will be a request of contracting authority proving that a ban on concluding the conclude contract would cause great difficulties in the work or operation of the contracting authority which are disproportionate to the value of public procurement, or that such ban would substantially undermine the interests of the Republic of Serbia. The contracting authority must also demonstrate that it has taken all measures necessary to prevent adverse consequences, that the other bidders do not meet requirements of the procedure, or that, after the ranking of the bids, the difference in prices is 10 per cent higher or that the number of weighted points is higher by ten in favour of the selected bidder.[356]

PPL 2019 foresee conflict of interest between the bidder and purchasing entity as an obstacle to award the contract, but only if the conflict may not be resolved through other measures.[357] Representatives of purchasing entities, that are in the conflict of interest, have to abstain from public procurement procedure.[358]

The new Law on the Prevention of Corruption (implemented as of September 2020), in Article 53 stipulates the obligation for a legal entity in which a public official or family member, during public office and two years from its termination, has a share of more than 20 per cent and who participates in a public procurement or privatisation procedure or other procedure resulting in concluding a contract with a public authority, to report this to the APC. However, this duty does not apply to companies, previously owned by an official, where the ownership has been transferred (to a family member, for example). There is no regulation on how the APC is supposed to further handle such reports. Law on ACA had similar rules.[359]

Another provision of that law provides for a general duty of public officials to report a conflict of interest to the agency and to abstain from any decision-making in the case of doubt about the existence of a conflict of interest. According to the previous Law on ACA, an act involving an official who was disqualified due to conflict of interest shall be null and void.[360] However, there is no such provision in the Law on PC.

General legislation on civil servants and similar laws regulating the work of public institutions and the local administration (but not public enterprises) also provide for the obligation to disclose conflicts of interest in a specific case the civil servant deals with. Depending on the nature of such conflict (for example the degree of kinship with an interested party), the exclusion may be mandatory or optional.

Proportionate sanctions

There are several types of sanctions that may be imposed for the violation of public procurement rules.

The Criminal Code distinguishes since 2012 a separate criminal offence - misfeasance in public procurement - that is developed from the general concept of abuse of official duty. A responsible person in a company or an entrepreneur, who submits an offer based on false information, colludes with other bidders, or undertakes other unlawful actions with the aim to influence the decision of a contracting authority, shall be punished with imprisonment from six months to five years. Similarly, the penalty will be imposed against a responsible person in the contracting authority who, through abuse of position or powers, by exceeding his/her powers or failure to discharge his/her duty violates the law or other regulations on public procurement and thus causes damage to public funds. When the estimated value of public procurement is higher than RSD150 million (nearly €1,27 million) – no matter how big the actual damage is – the punishment will be higher (one to 10 years). This crime is rarely prosecuted. In 2019, there were 102 criminal charges (in 2018, 200) and only 11 (in 2018, 17) verdicts.[361]

There is a whole list of misdemeanours in the PPL as well, but they were never sanctioned in the 2013 - 2020 period, due to lack of harmonisation of the provisions of the PPL and misdemeanours law. Violation of integrity rules may also constitute grounds for disciplinary measures against civil servants, but there are no records as to whether such measures have been applied.

Therefore, even if sanctions exist and may be proportionate and dissuasive, the frequency of their application is insufficient to deter from wrongdoings.

[353] Budget System Law ("Official Gazette RS", no. 54/2009, and 72/2019), Article 82.
[354] PPL 2012, Article 22, PPL 2019, Article 49.
[355] Law on ACA, Article 46 (5), Law on PC, Article 67.
[356] PPL 2012, Article 30.
[357] PPL 2019, Article 111.
[358] PPL 2019, Article 50.
[359] Law on ACA, Article 36, Law on PC, Article 53.
[360] Ibid, Article 32.
[361] https://uts.org.rs/images/2019/represivne_mere_u_borbi_protiv_korupcije_2.pdf
Report on the Work of Public Prosecutor's Offices on Crime Prevention and the Protection of Constitutionality and Legality in 2019, page 98, http://www.rjt.gov.rs/docs/RAD_JAVNIH_TUZILASTAVA_2019.pdf

Whistleblower protection

The PPL of 2012 introduced the concept of whistleblower protection before the general law was adopted (2014). According to this law, protection is provided to those who reported corruption, and it is the duty of a contracting authority to provide it. Such persons may not be dismissed or transferred to another work position for reporting corruption. They may also address the public if there has been no follow-up information within appropriate period in response to such reporting, or if the APC or the prosecutor haven't done anything within one month. They may address the public if the estimated value of public procurement is higher than RSD1 billion or "if the subject matter of the public procurement is particularly important for the functioning of the contracting authority or for the interests of the Republic of Serbia".[362] PPL 2019 does not regulate whistleblowing.

It is unknown whether any civil servant has requested and obtained protection according to these provisions. As for classified information (some procurements in the defence sector, for example), these clauses regarding protection were still valid even after adoption of the general whistleblower protection rules. Namely, according to article 20 of the general whistleblower protection act, such protection will be denied if a person has addressed the public directly for an alleged wrongdoing and disclosed information labelled as confidential in the process.

Remuneration of the personnel in charge of public procurement

There are no specific provisions concerning the adequate remuneration of the personnel in charge of public procurement. In average, such remuneration is similar to the salary of their peers with similar qualifications level, position in the administration and work experience. Giving a higher pay or recognizing the importance of that position by ranking it higher in the hierarchy is solely at the discretion of the manager.

External safeguards

The Serbian external safeguards for public procurement integrity can be assessed at 50 out of 100, given that:

- the external auditing body – the State Audit Institution – functions independently and its reports are publicly available
- robust, independent and effective appeals procedures are in place for aggrieved bidders (request for protection of rights). New Law enabled appealing generally for procurements where the application of the PPL is excluded. However, this legal mechanism would not affect high value procurements based on bilateral agreements and lex specialis
- mechanisms for reporting allegations of corruption are in place, but some of them are not independent and effective, and do not relate specifically to corruption in public procurements
- a voluntary disclosure programme that allows companies to report on corruption in return for mitigation of sanctions is provided, but such a deal depends on the prosecutor's proposal and approval from the court
- participation of civil society organisations as independent monitoring bodies during all stages of the procurement process is neither promoted nor developed, but it existed until recently as a legally recognised mechanism for biggest procurements (exceeding RSD1 billion). Besides that, high level of transparency, ensured through Public procurement portal, enables insight of interested citizens, organizations and media.

External oversight

External oversight of public finances in Serbia are within the purview of the State Audit Institution (SAI) that effectively started working in 2009.[363] The SAI is an independent state authority. It is accountable to the parliament for its activities stemming from its area of competence. The institution has a president, vice-president, council and audit departments. The officials of the SAI are elected by the parliament based on nomination by the finance committee. The institution has its code of ethics for state auditors and other employees. Auditors are also obligated to strictly implement the INTOSAI audit standards (International Organisation of Supreme Audit Institutions) and the INTOSAI code of ethics.

The SAI performs a mandatory audit of the final account of the central budget. The rest of the public sector is audited according to the SAI's annual plan, designed based on risk assessment. The SAI published 190 audit reports in 2019. There are increasing numbers of performance audits, some of which are related to the procurements of goods and services (report on hail protection, for example).[364]

From the very beginning, public procurement has been an important element of SAI reports, and the degree of identified violations has occasionally been very high (up to 50 per cent of controlled procurement budgets), due to the fact that some procurements were for years conducted without a tender (road maintenance, for example). The value of such irregular public procurements has been down in the few recent years, but still considerable.

According to the PPL 2012[365], the PPO oversees (according to the PPL 2019 "monitors")[366] the application of the law, files request for the protection of rights, informs the SAI and budgetary inspection when it identifies irregularities in public procurement procedures and the delivering of public procurement reports, initiates misdemeanour procedure after obtaining information about a violation of this law, which information may constitute grounds for misdemeanour liability, initiates the procedure for annulment of a public procurement contract etc. All government bodies and organisations, offices and bodies of territorial autonomy and local government, contracting authorities and bidders (applicants), shall provide the requested information and documents in their possession or under their control to the PPO within the specified deadline (15 days in PPL 2019). The PPO submits a special annual report on the monitoring of the application of this law to the government and the committee of the National Assembly in charge of finance by 30 April of the current year, for the previous year (March 31st in PPL 2019). The process of monitoring is further regulated by an act of PPO.[367]

However, the PPO performed these tasks in a limited manner. The capacities of this institution have never been sufficient to investigate all suspicions of violation of public procurement rules and in particular to conduct ex officio pro-active controls.

Appeals procedures

The Republic Commission for the Protection of Rights in Public Procurement Procedures is an autonomous and independent body of the Republic of Serbia, which ensures the protection of rights in public procurement procedures. The RCPR decides on requests for the protection of rights, appeals filed against conclusions of the contracting authority, against the contracting authority's proposals that the submitted request for the protection of rights should not prevent the issuance of the decision (suspensive effect), and it also oversees and controls the implementation of decisions it renders, imposes fines to the contracting authority and the responsible person of the contraction authority, annuls public procurement contracts, etc.

The commission has a president and eight members. They are appointed and removed from office at the proposal of the parliamentary committee in charge of finances (elected after a public competition, for a five-year period).[368]

Requests for the protection of rights may be filed by a bidder who has interest in the contract to be awarded in the particular public procurement procedure and who has suffered or could suffer damage due to the actions of the contracting authority in contravention of the provisions of the PPL. The Public Procurement Office, State Audit Institution, public attorney may also submit a request for the protection of rights. The submitted request has a suspensive effect, unless decided otherwise.[369]

In practice, many bidders are reluctant to use this legal remedy because of the associated risks and uncertain benefits. Namely, the fees for the submission of the request may be substantial (0.1 per cent of estimated value for higher value procurements and minimum of RSD120,000 or €1,000 for smallest ones).[370] Even if the requestor wins in the case in question and the commission revokes a decision or annuls some provisions of the terms of reference (ToR), there is no guarantee whatsoever for winning the public procurement award thereafter.

Complaints mechanisms and disclosure programmes

There are possibilities for persons reporting corruption in public procurement to obtain benefits for themselves. The perpetrator of the offense who voluntarily discloses that the offer is based on false information or collusion with other bidders, or that he/she has undertaken other unlawful actions with the intent to influence the decision of the contracting authority prior to the issuance of the decision on the selection of the bid, may be remitted from punishment. Therefore, there still exist the criminal liability, but probably without a prison sentence or fine. Companies, but not individuals may use this method of reporting.

There are other legal mechanisms as well that are not specifically related to corruption in public procurement, but to wider range of criminal offences. It includes the possibility for the public prosecutor to decide to defer criminal prosecution if the perpetrator commits to some community service and confesses the crime. Another form of arrangement, widely used in corruption cases, in particular since 2018, is plea-bargaining. These types of cooperation with investigation authorities will help perpetrators receive lower sentences.

It is not publicly known if any company has reported corruption in public procurement and used the above-mentioned benefits.

Other complaint mechanisms are explained in the paragraph on the whistleblower protection.

Independent monitoring

Except for the civic supervisors (till July 2020), there is no other institutionalised civil society public procurement monitoring mechanism. Civil society organisations (CSO) and individual citizens may however submit free access to information requests and participate in the public opening of the bids. Not all other phases of the process are open to the public.

[362] PPL 2012, Article 24.
[363] www.dri.rs
[364] http://www.dri.rs/audit/latest-report/latest-report.199.html
[365] PPL 2012, Article 132.
[366] PPL 2019, Article 180.
[367] http://www.ujn.gov.rs/wp-content/uploads/2020/07/Monitoring.pdf
[368] PPL 2012, Article 138-145, PPL 2019, Articles 186-203.
[369] PPL 2019, Article 216.
[370] PPL 2019, Article 225.

Legislation for the private sector

Serbian legislation for the private sector in the context of public procurement can be assessed at 75 out of 100, given that:

- companies that do not have a transparent ownership structure and code of conduct may also compete in tenders, but bidders who have been convicted of certain offenses or against whom measures have been imposed are not entitled to participate in public procurement
- the law prescribes punitive measures against companies and their representatives; sanctions are dissuasive, proportionate and effective (imprisonment and fines, ban on participation in future procurement procedures), but are rarely imposed
- since recently there is a legal mechanism under which a company that has previously broken the rules "can demonstrate its reliability"
- the law does not provide for any additional incentives for the selection of companies that implement effective anti-corruption programmes

Limited access to public procurement for bidders

According to Article 75 of the PPL from 2012, a bidder has to be registered with the competent body or entered in the relevant register. A company or its legal representative may not participate if they have been convicted of any criminal act as part of an organised criminal group, of a commercial criminal offence, criminal offence against the environment, criminal offence of receiving or offering a bribe, and criminal offence of fraud. The list of criminal offences is even longer in PPL 2019.[371]

Registration with the competent authorities, in the case of a Serbian companies, would be sufficient to ensure a transparent ownership structure. However, it is theoretically possible for a company from countries where ownership is not transparent to participate in a tender as well.

Furthermore, according to Article 112 of PPL 2019, contracting authority shall exclude bidders who tried to influence improperly decision-making process, to obtain confidential information or who submit deceptive data. Contracting authority may (but does not have to) include in the ToR other grounds for rejection of a bidder.[372] Such elimination is possible, among other, in cases of grave professional misconduct which brings into question integrity of the bidder, collusion with other bidders, failure to fulfil public procurement contracts, submission of false information. Misconduct of the bidder has to be determined by the competent authority within the past three years.

Sanctions for bidders

As explained, the sanctions include punishment for criminal offences, fees for misdemeanour offences and debarment from either current or prospective public procurements. Debarment from participation in tenders may be an additional measure imposed by the court, along with the punishment.[373]

However, since these measures are seldom applied, they remain significantly less dissuasive and effective.

Debarment works in practice only when the bidders are required to submit evidence in order to participate in tenders. Contracting authorities are not using optional possibilities for the debarment of companies.

Settlement mechanisms

Unlike the one of 2012, the PPL 2019[374] provides for "self-cleaning" mechanisms. Hence, a company may not be debarred if it provides evidence that it has paid or is committed to pay damages caused by a criminal offence or unprofessional behaviour; if it has clarified the facts and circumstances in a comprehensive manner by actively cooperating with investigative agencies; if it has carried out specific technical, organisational and personal measures adequate to prevent further crimes and unprofessional behaviour.

The contracting authority will be free to evaluate measures of self-cleaning, depending on the gravity of the violation. If the measure is found to be insufficient, the contracting authority has to provide an explanation. The publishing of these documents is not envisaged.

Anti-corruption incentives

There are no legal provisions for incentives offered to companies with effective anti-corruption programmes in place (for example, favourable procurement conditions).

[371] PPL 2019, Article 111.
[372] PPL 2019, Article 112.
[373] Law on Misdemeanor (Off. Gazette of RS", no. 65/2013, 13/2016, 98/2016, 91/2019 and 91/2019), Article 66a.
[374] PPL 2019, Article 113.

THEMATIC AREA 9:
TAXES AND CUSTOMS

Operating environment

Serbian operating environment concerning taxes and customs can be assessed at 50 out of 100, given that:

- processes to determine, pay and collect duties are not always simple, standardised and transparent; the law clearly prescribes the number of taxes or customs fees, the distribution of tax revenues between central and local authorities, level of tax and custom rates and criteria for tax exemptions; however, there is also room for the discretionary powers of officials in some instances, that partly arises from possibility of different interpretations of the law
- tax and customs administrations use modern technology, the law stipulates electronic payment, each legal entity has its own unique tax code, some information is provided electronically (not always sufficient to complete a task); however, tax inspections and customs often work directly with clients, which entails greater risk of corruption
- there is transparency of information on collected taxes and custom fees and their sources; when it comes to the institutions in general, the customs office publishes most of its information on its website, while it is very difficult to find information on the work of the Tax Administration, which does not publish its annual reports and does not respond to requests for access to information of public importance or denies such access without specific justification
- there is no transparency when concluding tax deferment agreements with companies

Taxation processes and the use of technology

Taxes and customs administrations operate based on a set of fiscal laws, including the Budget System Law[375], the Tax Procedure and Administration Act[376], and the Customs Law[377]. Those laws include provisions on processes of how to determine, pay and collect taxes, provisions on the number of taxes or customs fees, regulating the distribution of tax revenues between national and local authorities, the level of tax and custom rates and the number of, and criteria for, tax exemptions. Interactions between taxpayers and tax and custom officials are increasingly limited, based on electronic filling and payments, used exclusively for certain types of documents.

These measures significantly limit the interactions and discretionary powers of officials. However, there are still many opportunities for corruption to occur, due to inevitable contacts of individuals with custom officials, who enjoy a great degree of discretion when assessing whether to conduct control and to which extent. Similarly, tax inspectors, while subject to mandatory elements of control, also have a high degree of discretion and the risk of corruption is high having in mind direct contacts with interested persons.

The Law on the Tax Administration prescribes the procedure for determining, collecting and controlling public revenues, the rights and obligations of taxpayers, the registration of taxpayers and tax crimes and misdemeanours. The Law on the Budget Tariff sets the rules for the customs clearance of goods.[378] In recent years, legal entities have been making all payments electronically, limiting interactions between the taxpayers and tax and customs officials. When it comes to collecting customs duties, agents mainly perform this operation for legal entities, that is, freight forwarding companies. However, there is still a rather high level of interaction between taxpayers and customs officers who directly inspect goods.

The biggest risk of corruption occurs within tax inspections and customs controls because they work on the spot, where the discretionary powers of customs officials are high. There are no reports available on internal controls that could offset discretionary decisions. One of the identified problems is the lack of clarity of legal provisions and further "regulating" of such situations through the institute of "opinions", issued by the Ministry of Finance (MF).

From 1 January 2018, taxpayers can submit electronic tax returns for all revenues administered by the TA through the e-Taxes portal and they can check the status of their tax cards. From 1 March 2019, they can receive an electronic tax settlement certificate as well. Until recently, the criteria for flat-rate taxation were not logically elaborated and the Tax Administration did not apply them in the same way. All entrepreneurs in the flat-rate tax regime or those who are just planning to start a business now have the opportunity to calculate their tax liabilities four years in advance on the portal www.jpd.rs.[379]

The complexity of the tax system, which is reflected in the existence of a large number of tax forms, as well as the com-

[375] Budget System Law ("Official Gazette RS", no. 54/2009... 72/2019)
[376] "Official Gazette RS", no. 80/2002 ... 86/2019
https://www.paragraf.rs/propisi/zakon_o_poreskom_postupku_i_poreskoj_administraciji.html#
[377] "Official Gazette RS", no. 18/2010, 111/2012, 29/2015, 108/2016 and 113/2017
https://www.paragraf.rs/propisi/carinski_zakon.html#
[378] https://www.paragraf.rs/propisi/zakon_o_carinskoj_tarifi.html
[379] https://naled.rs/vest-kalkulator-za-novo-pausalno-oporezivanje-2795

plexity of the rules for calculating individual taxes and non-tax forms (fees and taxes), also affects the size of the grey economy.[380] Various para-fiscal duties[381] are also a problem.

Considering the number of fiscal cash registers in the Republic of Serbia (about 191,400) and the number of taxpayers - entrepreneurs and legal entities (about 333,000) and field control inspectors (500), it can be concluded that physical control on-site, as it is now implemented, is not producing the desired results. Furthermore, such a discrepancy between the number of potentially controlled subjects and controllers creates significant risk in not only the very process of control, but also when the decision is to be made as to who will be controlled at all.

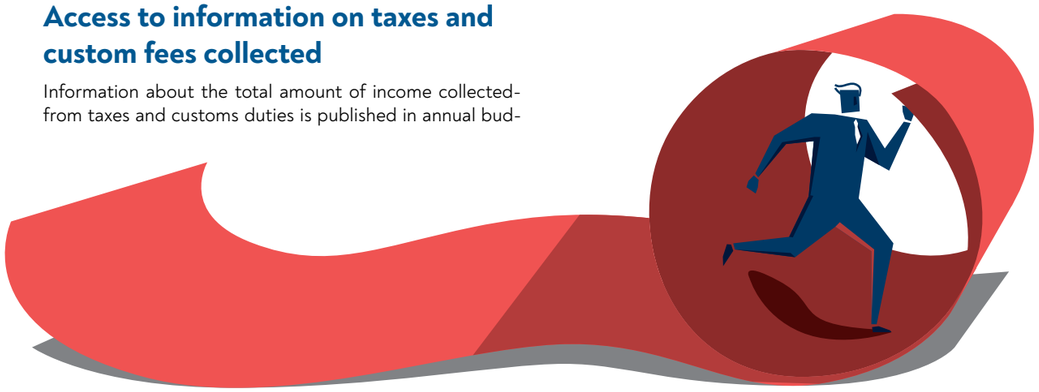
The 2018 amendments to the customs law significantly aligned the customs procedure with the EU customs law, in particular for legal entities that link the simplified customs procedure to the process of an Authorized Economic Operator (AEO). The instructions are publicly available on the Customs Administration's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

Access to information on taxes and custom fees collected

Information about the total amount of income collected-from taxes and customs duties is published in annual budget and in monthly bulletins of the Ministry of Finance. However, not all types of taxes are listed in these reports specifically. There is no information published about individual tax and custom payers, unless companies publish such information themselves, usually for a self-promotion.

In their reports, the Tax Administration and Customs Administration publish information on collected taxes and custom fees as well as their sources. While CA publishes most of the information on its website, the TA does not. Information is neither easily accessible nor clear to less informed citizens and businesspersons. Information not published online may be legally requested through requests for access to information of public importance. However, the practice of Transparency Serbia shows that the TA does not respond to such requests or, when it does, it only provides inadequate and incomplete answers (usually claiming that information is considered confidential, that the requested information is voluminous, or combining these two answers).

Tax deferent agreements with companies[382] are not published.



Integrity of tax administration authorities

The integrity of tax administration authorities in Serbia can be assessed at 50 out of 100, given that:

- the tax and custom administrations and their respective employees are subjects to strict regulations for corruption (both administrations have departments for internal control, as well as a code of conduct)
- both administrations have anti-corruption procedures and provide trainings
- internal control and internal auditing exist within both administrations, but their institutional set-up does not guarantee full independence, while effectiveness and efficiency cannot be fully assessed due to confidentiality of information
- dissuasive and proportionate sanctions are in place for both administrations' employees, as well as for private sector staff where corruption is uncovered (according to the law), but in reality, corruption in these areas is rarely reported while the sanctions are often conditional
- internal mechanisms for whistleblowers protection in the public sector, including these two administrations, are provided by the law, but they are insufficiently promoted and not always effective
- the remuneration for tax and custom officials does not differ significantly from the rest of public sector and is not always proportionate to the responsibilities and challenges of these jobs

[380] https://naled.rs/images/preuzmite/Nacionalni_program_Akcioni_plan_SE_2019-2020.pdf
[381] http://parafiskali.rs
[382] Tax Procedure and Administration Act, Articles 73-74b.

Anti-corruption commitment

As other civil servants, tax and custom officers have to respect laws and the general Code of Ethics for Civil Servants.[383] Legal rules are rather strict when it comes to corruption, as it was elaborated in the section dealing with bribery in the public sector. However, general regulations on civil servants do not provide for assets declaration, except for heads of departments that are appointed by the government and therefore considered public officials.

Furthermore, both the Tax Administration and Customs Administration also have their own codes, adopted in 2019[384] and 2011.[385] The Code for the Customs Administration is much more detailed; it includes statements on gifts, of conflict of interest and of being informed about the duties from the Code.

Officers receive regular training, including on anti-corruption, but no information has been released on how many officers have completed such training. The TA's Information Booklet states that trainings were held for 5,592 tax officials in 2019, but neither the areas nor the types of training are specified.[386] During 2019, the Judicial Academy organised several trainings for members of the Department for Internal Control of the Tax Administration.[387]

Effective sanctions

Corruption offences in the field of tax and customs are sanctioned in the same way as in other sectors. Therefore, findings underlined in this report under thematic areas 1 and 2 are valid for this section as well. Violations of codes may be subject to disciplinary proceedings.

Internal control and training

Both the TA and the CA have elaborated internal control and audit mechanisms.

The CA has a special phone line for reporting corruption[388], as well as a code of ethics[389], with the aim of improving the reputation of the customs service and eliminating negative public perception (both administrations are regularly on the list of institutions that citizens consider susceptible to corruption, i.e. that are under the influence of various political and other interests) as part of the fight against corruption, standards of integrity and rules of conduct.

Despite these efforts, a survey conducted by CESID for USAID during 2019 showed that Serbian citizens still rank customs high on the list (4th place) of most corrupt institutions. It is the citizens' perception and the general opinion that customs officers receive money and gifts on a regular basis.[390]

When it comes to corruption risk assessment, these two institutions have their integrity plans[391], but these plans and implementation reports are not publicly available. Integrity plans are developed with the support of and controlled by the Agency for Prevention of Corruption[392]

In the Report on Compliance with the Code of Conduct for Civil Servants for 2019, submitted by the Ministry of Finance[393], most complaints (45) were recorded in the Tax Administration.[394] Due to violations of the rules of ethical conduct, regulated by the Code, eight disciplinary proceedings were initiated and five were completed. Three fines were imposed in the completed disciplinary proceedings.

The Customs Administration initiated 26 disciplinary proceedings, due to serious violation of official duty related to civil servants' behaviour towards their superiors and colleagues. From the available statistics, it is not possible to determine the exact number of tax and customs officers identified or punished for corruption and related criminal offenses. The police occasionally release information on such arrests. Usually, the internal control departments of both administrations claim that they cooperate in these cases.[395]

Whistleblowers Protection

The law provides the possibility to report, anonymously or under protection of identity, violations of rules and damage risks internally – either to the competent authority or, in some instances, directly to the public. In that sense, tax and custom administrations may receive complaints from their employees and clients, when the whistleblowing is internal. They may also be considered "external competent bodies" when someone reports wrongdoing by another person (for example, a company that attempted bribery or fraud). The law obligated all institutions to publish internal alerting rules as well as internal alert procedures on their websites. Contact details of the person to whom corruption can be reported is provided as part of these acts.

It is unknown whether these mechanisms are used at all in the TA or the CA. Allegedly, the Ministry of Finance did not have any case of whistleblowing from 2015 until the end of 2018.[396] However, it is not clear whether specific administrations within the ministry were asked to provide statistical data.

[383] Code of Ethics for Civil Servants ("Official Gazette RS", no. 29/2008, 30/2015, 20/2018, 42/2018 and 80/2019)
[384] http://www.carina.rs/cyr/Dokumenti%20i%20obrasci%20cirilica/%D0%9A%D0%BE%D0%B4%D0% B5%D0%BA%D1%81%20%D0%BF%D0%BE%D0%D%D0%B0%D1%88%D0%B0%D1%9A%D0%B0%20%D1%86%D0%B0%D1%80%D0%B8%D0%BD%D1%81%D0%BA%D0%B8%D1%85%20%D1%81%D0%BB%D1%83%D0%B6%D0%B1%D0%B5%D0%BD%D0%B8%D0%BA%D0%B0.pdf
[385] http://poreskauprava.gov.rs/sr/o-nama/pravilnici/461/pravilnik-o-pravilima-ponasanja-poreskih-sluzbenika-i- namestenika-u-ministarstvu-finansija--poreskoj-upravi.html
[386] http://www.poreskauprava.gov.rs/o-nama/Informator.html
[387] https://www.pars.rs/sr-yu/component/tags/tag/borba-protiv-korupcije
[388] http://www.carina.rs/cyr/Stranice/PrijaviteKorupciju.aspx
[389] http://www.carina.rs/lat/Informacije/Stranice/KodeksPonasanja.aspx
[390] https://www.odgovornavlast.rs/wp-content/uploads/2020/01/USAID-GAI-Deliverable-Citizens%E2%80%99-Perceptions-of-Anticorruption-Efforts-in-Serbia-December-2019.pdf
[391] http://www.acas.rs/wp-content/uploads/2017/12/Sistem-javnih-finansija-i-privrede.pdf
[392] http://www.acas.rs/plan-integriteta/
[393] https://www.suk.gov.rs/tekst/609/izvestaj-o-postovanju-kodeksa-ponasanja-drzavnih-sluzbenika-za-2019-godinu.php
[394] Violation of Articles 4, 5, 6, 7, 9, 10, 13 and 14 of the Code, that refer to legality and impartiality, political neutrality, protection of the public interest, prevention of conflict of interest, restrictions on the acceptance of gifts, use of property, relations with citizens, superiors and colleagues.
[395] http://www.poreskauprava.gov.rs/biro-za-informisanje/novosti/3491/saopstenje.html
http://www.poreskauprava.gov.rs/biro-za-informisanje/novosti/4527/saopstenje.html
http://www.rtv.rs/sk/hronika/uhapseno-14-direktora-i-8-carinika-preko-carine-u-subotici-ostetili-drzavu-za-milijardu-dinara_322682.html
https://www.glasamerike.net/a/uhapseno-11-carinika-zbog-sumnje-da-su-ostetili-budzet/3824459.html
[396] https://www.mpravde.gov.rs/tekst/14518/izvestaji-o-primeni-zakona-o-zastiti-uzbunjivaca.php

Human resources available and remuneration of tax and custom officials

According to information released by the tax administration, the salary of its director in December 2019 was RSD176,000 (€1,500); managers of various units received roughly between RSD80,000 and 124,000 (€680 and 1,055); officers with university degree between RSD50,000 and 82,000 (€425 and 700) and with a secondary school degree between RSD30,000 and 38,000 (€255 and 320). Custom service officials are similarly paid. At the same time, the average salary in the country was RSD56,000 (€476). Even if their salaries increase in 2020, it is safe to say that they are not very attractive. On the other hand, what might be stimulating, as elsewhere in public sector, is a lower risk from losing one's job than it is in the private sector.

External safeguards

Serbian external safeguards for tax and revenue collection integrity can be assessed at 50 out of 100, given that:

- a single tax and custom identification number for companies is used for tracking each company
- external control and auditing bodies function independently and their reports are publicly available
- there are some mechanisms for reporting allegations of corruption, but those mechanisms are only partially independent (they are under the control of the CA/TA director) and not fully effective
- there are possibilities to mitigate sanctions on the basis of reported corruption, but there is no other incentive for the reporting of wrongdoing

Single tax and custom identification number

A single tax identification number is provided to companies along with the registration documents since 2003. That makes the tracking of the activities of companies easy. This number is also used for companies' customs identification and it may be seen in the public register of companies.

External Control and Audit

The work of tax and custom administrations may be externally assessed and audited by various institutions. Organisationally, both administrations are part of the Ministry of Finance, which may hold them accountable and steer their activities.

The State Audit Institution (SAI) is the independent authority in charge of auditing their activities when it comes to finances and compliance. Performance audit is also possible, but no such activity has been conducted in the two administrations yet.

In November 2019, the SAI published a report on the audit of several aspects of the work of the customs administration – salaries, procurements, commitments. SAI found violation of rules of public procurements.[397] A full report on the financial reports of the tax administration for 2018 found significant irregularities, mostly related to the property value accounting.[398]

Corruption in the two administrations is suppressed, like elsewhere, by the police and prosecutors. There were several prominent cases of that kind in recent years. For example, a Special Court for organised crime in Belgrade sentenced in 2015 a six-member group known as the "customs mafia" to several years in prison for illegal customs clearance of foreign vehicles to the detriment of the state budget.[399] The group comprised eight officers of the CA and 14 enterprise directors were arrested in 2012.[400] In August 2019, the police arrested a tax inspector in Kragujevac[401], in May 2019 one from Bor[402], and in July 2019 one from Smederevo[403] for taking bribes from entrepreneurs. Several mid-managers of the TA were also arrested in previous years.[404]

Complaints mechanisms

An anti-corruption hotline, which has been in operation for years, is available for any interested party, when it comes to the CA.[405] Corruption or any other wrongdoing may be reported via that hotline specifically dedicated to the internal control unit. An e-mail address is also available but does not work.[406]

The TA does not invite citizens and companies to report corruption on their web pages. It offers a general hotline (0700 700007), but the number cannot be reached! There are also contacts (land line numbers) of various organisational units available in the TA's fact sheet, including those in charge with internal control. Much more information is available if someone wants to report company wrongdoing. For that purpose, the TA established an online form.[407] It is the part of their activities in combatting "grey economy".

A possibility to mitigate sanctions for wrongdoings in case of voluntary disclosure does exist, but it is not part of the tax and custom administrations' programmes – it is rather an issue related to the application of criminal law.

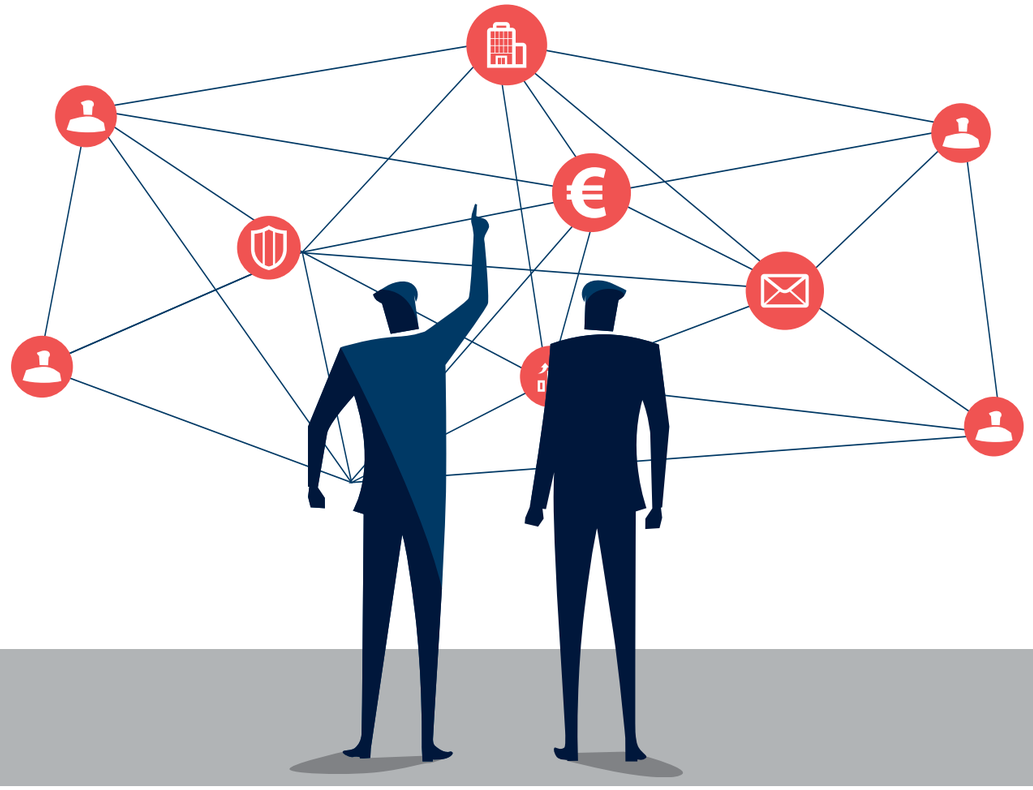
[397] http://dri.rs/php/document/download/2232/1
[398] http://dri.rs/php/document/download/1956/1
[399] http://rs.n1info.com/Vesti/a54387/Presuda-carinskoj-mafiji.html
[400] https://www.blic.rs/vesti/hronika/devet-godina-kasnije-apelacioni-sud-ukinuo-osobadajucu-presudu-carinskoj-mafiji/9vybtb1
[401] https://www.blic.rs/vesti/hronika/stavi-pare-na-racun-i-daj-mi-ovlascenje-sluzbenica-poreske-uprave-uhapsena-jer-je/7kdplj1
[402] https://rtvbor.rs/uhapsen-poreski-inspektor/
[403] https://www.republika.rs/hronika/hronika/146910/korupcija-poreskoj-upravi-uhapsen-sluzbenik-koji-primio-mito
[404] https://www.blic.rs/vesti/hronika/uhapsen-bivsi-direktor-filijale-poreske-uprave-u-ivanjici-i-sluzbenica-poreske/7c85qlb
https://www.krstarica.com/vesti/hronika/uhapsen-direktor-filijale-poreske-uprave-u-paracinu/
[405] http://www.carina.rs/lat/Stranice/PrijaviteKorupciju.aspx
[406] http://www.carina.rs:81/CarinaAnonimusPortal/OtvorenaCarinskaInternetLinija.aspx
[407] http://www.purs.gov.rs/fiskalne-kase/prijavite-poreske-nepravilnosti.html

BICA **ASSESSMENT** PART II

PRIVATE SECTOR ASSESSMENT
Overall assessment

There are significant differences in standards adopted and applied in the private sector, depending on the size of the business, share of international capital, professionalism of the management and the respective industry in question. Where standards and policies are developed, which is still the case with a minority of companies, they cover most of the relevant issues. There is also legal provision aimed to ensure standards of good corporative governance, mainly through mandatory internal structures, external audit and protection of the rights of shareholders. However, the implementation of these standards faces a range of obstacles, including the understanding of these rules as bureaucratic requests, formal compliance and incompatibility with some widespread cultural models that influence business in the country.

There are still no sufficient incentives for the private sector in Serbia to promote integrity in its activities. There is public odium towards corruption throughout the private sector, but it is still not articulated into an action in the common interest. In part, such a situation is the consequence of a high influence of the public sector on the national economy and dependence of businesses on connections with those in power, in particular when it comes to small enterprises at the local level. Business associations may help resolve that problem by greater promotion and streamlining of anti-corruption initiatives of the business sector.



THEMATIC AREA 10:
INTEGRITY MANAGEMENT

Provision of policies

The measures contained in corporate formal policies to counter corruption in Serbia can be assessed at 50 out of 100, given that:

- only a few companies have established clear, visible and accessible formal policies prohibiting corruption
- when existing, these policies address the most prevalent risks of corruption, such as conflict of interests, bribery, political contributions, charitable contributions and sponsorships, facilitation of payments, gifts, hospitality and expenses, money laundering and collusion
- in most cases, when existing, policies are visible to all parties within and outside the company
- adherence to policies is mandatory and applies to all levels, functions and areas of the company

General anti-corruption policies for private sector

The National Anti-Corruption Strategy[408], adopted for the period 2013 - 2018, addressed the ways in which the private sector can contribute to fighting corruption. The strategy envisaged that the state would work to create a stimulating framework for the private sector to support financially anti-corruption projects in the civil sector in that period.

The Action Plan for the implementation of the National Anti-Corruption Strategy envisaged the following measures:

- the state will amend the law so that companies providing financial assistance to the civil sector can receive tax breaks
- the Chamber of Commerce and Industry of Serbia will adopt several codes providing for the establishment of anti-corruption standards in the private sector

There is no publicly available data on how many companies in Serbia have adopted anti-corruption or integrity plans as recommended by the CCIS and Global Compact members.[409]

All Serbian companies, including private ones, are required to be part of the CCIS and thus respect its Code of Professional Ethics, which was adopted back in 2006 and which addresses anti-corruption standards in the private sector. The code prescribes the standards that companies should apply in developing anti-corruption programmes.[410]

In case of violation of the provisions of the code, the Court of Honour of the CCIS can impose one of the following measures:

- reprimand
- public reprimand by publication on the board of directors of the chamber
- public reprimand by publishing in one or several print or electronic media

There is no publicly available data about violations of anti-corruption standards of the code detected by the CCIS.

Anti-corruption policies of companies

When it comes to introducing certain anti-corruption standards in companies, legal obligations are significantly higher for companies with majority state ownership than for private companies. In addition, significant differences occur within the private sector itself. They are present mostly in the branches of huge international corporations that usually have clearly defined, communicated and available policies. This is in particular true for companies that are publicly listed. The next group of companies, that also generally tend to adopt such programmes are regional corporations, managed by professionals. They are followed by huge national companies, managed by professionals that either have already adopted some policies or are working on the drafting thereof. The situation is worse in companies where the owner is also highly involved in the management. There are also some industries that tend to develop anti-corruption policies more frequently, as they are highly regulated anyhow, for example financial institutions, the pharmaceutical industry, tobacco industry or environmentally sensitive industries. Specific anti-corruption policies may also be identified in companies where the need is greater due to high corruption risk – for example procurement processes for supermarket chains or petrol station chains.

Multinational companies operating through their branches in Serbia generally have their own policies and standards for combating corruption, as well as for conduct when cooperating with third parties.

These companies have publicly available codes of conduct or ethical codes on their websites that address the following issues:

- Anti-corruption and bribery
- Insider trading
- Conflict of interests
- Gifts and entertainment expenses
- Responsible use of company assets
- Document management
- Confidentiality of information
- Privacy of customer data and employees

Some of them also have publicly available contact information of their ethics and compliance departments and hotlines[411] for reporting ethical issues.

The analysis of such codes shows that, depending on the company, the codes address the prohibition of corruption in various ways. Some codes provide general guidance, while others give detailed instructions to employees for handling specific situations.

The codes of business ethics may stipulate that they apply to all employees, as well as to persons engaged under special contracts in any part of the company.[412]

The codes recommend that employees, when accepting a gift or service, must declare that they have received it as well as its value, in accordance with the applicable gift and business entertainment policy.

Other codes make more detailed recommendations: any offer, promise or acceptance of money, things, rights, services, gifts exceeding the value of promotional products (from €50 to €200) or the possibility of influence by another person who is in business with the company, is considered as unacceptable. It is acceptable to receive and give gifts of lesser value, or invite one to lunch, only if it is part of a generally accepted business practice and cannot influence a business decision.[413]

Most of the companies that have addressed conflicts of interest in their codes, pointed out that every employee has the responsibility to report situations or transactions that could lead to a conflict of interest. Companies also expect their employees to report if they suspect being involved in some suspicious transaction or transactions that may be considered as a conflict of interest.

Some companies have also addressed and developed recommendations regarding the political activities of their employees: all employees have the right to take an active part in political life, but outside working hours and outside the workplace. It is forbidden to use the official position or assets of an enterprise to support a political candidate, political party, movement or group. It is also forbidden to put pressure or make promises that may affect employees, especially subordinates, for political ends.

In general, even when anti-corruption programmes exist, it is not always clear what should be the role of each player and in which way these programmes overlap with or differ from compliance programmes and internal audits. The role of corporate lawyers is also not recognised sufficiently.

There are also companies that do not allow any contribution or payment, directly or indirectly, for supporting political parties or political party candidates and that is clearly stated in their codes of ethics.

On the other hand, as it has already been explained, the need to develop internal anti-corruption standards has not yet been recognised in many small businesses.

Implementation of practices

The implementation of corporate policies to curb corruption in Serbia can be assessed at 25 out of 100, given that:

- existing anti-corruption programmes of companies mainly deal with corruption on the general level without considering the specifics of the Serbian normative and business environment
- where such a programme exists, the CEO or owner of the company is not always responsible for ensuring that the programme is carried out; it is usually the responsibility of other company managers or legal, control or human resource departments
- when implementing anti-corruption programmes, companies usually include training of managers and employees, internal communication and to a much lesser extent, feedback mechanisms
- compliance with the programme is mandatory for all employees, but the amount of their duties and responsibilities differ significantly
- information about sanctions for violations of the programme is scarce (even when collected through interviews), but interviewees claim that in several cases sanctions were applied
- the cooperation of companies with law enforcement bodies is regulated to great extent by the law and does not depend significantly on company codes

[408] http://www.acas.rs/wp-content/uploads/2010/06/Nacionalna_strategija_za_borbu_protiv_korupcije.pdf?pismo=lat
[409] https://api.pks.rs/storage/assets/Deklaracija%20o%20borbi%20protiv%20korupcije.doc
[410] https://pks.rs/strana/sekcija/publikacije-kompanijska-antikorupcija
[411] https://rs.coca-colahellenic.com/media/2876/code-of-business-conduct-srb-press-v02.pdf
[412] https://www.metalac.com/images/pdf/KodeksPoslovneEtike.pdf
[413] https://www.deltaholding.rs/upload/documents/dokumenta/nekategorizovano/Eticki%20kodeks.pdf

Risk-specific programmes

Most of the analysed codes show that private companies have implemented anti-corruption programmes modelled on their foreign owners' existing standards. This means that the anti-corruption programmes deal with corruption at the general level without considering the specifics of the Serbian institutional, normative and business environment, business ethics of employees and habits that encourage corruption. There are a number of multinational companies working in Serbia that have developed training programmes to address the specific risks of this region.

Anti-corruption implementation, programmes and trainings

Companies that have developed regulations for the prevention of corruption have different practices when it comes to the responsibility of implementing anti-corruption programmes. Research shows that the responsibility for implementation of the code of ethics and all anti-corruption programmes lies in different sectors such as the legal department, internal control or HR.

It is the responsibility of these departments to organise trainings for employees, including managers, partners and associates, to inform them about the code of ethics, help them understand and apply such codes in the relevant situations and circumstances. Interviewees confirmed that they were informed about the programme in various ways - educational videos or brochures provided by the HR department.

To ensure compliance with the code, some companies require all employees to pass post-employment training and to re-attend it after two or three years. Some code of ethics point out that employees must sign a document attesting that they have read the code.

Research shows that company management takes the final decision regarding penalties for violating the code of ethics.

Companies that are part of multinational businesses have in place programmes and trainings such as mandatory trainings on an annual basis during which employees can better understand laws on the prevention of corruption and bribery. Some companies have introduced periodic electronic training mandatory for all employees.

Compliance with the programme is mandatory but the amount of the duties and responsibilities of the persons it concerns differ significantly.

Sanctions and cooperation with law enforcement

Information about sanctions for violations of the anti-corruption programme is scarce but several cases have been identified. Sanctions include various disciplinary measures including dismissal.

Even companies with higher commitment to anti-corruption are usually reluctant to report the corruptive practices of their employees.[414] However, when a case[415] is uncovered they cooperate with investigative bodies and try to protect the reputation or prevent a potential risk for the reputation of the company.

In general, law enforcement bodies do not have to rely on company policies in order to conduct an investigation, but the active cooperation of company staff may help solving the case more efficiently, which is in the interest of both the investigators and the companies.

Whistleblowing

The implementation of corporate whistleblowing mechanisms (secure channels to raise concerns and report violations) can be assessed at 25 out of 100, given that:

- secure and accessible channels for reporting information about corruption in the company are not always provided, even if the company does have some type of whistleblower protection mechanism
- the law protects the employees that alert the management of abuse from victimization and retaliation, but such protection is still not a sufficient incentive for potential whistleblowers
- information provided by reporting persons is not always handled promptly and through an orderly follow-up process, which entails communication with the reporting person
- where whistleblowing channels are available, employees alerting the management of misfeasance are protected from victimisation and retaliation
- there is no available information about the actual implementation of whistleblowing policies in companies, whether the information provided is handled promptly and in what manner and if any further course of action undertaken is communicated to the reporting person. This information is not included in corporate reports

[414] Interview with the compliance officer of an international company that operates in Serbia
[415] Interview with a former police inspector in charge of financial crime

Whistleblower protection in the private sector has been generally rare for years, except in the case of big international companies. However, the situation significantly changed in November 2014 with the adoption of the Law on the Protection of Whistleblower by the Serbian Parliament[416], which prescribes the protection of persons reporting corruption. By "whistleblowing" the law refers to the disclosure of information about violations of regulations, violations of human rights, exercise of public authority contrary to the purpose for which it was entrusted, threats to life, public health, safety, as well as for the purpose of preventing large-scale damage.

The law stipulates that persons who reports corruption in connection with their employment, cannot be persecuted, since the state offers them judicial protection, which they will obtain through a lawsuit before a higher court in an emergency procedure. Whistleblowers must not be disadvantaged when it comes to promotion, evaluation, acquisition or loss of title, disciplinary measures and penalties, working conditions, termination of employment, earnings and other benefits from employment, participation in employer's profits, payment rewards and incentive redundancies, by assigning the tasks or transferring to another workplace, by not taking measures to protect them from harassment, and by referring them to mandatory health screenings.

Every legal entity that employs more than 10 people, pursuant to Article 16 of the Law on the Protection of Whistleblowers, has to regulate internally the procedures of "internal whistleblowing". Within the meaning of this law, "internal" is not just reporting wrongdoing by an employee, but also by any of its business partners that wants to address some issue. The employer has to explain all the legal rights to all employees. One of these rights is to be informed about the outcome of a case.

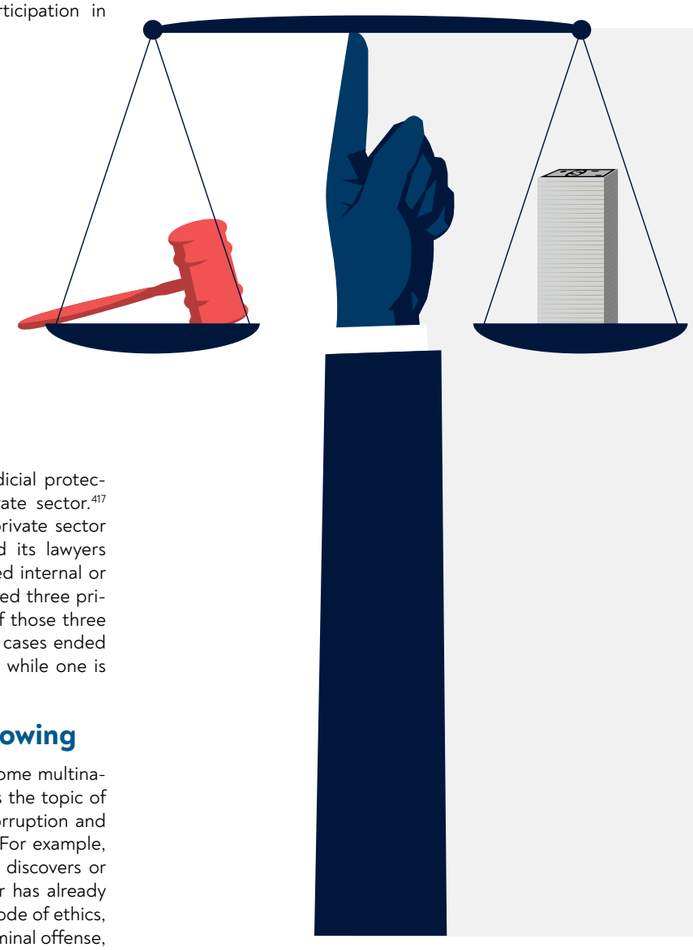
In December 2015, the very first case of judicial protection of whistleblowers occurred in the private sector.[417] For the last 6 years, 306 people from the private sector approached the organisation "Pištaljka" and its lawyers for legal advice. "Of those 306, 54 committed internal or external reporting and our lawyers represented three private sector whistleblowers in court. In two of those three cases, a temporary measure was issued. Two cases ended with verdicts in favour of the whistleblowers while one is ongoing."[418]

Business ethics and whistleblowing

The codes of business ethics developed by some multinational companies operating in Serbia address the topic of whistleblowing, in terms of how to report corruption and to protect whistleblowers from retaliation[419]. For example, one of the codes states that if an employee discovers or suspects that a person intends to commit or has already committed an act that is in conflict with the code of ethics, especially if such act has the character of a criminal offense, the associate of that person is obligated to report it. To ensure effective compliance with the code of ethics, come companies have developed a system to allow associates and third parties to report corruption. In some cases, there is a possibility that, if the applicant so wishes, the application may be submitted anonymously.

Companies usually state that they will process applications no matter who the applicant is and regardless of how applications are submitted, and that they will not punish a whistleblower in any way.

One of the codes[420] clearly states the consequences of retaliation, saying that any form of retaliation is a serious breach of the code and may lead to disciplinary action and even termination of employment. The corruption reporting mechanism provides that the whistleblower may send the report to his/her superior. When it receives information



[416] Law on the Protection of Whistleblowers - https://www.paragraf.rs/propisi/zakon_o_zastiti_uzbunjivaca.html
[417] https://pistaljka.rs/home/read/528
[418] Interview with Pištajka's Editor in Chief
[419] https://coca-colahellenic.com/media/4092/cocacola_abpolicy.pdf
[420] https://rs.coca-colahellenic.com/media/2876/code-of-business-conduct-srb-press-v02.pdf

about a possible violation of the law, codes or any other rules of the company, the company will initiate an investigation and may take the appropriate corrective action that may result in termination of employment. If there is a violation of state laws or regulations, the company may notify the competent state authorities.

Most companies also state that they will not tolerate applications that are wilfully materially fraudulent or contain harassment.[421]

Despite of legal provisions and codes, those mechanisms are rarely used in practice. Interviewees mentioned several reasons, including cultural patterns, mistrust that the person in charge will actually investigate the case properly/ that the identity of the whistleblower will be protected, the possibility of retaliation that it would be difficult to prove in court and a lack of incentive. The Serbia-specific types of "invisible retaliation", present in many companies, include denial of rights that were not contracted in writing (the "unofficial" part of the salary, paid in cash, for example).

On the other hand, some of the interviewed mid-managers and company lawyers in telecommunication companies expressed serious concerns over the actual motivation of whistleblowers. In one such example[422], while the person had actual knowledge about misfeasance in the company, his only motivation to report it was to protect himself against (justified) dismissal.

Business partner management

The implementation of corporate anti-corruption policies to business partners can be assessed at 25 out of 100, given that:

- companies with anti-corruption programmes implement them in all business entities over which they have effective control
- companies undertake due diligence of business entities when entering into a relationship, including mergers, acquisitions and significant investments
- some companies use their influence to encourage the development of an equivalent programme in business entities where they have a significant investment or with which they have significant business relationships but no effective control
- companies perform reasonable and proportionate monitoring of their significant business relationships, including the right to review books and records in the case of very close and important business relationships

We analysed for this research the codes of conduct and ethics and other relevant documents of the 20 private companies[423] that were among the most successful businesses in Serbia in 2018[424] according to the Serbian Business Registers Agency.

The analysed codes of ethics of the selected companies show that large firms are declaratively applying their ethical standards to all the affiliated businesses over which they have control.

The analysis has shown that companies undertake due diligence of business entities when entering into a business relationship. Their codes of ethics emphasize the need to check prospective business partners. Prior to conducting a transaction, the relevant associates are required, to the maximum extent possible, to obtain assurances that the business partner is not involved in any illegal activity and that its resources are legal.

Furthermore, in most of the analysed codes of ethics, companies have developed practices according to which potential partners are obligated to sign legal standards and policies on anti-corruption[425].

Codes of ethics recommend that, by entering into contractual relations with suppliers and business partners' employees, each contract should contain an obligation to comply with at least the minimum standard rules of ethics. In addition, some companies require from their business partners to adopt anti-corruption rulebooks.

In practice, companies undertake due diligence of business entities when entering into a various form of relationships, including mergers, acquisitions and substantial investments. They also conduct reasonable and proportionate monitoring of its significant business relationships, including the right to review books and records in the case of very close and important business relationships.

Having in mind that anti-corruption policies are not the top priority of companies, it could happen that some form of relationship is established with entities that are not assessed "100 per cent clean", which relationship obviously requires greater caution[426].

[421] Based on interviews with the representatives of selected companies.
[422] Interview with the compliance officer of an international company that operates in Serbia
[423] List of selected companies: HBIS GROUP SERBIA IRON & STEEL DOO, DELHAIZE SERBIA, MERCATOR-S, TIGAR TYRES, NELT CO, COCA-COLA HBC, PHOENIX PHARMA, TELENOR, KNEZ PETROL, MOL SERBIA, MERCATA, OMV SRBIJA, HEMOFARM, VIP MOBILE, DELTA AGRAR, VELETABAK, ROBERT BOSCH, TETRA PAK PRODUCTION, HENKEL SRBIJA, CENTROSINERGIJA
[424] https://www.apr.gov.rs/upload/Portals/0/GFI%202019/STO_NAJ/STO_NAJ_2018_16102019.pdf
[425] https://www.deltaholding.rs/upload/documents/dokumenta/nekategorizovano/Eticki%20kodeks.pdf
[426] Based on interviews with middle managers in several companies who wanted to remain anonymous

THEMATIC AREA 11:
AUDITING AND ASSURANCE

Internal control and monitoring structures

The extent to which companies in Serbia establish internal control and monitoring structures that seek to detect and prevent corruption can be assessed at 50 out of 100, given that:

- most of the large companies maintain an effective system of internal controls, comprising their financial and organisational checks and balances over accounting and record-keeping practices and other business processes; it is also part of legal obligations
- companies must maintain books and records that properly and fairly document all financial transactions and that are available for external inspection, but rules are not always respected
- only bigger companies have independent, sufficiently resourced internal audit structures in place
- for bigger companies that are obligated by law to perform an external audit, the effectiveness of the internal audit function is assessed annually; in other companies, the internal audit function rarely exists
- in large companies an audit committee (or equivalent body) assists in the oversight of the integrity of the company's financial statements and its compliance with legal and other regulatory requirements
- the CEO and the head of the finance department certify in a written statement to the oversight committee of the company that the financial statements present a true and fair picture of the company's affairs

Effective internal controls and inspection of books

Under the Law on Accounting, all legal entities operating in the Republic of Serbia are obliged to keep business books. The law requires legal entities to adopt internal acts and to comply with legal rules relating to the manner of organizing accounting and bookkeeping, accounting policies for the recognition and valuation of assets and liabilities, income and expenses, as well as other operating bookkeeping and financial reports. Fulfilling these legal duties helps to make the system of internal financial control more efficient and vice versa.

However, the level of compliance with these rules is generally higher in bigger companies that also have to establish an internal audit function or to perform an external audit annually. In small enterprises, the effectiveness of internal controls and compliance with legal standards depends on various factors, including the level of involvement of company owners in their daily business operations and the exposure of the company to the risks of external control by the authorities.

Internal control in the private sector is not a topic of interest for the general public, as in the public sector.[427] Research analysing the functioning of the internal control system is publicly not available.

Interviewees who mainly work for large, multinational companies point out that that internal control system is developed according to the standards applicable in the parent company from abroad. Bigger companies mostly have procedures and rules that have been adopted and should be followed by everyone. The internal control department takes samples from various processes and checks if they have been performed according to procedure.

For example, the rules describe what a procurement process should look like, from purchasing a phone to renting an office, described step-by-step and specifying the amount of time needed for completion, by whom and when. Interviewees say that the subject of internal control may be a new employee and the way he or she performs tasks that are more difficult or the way all employees use vacations.

Internal audits and their resources

Internal audits in Serbia are mandatory under the law for some companies. According to the Law on Enterprises, the board of directors of a public shareholder company must appoint the audit commission.[428] The commission is, inter alia, responsible for preparing and checking implementation of accounting policies and risk management, proposing persons to perform internal oversight in the company as well as auditors, and for overseeing internal control, etc.[429]

Internal oversight in such companies presupposes employing at least one person that is qualified as an internal auditor. Internal oversight deals with issues such as compliance control of the company's actions with laws and regulations, oversight of accounting policies and financial reporting, control of implementation of risk management policies, monitoring of compliance with the code of corporative management and evaluation of policies. The internal auditor reports to the audit commission. In companies without the relevant body, the internal auditor will report to the board of directors or oversight committee.[430]

[427] The researcher did not find any media articles dealing with that issue
[428] Law on Enterprises, Art 409
[429] Ibid· Art 411
[430] Ibid· Art 452

Interviewees from the companies in charge of establishing internal audits confirmed that they observe the legal requirements.

Since internal audit units is present almost entirely in big companies and in production industries, sufficient resources for their work are available.

An academic study entitled "Internal Audit in the Function of Management" released in 2018[431] shows that 53 per cent of analysed companies provide sufficient resources for quality internal audit. The study also concludes that internal audit contributes to the improvement of business management in companies in the Republic of Serbia, but also points out to the slow development of internal audit as a profession.

Responsibilities for books and audits

Usually, the CEO in a company assumes responsibility and certifies in a written statement to the board of directors/oversight committee, that the financial statements present a true and fair picture of the affairs of the company. Other people are involved as well, including the head of the finances sector or another authorized person.[432]

External audit

The external audit of the financial reporting of Serbian companies can be assessed at 50 out of 100, given that:

- when mandatory by law, an annual audit is conducted by an independent, competent and qualified auditor; some companies do that in order to provide external and objective assurance to the supervisory board and shareholders that the financial statements represent fairly the financial position and performance of the company in all material aspects, while others only seek to comply with the law
- when performing external audits, companies resort to licensed external auditors, as this is mandatory by law
- many companies avoid rotating auditors periodically, while some of them are legally obliged to do so
- external auditors are generally independent of company officers, board members and their families and do not have any other substantive contracts with the audited company
- if not mandatory by the law or policies, companies do not report publicly on their external audits

Legal duty, independence and professionalism

According to the Serbian Audit Law[433], a mandatory external audit is required for the regular annual financial reports of large and medium-sized legal entities, as well as entrepreneurs whose total revenue in the previous financial year exceeds €4,400,000 in dinars equivalent. Starting with the financial reports for 2018, private equity funds are subject to audit if they meet the above-mentioned criteria. The Law on Enterprises describes the situations where an extraordinary or special audit should be conducted[434] (for example, the decision of the shareholders' assembly in order to assess the value of non-financial investment, etc.).

As stipulated in the law[435], auditing firms and individuals have to be independent from the auditee and may not take part in their decision-making. They must take all the reasonable steps to ensure that, when conducting a statutory audit, their independence is not affected by any existing or potential conflict of interest, business or other direct or indirect relationship. This also applies to their network, executives, auditors, employees, other connected persons.

Only a competent and qualified auditor may conduct an audit. Furthermore, the law requires the licencing of professional service providers. In addition to the standards set in the law[436], auditors have to implement the relevant international standards. All the rules and regulations should guarantee that an audit will provide external and objective assurance that the financial statements represent fairly the financial position and performance of the company in all material aspects.

Auditors are required to submit to the Serbian Business Registers Agency (BRA) an audit report, signed with a qualified electronic signature of a key audit partner and compiled in accordance with the law and international auditing standards. The financial statements that have been audited must be attached to the audit report. The principal information from audit reports is publicly available on the BRA's website. According to the law, companies are required to utilize external auditors licensed by the Chamber of Authorized Auditors[437].

There are rules to foster the independence of auditors from the company that is audited. So, it is forbidden by the law[438] to the auditor to perform an audit in the company where he or she has financial interest, where their relatives are involved in management or oversight, if they provided other services to the same company etc. They are also banned from receiving gifts from audited entities and may not seek employment in audited companies in next two years.[439] Even more importantly, an auditor's reward may not be related to the provision of other services to the auditee nor may it be conditional on some potential future event.[440]

In practice, when it is mandatory by law, companies conduct annual auditing by an independent, competent and qualified auditor. However, some of interviewed auditors reported they were under pressure by company owners when writing audit reports.

Rotation

The maximum period of consecutive audits by the same company is 10 years. After that period, there should be a four-year cooling-off period. The individual auditor within the audit firm may not audit the same company for more than six consecutive years.[441]

In interviews with company representatives, while recognizing the potential risks in the case of hiring the same auditors for years, they also highlighted the benefits. In particular, senior management of big companies claimed, "introducing the auditor with all relevant information may be a time-consuming process and it is cost-effective for the company to work with someone who is already familiar with the policies and structure".

Companies mostly respect the legal limit and mandatory rotation of the official auditor, but in practice, one can find opposite examples as well. Out of five randomly selected company auditing reports in the last 10 years, in one case we found that the company had not fully complied with the rotation obligations.

Publication of audit reports

The law does not request the publishing of audit report; practices vary significantly and depend mostly on internal policies. Come company representatives that we interviewed considered that the publishing of audit reports is good tool for promoting the company. The observed companies were mostly consistent in publishing or not publishing their audit reports for several years in a row, but the degree of technicality differs in some cases.

Independent assurance

The use of the voluntary independent assurance mechanism of anti-corruption programmes of Serbian companies in terms of their implementation and/or effectiveness can be assessed at 0 out of 100, given that:

- such practices are quite rare although they have been identified in some cases in the interviews

Having in mind that the significant part of companies in Serbia that have anti-corruption programmes are those with an international presence, in some cases the effectiveness of such programmes was assessed internationally, by the relevant officer in a parent company rather than by an external independent expert.

However, there are other examples as well, and we identified through interviews one case out of twenty where attorneys provided the assurance of the anti-corruption programme and the International Standard on Assurance Engagements (ISAE 3000) was the basis, both for developing the programme and for the external assurance process.

[431] https://scindeks-clanci.ceon.rs/data/pdf/2217-401X/2018/2217-401X1801063N.pdf
[432] Based on interviews with middle managers in several companies who wanted to remain anonymous
[433] https://www.paragraf.rs/propisi/zakon_o_reviziji.html#
[434] Law on Enterprises, articles 455 and 457
[435] Law on Audit, articles 29 and 30.
[436] Ibid, Article 39.
[437] https://www.kor.rs/Eng/index.asp
[438] Law on Audit, Art 44
[439] Ibid, Article 51
[440] Ibid, Article 42.
[441] Ibid, Article 50.

THEMATIC AREA 12:
TRANSPARENCY AND DISCLOSURE

Disclosure of anti-corruption programmes

The transparency and disclosure in the private sector can be assessed at 25 out of 100, given that:

- only 16 per cent of the 25 sampled companies publish details of their anti-corruption programmes and 12 per cent publish information about some anti-corruption aspects (whistleblower protection, public procurement)
- commitment to compliance with all the relevant laws, including anti-corruption laws, is disclosed by 20 per cent of the companies
- management statements of support to fighting corruption and their commitment to be in compliance with anti-corruption laws are found in 20 per cent of the observed companies, and some aspects of anti-corruption (for example whistleblower protection, public procurement) are found in an additional 12 per cent of the companies
- the code of conduct/anti-corruption policy/whistleblower regulation explicitly apply to all employees whenever the company has such a policy (32 per cent of the total sample); however, agents and other intermediaries are explicitly covered by the aforementioned codes and policies in 16 per cent of the companies and subcontractors and suppliers in 12 per cent
- 12 per cent of the companies have anti-corruption training programmes for their employees
- 16 per cent have a policy defining the appropriate/inappropriate gifts and hospitality, while only one document (four per cent) explicitly refers to travel expenses
- there is a policy that explicitly forbids facilitation payments in 12 per cent of the companies
- all companies are legally prohibited from retaliating against reporting violations of the anti-corruption policy, but only 12 per cent explicitly refer to that legal duty in their documents
- there is a legal requirement for all companies to adopt internal acts and establish channels for employees to report potential violations of the anti-corruption policy, but only 12 per cent have published these documents on their web pages; an additional 16 per cent also created their own mechanisms for employees to report violations and seek advice in confidence (that differs from the mechanism envisaged in the law)
- only in 16 per cent of all cases companies envisaged carrying out monitoring of their anti-corruption programme on regular basis
- only two companies (8 per cent) have a policy prohibiting or restricting political contributions

Research sample includes 25 of the largest Serbian companies under the criteria - incomes in 2016, which vary from RSD1,804,340,000 to 228,519,000 (approximately €15.300.000 to 1.935.000). They are registered as limited liability companies or shareholders' companies. The state owns nine enterprises completely or partially.

Two of the enterprises do not have their proper websites ("Telekom Srbija", "Delhaize Srbija"); instead, their information is published under their brand web pages ("MTS", "Maxi"). One company has a web page in preparation, without any content (Mercator – www.mercator.rs). Sixteen companies have headquarters in the capital of Serbia – Belgrade and five in Novi Sad, the capital of the Autonomous Province of Vojvodina. The remaining companies are located in other larger Serbian cities. Most of them are from the energy sector (10), while the others operate in trade (six) and telecommunications (two).

The research did not identify any instance where internal policies or measures solely addressed "anti-corruption". Only five companies, out of 25, published documents regulating ethics and integrity. In addition, three companies, all of them being at least partly state-owned, also published special rules adopted for the purpose of whistleblower protection and on protection from corruption in public procurements (one).

None of the acts tackled all corruption risk areas, nor provided all the necessary elements for successful implementation, but most of them contain useful provisions to decrease corruption risks.

The biggest emphasis has been put on conflict of interest, followed by whistleblowing and bribery. Even when anti-corruption programmes, that are in the form of codes and acts, are disclosed, the data on implementation is missing and all examples are hypothetical. While acts of international companies mirror their headquarters' policies, other acts largely follow the models developed by the public authorities of Serbia or the chamber of commerce.

While it is undeniable that approximately one third of the sampled companies have invested obvious efforts in preventing corruption, there are concerns whether these acts are completely adapted to the specific risks and if they are fully considered within a company as an effective anti-corruption mechanism.

Two of all the companies have published their codes of conduct – "Telenor"[442] and "Belgrade Power Plants[443]"; "Air Serbia"[444] and "Coca-Cola Hellenic"[445] published a code of business ethics; and two companies disclosed their codes of corporative management – "Philip Morris"[446] and "Telekom".[447] In addition, "Coca-Cola Hellenic" published its anti-bribery policies[448] and guiding principles for suppliers.[449]

Telenor's code of conduct has one paragraph about corruption prevention practices with the description of bribing, but stops short of mentioning any other form of corruption. Another paragraph is dedicated to money laundering. All the provisions are too general, merely stating that the company and its employees should comply with standards and internal regulations, but these documents are not listed. No mechanisms or sanctions have been envisaged.

The same can be said about the code of the "Belgrade Power Plants"[450]. A paragraph titled „Zero tolerance for corruption"[451] explains in just a few sentences that any influence on the management of the company will not be tolerated, and that the company will adopt guidelines on the prevention and reporting of corruption with a special emphasis on whistleblower protection. It deals in more detail with conflict of interest and gifts, with an attached form for the reporting of gifts. There is an elaborate description of the status of the ethical council and its function, as well as a description of the grievance procedure with the relevant deadlines.

The code of business ethics of "Air Serbia" is to some degree more advanced and elaborate than the previous two documents. On its webpage, the company also provides information about the mechanism of reporting irregularities. "Air Serbia" hired "Expolink Europe", an independent private company, to manage complaints 24/7. Reporting is possible in 300 different languages through special purpose phone lines (a list of which is available) or through an online form/by e-mail. It is explicitly stated that this service is available to all employees, clients and other interested parties that wish to report irregularities. One paragraph generally mentions whistleblowing, saying that the company takes all reporting on irregularities seriously and that it will invest all efforts to protect a whistleblower from bullying.

One chapter is dedicated to conflict of interest, including gifts. The company states what should the employees do regarding conflict of interest, in the form of advice, and the only mechanism offered is consulting the management if one has any doubt as to whether a conflict of interest may exist or whether to accept a gift. Another chapter shortly deals with the bribing of business partners and political officials, where it is stated that the company prohibits bribery, but there is no further explanation.

Finally, the chapter on the implementation of the code mentions only in general terms that the company will conduct investigations and, depending on the nature of the irregularity, it will assign the appropriate body to remedy it.

Philip Morris' code of corporative management tackles only the matter of conflict of interest with general instruction saying that conflicts of interest, both personal or involving other persons, should be reported to the company's bodies. The code of corporative management of "Telekom"[452] contains, however, more details regarding anti-corruption policies. It does has several chapters dedicated to this matter, but as in the case of the aforementioned similar documents, these chapters mostly contain general definitions. Among other, conflict of interest, disclosure of information, transparency, curbing corruption and prevention of bribery, business ethics and engagement of external associates are regulated.

The documents published by "Coca-Cola" contain a management letter explaining the process of adoption, information on coverage, the link to compliance mechanisms, a general reference to the laws prohibiting active and passive bribery, definitions and examples of the basic concepts (not identical to the Serbian legislation but adapted to the context of an international company), the duty to consult with the compliance officer, detailed gift and hospitality policies, restrictions related to lobbying, political financing and charitable activities, rules on various types of contracting with third parties and duty to report violations of these rules. The guiding principles for suppliers include rules on conflict of interest, gifts and hospitality, bribery, disclosure of information, compliance and reporting violations.

Three (partly) state-owned companies published internal acts related to whistleblower protection, namely rulebooks based on the model act developed by the Ministry of Justice. These are EPS[453], NIS[454] and Yugorosgaz.[455] Furthermore, EPS-distribucija published an act regulating the prevention of corruption in public procurement.[456]

[442] https://www.telenor.rs/
[443] https://www.beoelektrane.rs/
[444] https://www.airserbia.com/en/
[445] https://rs.coca-colahellenic.com/rs/o-nama/politike/kodeks-poslovnog-ponašanja/
[446] https://www.pmi.com/markets/serbia/rs/about-us/overview
[447] https://mts.rs/?utm_source=google&utm_medium=cpc&campaign_name=brend-kampanja&utm_term=telekom&gclid=CjwKCAjw2a32BRBXEiwAUcugiBW-E1vlTObyAAylhCevizP_Vzu-xZQMyQjkglKygKvRGN-Hr6E5IBhoCYyoQAvD_BwE
[448] https://rs.coca-colahellenic.com/media/3147/cocacola_abpolicy_07_srp.pdf
[449] https://rs.coca-colahellenic.com/rs/o-nama/politike/vodeći-principi-za-dobavljače/
[450] http://www.beoelektrane.rs/wp-content/uploads/2014/07/Eticki-kodeks-usvojena-finalna-verzija-BE.pdf
[451] http://www.beoelektrane.rs/wp-content/uploads/2014/07/Eticki-kodeks-usvojena-finalna-verzija-BE.pdf
[452] https://static.mts.rs/pdf/reporting/Annual%20Business%20Reports/Annual%20Business%20Report%20for%202012%20Telekom%20Srbija.pdf?d=False&h=63578435822550000 0
[453] http://www.eps.rs/SiteAssets/Lists/Sitemap/EditForm/pravnareg/propisi/Odluka%20o%20postupku%20unutrasnjeg%20uzbunjivanja.pdf
[454] https://www.naftagas-ths.rs/sites/default/files/files/THS900000-ND-od-47%20od%2026_06_2019%20Uzbunjiva%C4%8Di.pdf
[455] http://www.yugorosgaz.rs/pravilnik.html
[456] http://www.epsdistribucija.rs/pdf/Interni_plan_spre%C4%8Davanja_korupcije_u_javnim_nabavkama.pdf

Disclosure of organisational structures

Disclosure of organizational structures of companies can be assessed at 25 out of 100, given that:

- the full list of their subsidiaries, other affiliates and representation offices, either fully consolidated or not, is published in 24 per cent of the total cases, but it is likely that some of the remaining companies do not have subsidiaries
- the percentages owned in subsidiaries is presented by 8 per cent of the total sample, i.e. one third of those that had published some information on subsidiaries
- the home countries of incorporations are visible in all cases where information about subsidiaries exist
- the names of beneficial owners are known for 24 per cent of companies

Slightly more than a half (52 per cent) of companies from our sample have published at least some information about their organisational structure. The organisational structure is presented in various forms, making it sometimes difficult to understand.

Six companies have published a list of their subsidiaries either fully consolidated or not, which makes approximately a one-quarter of the research sample. Only two companies have done so by stating the percentage of their ownership and the countries of operation – "NIS Petrol"[457] and "MTS Telecommunications".[458] Two electricity companies, EPS[459] and EMS[460] (the former produces and the latter distributes electricity) – that originate from the same state-owned company that was partitioned by the government's decision in 2015 – published the list of their branches with addresses thereof.

In addition, the remaining two companies ("Coca Cola"[461] and "Hip-Petrohemija"[462]) invested some effort by merely mentioning their subsidiaries (or companies they are related to in some other way), one hyperlinking them to their own web pages and the other in a manner that makes their identification somewhat difficult.

Beneficial ownership

The registers of the Business Registers Agency have been providing basic information on ownership in enterprises for more than a decade, based on their registration documents and statutory changes. Starting this year, the same institution runs the register of beneficial ownership that is based on statements submitted until 31 January 2020 by authorized persons of companies. Access to both registers is free of charge. However, in order to obtain data from the beneficial ownership register one has to register to request permission.[463] In view of the purpose of registers, this practice is not justified.

In some cases, information from the new register does not differ from those already known from the previous one, but there are also discrepancies. Four out of the 25 sampled companies are fully owned by the state, local government or another state-owned company.[464]

The state has a its share in five companies[465] as a majority or minority owner, along with companies from Russia, UAE, and citizens of Serbia (in one case Serbia's share in the ownership structure is indirect). Several companies[466] are fully owned by big international companies from Italy, Belgium, the Netherlands, Luxemburg, USA, Austria, Russia, Romania, Slovenia and China. The owner of one Serbian company from the list is registered in Cyprus.[467] Two companies are owned by Serbian firms whose owners are known.[468] Only one company declared to be fully owned by a natural person. In one case, there is a mixed ownership structure with two companies having 40 per cent each and two natural persons owning 10 per cent each.[469]

For seven companies the Register of Beneficial Ownership contains no data that could be searched based on the company identification number. In four instances, the reason was clearly the full ownership of the state and in three instances,[470] the reason could be the legal status of the owner. These are joint stock companies that do not have the obligation to register the beneficial owners. However, the problem is that such an explanation is missing within the register.

This register provides additional information for eleven foreign owned or international companies and for seven Serbian companies, mostly in a way that their legal representatives are registered as beneficial owners. For six companies, only (24 per cent) this register allows the public to see the ultimate owner. For one company, additional information is provided for the trustee representative and for one for the person exercising dominant influence in decision-making.

An interesting peculiarity is the fact that, for one company, the ownership structure differs in the two registers, although in both cases the owners are natural persons.

[457] http://www.elektrosrbija.rs/index.php/eps-d/licna-ogranci.html
[458] https://mts.rs/O-Telekomu/a3328-O-nama-Profil-grupacije.html
[459] http://eps.rs/Pages/Ogranci.aspx
[460] http://www.elektrosrbija.rs/index.php/eps-d/licna-ogranci.html
[461] http://ir.nis.eu/sr/korporativno-upravae/grupa/ http://ir.nis.eu/sr/korporativno-upravae/grupa/
[462] https://www.hip-petrohemija.com/akcionari/akcijski-kapital.495.html, https://www.hip-petrohemija.com/o-nama/osnovne-informacije.12.html
[463] Researchers faced with technical problems when accessing these data
[464] EPS, EPS-disribucija, Srbijagas and Beogradske Elektrane
[465] NIS, Telekom Srbija, Hip-Petrohemija, Air Serbia, Yugorosgaz
[466] FCA Group, Delhaize Group, PPF TMT Bidco 1 B.V, Michelin Finance, S.a.r.l. Philip Morris International, CC Beverages Holdings II B.V, PHOENIX PIB AUSTRIA BETEILIGUNGS GMBH, PJSC "LUKOIL", OMV Petrom S.A., Poslovni sistem Merkator Slovenija, New-Silkroad (Hong Kong) Holding Co. Limited
[467] Neregelia Trading Limitet
[468] Victoria Group AD Beograd
[469] Mercata doo and Veletabak
[470] Philipe Moris, Lukoil and Gazprom.

Disclosure of key financial data on country-by-country basis

Disclosure of key financial data on country-by-country basis can be assessed at 0 out of 100, given that:

- only 8 per cent of the sampled companies have published some information about their business abroad
- even these 8 per cent of companies haven't published all the information relevant to the research, such as disaggregated revenues, sales, capital expenditure, pre-tax income, income tax and community contributions per each country they operate in

Only two out of 25 companies have published information about their countries of operation and another two have made an effort to present the structure of the company's operation abroad, albeit insufficiently. The national oil and gas company (NIS) published a list of dependent companies that operate in foreign countries, along with ownership percentages. These companies are part of the "NIS group". Same with the national telecommunications company MTS, which also published a list of companies that are part of "MTS group", along with ownership percentages, but also of related legal companies that have an indirect share. All of these entities are hyperlinked to the main website for more information.

The other two companies from the sample, which may be taken into consideration, are "Coca-Cola Serbia" and "HIP Petrohemija" regardless of the fact that their published data is scarce. Since "Coca-Cola" is a large international company and that its branch in Serbia is already in the country of operation, it is understandable why there are not that many information on the "local" website. However, data on the global network of the company "Coca-Cola" is practically non-existent, except for data from the non-interactive map of the world with coloured representations of countries of operation. Even less information is available from "HIP Petrohemija", where it is only possible to single out the fact that about 80 per cent of exports abroad go to neighboring countries and EU members.

Except for MTS and NIS, data on countries of operation is poor to none. One may guess that at least one third of companies from the list operate in Serbia only, either because they are members of global or regional networks established for the Serbian market or because they are firms established to serve Serbian citizens.

Even when companies have hyperlinking dependent companies to their own web pages, they have not presented data about revenues and sales, capital expenditures, income tax, community contribution or any other financial data related to their operations in other countries.

Additional disclosures

Additional disclosures can be assessed at 25 out of 100, given that:

- companies publicly disclose their charitable contributions, such are sponsorships, in 36 per cent of cases
- no company has published their lobbying activities

The aspect of social responsibility seems to be important to companies, at least to nine of them (36 per cent) which have published such information on their websites. All of them have web pages dedicated to social responsibility. However, the content of those pages varies. Some companies (four) mention both the social and environmental aspect of responsibility, three companies deal only with the social aspect and two with the ecological aspect only. Most web pages provide only basic information about the activities undertaken in these fields, listing only projects names and general goals. Out of four published reports about social responsibility, only one is for the year 2018 (by "NIS Petrol"), and the remaining three are from 2016. Only three companies mention specific projects they have financed – MTS, "Telenor" and "Lukoil Petrol Company".

None of the companies present data on lobbying activities. The absence of such information in previous years is not surprising as the lobbying legislation has been in place only since August 2019. However, it is a major area where corporate transparency and political integrity must improve in order to have a private sector fully dedicated to transparency, fighting corruption and a clean environment, and a public sector that would mirror such intentions.

THEMATIC AREA 13:
STAKEHOLDER ENGAGEMENT

Stakeholder relations

Engagement in multi-stakeholder initiatives against corruption of Serbian companies can be assessed at 25 out of 100.

- while companies have a declarative interest in the views of all stakeholders and consider it important to involve them in the decision-making process, in practice there is little data and evidence that this is indeed the case
- companies do provide mandatory financial information to the stakeholders such as annual statement of accounts and business reports, information on the distribution of profits, certified auditor's report on the audit of accounting statements, but other information are usually shared only when they serve to promote companies rather than improve the corporate governance process
- individual employees and their representative bodies (trade unions) are not fully able to communicate their concerns about illegal or unethical practices; in many companies, such unions are not even organised due to a general lack of trust in unions or fear of reprisals
- shareholders have the right to participate in decision-making processes and to be sufficiently informed about decisions concerning fundamental corporate changes

The annual financial reports are public by law and published on the website of the Business Registers Agency, which means that they are accessible to all stakeholders. In addition, big companies have developed a practice of publishing annual business performance reports on their websites, making them publicly available to all interested parties, but these reports do not contain a thorough overview of all information relevant to employees and long-term stakeholders, and are intended primarily for promotion

These companies also declare that shareholders, employees and all other stakeholders will be able to communicate freely their concerns about illegal or unethical practices to the management board, and their rights will not be compromised for doing this.

Some of the existing multi-stakeholder initiatives may address corruption, but it is not their primary goal. One type of these initiatives are events organised by the Serbian Chamber of Commerce and Industry where the business sector cooperates with the relevant government bodies, and some NGOs also take part (for example, public debates on the new law on public procurement in 2019). Another example are the activities of the National Alliance for Local Economic Development (NALED) that is a multi-stakeholder organization itself.[471] NALED indirectly tackles corruption in its activities, such as the NALED initiative against the grey economy.[472]

In their business reports, large companies that we analysed for the purpose of this project[473] define stakeholders as the management, employees, customers, suppliers, contractors, office tenants, banks, citizens' associations, NGOs, business associations, educational institutions and the media. Generally, companies emphasize their interest in two types of stakeholders:

- Internal - all employees who should formally be involved in the development of strategic plans and priorities. By law, company employees must be notified directly or through their representatives of any issues that affect them directly. Interviewees say that although formally a two-way communication exists between internal stakeholders and management, companies often involve employees in the decision-making process at the end of it, when they cannot have any significantly influence. Trade union organisations in Serbia say that employees are not sufficiently involved in making decisions regarding their working conditions. They add that, while unions in state-owned enterprises and in the public sector act by inertia from the former self-governing socialist system and do have an impact on the business of enterprises and institutions, the unions in private companies face strong resistance from a significant part of employers (especially domestic owners and employers) and the workers afraid of losing their jobs because of their affiliation with the union.
- External - they should be involved in the decision-making process indirectly, through annual tests of satisfaction with service and product quality. They are also involved through so-called open channels of communication such as mailing addresses, call centres, a book of impressions through which they can express their opinion on the company's business at any time. In their business reports and corporate business programmes, large companies have declaratively stated that the views of external stakeholders are important and that their opinions are integrated into development and strategic plans.

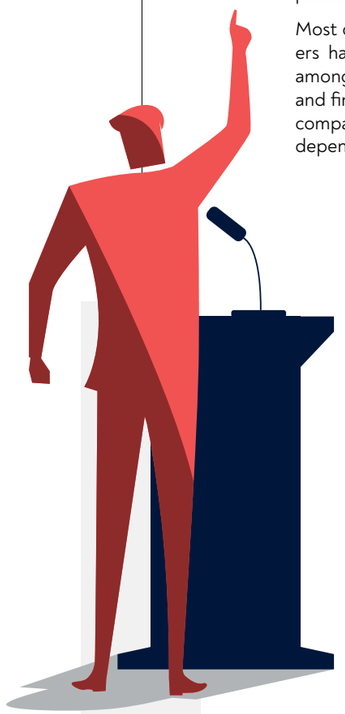
In addition, companies indicate that they report on regular basis about development plans and business results to all stakeholders at media conferences, as well as daily on social networks, websites and internal portals.

Although companies emphasize the importance of involving stakeholders in the decision-making process, there is no publicly available information on how it happens in practice.

Most of these companies are foreign-owned and the owners have an active role (according to the interviewees[474] among the decisive roles) in terms of business development and financial planning. In the context of strategic planning, companies in Serbia that are part of global business chains depend on their parent companies' business plans, which is why the influence of stakeholders on the business in Serbia is limited.

Companies are incorporated as joint stock entities, which inform and engage stakeholders through regular shareholder meetings and assemblies. Research shows that information on the agenda of the shareholders' assembly, meeting materials and reports from the meetings are not often publicly available, which is why some stakeholders are denied information about decisions that are made. Through the so-called dialogue initiatives, some companies have developed a practice of their management's dialogue with employees or their formal employee representatives, for example recognised trade unions, or through local cooperation bodies such as People Council.

Some international and national companies have also developed grievance mechanisms – in practice this means that a formal complaints procedure exists for reporting incidents of non-compliance with the official policy. Employees can also use whistleblower hotlines to express anonymously their concerns or submit complaints to a trade union.



Business-driven anti-corruption initiatives

The degree of cooperation of private companies in Serbia with stakeholders in the strengthening of anti-corruption measures can be assessed at 25 out of 100, given that there has been almost no public campaign against corruption initiated by or with the involvement of the private sector, according to online research, media reports, NGO publications and interviews. Some companies are only indirectly involved in anti-corruption initiatives, although many have stated their commitment to anti-corruption initiatives in their Codes of Ethics.

- Companies do show some interest to cooperate with stakeholders from the public sector and civil society, in particular when they are directly affected by certain topic (for example, the adoption of new public procurement and lobbying legislation475), but the cooperation with such partners is usually established through business associations and not individual companies
- There have been some efforts of joint multi-stakeholder cooperation in fighting corruption in previous years (for example Global Compact in Serbia in 2007) but there is no recent evidence of such cooperation
- Companies do cooperate with their industry peers on matters of common interest. Such collaboration might in effect be useful in fighting corruption, but the main reason for establishing sectoral coalitions is mutual commercial interest
- Bigger companies are wary of being exposed as "anti-corruption fighters", as it may harm their position on the market and jeopardise the possibility of obtaining government contracts, so they opt for less controversial activities[476] in supporting the community

Private companies have not visibly participated in anti-corruption campaigns launched by state institutions or NGOs. Several anti-corruption campaigns in Serbia in last few years have been conducted by the state Agency for Prevention of Corruption [477] and the Ministry of Justice[478]. Furthermore, a number of civil society organisations have implemented campaigns aimed at preventing corruption and bribery, in particular in the health sector.[479] There is no data publicly available that any relevant private company participated in this kind of initiatives. The goal of these campaigns is usually to educate the public and public servants about the consequences of corruption, but they hardly ever touch on private sector corruption.

[471] According to its own acts, NALED is „an independent, non-profit and non-partisan association of businesses, local governments and civil society organizations that work together on creating better conditions for living and working in Serbia". NALED also claim to be „the largest public-private association in the country", that „positioned itself as the key partner to the Government and Parliament in defining the regulatory priorities and legislative solutions significant for businesses". https://naled.rs/en/ While the list of members is not available, NALED claims to have 310 members, out of which 53% are firms, 39% public authorities and local governments and 8% are NGOs and academia. https://naled.rs/struktura-clanova

[472] https://naled.rs/siva-knjiga

[473] 20 private companies that were among the most successful companies in Serbia 2018 according to Serbian Business Registers Agency (already mentioned in the business partner management section).

[474] Based on interviews with middle managers in several companies who wanted to remain anonymous

[475] http://www.acas.rs/okrugli-sto-o-primeni-zakona-o-lobiranju/?pismo=lat

[476] https://www.mozzartsport.com/kosarka/vesti/velika-humanitarna-akcija-za-pomoc-prevremeno-rodenim-bebama/344284

[477] E.g. http://www.acas.rs/kampanja/?pismo=lat

[478] https://www.mpravde.gov.rs/obavestenje/9048/predstavljanje-javne-kampanje-sad-su-uzbunjivaci-jaci.php

[479] E.g. http://srbijaupokretu.org/kampanje/page/2/?term=54&orderby=name&order=DESC

Interviewed sources say that companies cooperate with the public sector and civil society in developing anti-corruption programmes. They also say that some companies cooperate within their sectors, but do not work enough to further promote these activities. Our online research shows that most large companies on their websites proclaim their commitment to participate in public campaigns that would promote the fight against corruption.[480] Participation of private companies in public campaigns initiated by the state or NGOs is not publicly visible and recognised as an activity that is important to the private sector. The companies that we analysed have neither started their own anti-corruption campaign nor participated in any anti-corruption campaign initiated by others.

In 2018, several private companies took part in a national campaign against the grey economy launched by the Serbian Government[481], which indirectly addressed the problem of corruption.

Some companies have indirectly supported the fight against corruption through their philanthropic activities. For example, a big multinational company (pharmaceutical sector) has set up an annual award for civic initiatives against, among other things, corruption in health sector.

During the research, we found some examples of promotion of social responsibility activities:

The Business Leaders Forum was established by 14 founding companies in 2008 and it today comprises 31 companies from Serbia. The Forum empowers companies to operate in accordance with the principles of sustainability, responsibility and ethics. The Forum is the national partner of International CSR (Corporate Social Responsibility) associations - CSR Europe, EASP, and the Global Pro Bono Network, with which they exchange information on regular basis and participate in the creation of the European CSR agenda. The expert organization Smart kolektiv - a non-profit organization founded in 2003 with the aim of promoting the concept of socially responsible business and the development of social entrepreneurship in Serbia - is in charge of the realization of all activities

Examples of social responsibility of Forum members include the following activities:

- support programme for young unemployed people who want to start their own business.
- renovation of children's playgrounds
- project of cement certification and obtaining the CE mark
- The "EY Entrepreneur of the Year" award extended at the national level

The Forum supports the EU directive from 2014, which refers to the obligatory non-financial reporting of companies, according to which companies are obligated to report on their policies and impact on the environment, social responsibility and treatment of employees, respect for human rights, anti-corruption and bribery.

Mandatory non-financial reporting for companies in Serbia was introduced by the Law on Accounting in January 2020, and will be applied starting from January 2021. According to the law, non-financial reporting entities are large legal, public interest entities, which exceed the criterion of 500 employees during the business year.

One example of company promotion of the benefits of participating in multi-stakeholder anti-corruption initiatives is the United Nations Global Compact Initiative. Global Compact in Serbia[482] is an organisation currently encompassing 118 members (private and public companies, institutions, organisations, associations, media and other legal entities). The Serbian Global Compact Initiative was founded in 2007 and so far, 44 private companies have joined this initiative. Several companies that we analysed say on their websites that they are signatories of the initiative and that they have pledged to align their activities with the ten universal principles in various fields, including anti-corruption.

Since 2008, members of this network have written 116 individual annual reports on the implementation of the UN Global Compact. It is noticeable that only some members send annual reports on the measures they have taken in order to implement the global principles. In 2018, for example, only five members submitted reports, while in 2019 only two reports were published. There is only one report published for 2020.[483]

In 2018, the Serbian Chamber of Commerce[484] in cooperation with counterparts from Italy and Romania and Eurochambres representatives analysed corruption in private companies in Serbia, Italy and Romania. In addition, the Serbian chamber has launched a "C-detector on-line" on its portal, where its members can test the risk of corruption in their respective companies quickly and easily. That same year, the chamber organised three public business events, where dozens of participants from both the private and public sector, as well as from state institutions discussed, among other things, the prevention of corruption in the private sector.

An analysis of the published reports from 2017 to 2020 (16 reports in total, but only nine from private companies) shows that some members have mostly invested in their employees' training in terms of recognizing and reporting corruption, while others have been more focused on developing strategic documents that regulate and prevent corruption. There is no information on joint anti-corruption initiatives with other companies from the same or different sectors, or on initiatives in which NGOs or the state have participated. Out of nine most recent private company reports to the Global Compact, only two addressed anti-corruption activities.

It is noticeable that companies, both local and international, show interest in working with stakeholders from the public sector and civil society on various anti-corruption related issues, especially when a particular matter directly affects them. A recent example of such cooperation was a series of discussions about the new Law on Public Procurement (in 2018), attended by hundreds of company representatives gathered by the CCIS and the Public Procurement Office.[485] Another example was a vivid 2019 discussion on the Law on Lobbying attended by the members of the American Chamber of Commerce in Serbia and the Agency for Prevention of Corruption. In both instances, discussions were followed by concrete initiatives.[486]

Companies cooperate with their industry peers on matters of common interest. Such collaboration might in effect be useful fighting corruption. Even then, the main reason for sector coalitions is mutual commercial interest.[487] It is highly unlikely that companies from one sector would initiate an action or join common initiative with external stakeholders in order to suppress corruption. However, they sometimes use anti-corruption as an additional argument to support their original claims.[488] That usually happens when promoters of such initiatives do not have sufficient backing in the government and thus seek to improve it by calling the public to support their "public-interest case".

In general, bigger companies tend to abstain from being exposed as "anti-corruption" fighters, as it may harm their position on the market and jeopardise the possibility of obtaining government contracts. Smaller companies are more eager to point to corruption. However, it usually happens only when their interest has been directly harmed by corruptive actions of public officials and when there is no perspective of potential reimbursement in any government contract.[489]

Business associations

The level of support provided by business associations to private companies in Serbia in the fight against corruption can be assessed at 50 out of 100, given that:

- associations prepare some training materials and organise events related to the anticorruption, but do not cover all relevant issues through these activities
- overall support for companies to cope with corruption is not sufficiently developed (there is no capacity to provide legal support for companies facing corruption, for example). However, associations reveal weaknesses in laws and practice and make recommendations to the authorities on how to address these issues.

Overview

There is a significant number of business associations in Serbia that formally address corruption in their founding and strategic documents.

The Chamber of Commerce and Industry of Serbia, recognised as an important factor in the implementation of the National Anti-Corruption Strategy (valid until 2018), plays an important role in the development of anti-corruption practices. CCIS membership is mandatory and the chamber has some assigned public powers. Based on this strategy, the CCIS has developed anti-corruption codes that are binding on all its members. Furthermore, the chamber is obligated to organise educational programmes that help the private sector in the development of anticorruption standards.

The CCIS has initiated roundtables on good practices of Serbian companies in the development of anti-corruption programmes, where chamber members exchange experiences. Our research about events organised by the CCIS[490] shows that large-scale companies are mainly involved in such activities and that most of the activities are conducted in Belgrade, with less focus on the local level.

In addition, the CCIS organises educational programmes that assist the private sector in the development of anti-corruption standards. An analysis of their workshops and courses[491] have shown that trainings for employees related to the fight against corruption exist, but there are other more dominant topics such as discrimination, human rights, environment, etc.

Aside from the chamber, there are associations whose membership is based on various criteria: members of industrial sectors, companies originating from a certain country, foreign investors in general, major national owners, managers, professionals etc. Some of these associations assess the situation and launch initiatives that may be useful in fighting corruption. Such an example is the annual White Book publication[492] by the Foreign Investors Council, which contains recommendations for improving the business environment in Serbia in a wide variety of areas. Similar example are recommendations issued by the American Chamber of Commerce.[493]

However, business associations in general do not seek to be recognised as champions in fighting corruption in a way that could generate overt criticism of the government, even if they might be aware of government corruption. They rather seek to establish and maintain cooperation with decision-makers and to at least achieve a good balance between criticism and praise of government efforts and achievements.[494]

[480] https://odgovornoposlovanje.rs/wp-content/uploads/2015/03/lokalni-izvestaj-o-odrzivosti-za-2018.pdf
[481] http://uzmiracun.rs/godina-borbe-protiv-sive-ekonomije
[482] http://www.ungc.rs/srb
[483] http://www.ungc.rs/srb/izvestaji
[484] http://www.ungc.rs/docs/reports/2019/PKS%202018-2019%20Izvestaj%20za%20globalni%20dogovor.pdf
[485] https://www.paragraf.rs/dnevne-vesti/111018/111018-vest8.html
[486] http://www.acas.rs/okrugli-sto-o-primeni-zakona-o-lobiranju/?pismo=lat
[487] http://rs.n1info.com/Vesti/a458785/Protest-kombi-prevoznika-u-subotu.html
[488] https://www.blic.rs/vesti/beograd/haos-u-jutarnjem-programu-zestoka-svada-predstavnika-taksista-i-cargo-voditelj-ih/2ct8z67
[489] https://www.juznevesti.com/Drushtvo/Ariva-Litas-podnela-zalbu-ceka-se-hitna-nabavka.sr.html
[490] https://pks.rs/strana/sekcija/kalendar-seminara
[491] https://pks.rs/komorske-usluge
[492] http://www.fic.org.rs/projects/white-book/white-book-publication.html
[493] https://www.amcham.rs/upload/Policy%20Priorities.pdf
[494] https://www.naled.rs/obavestenja-konferencija-o-ekonomskim-reformama-siva-knjiga-2020-3119

THEMATIC AREA 14:

Oversight

The oversight of company's governance practices in Serbia can be assessed at 50 out of 100, given that:

- in a significant number of cases persons at the top positions in the company (the director, oversight board or board of directors) are responsible to a certain degree for the of monitoring anti-corruption programmes, if such programmes exist
- bigger, mostly foreign owned companies formally apply anti-corruption programmes to all employees including the director and members of the board of directors, but the regulations are not often implemented
- such anti-corruption programmes are binding for board members; while the board is informed about major incidents and corrective actions, there is no practice of providing anti-corruption training for board members

Responsibility for monitoring governance

Most companies in Serbia are micro companies with one director, who is often the owner of the company. Each company has a legal representative (one or more directors) and some of them have a supervisory board, an executive board and a board of directors. Large companies often have one or more directors and an assembly. Some large companies also have a board of directors. Depending on how the company is organised and whether there is an anti-corruption programme, it is the responsibility of the supervisory board or board of directors to monitor the implementation of anti-corruption programmes.

Analysing the codes of ethics of the top 20 private companies in Serbia, we found that anti-corruption programmes are mandatory for all employees and officials, including the director and the board of directors[495]. Under these codes, top executives are expected not only to comply with anti-corruption provisions but also to set an example for other employees.

Oversight of anti-corruption programmes

In most companies, the director is responsible for the oversight of anti-corruption programmes. The director is also the one who decides on possible penalties and other measures against employees for violations of rules. The board of directors or supervisory board is responsible for overseeing the implementation of programmes in companies where such programmes exist (even the actions of directors).

Some larger companies[496] have introduced positions such as "anti-corruption programme manager", tasked with developing procedures, organizing trainings and monitoring the enforcement of anti-corruption rules within the firm. This manager is accountable to the director of the board of directors of the company, who is making the final decisions.

Information and training of the board of directors

Codes of ethics in bigger and international companies stipulate that anticorruption trainings are mandatory for all employees, including the director or board of directors' members, if the latter exists. Respondents said that in practice, trainings related to corruption are not frequent and that mostly low-level employees and sometimes some of the sectoral managers participate in these trainings.

While the board members are probably not informed about all aspects of programme implementation, respondents said to believe that the board is informed about any major incident and corrective action.

In 2018, one bank[497] conducted an official fraud risk analysis, and inter alia, a corruption risk analysis. The following risks were identified on that occasion: bribery, abuse of power, forgery of documents, failure to perform duties, damage to integrity and reputation.

The same company has invested in raising employee awareness through trainings within the corruption risk management system. For the highest levels of management, so-called "Tone at the Top" training, related to general topics of corruption and reputational risk, was organised. Management training included e-learning modules, as well as special presentations for specific managerial positions. During 2018, four members of the executive board and 12 executive directors (64 per cent of top management) underwent targeted anti-corruption trainings.

In another example, the topic of anti-corruption is an integral part of the ongoing training for all new employees; it takes place once a month and includes training on non-financial risks, financial crime risks and general provisions on conflicts of interest, corruption and reputational risk. Internal and external trainings held in 2018 covered topics such as bribery, corruption, fraud, safety and health at workplace and included specifically targeted anti-corruption topics. That year, 685 employees from the category of non-managers (72.7 per cent) and 124 employees from the category of managers (80 per cent) passed the trainings.

One company[498] that is a leader in the field of distribution of consumer goods, tobacco and pharmaceuticals products, logistics services and trade marketing in Serbia, also organised anti-corruption trainings during 2016, with the participation of 10 members of the management board and four managers from the sales sector. A total of 158 employees in the company's legal sector (including 154 managers), in all the markets in the Western Balkans where the company operates, also passed the training – 50 were from Serbia.

Executive remuneration

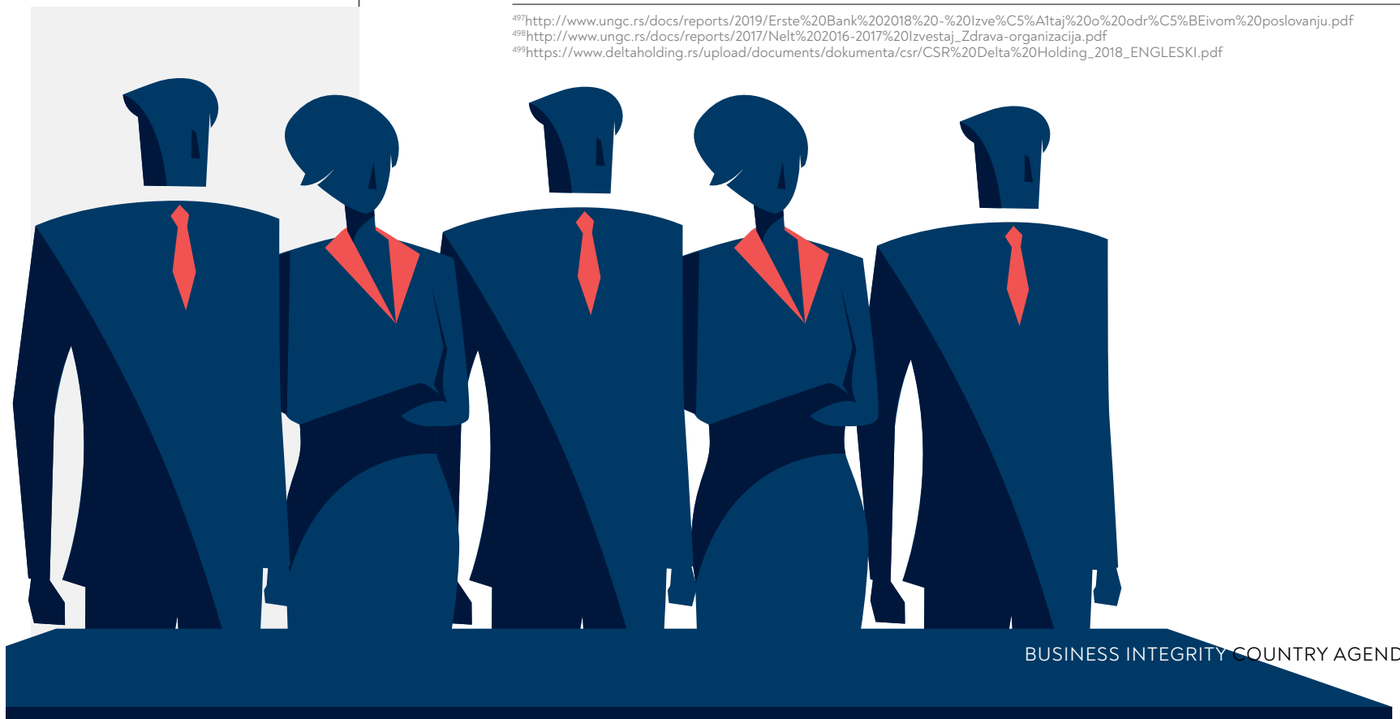
The executives' remunerations can be assessed at 0 out of 100, given that:

- information about how remuneration policies are implemented in some big companies (especially international ones) are neither publicly available, nor can it be obtained through interviews

Large companies have a well-developed remuneration policy for all employees, from the lowest to the highest positions, but information is generally not available on the remuneration method and criteria. Information on management contracts, remuneration and benefit packages is not public and cannot be found on the companies' websites or on the website of the Business Registers Agency to which the companies submit their financial statements .

Remuneration packages exist in most of bigger companies, but detailed information is generally not publicly disclosed. Similarly, we were not able to obtain any further information through interviews.

The annual business report[499] of one of the largest companies in Serbia states that in accordance with the defined remuneration policy, board members, management and employees receive a stimulation or disincentive in earnings,



[495] E.g. one of the analysed Codes of Ethics: https://www.deltaholding.rs/upload/documents/dokumenta/nekategorizovano/Eticki%20kodeks.pdf
[496] Based on interview with an employee in one large international company operating in Serbia
[497] http://www.ungc.rs/docs/reports/2019/Erste%20Bank%202018%20-%20Izve%C5%A1taj%20o%20odr%C5%BEivom%20poslovanju.pdf
[498] http://www.ungc.rs/docs/reports/2017/Nelt%202016-2017%20Izvestaj_Zdrava-organizacija.pdf
[499] https://www.deltaholding.rs/upload/documents/dokumenta/csr/CSR%20Delta%20Holding_2018_ENGLESKI.pdf

and can move to a higher or lower position in the organisational structure. Stimulation and disincentive are carried out by the board of directors in cooperation with the internal audit and the sector for planning and control, which check the implementation of plans in all areas of business and all at levels of management.

This company selects "employees of the month", who receives a cash reward of RSD10,000 (less than €100) each. "Managers of the quarter" are chosen four times a year. Personalised cards that read "Thank You for Providing True Hospitality" express gratitude for their extraordinary effort and work.

Conflicts of interest

Safeguards for preventing conflict of interest can be assessed 50 out of 100, given that:

- there are conflict of interest prevention mechanisms in the law, and that some of the large companies have their own rules for dealing with conflicts of interest, internal trading and abuse of company assets by board members and other senior management.
- there is very limited data and information on how safeguards are implemented in practice as to conflict of interest of the director or board members
- most information about potential conflict of interest of senior representatives is not publicly available.

Prohibition of conflicts of interests of directors and supervisors

When it comes to conflict of interest, the analysed codes of business ethics of large companies show that all employees, including the director or board of directors, are generally prohibited from engaging in any commercial activity outside of their employment or that this type of engagement is possible with the approval of the human resources department or similar sector.

There is also a set of rules for preventing conflict of interest and resolution in Law on Companies. The set of rules includes, among other things, restrictions for the officials on using company property and information they have access to in that capacity (otherwise not publicly available). The rules also prohibit abuse of office and taking advantage of opportunities related to working in the company for one's own benefit. Company officials must seek approval for their actions in the case of a potential conflict of interest.[500]

Enforcement of conflicts of interest regulations of directors and supervisors

Information on potential conflicts of interest of the board of directors is not publicly available, so stakeholders cannot find information on whether board members have additional earnings in the company, whether they have any employment outside the company or whether they have a share in any financial investment.

In order to protect assets, some companies have introduced practices such as GPS monitoring of company vehicle usage or mobile phone costs and controlling the reimbursement of costs to the staff as part of internal control. However, there is no publicly available information on the extent to which board members are subject to this type of control.

Prohibition of inside trading

Legislation governing free competition and monopoly prohibits inside trading. The research shows that a majority of large companies have rules stipulating that company employees, including the board of directors, are required to keep the confidentiality of classified information they have obtained while performing their business.

The code of business ethics of one multinational company[501] says that all employees, including directors and supervisors, should never engage in discussions with competitors about pricing policies and sales strategies in order to avoid any breach of antitrust laws (any agreement with competitors on products prices, market sharing, customer sharing, etc. is strictly forbidden). There is no publicly available information on the extent to which business entities themselves apply these rules

[500] https://www.vipmobile.rs/documents/rs/Code%20of%20Conduct%202017%20_Serbian_srp%20doc.pdf
[501] https://www.vipmobile.rs/documents/rs/Code%20of%20Conduct%202017%20_Serbian_srp%20doc.pdf

BICA **ASSESSMENT** PART III

CIVIL SOCIETY ASSESSMENT
Overall assessment

Although anti-corruption is one of the favourite topics addressed in public by the Serbian civil society and media, the issue of business integrity is an exception. There is a great potential to improve that situation through collective action. However, the willingness of private companies to engage in activities that may result in immediate commercial damage (for example in government contracting) and uncertain benefits, can be rightfully brought into question.

Most of the media are not able to act independently from the private or the government sector, which prevents them to fully achieve their role in this field. However, there are investigative journalists and media that have been dealing with corruption in the public sector with reasonable success. There is room for them to look into corruption in the business sector as well.

THEMATIC AREA 15:
BROADER CHECKS AND BALANCES

Independent media

The independence of media in Serbia can be assessed at 25 out of 100 given that:

- most of the Serbian media lack financial autonomy from the advertisers and cannot be completely objective and independent when reporting about the private sector
- most of the media are not objective, free and independent from the government, even when not financed from the public sources
- most influential media are not adhering to the highest standards of fairness and accuracy
- some broadcast and print media, as well as a number of online media, have a proven track record of investigating and reporting about corruption involving the private sector, with private sector entities as beneficiaries, victims or perpetrators of corruption in their transactions with government officials and civil servants; corruption within the private sector is almost never a subject of media research and coverage

Overall assessment

The Serbian media landscape gets grimmer year after year. While the legal framework is good, it remains a dead letter. Under the law, media in Serbia are free, censorship is prohibited by the constitution, freedom of expression and information are enshrined in both international and national law, but the reality is different: although the state has reportedly withdrawn from the media as an owner, Serbian outlets are predominantly under state control or very strongly influenced by it at least, censorship and self-censorship are widespread, investigative journalism is constantly under attack from the government representatives, financing is not transparent, and pressure against local media has been on the rise.

At the very end of January 2020 the Serbian Government finally, after four years of disputes and arguments, adopted the national Media Strategy (official title: "Public Information System Development Strategy in the Republic of Serbia for the period 2020-2025."[502]). The document (still not published on the government website but it is elsewhere) lists numerous measures and activities for the Strategy's implementation that are expected to eventually improve the media landscape in Serbia.[503]

The OSCE Media Freedom Representative and the OSCE Head of Mission to Serbia both welcomed the adoption of the Serbian Media Strategy[504]; Serbian government officials praise the strategy as an important first step towards media freedom[505]; the Independent Journalists' Association of Serbia (NUNS) and the Association of Journalists of Serbia (UNS), although pleased with the content of the strategy, believe that it will not be an easy path to changing the media laws.[506] The major issue here is non-observance of media laws in Serbia. Many journalists wonder whether this strategy is just a simulation of reforms[507] or merely a wish list that will not produce any substantial changes.[508]

Media freedom perception

Serbia is considered "partly free" by Freedom House[509] holding the 90th place on the list of 180 countries in the 2019 Press Freedom Report compiled by Reporters without Borders (Reporters Sans Frontières – RSF). It is 14 places down compared to 2018 and 24 places down from 2017.

"Serbia's status declined from free to partly free due to the deterioration in the conduct of elections, continued attempts by the government and allied media outlets to undermine independent journalists through legal harassment and smear campaigns, and President Aleksandar Vucic's de facto accumulation of executive powers that conflict with his constitutional role", the report by Freedom House reads.

It is important to emphasize that in the previous couple of years, when Freedom House still ranked Serbia as a "free country", Serbian journalists and their associations had warned about serious deterioration of media freedom and a difference between theory and practice on the media landscape. One of many examples that testifies to the foregoing is the press release by the Independent Journalists' Association of Serbia (NUNS) and the Independent Journalists' Association of Vojvodina (NDNV) from 2017, when media associations warned the citizens and international institutions that the Serbian authorities had entered "a new, brutal phase of the crackdown on media freedom and intimidation of journalists, with the goal to completely disable the media's controlling role and break any free critical voice."[510]

The 2019 report suggests[511] that Serbia has become a place where "practicing journalism is neither safe nor supported by the state. The number of attacks on media has been growing, including death threats, and inflammatory rhetoric targeting reporters is increasingly coming from government officials. Many attempts on journalists' integrity have not been investigated, solved or punished, the report indicates."

The lack of media freedom is one of the reasons why Freedom House placed Serbia among the ranks of partly free countries, while suppression of freedom of speech is at the centre of the new report of the European Commission on Serbia's progress in EU accession.[512] Ratings have not improved in recent reports from Freedom House[513] and the European Commission[514].

Financial in/dependence

Economic hardship and permanent lack of capital is a systemic problem for the financial and professional independence of media. Although the process of media privatisation in Serbia should have been over (it started in 2015), the state still plays a significant role. At the same time, media privatisation has led to a transfer of state ownership to business persons or people otherwise close to the ruling party. For example, Prva TV and 02 TV station and the b92 website were sold for €180 million[515], and afterwards there were suspicions that one state-owned company also participated in the transactions related to those media houses.[516] The list is much longer though. The state continued to allocate significant amounts of money to these media from the budget, in subsidies, calls for proposals and direct contracting, the Balkan Investigative Reporting Network (BIRN) found[517]. The continued state financing also represents a resumption of state influence on the editorial policy of these media.

Interestingly enough, with all that hardship and media business being less sustainable, there are almost 2,000 media in Serbia registered in the media register of the Business Registers Agency – over 800 print publications, more than 300 radio stations, over 200 TV channels and over 600 online media.[518] The government controls most of them, not through direct ownership, but rather through "project financing" (public funding) or allocated budget (as mentioned above), and media advertising, in a "arbitrary and non-transparent manner, usually in favour of pro-government media outlets".[519]

From 2017 to 2019, more than RSD260 million (€2.2 million) went to media close to the current governing structure only at local competitions for co-financing projects of public importance.[520]

Figure 6. Raskrinkavanje

*Figure 6. Raskrinkavanje[521] – project Ke$Informisanje (CashInformation), money (in RSD) given to media close to the government, at competitions for co-financing projects of public importance. * Numbers in black squares show the number of fake news published by those media in the same period, 2017 – 2019.*

State funds – especially for co-financed projects, rather than advertising – are critical to the survival of many Serbian media. Still, most of them, in particular the local ones, cannot afford to be independent from their potential private sector advertisers, hence, they avoid topics that may disturb the interests of central and local government decision makers or businessmen, being dependent from their project financing, advertisement and sponsorships.

[502] https://www.srbija.gov.rs/vest/en/149736/serbian-government-adopts-media-strategy.php
[503] Media Strategy, document https://www.srbija.gov.rs/dokument/441801/medijska-strategija.php
[504] OSCE: https://www.osce.org/representative-on-freedom-of-media/445246
[505] https://www.danas.rs/drustvo/usvojena-medijska-strategija/
[506] https://www.slobodnaevropa.org/a/medijska-strategija-srbija/30410604.html
[507] https://europeanwesternbalkans.com/2019/07/31/serbias-media-strategy-a-step-forwards-for-the-media-freedoms-or-a-simulation-of-reforms/
[508] https://www.cenzolovka.rs/drzava-i-mediji/nova-medijska-strategija-hoce-li-se-ista-promeniti-na-bolje/
[509] https://freedomhouse.org/report/freedom-world/2019/serbiahttps://freedomhouse.org/sites/default/files/Feb2019_FH_FITW_2019_Report_ForWeb-compressed.pdf
[510] http://www.ndnv.org/2017/09/19/media-associations-new-phase-of-media-freedom-suffocation-and-intimidation-of-journalists/
[511] https://rsf.org/en/serbia
[512] https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-serbia-report.pdf
[513] https://freedomhouse.org/country/serbia/freedom-world/2020
[514] http://europa.rs/godisnji-izvestaj-o-srbiji-2020/
[515] https://www.blic.rs/biznis/vesti/prodati-prva-tv-o2-tv-i-sajt-b92net-za-180-miliona-evra-doskorasnjem-suvlasniku/8mgy7fj
[516] https://www.danas.rs/ekonomija/telekom-kopernikus-smo-platili-manje-od-200-miliona-evra/
[517] http://birnsrbija.rs/wp-content/uploads/2016/02/izvestaj_meka_cenzura_final.pdf
[518] https://serbia.mom-rsf.org/en/context/media-consumption/
[519] https://rsf.org/en/news/who-owns-media-serbia
[520] https://www.raskrikavanje.rs/page.php?id=412
[521] https://www.raskrikavanje.rs/page.php?id=412

The media advertising market in Serbia is estimated at a mere €180 - €200 million annually.[522] Few advertising/media buying agencies dictate prices and rules, and indirectly the editorial policies. Almost all of these agencies are associated with government officials, whether current or former[523]

In terms of advertising, there is no official source in Serbia that can provide information on the total value of advertising[524], but most media analysts believe the national government is the largest advertiser in Serbia. There are no sufficiently clear or comprehensive rules regarding the selection of media in which advertising will occur, but there is a chance for a progress, if the measures envisaged by the Media Strategy are applied.[525]

To summarize, whether it is a private or local TV station, national or local newspaper, in the last five years the same principle applies to financial (in)dependence of the media, and consequently, to editorial (in)dependence : "Those who buy media quickly get reimbursed from local and other budgets through the project financing system and thus media have a (new) owner (officially it is not the state anymore) and people pay the costs of that company, Vreme wrote.[526]

The financial dependence of the media is largely the reason for their rare decision to research important problems of society, such as corruption. Although there is donor support for work on these topics, it is mostly directed toward non-governmental organizations that gather journalists and have their own online media, while donor's assistance rarely reaches the traditional media and their journalists who would carry out with anti-corruption issues within their professional tasks, that is, informative and analytical journalism.[527]

Censorship and Self-censorship

The Law on Public Information and Media stipulates that public information is not liable to censorship[528]. Free flow of information through the media, as well as the editorial autonomy of the media must not be undermined, in particular by putting pressure on, blackmailing or threatening an editor, journalist or source of information. That is what the law says, but censorship and self-censorship in particular are still prevalent on the Serbian media landscape[529]. Explaining the mechanisms of self-censorship requires a lot of time and space, but some examples can be found in a letter[530] sent by five Serbian media associations to the Index on Censorship aiming to raise awareness and concern about press freedom in Serbia.

In a survey of media professionals (journalists, editors, editors-in-chief, freelancers, etc.) by the Slavko Curuvija Foundation[531], published in the Media Sustainability Index 2019[532], one-third of respondents (34 per cent) said there is more self-censorship than five years ago, and 37 per cent said it is harder to resist external pressure (from advertisers, for example) – than five years earlier. "As far as pressure from media owners or editors, 26 per cent said it is harder to withstand than it was five year ago." Journalists and editors surveyed by the Balkan Investigative Reporting Network (BIRN) say that the goal is to have a tamed and pliant media field where self-censorship has become the norm.[533]

Pressure and fear

In addition to financial dependence on sponsors, another reason for the obedience and self-censorship of journalists is the fear for their jobs (job security in the Serbian media is non-existent, and in order to try to secure a job and salary that comes with it[534] most journalists opt for self-censorship) and their safety.

How serious is a journalist's fear for personal safety can be illustrated by the case of Milan Jovanovic[535] who was reporting on local corruption[536] for the website Zig Info[537] (for example, he uncovered theft in the public company "Serbian Railways", fraud in the purchase of a utility company in the Grocka Municipality, as well as in the process of gasification[538], etc.) For these and many other corruption related issues Jovanovic blamed the then Mayor of Grocka Dragoljub Simonovic, the former CEO of "Serbian Railways" and local branch chief of the ruling Serbian political party SNS. Jovanovic was attacked and his house was set on fire at the end of 2018. A month later, the rented apartment he was forced to move in with his wife was broken into.[539] Simonovic and two other suspects were arrested in this case in January 2019, but the trial is still ongoing.

NUNS recorded 119 cases of attacks against journalists in 2019 – the highest in a decade. Of these cases, 80 were classified as "pressure", 27 were verbal threats and 11 were physical attacks. It was the highest number after 2008, when 144 attacks against journalists were registered. In 2018, there were 102 attacks. The major difference in the last 12 years is that the number of physical attacks has been reduced, but "pressure" and verbal threats have been increasing, especially in last six years.[540]

"The pressure to keep silent is stronger today than ever," Zoran Sekulic, owner and chief executive of the private FoNet News Agency, said. "There's no official censorship, but a media outlet is on its own when deciding whether to risk running a story." He said that Serbian news are full of staged events presented as newsworthy. "Those aren't fake news; they're fake narratives and fake perceptions."[541]

[522] https://www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-eurasia-2019-serbia.pdf
[523] https://www.danas.rs/drustvo/od-oglasavanja-u-srbiji-profitiraju-preduzeca-i-mediji-bliski-vlastima-ali-i-opozicioni/
[524] https://www.cenzolovka.rs/drzava-i-mediji/jos-nema-podataka-koliko-novaca-odlazi-medijima-putem-javnih-preduzeca/; https://www.cenzolovka.rs/drzava-i-mediji/drzavno-oglasavanje-u-srbiji-zona-uticaja-na-medije-i-pritiska-na-medijske-slobode/
[525] https://www.transparentnost.org.rs/images/dokumenti_uz_vesti/Regulacija_promotivnih_aktivnosti_javnih_entiteta_u_medijima_TS_oktobar_2020.pdf
[526] https://www.vreme.com/cms/view.php?id=1714988&print=yes
[527] NAG members' comments on the BICA draft report
[528] Law on Public Information and Media, Chapter I, Article 4
[529] http://nuns.rs/info/news/30791/jankovic-cenzura-i-autocenzura-glavni-urednici-medija-u-srbiji-.html
[530] https://www.indexoncensorship.org/2018/10/letter-serbian-media-facing-very-difficult-situation/
[531] The Slavko Curuvija Foundation is an independent organization that campaigns for free media under the name of the journalist murdered in 1999 in Belgrade, during the NATO bombing, by state-sanctioned gunmen.
[532] https://www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-eurasia-2019-serbia.pdf
[533] https://balkaninsight.com/2018/08/15/for-serbian-journalists-obedience-is-the-norm-08-14-2018/
[534] One of the reasons for the difficult position of journalists in Serbia is the underdeveloped market, which cannot sustain a large number of media and graduate students of journalism - http://voice.org.rs/mladi-novinari-u-srbiji-beze-od-novinarstva-stavi-14-minuta-sns-ostalo-vremenska-prognoza/
[535] https://cpj.org/2018/12/serbian-investigative-journalist-targeted-with-ars.php
[536] https://www.osce.org/representative-on-freedom-of-media/410030
[537] http://ziginfo.rs/
[538] http://ziginfo.rs/lokalne-vesti/112-grocka/7528-hoce-li-neko-odgovarati-gasifikaciji-grocke-nigde-kraja-ali-pred-izbore-opet-stizu-obecanja-foto1.html
[539] http://rs.n1info.com/English/NEWS/a448480/New-attack-on-Serbian-journalist-whose-home-was-burned-down.html
[540] http://www.bazenuns.rs/srpski/napadi-na-novinare
[541] https://www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-eurasia-2019-serbia.pdf

In response to accusations of never stronger censorship in the Serbian media, there are various surveys, which tend to prove the opposite. One of the examples is the "non-existent" Media Monitoring Centre, as Raskrinkavanje wrote, (pointing out that the centre is not registered with the business registers agency, nor does it have a website) which published a survey saying that there is no censorship in Serbia and that "hate speech is merely a style utilized by the opposition".[542] Such views are then conveyed by media close to the regime,[543] stating that there is no censorship in the Serbian media.

The Serbian Journalists' Code of Ethics is an ethical standard for professional conduct of journalists. It says that it is a journalist's duty to adhere to ethical and professional principles contained in the code, and to resist pressure to violate these principles.[544] It also says that a journalist should resist any pressure to freely exercise the profession, as well as any form of censorship.[545] Like these standards, many others from the code are not respected in Serbia, thus the quality of journalistic standards has been radically decreasing.

Lack of pluralism

While corruption has become quite a frequent topic for investigative journalists, private sector companies are treated as beneficiaries, victims or perpetrators of corruption in their relationships with civil servants and public officials. Corruption that entirely stays within the private sector or privately owned companies is not considered a topic of public interest yet.[546]

The lack of pluralism in both print and broadcast media in Serbia is deepening the collusion between politicians and the majority of media and leaving rare brave investigative reporters and a few media to work under huge pressure, constant attacks and verbal assaults in discovering and investigating numerous corruption cases and scandals. Some of the latter are:

- "Krusik" – the ammunition factory where a shady arms trade sale was linked to the father of Serbia's interior minister[547]
- "Megatrend University" – a bizarre case that was publicly initiated in a documentary (N1 TV production[548]) about the role of this private university in nostrifying the Serbian interior minister's plagiarized PhD thesis, and its non-existent schools and lecturers, which ultimately led to a ghost sale of the university[549] to, what turned out to be the non-existent German consortium EFAS.
- "Jovanjica" – an agricultural farm whose owner received tens of millions of dinars in incentives for organic farming from the state[550] and where the police seized over four tons of marihuana.

These cases summarize the current situation of the media: there are professional media that cover topics like these[551], discover affairs, seek answers, approach stories analytically; on the other hand, regime tabloids most often create new events, affairs that should draw attention away from genuine problems[552]; and somewhere in the middle are media like public service broadcasters that generally avoid these hot topics or just give individual reactions to them", explained Zeljko Bodrozic, the President of NUNS.[553]

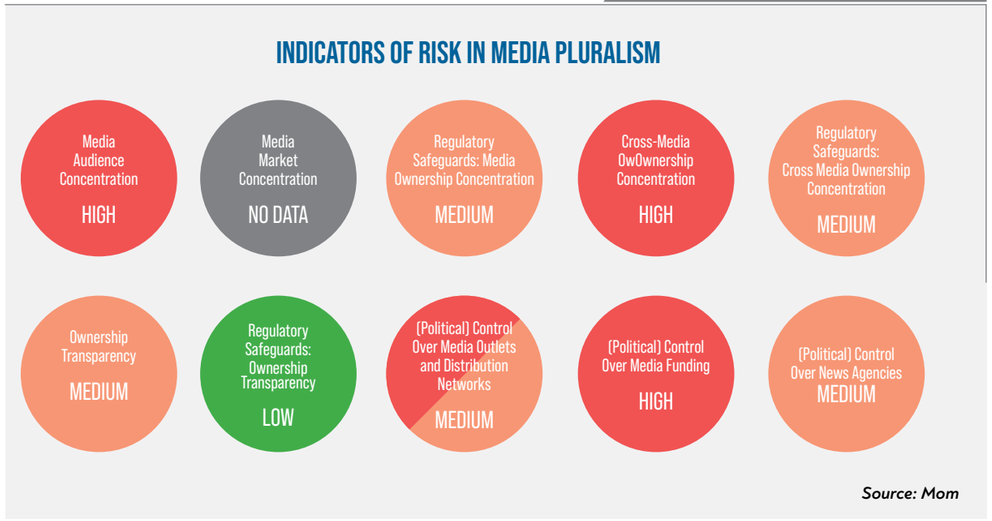
In Serbia, there are media that function independently from the government , for example N1 TV, the daily Danas, weeklies Nedeljnik, NIN, Vreme, Novi Magazin - but the question is how powerful they are? The latest case where N1 TV was removed from the plan Telecom cable operators offer their viewers[554] illustrate this best: "About one million citizens were deprived of the opportunity to hear the voice of the opposition or public figures who speak differently from the government", said Bodrozic.

According to data of IPSOS, eight daily newspapers and six weeklies account for the greatest share in the readership of print media.

The Media Ownership Monitor illustrated the situation with media pluralism in Serbia tackling 10 indicators of risk to media pluralism[555]:

[542] https://www.raskrikavanje.rs/page.php?id=314
[543] https://www.kurir.rs/vesti/drustvo/3406781/kvartalni-medijametar-nema-cenzure-u-srpskim-medijima-o-vucicu-dvostruko-vise-negativnih-nego-pozitivnih-tekstova
[544] Code of Ethics, preamble
[545] Ibid. Chapter 2, Article 1
[546] There has been one case in which a private company might have been extorted for donation to a ministry, but the private company never reported it and treated it as an act of corporative responsibility. In this case, the donation was given to the ministry in charge of labour inspection, and the case was in focus when the company's employees told the media that the inspection turned a blind eye to their complaints. https://insajder.net/en/site/focus/1005/Yura-Labor-Ministry-asked-us-to-donate-cars-(VIDEO).htm
[547] https://www.dw.com/en/serbian-leaders-rattled-by-krusik-arms-export-scandal/a-51565172
[548] http://rs.n1info.com/Video/Info/a547266/Dokumentarni-film-Mega-diplomac-o-studijama-Nebojse-Stefanovica-i-Megatrendu.html
[549] http://rs.n1info.com/English/NEWS/a547820/Megatrend-University-sold-after-N1-s-film-which-owner-says-is-a-peak-of-negative-campaign.html
[550] https://www.independent.co.uk/news/world/europe/serbia-cannabis-marijuana-raid-drugs-organic-food-farm-a9219066.html; - https://insajder.net/sr/sajt/tema/16558/
[551] http://rs.n1info.com/Video/N1-reporteri/a547602/N1-reporteri-o-novostima-u-vezi-sa-slucajem-Krusik-i-burnim-reakcijama-na-dokumentarac-N1-Mega-diplomac.html (VIDEO)
[552] http://rs.n1info.com/Vesti/a550352/Culibrk-Prodaja-Megatrenda-sluzi-vlasti-da-skrene-paznju-sa-Krusika.html (VIDEO)
[553] https://nezavisnost.org/intervju-zeljko-bodrozic-predsednik-nuns-a/
[554] http://rs.n1info.com/English/NEWS/a566654/N1-United-Media-repeat-call-for-transparency-in-dispute-with-Telekom.html
[555] Indicators of Risk to Media Pluralism in Serbia - https://serbia.mom-rsf.org/

Figure 7. Indicators of risk to media pluralism



Source: Mom

Serbia has seven national free-to-air channels, viewed throughout the country – the public network Radio Television of Serbia (RTS) with three channels (RTS1, RTS2 and RTS3), as well as private channels Prva, O2, Pink and Happy. RTS and another public broadcaster, Radio Televizija Vojvodine (RTV, with regional coverage) receive most of their revenues from the mandatory subscription or state budget. During the last couple of years, television stations with national frequency have been fully placed under the control of the government or people linked to it. Pro-government televisions Pink and Happy have vigorously been spreading government propaganda while the former independent TV outlets B92 and Prva, with new owners (SNS connected) joined the state propaganda club[556]. Srđan Milovanovic bought the privately owned Antenna Group for about €180 million through an offshore company from Cyprus. Both NUNS and the Independent Journalists' Association of Vojvodina NDNV assessed that this was a pre-designed mechanism for the Serbian ruling party to become the owner of TV Prva and O2, and that such a transaction today represents one of the largest media, political and economic scandals in Serbia.[557]

This poses a high risk to media pluralism in the country the Media Ownership Monitor (MOM)[558] suggested. The research also revealed a high level of cross-media concentration of the audio-visual, print and online sectors.

One of interesting and important structural changes comes with the increased influence of cable operators in the media sector, privately owned SBB and state-owned Telekom Srbija. The race between them undoubtedly represents a struggle for a dominant position on the market, but it is also an attempt by the state to reduce the influence of the owner of one of the few private television stations, which has a critical attitude towards the current government. N1, the cable news channel owned by the Netherland based "United Group"[559], has been a target of attacks by the highest state officials (president Vucic being the most persistent) and pro-regime media which refer to it as being 'American station' or "foreign servants" who work against the national interest. N1 journalists are constantly verbally abused and publicly "lectured" about their hostile conduct especially after investigating and reporting about several major corruption affairs and scandals directly related to the government. The Reporters Without Borders condemned those attacks..[560]

SBB used to be dominant in the field. According to data of the Regulatory Agency for Electronic Communications and Postal Services (RATEL)[561], in 2017 SBB was the biggest media content distributor with a 54 per cent market share relative to the number of subscribers, while "Telekom Srbija" had a share of 'only' 25 per cent. However, this started to change over the last few years when Telekom began to buy up smaller operators, justifying it with its "Million Plus" strategy.

TV is the most popular medium in Serbia - 62.5 per cent of the audience are attracted by four

dominant media groups (PSB – 23.2 per cent, Pink Media Group – 16.4 per cent, Antena Group – 15.3 per cent, and Happy TV – 7.5 per cent) and the media audience is highly concentrated around television, which presents a serious risk to pluralism.[562]

[556]https://www.vreme.com/cms/view.php?id=1671163
[557]Media Box News - http://medijskakutija.rs/srdjan-milovanovic-kupio-televizije-prva-i-02-za-potrebe-sns-a-novcem-gradjana-srbije/
[558]https://www.mom-rsf.org/en/countries/serbia/
[559]https://united.group/
[560]http://rs.n1info.com/English/NEWS/a565208/Reporters-Without-Borders-condemns-cyber-attacls-on-N1-portal.html
[561]https://www.ratel.rs/en/
[562]http://www.thomsonfoundation.org/media/113958/tfserbia_report_digitaleconomy-small.pdf

When it comes to the print press, most popular are tabloids, which are also the cheapest daily newspapers. Some of them are sold at a barely sustainable price of RSD30 dinars (less than €0.25) a copy. One of the defining features of the print press in Serbia, as the MOM Serbia noticed, are the pro-government tabloids, which are used to attack the political opposition, as well as all other public figures who criticize the government. These tabloids frequently produce fake news and spread propaganda.[563]

Fake News

While government has been trying to cover up various scandals in which officials are involved, at the same time government representatives present and/or tolerate fake news in the media under their control. In addition, as Amnesty International noted, "slurs by officials and media close to the government keep creating a toxic environment for transitional justice activists and independent media."[564]

The Serbian Journalists' Code of Ethics says that it is the right of the media to have different editorial concepts, but it is the obligation of journalists and editors to make a clear distinction between the facts they convey and comments, assumptions and speculation.[565] It also says that publishing speculative allegations, libels, rumours and fabricated letters or letters whose authors are unknown or the identity of whom is not verifiable, is incompatible with journalism.[566] Again, theory and practice significantly differ.

At the 4th Regional Conference on Security Challenges in the South East Europe (SEE), organised by the Regional Cooperation Council (RCC), which took place in December 2019 in Trieste, speakers at the panel dedicated to the issue of disinformation concluded that the reporting of the mainstream media in Serbia was particularly worrying and that there was, for the post part, no impartial journalism in the public realm[567]. It was also noted that, in this case, the problem is not in "non-professionalism or unplanned mistakes" but rather in "intentional spreading of fake news".

As the portal "Raskrinkavanje" (Unmasking) reports, four tabloids in Serbia with the largest circulation - Informer, Srpski Telegraf, Alo and Kurir – published at least 945 fake or unfounded news on their cover pages in 2019[568] (compared to 700 in 2018[569]), the majority of them based on lies about the opposition parties and leaders in Serbia. One of these tabloids even reported about events that have never happened[570]. Those tabloids are regularly financed from the local communities' budgets in the form of projects co-financing and public procurement, though they violate the code of ethics of Serbian journalists on regular basis, the website noticed.

Tabloids are not the only media that thrive on fake news or disinformation. The"Raskrinkavanje" portal regularly brings them to the public attention.[571] One of the latest example of fake news and disinformation about the lives of refugees and migrants temporarily residing in Serbia is a report released by the state-owned Tanjug news agency about "Increased police presence in Sid due to unregistered migrants", the Vojvodina Research and Analytical Centre (VOICE) wrote under the title "RTV via Tanjug fabricated stories about incidents and attacks by migrants on locals in Sid".[572]

"Fake news gets distributed everywhere, while maybe one-tenth as many people will see a denial of it," Milorad Tadic, owner and chief executive of local Boom 93 Radio from Pozarevac said.

Fake news is just another brick in the wall that proves that the quality of journalistic standards is decreasing. Furthermore, among those violating such standards are some of the most influential media in the country. On the other side of the media spectrum, there is a group of investigative journalists, working mostly for online media and weeklies, some of whom have been internationally awarded for their work (for example, Stevan Dojcinovic, ICFJ[573], CINS – European Journalism Award for Investigative Journalism[574]).

So, do people in Serbia trust their media? According to a poll of 1,500 people conducted by the Centre for Free Elections and Democracy (CeSID), 39 percent of Serbians do not trust the media at all, while a mere 23 per cent partly or fully trust them. Fake news is viewed as a problem by a quarter of the persons polled, with 16 per cent saying that the problem is the influence of political parties and 15 per cent see the lack of professional journalists as a problem, the independent daily "Danas" reported from the Media Talks conference organised by USAID.[575]

According to research of the European Broadcasting Union (EBU[576]), Serbia is one of four countries in Europe in which less than half the citizens trust the media – but those who do, they trust TV and online media.

[563]https://serbia.mom-rsf.org/en/media/print/
[564]https://www.amnesty.org/en/countries/europe-and-central-asia/serbia/
[565]Code of Ethics, I Authenticity of reporting, Article 2
[566]Ibid, Article 5
[567]https://europeanwesternbalkans.com/2019/12/05/disinformation-and-fake-news-widespread-in-the-western-balkans/
[568]http://ba.n1info.com/English/NEWS/a406020/Website-Almost-a-thousand-fake-news-on-Serbia-s-tabloids-front-pages-in-2019.html
[569]https://www.stopfake.org/en/700-false-news-stories-in-serbian-tabloids-in-2018/
[570]https://www.serbianmonitor.com/en/informer-reports-on-non-existent-event-as-it-has-already-happened/
[571]Raskrinkavanje, page with fake news - https://www.raskrikavanje.rs/cat.php?disp=13
[572]http://voice.org.rs/rtv-preko-tanjuga-izmislio-incidente-i-napade-migranata-na-lokalno-stanovnistvo-u-sidu/
[573]https://www.icfj.org/about/profiles/stevan-dojcinovic
[574]https://www.cins.rs/cins-dobio-evropsku-novinarsku-nagradu-za-istrazivacko-novinarstvo/
[575] Survey: Close to 40per cent of people in Serbia don't trust the media https://www.serbianmonitor.com/en/survey-close-to-40-of-people-in-serbia-dont-trust-the-media/
[576]EBU report - https://www.ebu.ch/publications/serbia-country-profile * It did not change, it has to be downloaded.

Civil society engagement in business integrity

Serbian civil society engagement in business integrity can be assessed at 25 out of 100 given that:

- civil society has a track record of convening and supporting short-term or long-term initiatives in key areas for the private sector, such as public procurement and cooperation with law enforcement, but business integrity is not in the focus of NGOs involved in anti-corruption
- CSO initiatives involve, in many cases, anti-corruption stakeholders from the public sector, civil society, media, international organisations, and to a significantly lesser extent private sector
- such initiatives result, in some cases, in tangible outcomes and commitments from all participating stakeholders, publicly documented in an action plan, for example

Anti-corruption initiatives of civil society organisations (general overview)

There are more than 500 active CSOs in Serbia, the goals and activities of which are related to anti-corruption issues.[577] Some of them are mostly focused on local initiatives, while others use experts' knowledge and recommendations to help public sector reforms. CSOs are engaged as watchdogs in advocacy campaigns, on research projects and in working with the citizens.

In the last few years, it has become obvious that the space for the activities of CSOs in Serbia is narrowing [578]. Since the beginning of the negotiation process for joining the EU, some CSOs have been focused on developing joint initiatives in which some activities are related to anti-corruption issues. For example, the National Convention on the EU represents a permanent body for a thematically structured debate on Serbian accession into the European Union between the representatives of governmental bodies, political parties, CSOs, experts, trade unions, the private sector and representatives of professional organisations.[579]

Regarding anti-corruption in the context of EU accession negotiations, CSOs are particularly involved in Chapter 23 (rule of law and anti-corruption, fundamental human rights, media freedom), but also in chapters 24 (justice, freedom and security), 5 (public procurement), 27 (environment protection) as well as in others.

There are several other CSO groups active in anti-corruption topics of interest for the private sector, such as public procurement, public-private partnerships, state aid, taxes, inspection supervision and the public interest. That includes seven CSOs with expertise in various policies covered within chapters 23 and 24 of the EU accession negotiations - Coalition prEUgovor[580], the Coalition for Oversight of Public Finances[581], Group for Media Freedoms[582] (that gathers NGOs, media, journalist and media associations) and numerous partnerships created for the implementation of specific projects.[583]

Cooperation with anti-corruption stakeholders and its results

The basic level of cooperation between CSOs and public authorities includes providing information for monitoring the activities and participation of state institutions representatives in the promotion of CSO's findings.[584] Although the law regulates it, CSOs face problems in collecting information needed for their monitoring[585], even in cases when the Commissioner for information decides that information has to be disclosed.[586] When it comes to the promotion of research findings, government representatives are increasingly reluctant to take part in it, in particular if they expect well-argumented criticism.[587] On the other hand, there are examples of active promotion of pro-governmental organisations or NGOs, some of them founded by the people from government ranks, in which the government representatives participate zealously.[588]

Another type of cooperation is related to donor projects, where public institutions at the central or local level are beneficiaries and CSOs are implementing partners.[589] That is, for example, the case with the development of local anti-corruption plans in numerous municipalities. There are also situations where NGOs and municipalities are partners on a project.[590]

Traditionally, Serbian NGOs cooperate best with independent state institutions, promoting actively their role in the last 16 years.[591]

[577] According to the data from: http://ocdoskop.rs/ci/organizacije.html
[578] http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/NGOs_in_Serbia.pdf
[579] http://eukonvent.org/
[580] http://preugovor.org/prEUgovor/1121/About-us.shtml
[581] http://nadzor.org.rs/
[582] https://www.gradjanske.org/za-slobodu-medija/
[583] E.g. https://cpes.org.rs/ka-efikasnijem-sistemu/, http://www.balkantenderwatch.eu/
[584] https://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/konferencije/434-konferencija-sankcionisanje-krenja-antikorupcijskih-propisa
[585] https://www.juznevesti.com/Drushtvo/Transparentnost-Poreska-uprava-krije-podatke-o-kontroli-medija.sr.html
[586] https://www.poverenik.rs/images/stories/dokumentacija-nova/izvestajiPoverenika/2019/Izvestaj-za2019.pdf
[587] Based on Transparency Serbia and other NGO experiences in particular in recent years.
[588] https://www.nacionalnaavangarda.rs/konbes/
https://www.ust.rs/galerija.html
http://rs.n1info.com/Vesti/a497574/Razvojni-put-Vladinog-sluzbenika-iz-NVO-sektora.html
[589] http://www.skgo.org/vesti/detaljno/2276/radionica-o-metodologiji-za-pracenje-i-izvestavanje-o-primeni-lokalnog-antikorupcijskog-plana
https://www.transparentnost.org.rs/index.php/sr/projekti/175-podrska-za-izradu-lokalnih-antikorupcijskih-planova
[590] https://mojbecej.rs/bum-odobrena-realizacija-projekta-sa-opstinskim-budzetom-na-ti/
[591] https://www.transparentnost.org.rs/index.php/sr/aktivnosti-3/arhiva-projekata/izvetaji-nezavisnih-tela

Non-governmental organisations used to participate in governmental projects for improving legislation and developing anti-corruption strategies. The representatives of NGOs participated in the working groups, providing their inputs starting from the drafting phase. However, that practice is not frequent anymore[592]; today, NGOs can mostly comment drafts already prepared by ministries, at best.

There are also some institutionalised channels for communication between public authorities and non-governmental organisations. This includes a parliamentary group – national branch of GOPAC[593], consultations in the Anti-Corruption Agency[594], joint activities on partnership for open government[595] and fora organised by the government Office for Cooperation with Civil Society.[596]

The Government proposed 97 – 98 per cent of the laws passed in the parliament in last three years[597]. In practice, there is still a problem with the lack of public consultations and public debates in the preparation process of new public policies. Even when organised, consultative processes do not guarantee that all proposals will be considered.[598]

Due to a reduced possibility to influence the adoption of decisions by the authorities, a new wave of civic initiatives was launched in 2018, bringing citizens together on local issues. Some of the most prominent examples of that trend are "Defend the rivers of Stara Planina"[599] (opposes the construction of mini-hydropower plants for environmental concerns), defence of the Nis airport[600] (opposes the change of the airport's ownership), and the Coalition of the Anti-Corruption Association in Ecology [601] (preventing the illegal exploitation of gravel from rivers in Serbia). Some of these initiatives brought together more than 5,000 people who took part in the initiative and attracted considerable media attention.

An example of NGOs dealing with the private sector (banks) and public authorities is the customers association Efectiva. Its main goal is assisting citizens in their communication with banks and other financial institutions in solving various issues. By the means of concrete actions, Efectiva called out the government to become accountable and adopt laws and by-laws to help resolve these conflicts[602], which ultimately bore fruit.[603]

Civil Society monitoring of business integrity

Serbian civil society monitoring of business integrity can be assessed at 25 out of 100 given that:

- CSOs in Serbia are not focused on the implementation of anti-corruption mechanisms and integrity in the business sector
- almost all CSO anti-corruption initiatives were/are related to the monitoring of integrity in the public sector
- there are few associations of businesses, local governments and CSOs, coalitions of civil society organisations, as well as professional associations, whose activities can be considered important for strengthening business integrity and implementation of anti-corruption mechanisms in the private sector
- there are no advocacy activities for strengthening business integrity

Civil society's watchdog role

Civil society organisations have an active watchdog role regarding the implementation of anti-corruption mechanisms and integrity in public institutions. On the other hand, there is a lack of systematic and continuous monitoring or research of business integrity. However, there are examples of associations of businesses, local governments and CSOs, and coalitions of civil society organisations the activities of which include research and monitoring of public policies that might have some influence on the strengthening of business integrity and implementation of anti-corruption mechanisms in the private sector.

There are many examples of CSOs performing monitoring and related advocacy activities on central and local levels targeting public authorities, citizens, media and only indirectly the business sector. This includes Transparency Serbia, that monitors the implementation of anti-corruption laws and submits concrete proposals for the improvement

[592] The last examples of were the drafting of Law on Whistleblowers Protection in 2014 and the new Law on the Anti-Corruption Agency until 2016.
[593] https://gopacsrbija.wordpress.com/2019/05/13/%D0%B3%D0%BE%D0%BF%D0%B0%D0%BA-%D0%BE%D0%B3%D1%80%D0%B0%D0%B-D%D0%B0%D0%BA-%D0%B8-%D1%86%D0%B8%D0%B2%D0%B8%D0%BB%D0%BD%D0%BE-%D0%B4%D1%80%D1%83%D1%88%D1%82%D0%B2%D0%BE-%D0%B7%D0%BD%D0%B0%D1%87%D0%B0/
[594] http://www.acas.rs/%D1%81%D0%B0%D1%80%D0%B0%D0%B4%D1%9A%D0%B0-%D1%81%D0%B0-%D0%BE%D1%80%D0%B3%D0%B0%D0%BD%D0%B8%D0%B7%D0%B0%D1%86%D0%B8%D1%98%D0%B0%D0%BC%D0%B0-%D1%86%D0%B8%D0%B2%D0%B8%D0%BB%D0%B-D%D0%BE%D0%B3-%D0%B4/?pismo=lat
[595] https://ogp.rs/pou-srbija/
[596] https://civilnodrustvo.gov.rs/%D0%BF%D0%BE%D1%87%D0%B5%D1%82%D0%BD%D0%B0.8.html
[597] https://nkd.rs/wp-content/uploads/2019/10/Indeks-odr%C5%BEivosti-OCD-2018.pdf
[598] https://www.transparentnost.org.rs/images/dokumenti_uz_vesti/TS_izvestaj_o_JR_u_2019.pdf
[599] https://www.facebook.com/groups/1925328764350247/
[600] http://rs.n1info.com/English/NEWS/a376492/Protests-over-Nis-airport.html
[601] https://www.pakt.org.rs/sr/2016-05-18-09-48-28/207-uhapsen-po-prijavi-koalicije-za-nelegalnu-eksploataciju-sljunka
[602] Serbia's Swiss Frank mortgage holders strike demanding the Government to solve the problem of their increasing debts as that currency grew stronger.
[603] http://www.parlament.gov.rs/upload/archive/files/lat/pdf/zakoni/2019/1496-19%20-%20Lat..pdf

of anti-corruption policies[604], BIRODI[605]

that promotes the concept of integrity in various sectors and professions, the Coalition for Oversight of Public Finances[606], the National Coalition for Decentralization – which mobilises citizens for various issues of public interest,[607] CRTA – that frequently runs advocacy campaigns[608], Serbia on the Move – that has monitoring and advocacy activities related to corruption in the health sector[609], etc.

One example of multisectoral activism is the National Alliance for Local Economic Development (NALED), an association of businesses, local governments and civil society organisations. NALED monitors the implementation of public policies for improving the business environment, in particular those related to the Doing Business World Bank ranking. NALED has developed tools and methodologies for analysing the performance and monitoring the work of the public administration, such as the Business Friendly Certification of local governments in Southeast Europe, the Regulatory Index of Serbia, Calculator of local fees and charges and the By-Law Barometer. Since 2008, NALED has been preparing the Grey Book, which contains recommendations by businesses, local governments and civil society organisations for eliminating the administrative obstacles to doing business in Serbia. The state institutions also use it as guidelines in planning and implementing the regulatory reforms.[610]

Advocacy for business integrity

Strengthening business integrity is not in the focus of CSO advocacy. However, the Corporate Compliance Association was established in 2018[611]. This association brings together individuals and companies advocating for the establishment of a fundamental system of values in day-to-day business operations. The founders, members, partners and associates of the association have recognised the fact that a multilateral approach to the principles of fairness, conscientiousness, good customs and fair relations among companies would also provide a substantial contribution to other spheres of social life[612]. During 2019, the association participated, together with its partners, in organising several trainings on the implementation of anti-corruption mechanisms and integrity in the private sector.[613]

Another example is the Coalition for Solidarity Economy Development, an established network of organisations[614] dedicated to developing a solidarity economy in Serbia.[615]

[604]https://www.transparentnost.org.rs/index.php/sr/inicijative-i-analize-ts
[605]https://www.birodi.rs/odrzan-sastanak-koalicije-za-integritet/
[606] http://nadzor.org.rs/
[607]For more details see: https://nkd.rs/
[608]https://crta.rs/kampanje/
[609]http://srbijaupokretu.org/predstavljen-izvestaj-istrazivanje-o-klinickim-ispitivanjima-u-srbiji/
[610]For more details see: https://naled.rs/en/o-nama, Current prime minister, Ana Brnabic, before becoming a member of the government, served as a board chair of NALED https://naled.rs/vest-premijerka-obisla-zaposlene-u-naled-u-2421
[611]https://www.linkedin.com/company/corporate-compliance-association/
[612]For more details see: https://www.linkedin.com/company/corporate-compliance-association
[613]For more details see: https://www.prospector.rs/seminari/znacaj-antikorupcijskih-programa-za-kompanije/ and https://www.prospector.rs/seminari/antikorupcijski-seminari-za-kompanije/
[614]Members of the Coalition are: European Movement in Serbia, Initiative for Development and Cooperation, Smart Collective and Trag Foundation.
[615]For more details see: https://solidarnaekonomija.rs/wp-content/uploads/2019/12/KoRSE_infokit_en.pdf

ANNEXES

List of sampled companies:

1. Javno preduzeće Elektroprivreda Srbije Beograd (Stari Grad) *
2. Društvo za istraživanje, proizvodnju, preradu, distribuciju i promet nafte i naftnih derivata i istraživanje i proizvodnju prirodnog gasa Naftna industrija Srbije A.D. Novi Sad*
3. Fca Srbija D.O.O. Kragujevac *
4. Privredno društvo za poslovne usluge Mercator-S Doo, Novi Sad
5. Preduzeće za telekomunikacije Telekom Srbija akcionarsko društvo, Beograd *
6. Delhaize Serbia društvo sa ograničenom odgovornošću Beograd (Novi Beograd)
7. Operator distributivnog sistema Eps distribucija D.O.O. Beograd *
8. Preduzeće za spoljnu i unutrašnju trgovinu i usluge Nelt Co. Doo Dobanovci
9. Javno preduzeće Srbijagas Novi Sad *
10. Telenor D.O.O. Beograd
11. Preduzeće za proizvodnju guma Tigar Tyres, društvo sa ograničenom odgovornošću Pirot
12. Philip Morris Operations A.D. Niš
13. Coca-Cola Hellenic Bottling Company-Srbija, Industrija bezalkoholnih pića Doo Beograd (Zemun)
14. Preduzeće za proizvodnju, promet i usluge Victoria Logistic Doo Novi Sad
15. Društvo za proizvodnju, promet i usluge Knez Petrol Doo Beograd
16. Akcionarsko društvo za proizvodnju petrohemijskih proizvoda, sirovina i hemikalija Hip-Petrohemija Pančevo *
17. Akcionarsko društvo za vazdušni saobraćaj Air Serbia Beograd *
18. Hbis Group Serbia Iron & Steel D.O.O. Beograd
19. Phoenix Pharma Doo, Beograd (Čukarica)
20. Mercata Doo, Beograd (Novi Beograd)
21. Preduzeće za izgradnju gasovodnih sistema, transport i promet prirodnog gasa Yugorosgaz Ad Beograd (Stari Grad)
22. Društvo sa ograničenom odgovornošću Veletabak za unutrašnju i spoljnu trgovinu, Novi Sad
23. Javno komunalno preduzeće Beogradske Elektrane, Beograd (Novi Beograd) *
24. Društvo za promet naftnih derivata Lukoil Srbija Ad, Beograd (Novi Beograd)
25. Privredno društvo za trgovinu i usluge Omv Srbija Doo Beograd (Novi Beograd)

**companies with partial or full state ownership*

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