WHITE BOOK

Proposals for improvement of the business environment in Serbia

2020

Foreign Investors Council

FOREIGN INVESTORS COUNCIL

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Proposals for improvement
of the business environment in Serbia

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and Foreign Investors Council

2020

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

www.fic.org.rs/whitebook2020.html

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FOREWORD

Dear Reader,

Welcome to the Foreign Investors Council's latest White Book, the most authoritative and up-to-date guide to improving the business environment in Serbia. The FIC today comprises over 120 companies employing more than 100,000 people and invests over EUR 36 billion. Its mission is to actively promote and develop a predictable, competitive and sustainable business environment, for the benefit of all.

But we cannot talk about today without looking back at recent months. I am sure that at the beginning of 2020, when the preparations for this year's edition were intensifying and our team was keen to do its best in making Serbia a better country to do business in, nobody could even imagine the kind of crisis the whole society would suddenly face. COVID-19 has given us all an enormous challenge, forcing us to face reality and change the way we live and do business.

Nothing is the same any more, and nor is this year's edition of the White Book. With joint forces, our team has summarized all aspects of the crisis and its effects. We strongly believe that this is the right approach and is the greatest contribution we can make in a situation like this – to be the engine that drives the business sector and supports economic recovery, using our knowledge and know-how to draw up concrete proposals on how to resolve burning issues.

Our analysis is structured around the areas that we see as priorities: taxes, labor, inspections and food safety, infrastructure and real estate, health, bankruptcy and Forex, with digitalization and e-commerce as this year's top priorities. In the last couple of months, it has been clear, more than ever, that digitalization is not just a phrase, but a real need of the whole society, because the entire system has moved to remote functioning. Serbia needs to seize this opportunity and improve its competitiveness, not only in e-government, but also throughout the private sector. Improvements in these areas will have multiple very positive effects on the future economy and will make the country more attractive for foreign investors.

This year, instead of the score card system, an index which compares progress in all areas that the White Book covers, the 2020 edition reflects the impact of COVID-19 on all relevant regulatory areas.

We are fully aware of the challenges faced by the Serbian Government and that is why we have offered and will continue to offer our expertise to help in overcoming the crisis. However, despite the current situation, our expectations remain the same: further acceleration of reforms. In other words, to continue and accelerate membership negotiations with the EU, along with work on sustainable fiscal consolidation and improvement in implementing laws. It is our role to constantly point out what must be done to make Serbia a better place for all, no matter the circumstances.

Our team acknowledges Serbia's moderate but steady progress in improving the business climate. That is why the work of the White Book Task Force, especially formed by the FIC and the Government in 2017 to enhance implementation, will be so important in the upcoming year. We welcome the readiness of the Government to cooperate and understand the needs of the business community and expect the new Government to continue in the same direction.

I can assure you that, in the challenging times ahead, FIC member companies will continue to be the driving engine of the Serbian economy, bringing investments and jobs, new technology and know-how, and developing cooperation with local small and medium sized enterprises and suppliers. We all need to work together to build a better environment with a functional state, more competitive business and a higher standard of living for citizens. It is now, more than ever, crucial that the business community comes together with a unified voice and continues an open dialogue with the government. This will have multiple positive effects on the lives of all in the challenging times in which we live, but I am positive we can overcome them together.

Stay safe.

Mike Michel
FIC President

FOREWORD EU

Dear reader,

It is a privilege to foreword for the third time the annual White Book of the Foreign Investors Council (FIC), now at its 2020 edition.

I am pleased to see that the hard work of the FIC has resulted in yet another White Book, particularly as the past months have proven to be anything but business as usual. Since its establishment in 2002, the FIC continues to impress. Its membership has grown from 14 to over 120 companies, including numerous EU businesses that represent nearly 70 % of all foreign direct investments in Serbia. Thanks to the FIC and its members, the EU receives valuable information on the opportunities and challenges faced by businesses operating in Serbia.

2020 is a tough year - for businesses and citizens alike. The pandemic has forced us to change old habits and adapt to new circumstances in search of a new normal. As businesses are struggling to cope with a new reality, the pandemic has reinforced the need for a well-functioning and predicable business climate for economic growth and stability.

To this background, the work of the FIC and the recommendations presented in this year's White Book are perhaps even more valuable than previous years.

The White Book, as one of the flagship initiatives of the FIC, remains a unique platform for dialogue between the authorities and the private sector, as well as a useful tool for domestic and foreign investors.

Being based on concrete experiences on the ground, it is of particular value in pin-pointing the Government and institutions alike on where to focus when working towards a better business environment in Serbia.

It is an equally important document for the EU, too. It supports the continuous assessing and monitoring of the business and investment climate in Serbia. It provides useful insight for the European Commission 2020 Annual Report preparation - which has just been published and shared with the Serbian Government and interested stakeholders - by providing a comprehensive assessment across all sectors.

The White Book complements the European Commission's Annual Report – a document which helps the Government to focus on EU integration reforms. This objective is shared with the FIC. Both the Annual Report and the White Book confirm that the many reforms already undertaken go in the right direction towards EU integration.

Through past reforms, Serbia achieved very good results in addressing long-standing systemic weaknesses: macroeconomic stability, a stable inflation and increasing employment levels to mention a few. As a result, over the past ten years, inward foreign direct investments have increased by around 30 % and trade flows have more than doubled. Unfortunately, the ongoing crisis has forced some of this progress to take a few steps back. It is however important to recognise, that without the past years' reforms, the economic consequences of the pandemic in Serbia would have been even more severe. Thanks to all the work done over the past years, the negative impact on Serbia's economy has been kept at manageable levels. It is also thanks to past reforms that Serbia remains an attractive investment destination and that trade flows are already picking up despite continued uncertainty. Measures taken by the Government, such as the two EUR 5.1 billion and EUR 560 million economic recovery packages at large and SME- and sector-specific assistance, during this unprecedented crisis have also played an important role in this, still ongoing, recovery.

The EU membership reforms are helping businesses and citizens alike shielding from the harshness of the COVID-19 pandemic and the economy to rebound quickly and strongly.

The reform process must continue. As we are now in the midst of an health-induced crisis with a strong and negative impact on the socio-economic fabric of our society, good and sustainable reforms that are not only short-term solutions to temporary problems, but reforms that work also for the future, the next crisis, for the climate and for future generations have become more important than maybe ever before. It is therefore important for all relevant stakeholders, the Government in particular, to work on the key recommendations presented in the White Book 2020.

To make few examples:

First and foremost, in the rule of law area – fight against corruption, more transparency, independent and efficient judicial system, enforcement of contracts – all essential to a predictable business and investment climate paving the way to institutional trust and stable economic growth.

Secondly, increased transparency in the area of state aid, public procurement and bilateral international agreements is urgently needed. Furthermore, the role of public consultations in the law-making process is crucial. Businesses need to be consulted in an open, inclusive and transparent process in initiatives that affect them – despite some improvements, efforts need to continue.

Remaining weaknesses need to be addressed also in the fiscal governance framework, the public administration and the tax administration, as well as the role of the State in the economy.

Further improvements in the area of digitalization are also needed. Digitalization does not only cut red tape and administrative costs for businesses but also goes hand-in-hand with transitioning towards a greener economy in line with the European Green Deal.

The EU's and Serbia's commitment should continue. Through common, hard work, and with active support from partners such as the FIC, this can be achieved. The EU will continue to stand by Serbia as its largest donor, investor and trade partner in this process. The Economic and Investment Plan for the Western Balkans that the EU has just unveiled represents a game changer to build the necessary connectivity and reinforcing the reform process needed to make the Western Balkans an even more attractive destination for European and global investments.

Dear friends,

as autumn 2020 now arrives, it does so under new circumstances. The annual report should be seen as the springboard for future reforms and the new Economic and Investment Plan for the Western Balkans will provide substantial and additional financial resources. The new Government in Serbia should make the best possible use of this combined policy and financial resource to completing Serbia's path towards becoming an EU Member State.

Sincerely,

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

THE FIC ASSESSMENT OF COVID-19 IMPACTS

EXTERNAL SHOCK

The COVID-19 virus pandemic has caused a recession all over the world, including the Serbian economy. It was a big and unexpected external shock for all economies this year. Although it currently appears that the negative impact on the Serbian economy will be milder than expected, the effects of the crisis in the medium term are still uncertain. Our economy is fully involved in the European market where real GDP will shrink by about 7% this year, the most significant drop since World War II to date. The expected recovery of only 4.5% next year will not return real GDP in the EU to the level that existed before the crisis. Getting out of the recession for the EU, in that sense, does not mean returning to the path of long-term growth. That will have adversely affect to the Serbian economy, which exports 55% of all its goods to the EU market.

Many international institutions have forecast GDP trends for both Serbia and other countries. The EBRD predicted a decline in GDP by -3.5%, the IMF by -3%, the World Bank between -2.5% and -5.3%, and the European Commission -4.1%. However, all of these forecasts are subject to quarterly revision due to high uncertainty. Based on GDP trends in the first three quarters of this year, the decline in GDP in Serbia will be smaller, ranging between -1.2% and -1.5%. Compared to the expected growth of over 4% before the outbreak of the pandemic, the annual loss of potential GDP will be at least -6%, which more or less coincides with the fall in GDP in the second quarter of this year of -6.4%.

Not all sectors are equally affected by the pandemic. According to FIC members, 69% of the sectors monitored by the White Book were immediately affected by it, while the remaining 31% of the sectors were missing without immediate negative impact, but with possible indirect or subsequent negative consequences.

EXPECTATIONS

Economic expectations are important because they affect real economic activity. We checked this in a survey among FIC members. One third of FIC members participated in the survey in June 2020 on what they expect from their activities by the end of this year and next year. The general impression is that the decline in their activity will be mild this year, with a much faster recovery next year.

The crises will affect investments more than exports and employment, and also, profits will vary more than operating income. Within this framework, the financial sector will be less affected than the real sector. This survey was conducted before the second wave of the COVID-19 pandemic and the publication of data on the drastic fall in GDP in the second quarter in the EU and Serbia. The results of the survey are shown in Table 1 and illustrated in Figure 1.

The results of this survey fit the current GDP trend. However, it is uncertain how many expectations about the activity in 2021 will be realized, because we still do not know how long the pandemic will last, what health measures will have to be taken and what adverse effects they will cause. We also note that the structure of the economy in which the surveyed members of the FIC operate differs from the general structure of the Serbian economy. In the survey, one third of the members provide services, and two thirds are engaged in the real sectors in activity. In the Serbian economy, on the contrary, services form two

Table 1: Outcomes of FIC member' survey on activity during the COVID-19 pandemic[1]

Sectors	Year	Revenue	Profit	Employment	Export	Investment	Average
Financial sector	2020	-0.50	-0.88	-0.13	0.00	-0.25	-0.35
Real sector	2020	-0.15	-0.25	-0.20	-0.30	-0.45	-0.24
Weighted average	2020	-0.28	-0.54	-0.19	-0.18	-0.47	-0.33
Financial sector	2021	1.50	1.50	0.00	0.00	0.63	0.73
Real sector	2021	0.95	0.85	0.10	0.55	0.65	0.62
Weighted average	2021	1.20	1.21	0.07	0.38	0.63	0.70

1 The points for quantifying the answers are: 3 points for very good growth, 2 for good growth, 1 for some growth, 0 no change, some drop brings -1 point, a small drop -2 points and a significant drop -3 points. There were 17 large companies (weight 6 for size), 9 medium companies (weight 3) and 2 small companies (weight 1) participated in the survey (20 companies from the real sector, and 8 from the financial sector).

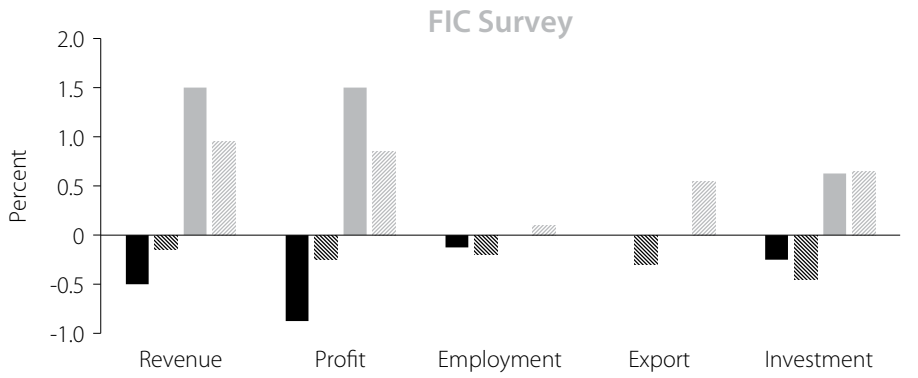


Figure 1:
Business expectations of FIC members in 2020-21

thirds of GDP, and production activities only one third. The data show that services were much more affected by the pandemic than production in the first three quarters of 2020.

RECOMMENDATIONS PRIORITY

In this edition of the White Book, we will not provide the FIC's Index of Institutional Progress in 2020. Although this index has gained the trust of the professional public, we decided to skip 2020 and continue publishing it in 2021. The reason for this decision is straightforward and justified. The COVID-19 pandemic in mid-March disrupted the usual activity of the Government and other state institutions on improving the economic environment and switched to fighting the virus disease and providing support to businesses, entrepreneurs and citizens to more easily withstand the impact of the recession. The FIC supports such state engagement and believes that external factors have caused the stalemate in institutional change. Therefore, it makes no sense to compare the two levels of institutional change, this and previous years, which are entirely incomparable.

However, further improvement of the business environment is a long-term necessity. Institutional changes must allow structural changes in the economy and better effects of fiscal and monetary measures to emerge from the recession. That is why our committees ranked the priority of the recommendations in this year's White Book.

Recommendations that should be adopted immediately received weight 3; weight 2 carries recommendations whose urgency is average and recommendations whose priority is not high carry weight 1. We called the average value of the estimated priority of implementing the recommendations the Priority Index (PI).

In Table 2, we ranked the sectors according to the priority of changing the institutional environment, i.e. according to the value of the Priority Index.

In addition to the priority of implementing the recommendations, we also added data on last year's scores and the average waiting time for the implementation of recommendations. The correlation between scores and priority of recommendations is 0.09, and the correlation between delayed implementation and priority of adopting new recommendations is -0.04. Correlation coefficients have the expected signs, but a very low value. Delays in the implementation of previous recommendations or unsatisfactory results in their implementation did not motivate FIC members to suggest what to do as soon as possible. The main motive was the assessment of which institutional changes would better help get out of the current recession. We believe that this is beneficial information for the Government.

In this sense, improvements are urgently needed in the areas of personal data protection, trade, central records of beneficial owners, mortgages and public procurement.

The second block of priorities includes staff leasing, energy sector, sanitary inspection, dual education, court proceedings, public-private partnership, restitution, VAT regulations, central records of temporarily restricted rights and related legislation to insurance.

Within the six aggregate sectors, real estate still requires rapid improvement. The insurance sector, on the other hand, has the lowest priorities.

It is interesting to note that the tax sector has priorities for change below the general average. In tax policy, the most significant problems are not in regulations and institutions, but

Table 2: Ranking of recommendations according to the priority of implementation in 2020/21

Recommendations	Average score in 2019	Average waiting time in 2019 [years]	Priority index: PI 2020
Sectors			
Law on personal data protection	1.33	8.50	3.00
Trade	1.33	7.33	3.00
Real estate: Mortgages and real estate financial leasing	1.00	4.00	3.00
Public procurement	1.00	4.00	3.00
Central registry of beneficial owners	2.00	NA	3.00
Labour legislation: Staff leasing	2.00	9.33	2.70
Food&Agriculture: Sanitary and phytosanitary inspections	1.00	1.40	2.67
Energy sector	1.60	1.80	2.63
Dual education	1.33	2.00	2.60
Judicial proceedings	1.20	4.38	2.60
Public-private partnerships	1.40	3.00	2.50
Real estate: Restitution	1.33	3.00	2.50
Taxes: Value added tax	1.14	4.71	2.50
Law on Central Register of Temporary Restriction of Rights	1.00	3.50	2.50
Insurance: Related legislation	1.00	1.60	2.50
Non-performing loans	1.67	2.67	2.50
Food& Agriculture: Food Safety Law	1.33	2.83	2.43
Law on Notaries	2.67	1.67	2.40
Investment and business climate	1.80	4.60	2.40
Real estate: Cadastral procedures	1.43	3.57	2.40
Labour legislation: The Labour Law	1.00	3.14	2.33
Labour legislation: Employment of foreigners	1.33	6.00	2.33
Law on Payment Transactions	1.33	2.00	2.30
Law on Bankruptcy	1.57	3.43	2.25
Food& Agriculture: Declarations on food products	1.33	2.00	2.25
Environmental regulations	1.83	5.33	2.22
Foreign exchange operations	1.14	3.14	2.20
State aid	1.33	7.00	2.20
E-commerce and digitalization	1.60	1.60	2.20
Pharmaceuticals	1.65	3.45	2.20
Protection of users of financial services	2.00	5.00	2.17
Illicit trade prevention and inspection oversight	1.71	3.12	2.14
Protection of competition	1.29	4.57	2.10
Capital market trends	1.67	3.33	2.00
Real estate: Construction land and development	1.80	4.60	2.00
Prevention of money laundering	1.75	7.50	2.00
Food& Agriculture: Livestock production	1.50	1.00	2.00
Insurance: Motor third party liability	1.50	6.00	2.00
Customs	1.40	1.00	2.00
Human capital	1.20	3.60	2.00

Recommendations	Average score in 2019	Average waiting time in 2019 [years]	Priority index: PI 2020
Sectors			
Insurance: Law	1.00	3.50	2.00
Taxes: Tax procedure	1.00	4.33	2.00
Labour legislation: Employment of disabled persons	1.00	7.67	2.00
Leasing	1.14	4.43	2.00
Taxes: Corporate income tax	1.57	6.43	1.88
Taxes: Parafiscal charges	2.00	4.60	1.83
Oil and gas sector	2.20	4.40	1.83
Taxes: Property tax	1.20	2.40	1.80
Company law	1.17	4.17	1.80
Taxes: Personal income tax	1.33	3.50	1.75
Private security industry	1.67	5.00	1.70
Arbitration proceedings	1.33	4.33	1.67
Law on Whistleblowers	1.00	3.33	1.67
Intellectual property	1.67	3.67	1.60
Telecommunications	1.78	1.89	1.56
Transport	2.00	4.40	1.50
Consumer protection	2.00	5.33	1.50
Labour regulations: Secondment abroad	1.00	2.33	1.30
Insurance: Natural disasters and shared services	1.00	2.50	1.00
Tobacco industry	2.00	3.50	NA
AVERAGE	1.47	4.03	2.17
Divisions			
Real estate	1.44	3.79	2.48
Labour regulations	1.33	6.33	2.35
Human capital & dual education	1.25	2.80	2.30
Food & Agriculture	1.29	1.81	2.27
Taxes	1.36	4.49	2.01
Insurance	1.09	2.74	1.88

in fiscal policy. The FIC supports the Government's efforts to help businesses and individuals in overcoming the difficulties of the current recession, but at the same time points out that such assistance has its limits determined by the fiscal deficit and public debt. If those boundaries are crossed, the entire economy will be exposed to significant risk and macroeconomic instability in which no one will fare well.

ANTI-CRISIS POLICY

In 2020, Serbia pursued an economic policy similar to other countries in the fight against the recession caused by the COVID-19 pandemic. The measures were primarily fiscal and monetary. The FIC does not question the positive effects of these measures but notes that most of the available fiscal space has already been used. The outcome was favourable as materialised in the small decline in GDP, but it had significant fiscal costs. As the economy is in recession and public debt is rising sharply, room for future incentives is limited. Therefore, further institutional reforms are needed to return the economy to sustainable growth and secure jobs. Within this framework, the FIC contributes to formulation of a detailed package of institutional changes with this White Book. FIC also emphasizes the need to overcome the stalemate in the EU accession process urgently. That would have a positive effect on the willingness to invest by foreign investors, as well as on the improvement of the general business climate.

FIC OVERVIEW

The Foreign Investors Council has reached adulthood in the difficult year of the world pandemic, which also affected Serbia. When it was founded in 2002, it had only 14 members connected by a common intention to actively promote and develop a predictable, competitive and sustainable business environment through open dialogue with the authorities and other important actors in society and the economy. This is the basic task of the Foreign Investors Council, which has remained unchanged during 18 years in which circumstances in the Serbian and world economy have changed significantly, but also the FIC itself in order to better adapt to these changes and engage more effectively in improving the business climate. We can proudly say that we have drastically increased the number of members and their influence in the economy in Serbia since its establishment. Today, the Foreign Investors Council has more than 120 members, who have so far invested over EUR 36 billion in this country and employ more than 100,000 people. As a rule, our members are foreign investors, although there are a number of domestic companies admitted under clearly defined conditions, as well as organizations that play a significant role in the areas we deal with. Our mainstays are: independence, expertise, best international practices, cooperation and support for European integration. The coronavirus pandemic did not disrupt these basic features of the FIC work, but, on the contrary, confirmed their validity.

FIC IN THE COVID-19 EPIDEMIC

After the outbreak of the COVID-19 epidemic, we had no dilemma as to what would be our primary priority. Preserving the health and safety of members, our employees, and society as a whole was second to none. Our office very quickly switched to remote work, while the engagement of employees remained at an extremely high level. Adapting work to the epidemic and protecting employees and their clients was one of the key topics we addressed in the months that followed. At the same time, our members strived to maintain business and employment as much as possible. In this regard, the FIC provided them with selfless support. We have provided fresh information on new regulations and restrictions. We have maintained an active approach and submitted proposals to the Government of Serbia to improve measures to support economy, but also to address the acute problems the economy was facing.

REORGANIZATION OF THE COMMITTEES

We also had a big change in the FIC last year - a change in the organization of the committees, which has been foreseen by the decision from 2019. It is necessary to mention here that the committees are the backbone of the work of the Foreign Investors Council. The committees bring together experts interested in the field in which the committee deals, they are a testing ground for the exchange of knowledge and professional experience: they conduct analyzes of regulations and policies, and draw conclusions and proposals for their improvement. In 2020, we had an important task to change this living and functional system, harmonizing the areas of their work with the topics that we singled out as key for work within the Working Group for Improvement and Implementation of White Book Recommendations with the Government of Serbia. The number of committees has thus been reduced to 8, and this change is expected to increase the efficiency of the committees' work. Following the completion of the reform, which is nearing completion at the time of publication of this text, the Foreign Investors Council has the following committees: Anti-Illicit Trade and Food Committee; Financial Services Committee; Human Resources Committee; Infrastructure and Real Estate Committee; Legal Committee; Pharmaceutical Industry Committee; Tax Committee; Committee on Telecommunications and Digital Economy.

MAINSTAYS OF WORK OF THE FIC

The world pandemic and the consequences that came along put the basic principles of our work to the test. We are pleased to say that we have passed this test and that they represent the right basis of work and allow for much-needed adjustments and changes.

Independence

We believe that financial independence and self-sustainability are the best guarantee of what we strive for - to represent the interests of the wider business community. The FIC is supported by membership fees, without external donations and sponsorships. In addition, all members pay the same membership fee, with the exception of the Board of Directors whose membership fee is higher but clearly defined, as is the role of the Board of Directors members in the FIC. Equality of members is achieved through a two-stage decision-making process. The first decision is made within the working committees, with equal participation of interested members without restrictions, and with the aim of reaching an agreement of all by agreement. The Board of Directors of the FIC confirms this decision.

Expertise

The activities of the FIC are based on the selfless engagement of members, who together form a huge base of knowledge and experience in the domestic and international market in more than 20 sectors in which we deal. The more knowledge and experience we have, the easier it will be to reconcile the interests of different sectors and branches of the economy and find solutions that benefit everyone. The best proof of the breadth of knowledge we have is the White Book in front of you, our trademark. A large number of members are involved in its development, and it is our platform for dialogues with the authorities and other stakeholders. We regularly express our views through position papers, e.g. reports on views, which are prepared by committees and sent to the authorities in order to initiate and enrich the dialogue. We also make expertise available to those interested through a number of projects and other activities, including appearances in the media.

Best practices

We are convinced that foreign investors bring not only fresh capital to the country, but also other values for society: new technologies, strong corporate rules, business ethics and the concept of sustainability. These are the principles that we nurture in the FIC, so we have adopted and applied through statutory acts which clearly define the rights and obligations of members and officials of the FIC. The FIC also supports Serbia's approach to modern business principles, and has long insisted on the development of digitalization, which has only gained in importance in the context of the coronavirus pandemic.

Cooperation

Cooperation is a precondition for the success of our initiatives, and our basic way of working. We try to have the most constructive dialogue with the Government of Serbia and regulatory bodies. In that sense, we attach special importance to the Working Group for the improvement and implementation of the recommendations from the White Book. This body is the official channel of cooperation with the goal of more successfully implementing the recommendations from the White Book, and it is chaired by the Prime Minister of Serbia. However, dialogue with other relevant participants, such as the EU, diplomatic circles, international financial institutions, development agencies, academia, as well as other business and public-private associations, is equally important to us.

European integration

We wholeheartedly support Serbia's European integration, and not just in words. We advocate the harmonization of Serbian legislation with EU regulations, but we also provide support for negotiations with the EU through dialogue on both sides in the process, expert advice, but also promoting the importance of Serbia's European path. We believe that as an organization we are very competent to support European integration, since 80% of the members come from the EU, while most of the others operate in the European market. It gives us great knowledge and experience that we can transfer, but also the power to see what awaits us as we progress on the path to the EU. Close cooperation with the EU has proved to be of key importance during the current crisis as well, since a response on the broadest possible level is needed to respond to a global crisis.

EXECUTIVE OFFICE

Finally, let us introduce the FIC Executive Office. This is a small team that with its efficiency, knowledge and dedication enables the smooth functioning of the association, easy communication with members and associates of the FIC. The Executive Office is in charge of implementing FIC decisions and contacts with members on a daily basis and represents a very important screw in our complex mechanism.

Key characteristics and values of FIC

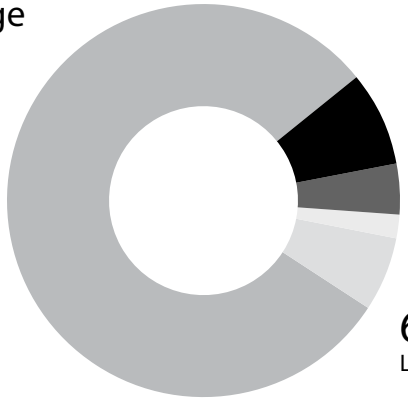
Independence	Regulatory expertise	Consistency
Best Practices	EU promotion	Cooperation

Key FIC figures

18 years since establishment

124 members from **23** sectors

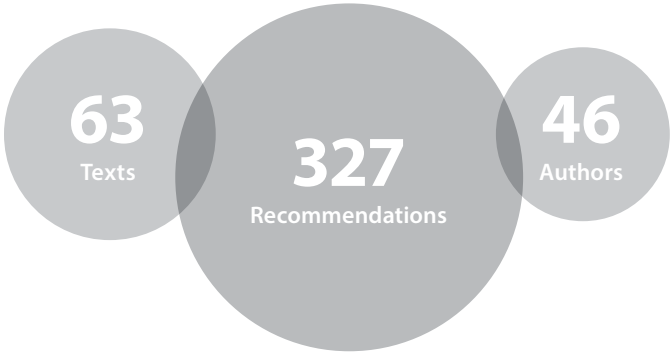
Geo coverage



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

>100,000 directly employed by FIC members in Serbia

White Book 2020 in numbers



CORPORATE SOCIAL RESPONSIBILITY MANIFESTO

As the driving force behind economic growth, the business sector is uniquely positioned to help establish a more equitable, inclusive, and sustainable society. As this understanding becomes increasingly common for both companies and social partners, we are witnessing increased corporate engagement in society, as well as the rise of influential multi-sector initiatives.

The complexity of business' responsibility during COVID-19 crisis

The corona virus has shaken the whole world, testing healthcare and welfare systems, societies and economies, bringing uncertainty and changing the ways we live and operate. Our society also faced a public health challenge that outgrows to the economic crisis. In the new circumstances, all the complexity of business' responsibility and role in the society has been more stressed. Some business activities became vital for the functioning of a society during the lockdown - from the distribution of products that are much needed by households like food and medicine, through their availability to all citizens at fair prices, to the provision of vital services such as telecommunications, financial services, etc. Above all, there was another priority - to ensure that employees, partners, suppliers and consumers are safe and healthy, and that business activities do not contribute to the further spread of the virus. In addition, the business leaders showed tremendous solidarity and responsibility - in an emergency response, business community in Serbia provided the much needed support to the public health institutions and those most in need.

Despite the negative economic consequences of the pandemic are still to be counted and some sectors are more jeopardized than others, one should have in mind that from adversity often comes opportunities. Inevitably, business models will change, hopefully toward more resilient and more sustainable, a lot of processes will be redesigned driven by technological and social innovations, while digitalization is happening in a rate that could not be ever imagined before.

In the post COVID-19 context, it is time to make a step forward - a step towards transforming role of the business in the society, where all social problems we are facing are not only a limitations, but also opportunities for business to offer an economically viable and efficient solutions that will be better, more ethical and more environmentally acceptable.

In order to bounce forward from COVID-19 and build back better, the impact of individual efforts made by companies and civil society organizations should be outlined into clear vision and joint strategy with the Government for the better post COVID-19 future.

A multi-sector approach for the common good

Joint challenges imply a greater responsibility of the state itself in defining public policies that will foster a competitive economy based on sustainable and responsible principles in accordance with the UN Agenda 2030 and European strategies. As well as business and community leaders, the state itself has a role in transforming our society by well-designed policies that use economic, political and social instruments in order to shape the outline of the better future.

Situations like current pandemic shows that the multi-sector approach and coordination among Government, business and civil society organization is more important than ever. A unique practice of such a cooperation is the Prime Minister' Philanthropy Council established in August 2018 on the initiative from Coalition for Giving. The Council represents a tool for multi-stakeholder dialogue aimed at improving the legal and fiscal issues related to giving for the common good and business engagement in this regard. Within the Council, the working groups have been working with active business participation to address topics such as reducing taxes on donations in goods and services, raising non-taxable amounts on student scholarships and improving the legal framework for food surpluses management. As one the first results, non-taxable amount on a scholarship has been raised to 30.570 RSD offering more favourable environment to support the most talented students and invest in the future workforce. As another improvement, the Tax Administration issued Guidelines for the corporate donors in order to explain and foster use of the existing legal mechanism for tax relief as defined in the Article 15 of the Law on Corporate Income Tax. Hopefully, this good practice of multi-sector cooperation should expand to more addressing number of topics where will be the most welcomed business and civil society inputs and expertise.

Venture philanthropy – towards making a long-term social impact

Aiming to create shared value for both their business and society, many companies are now turning towards establishing programs for the community that have long-term and sustainable impacts. Venture philanthropy, as a

high-engagement approach to social investment and grant making, combines business logic with philanthropy goals in bringing long term impact.

Sustainable Investment as a driving force for recovery

In the post COVID-19 context, the European Commission is working to mainstream sustainable finance in support of a green recovery. It is expected that by the end of the summer, the European Union (EU) will publish a regulation on Taxonomy, a classification system that will support investors and companies in identifying environmentally friendly activities. This means that in the near future European companies falling under the obligation of the Non-Financial Reporting Directive (NFRD) will have to disclose how, and to what extent, their activities are aligned with the Taxonomy.

The latest EU achievements in the field of sustainability provides good perspective and guidance for companies operating in Serbia. Namely, the changes in the national Law on Accounting adopted by the end of 2019 brought adjustment with the NFRD and oblige the large companies in Serbia to report on non-financial contributions. Following outstanding global practices, a number of companies in Serbia already issue an annual sustainability report voluntary and it seems that now the time has come to further expand this practice under the provision of the legal obligation.

OUR COMMITMENTS

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

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

INVESTMENT AND BUSINESS CLIMATE

The investment climate depends on the efficiency of institutions, as well as on the world trade conditions, risks of doing business, expectations of businessmen, and the structure of the economy. In the context of the global economic crisis caused by the COVID-19 virus pandemic, economic policy measures can significantly affect economic activity and mitigate the severity of the recession.

INVESTMENT CYCLE

The investment climate is heavily influenced by the current investment cycle. Serbia has had three investment cycles in the last 15 years. The first lasted between 2006 and 2009; the second ended in 2016, and the third lasted between 2017 and 2020. The pandemic abruptly brought down the third investment cycle, but, regardless of that, the amount of investments from 2019 was not sustainable. It was a consequence of a temporary expansion in construction and large infrastructural expendutures in roads and a gas pipeline (Turkish Stream), which is not sustainable. It is unrealistic to expect that the level of foreign direct investment that Serbia attracted during the last investment cycle will return quickly, particularly under the uncertainty related to the pandemic and its negative economic consequences.

Investments this year were crucially affected by the recession caused by the COVID-19 virus pandemic. This recession has two components that did not usually go with each other before. On the one hand, there was a sharp drop in aggregate demand, and on the other hand, production chains were broken. All of this was followed by a trade war between China and the United States. Therefore, the risks for investing are high, which will not contribute to getting out of the lower phase of the investment cycle quickly.

STRUCTURAL CHARACTERISTICS

The impact of breaking production links can be analysed via the input-output table. This table exists for 2015 and will undoubtedly change this year, but we still don't know in which direction. What we can assess is how a fall in demand would affect a fall in GDP within a given production structure.

The components of final demand are private and public consumption, exports and gross investment. We tested what would happen if the components of final demand, each for itself, fell by 10%. The results of this simulation are shown in Table 1. GDP will fall the most if there is a decrease in private consumption -4.8%. Then comes the negative impact of the decline in exports -3.0%, following the decline in investment -1.2% and public spending -1.1%.

The Government cannot influence exports because it does not want to devalue the RSD. Also, it cannot affect investments, because there is no funds for subsidies, and the risk of investing is significantly increased. In that sense, the space for economic policy is reduced to private and public consumption. Assume that private spending will increase by 2% in real terms due to Government transfers and public spending by 3%. On the other hand, investments will probably fall by 5% and exports by 10%. Under these assumptions, the annual GDP decline would be -2.3% ("Policy mix" column).

Of course, by sectors, the situation would be completely uneven. The most affected sectors would be the production of primary metals, electrical appliances, water transport, motor vehicles, means of transport, the IT sector,

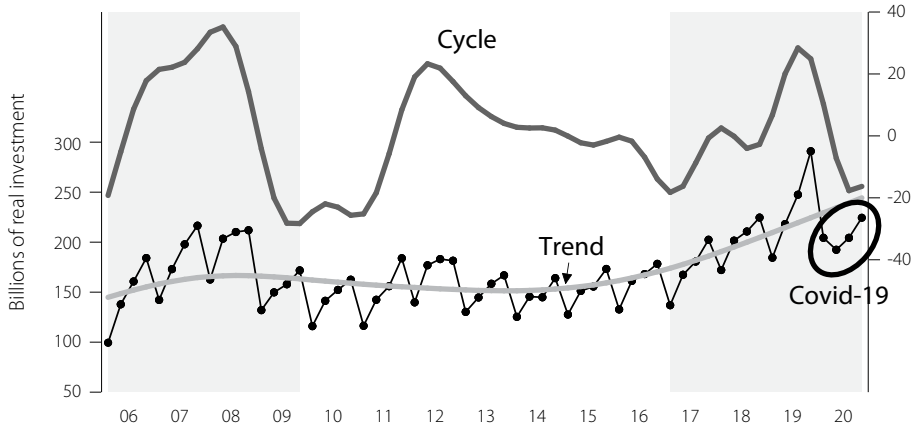


Figure 1:
Investment cycles in Serbia

Table 1: Final demand decline and structural disruptions within the input-output system

Investment -10%		Consumption -10%		Government consumption -10%		Export -10%		Policy mix		Systemic breaks	
R&D	-8.0%	Personal services	-9.9%	Public administration	-9.6%	Water transport	-7.5%	Basic metals	-7.6%	Basic metals	-12.8%
Machinery	-6.3%	Membership services	-9.3%	Health	-7.9%	Basic metals	-7.1%	Electrical equipment	-7.5%	Mining	-12.6%
Construction	-5.7%	Real estate	-9.1%	Education	-7.2%	Electrical equipment	-6.8%	Water transport	-7.2%	Wood	-12.1%
Elecrtonics	-5.1%	Fishing	-8.7%	Pharmaceuticals	-5.0%	Motor vehicles	-6.7%	Motor vehicles	-7.2%	Water transport	-11.9%
Vehicles trade	-4.9%	Travel	-8.3%	Professional services	-2.4%	Air transport	-6.4%	Transport equipment	-6.6%	Machine repairs	-11.3%
IT	-4.2%	Forestry	-8.3%	Printing	-1.9%	Rubber	-6.3%	IT	-6.5%	Mineral products	-11.1%
Transport equipment	-3.8%	Entertainment	-8.0%	Engineering services	-1.8%	Metal products	-5.6%	Machinery	-6.4%	Electricity	-11.1%
Mineral products	-3.3%	Telecommunications	-7.9%	Security services	-1.7%	Wood	-5.5%	Metal products	-6.3%	Metal products	-10.8%
Metal products	-2.3%	Sporting services	-7.9%	Travel	-1.5%	Advertisement	-5.0%	Rubber	-6.1%	Employment services	-10.8%
Electrical equipment	-2.0%	Water supply	-7.9%	Postal	-1.5%	Transport equipment	-5.0%	R&D	-5.9%	Rubber	-10.6%
Coefficient of variation	147%		53%		173%		68%		127%		67%
# Manufacturing sectors	6		3		1		7		7		8
# Service sectors	4		7		9		3		3		2
Average growth rate	-1.2%		-4.8%		-1.1%		-3.0%		-2.3%		-6.3%

the production of machinery and metal products, rubber and plastics, and research and development. Compared to the real situation in the first three quarters of this year, only the production of electrical appliances and metal products are holding up better than expected. However, if there were breaks in technological and business links at the same time, for instance at random with a negative effect of 5%, the decline in GDP would be -6.3% (column "Systemic breaks").

We do not know how business and technological ties between economic entities will be disrupted, but what is quite certain is that in this crisis, maintaining business ties is much more critical than maintaining aggregate demand. However, there is no valid experience in this area, and the measures that could be applied are far more subject to discretion than non-selective economic policy measures. That raises the question of the ability of economic policy makers to deal with structural disruptions, as well as the question of their impartiality. In that sense, the crisis has an entirely new dimension compared to 2009.

GLOBAL CONJUNCTURE

The new dimension of the crisis is also visible in Figure 2, where we compared the y-o-y GDP growth rates in Serbia and the EU. Serbia entered a recession in the second quarter of this year, while the EU was already in recession in the first quarter of 2020. That is the fourth recession for Serbia since 2008 and the third for the EU. The recession in Serbia lasted the shortest in 2014, ending after three quarters. Based on that experience, we can expect that a downturn will mark the whole of 2020.

Our economy is fully involved in the European market where real GDP will shrink by about 7% this year, the most

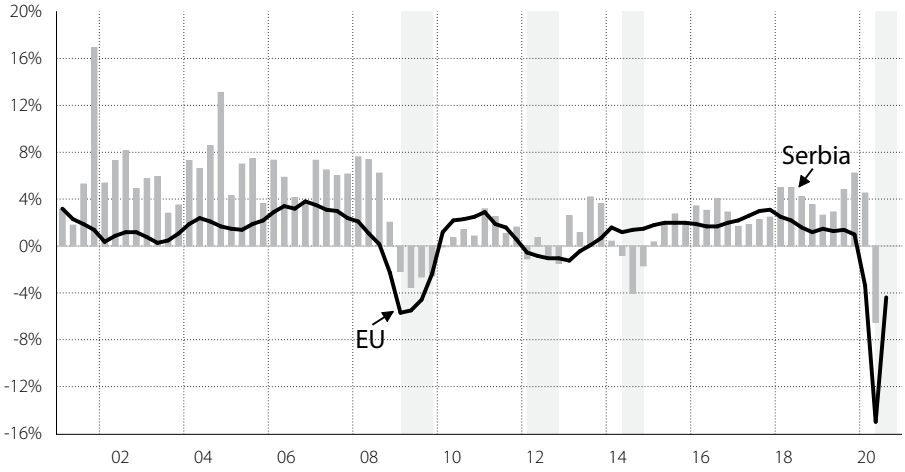


Figure 2:
GDP real growth rates in EU and Serbia

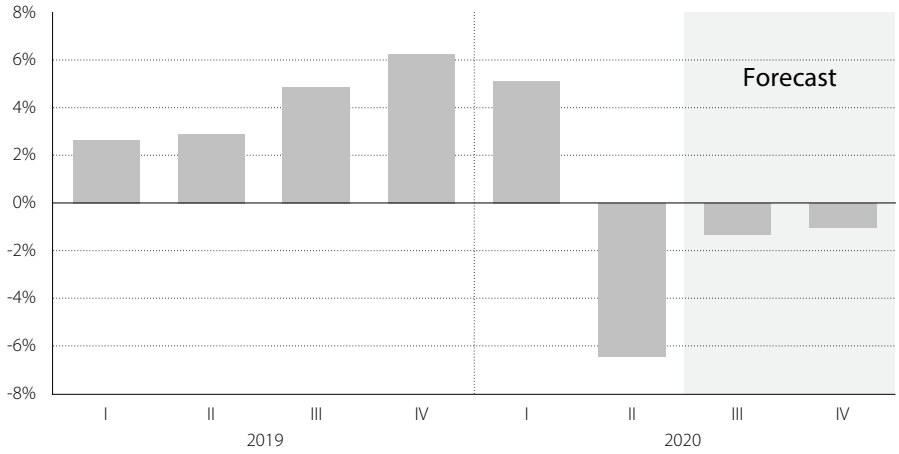


Figure 3:
GDP forecast for Serbia

significant drop since World War II to date. The expected recovery of 4.7% next year will not return real GDP in 2021 to the level that existed in the years before the crisis. Getting out of the recession, in that sense, does not mean returning to the path of long-term growth. That will have to adversely affect the Serbian economy, which exports 55% of all its goods to the EU market.

FORECAST

Many international institutions have forecast GDP trends for Serbia and other countries. The EBRD predicted a decline in GDP by -3.5%, the IMF by -3%, the World Bank between -2.5% and -5.3%, and the European Commission -4.1%. However, all of these forecasts are subject to quarterly revision due to high uncertainty. What we have demonstrated with the input-output analysis shows that for the recovery of the economy, not only measures to stimulate demand are necessary, but much more complicated structural measures are also needed. Stimulation of demand has its limit in the amount of public debt, while structural measures in the ability of economic policy makers to eliminate bottlenecks in the economy. Besides, for Serbia as a small open economy, the movement of demand from Europe and the trade war that currently exists in the world is significant because they increases the risks for foreign direct investment. In the first quarter, they were at the level of 2019, but they later dropped to 70% of that amount.

Assuming stable growth in public spending by the end of the year and a recovery in private consumption, the decline in GDP this year due to changes in final consumption could range between -1.1% and -1.5%. Figure 3 shows the optimistic variants of the GDP forecast. The forecast does not take into account the possible disruptions of structural ties in the economy, nor the introduction of restrictive health measures. According to official estimates, state aid amounting to 9% GDP saved 4% of GDP (drop of 1% instead of projected 5% decline). That raises doubts about the effectiveness of state aid and its sustainability in the medium term.

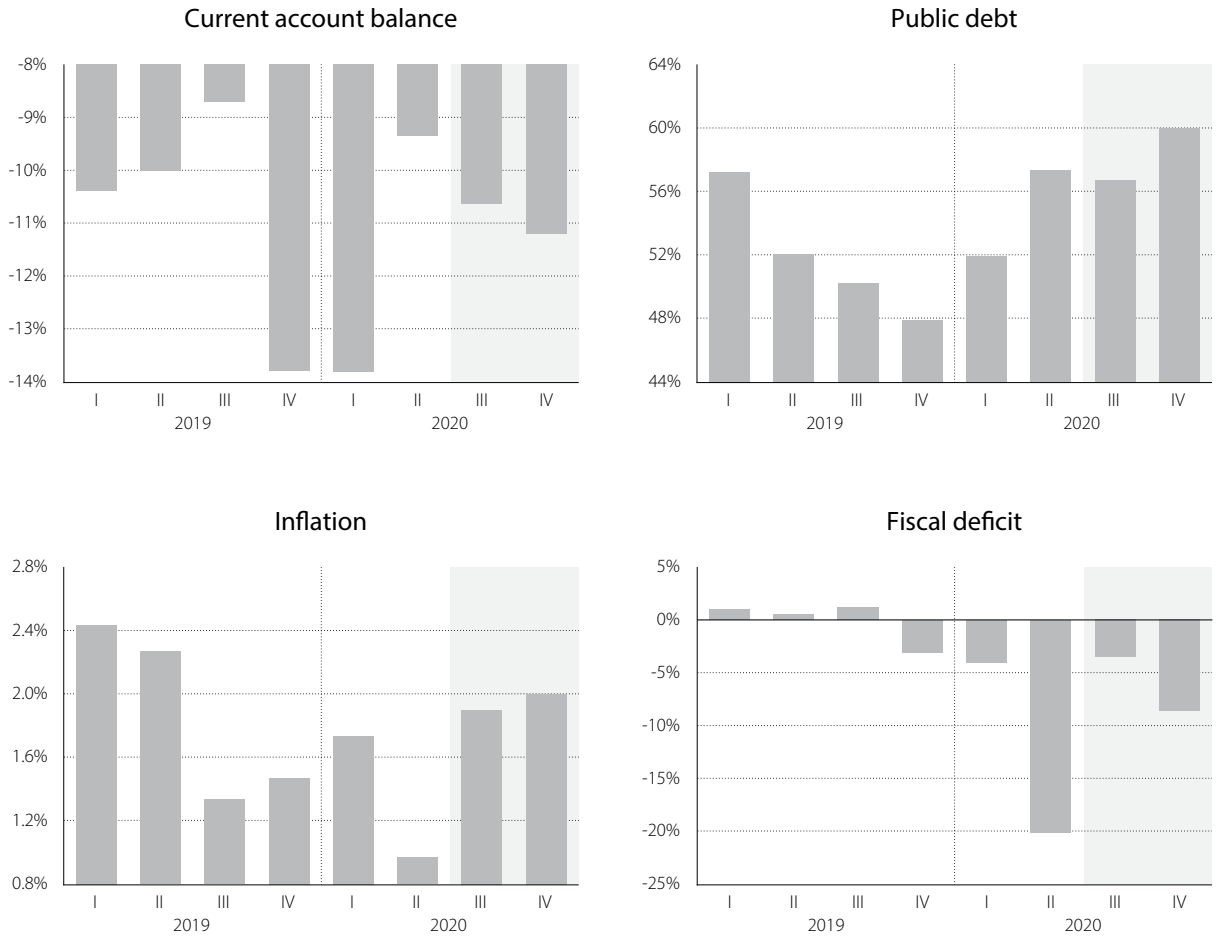
GDP growth in 2019 was based on investments and exports. Investments were exceptionally high in the fourth quarter. These activities will not be factors in the recovery of the economy in the second half of 2020, but public and private consumption. Their influence, however, has limited effect. In the short run, the broad impact of private consumption and domestic production (agriculture and food industry), as well as domestic services, may reduce the adverse effects of the crisis. Still, without investment and exports, those effects will return soon. Construction will be particularly affected by the fall in private demand, and the production of metals and minerals, equipment and means of transport, IT services and transport by the fall in export demand.

In the long run, we do not believe that economic activity in Serbia will proceed against the negative trend from Europe. That is why the rapid recovery of the EU economy is of crucial importance for the domestic economy.

MACROECONOMIC STABILITY

Figure 4 shows the basic macroeconomic aggregates. Prices are fairly stable. The inflation target is 3% +/- 1.5%. The average price growth in 2020 will be around

Figure 4: Basic macroeconomic indicators



1.5% compared to 1.8% last year. Thus, inflation is at the lower level of the inflation target corridor. That is why the exchange rate is stable. The average exchange rate in 2019 was 117.85 RSD / EUR, and in the third quarter of 2020, it was 117.77 RSD / EUR. The dinar appreciated slightly in real terms.

The current account deficit was -10.8% of GDP last year, while it could grow slightly to -12% this year, under the of the state in general in Figure 3. On the other hand, the deficit of general government after a record high of -20.5% in the second quarter of this year, will end this year at the level of -9%, according to the latest budget revision. As a result, public debt would rise from 52% in the first quarter to 57% in the third quarter, with a tendency to reach 60% at the end of the year.

According to official data on registered employment, it increased in the second quarter compared to the first quarter of 2020, despite negative GDP growth. However, the ILO and the EBRD estimated that in the second quarter, about 15% of jobs were effectively lost due to the crises.

S&P downgraded the country's credit rating from BB + positive, which it gave in December 2019 to BB + stable, in May this year. Fitch Ratings confirmed its BB + stable rating in September.

CHALLENGES AND MEASURES

The biggest challenges to macroeconomic stability in Serbia are the recession in the EU and the trade war, on the one hand, and the growth of the fiscal deficit and public debt, on the other.

The fall in GDP is not the most significant challenge at the moment. The Government supported the economy with RSD 390bn (7.1% of GDP) in the first package of fiscal measures and with RSD 67bn (1.2% of GDP) in the second package. By the end of the year, state support will reach 9% of GDP. The NBS reduced the repo interest rate from 2.25% to 1.25%, introduced a moratorium on loan repayments (first for three months, and then for an additional two months) and enabled the use of corporate bonds in open market operations to stimulate liquidity in the economy (for transactions with the NBS in bonds denominated in dinars, and for transactions with the ECB in bonds denominated in euros). At the same time, it spent EUR 1bn to defend a relatively stable dinar exchange rate.

FIC RECOMMENDATIONS

The Council maintains last year's recommendations with minor changes due to new circumstances:

- Restore fiscal stability and halt the growth of the country's public debt, (3)
- Complete the restructuring of infrastructure companies as soon as possible, including the closure of failed state-owned companies, (2)
- Increase public spending on infrastructure, including investment in health, and diversify it to reduce the infrastructure gap and improve the business environment, (2)
- Continue negotiations with the EU on membership to harmonise domestic regulations with European standards and improve the legal framework for business and investment, (3)
- Optimize the fiscal burden for countercyclical action and continue work on reorganization of the tax administration, invest in further enhancement of knowledge and capabilities of the tax administration and reduce uncertainty in the application of tax regulations. (2)

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PILLARS OF DEVELOPMENT

TRANSPORT

Serbia maintained in 2020 its strategic position in the region in all modes of transport: road, rail, air and water transport. The improvement of all types of transport continued this year, not only in the technical sense but also by concluding contracts with the executive authorities of the surrounding countries, as well as foreign investors. The three main characteristics of the state of transportation in the Republic of Serbia are the maintenance of the existing infrastructure, its modernization and harmonization with European standards.

However, the outbreak of the COVID-19 virus pandemic adversely affected the development of transport. The detention time at border crossings has been specially extended. The initiative to establish "Green Corridors", for now, is focused on the period in which there is an epidemic caused by COVID-19. Still, it should continue to support the established system even after the stabilization of the current situation.

Progress has been made in road transport with the adoption of regulations in the field of hazardous goods and transport licenses, while rules related to the transportation of goods are already in line with European regulations. The railway sector is the area where the need for modernization is the highest at the moment. Waterways are also underused, as is their potential in the context of Serbia's international connectivity. The intermodal form of transport, with three partially built terminals, is a form of transportation that is still in its infancy. Therefore, significant investments in transport infrastructure are still needed in order to use its development potentials.

Foreign Investors Council proposed six recommendations in this area for improving the situation. Concerning priority of adopting the recommendations, the priority index is 2.0 (out of a maximum of 3.0), which indicates the need for continuous adjustment of transport infrastructure.

ENERGY SECTOR

This sector includes electricity generation and transmission, the market for renewable energy sources and energy efficiency. Serbia has fully adopted the regulatory framework in line with the EU's Third Energy Package and has de jure liberalized the electricity market.

In the case of renewable energy sources, a new package of regulations to encourage the production and sale of renewable energy has not yet been adopted. In the field of energy efficiency, several energy efficiency improvement projects have been successfully awarded to private investors for public lighting throughout Serbia, with the readiness of large cities to work on it.

We emphasise that contracting energy supply for households and small consumers has started to work, but at regulated prices that have not changed for a long time. EPS (Serbian Electricity Company) is still the leading supplier of electricity, although there are about 60 registered wholesalers. The number of members on the SEEPEX electricity exchange increased from 16 to 18.

In terms of electricity supply and efficiency of its use, COVID-19 does not have any evident adverse impacts. However, a few days after the introduction of the state of emergency, EPS invoked a force majeure regime under power purchase agreements (PPAs) with privileged electricity producers. Consequently, the effects of PPA were suspended during the state of emergency.

Foreign Investors Council suggests eight recommendations in this area for improving the situation. Concerning priority of adopting the recommendations, the energy sector requires a rapid change. Index of priority implementation for recommendations is 2.63. That brings the energy sector to the top of the list of sectors for the necessary improvements in the coming period.

TELECOMMUNICATIONS

The synergy between the Government of the Republic of Serbia and electronic communications operators marked the activities in 2020 that was triggered by the coronavirus pandemic. The results of these activities had a positive impact on the entire society and economy of the Republic of Serbia since they enabled their successful functioning in conditions of the state of emergency throughout the country. The operators supported all the measures of the Government and made their resources available to achieve the general interest.

A crucial moment in the state of emergency was the sudden increase in domestic traffic that exceeded the existing capacities of the operators, as a result of which one of the main priorities was a significant investment in the network to ensure the expansion of capacity as soon as possible. At the same time, there has been a drastic decline in roam-

ing traffic due to restrictions on the movement of people outside the territory of national borders around the world, which has resulted in a reduction in operators' revenue.

Foreign Investors Council points out that the sector received a generous support from the Government in expanding network capacities and maintenance of the existing capacities during the state of emergency.

Foreign Investors Council proposes nine recommendations in this area for improving the situation. Concerning priority of adopting the recommendations, the telecommunications sector requires more continuous than rapid changes. In that sense, demand for introducing novelties in the next year is not high, with the priority index PI 1.78.

DIGITALIZATION AND ELECTRONIC BUSINESS

This sector includes e-commerce, electronic identification and documentation, as well as the operations of administrative bodies, including the connection of public databases. This year, the whole world suddenly began to adapt to the new situation caused by the appearance of the coronavirus and turned to e-business due to the completely changed way of life and business that we knew. Many positive changes have also taken place in Serbia. A large number of companies have launched working "from home", a larger number of citizens have started using the services of the e-Government portal, numerous new services have been developed, and administrative procedures that used to be sluggish has never been faster and more accessible.

The existing legal framework provides space for businesses to develop digital sales channels, as well as to protect the rights of consumers in the online environment. Although this type of commerce recorded significant growth in 2020, e-Commerce still has excellent potential for development, as only half of the citizens buy goods and services online.

There is a significant progress in the part of the National Bank of Serbia regulations that enables further digitalization of financial services. For example, in addition to the possibility of video identification of individuals, the identification of legal entities has recently been enabled. Through the national IPS payment system (Instant Payment System) using the QR code, it is possible to pay monthly bills, make purchases in retail outlets, as well as in online stores in a straightforward way.

In order to perform epidemiological surveillance related to the COVID-19 virus, an integrated e-Health information system has been established. The goal of this system is to collect data on the number of people tested, infected, cured and died from the consequences of diseases caused by COVID-19 virus.

The Foreign Investors Council proposes five recommendations in this area for improving the situation. According to the Foreign Investors Council, there is still a need for the urgent adoption of the proposed recommendations, as the priority index is PI 2.20.

REAL ESTATE AND CONSTRUCTION

As in last year's edition of the White Book, the focus of the Foreign Investors Council remains the implementation of the Law on Planning and Construction, the implementation of a unified procedure for obtaining construction documents, legalization of existing buildings under new regulations, conversion of construction land use rights and cadastre regulations, and cadastral procedure.

Although construction as an activity has significantly advanced until the appearance of the coronavirus, the issue of land ownership and mixed forms of state and private land ownership remains a major obstacle to construction in Serbia. All procedures that were not digitized before the COVID-19 pandemic were significantly slowed down due to a reduction of the workforce in administration and working on distance. For example, this was evident in the work of the RGA. However, after the initial confusion, some progress has been made here in communication through the issuance of electronic real estate sheets and copies of plans.

The sector in general is not homogeneous, and its parts behaved differently as it used to be the case in the past. The most urgent changes were proposed in the area of mortgages and financial leasing (PI is 3.0), where the Foreign Investors Council gave only three key recommendations. In the area of restitution, there were four recommendations (PI is 2.5), while there are 10 recommendations for the improvement of the cadastral procedure (PI is 2.40). In the real estate and construction sector, the Foreign Investors Council identified seven recommendations, which require swift implementation (PI 2.48).

LABOUR AND HUMAN CAPITAL

There were no improvements in the previous year, although

they were expected, both through amendments to the Labour Law and in court decisions. All this was followed by the coronavirus pandemic, which fundamentally changed the labour market. The Government had to intervene with its decrees, recommendations and announcements, not only to apply incentives to maintain employment, but also to specify the rights and obligations of employees and employers in the new circumstances (work from home, the amount of benefits, the rights of employees in self-isolation, paid and unpaid leave, the rights of parents who have children up to 12 years of age, temporary incapacity for work, use of annual leave, etc.). Foreign Investors Council analysed all these issues in details and gave recommendations on how to improve the situation here.

According to official data, there is no increase in unemployment, i.e. at the time of the coronavirus, the formally registered employment increased. That does not correspond to the situation with the members of the Foreign Investors Council, nor does it coincide with many surveys of business people. In any case, the area of employment is significant and requires continuous monitoring of the situation. In human capital and dual education, the pandemic has also disrupted the quality of education and training of the workforce.

In the field of the labour market and labour relations, the Foreign Investors Council proposed six recommendations for improving the implementation of the Labour Law (PI is 2.33), as for the work of foreigners three recommendations (PI is 2.33), as well as three recommendations for sending employees abroad for a temporary position (PI is 1.33), and three recommendations for vocational rehabilitation and employment of persons with disabilities (PI is 2.0). Human capital has six recommendations of average priority (PI is 2.0), while dual education has five recommendations of high priority (PI is 2.6).

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INFRASTRUCTURE

TRANSPORT

CURRENT SITUATION

When it comes to all types of transport, the importance of the Republic of Serbia is indisputable, both for the Balkan countries, as well as for the area of Southeast Europe and beyond. The improvement of transport would be most expediently considered through five modes of transport: road, rail, air, water and intermodal.

The aspiration to approach the levels of development of the European Union is present in this segment as well, which is primarily reflected in the implementation and harmonization of Serbian positive regulations with European regulations. The basis for these activities is certainly the General Master Plan for Transport in Serbia (abbreviated TMP), from 2009, which contains guidelines and plans for the road, rail, water, air, and intermodal transport sector, ending in 2027. The General Master Plan for Transport in Serbia is also the basis for existing and future projects that will be financed from EU pre-accession and accession funds, as well as other sources of funding.

When it comes to legislation, the Road Transport Sector is the most extensive, given that road transport is the most represented in relation to other modes of transport. Out of Serbia's 5,000 kilometers of roads, 1,100 kilometers have been identified as a high priority for rehabilitation, in line with the Transport Strategy and the aforementioned General Master Plan. Progress has been made in road transport with the adoption of regulations in the field of dangerous goods and transport licenses, while regulations related to the transport of goods are in line with European regulations.

The railway sector is the sector in which the need for modernization is highest at the moment, which has been intensively worked on in the last few years. In the area of rail transport, where there is progress, it is necessary to continue to open the market to private operators and ensure the sustainability of reformed railway companies.

Waterways are not sufficiently used, nor is their potential in the context of Serbia's international connection. Another burning issue with this sector is the financing of both the reconstruction and modernization of water transport. The funds needed to improve ports, waterways, and associated systems, as well as their maintenance, are really large. Novelties in terms of regulations governing water transport introduce amendments to the Law on Navigation and Inland Ports.

Intermodal form of transport, with three partially built terminals, is a form of transport that is still in its infancy, with a tendency to develop in the coming period.

The three main characteristics of the state of transport in the Republic of Serbia are the current maintenance of the existing infrastructure, investment, i.e. modernization of the same, and harmonization with European standards. Investing in infrastructure, as well as investing and maintaining the existing transport network are the goals to be pursued.

COVID-19

All facilitation and elimination of administrative barriers, especially in the transport of goods, are of interest to the Republic of Serbia. About 350 kilometers of new highways have been built in Serbia since 2012, only in 2019, about 130 kilometers of highways on Corridor 10 and "Miloš the Great" were opened to traffic, and after 30 years, the complete road Corridor 10 was finished. However, it is clear that this connection and the reduced travel time have no use-value in the case of a long stay at border crossings. The initiative to establish "Green Corridors", for now, is focused on the time period in which there is an epidemic caused by COVID-19, but consideration should be given to continuing to support the established system even after the current situation has been stabilized.

Digitalization was of particular importance to the transport and logistics industry during the pandemic. The adoption of this trend, which was current even before the start of the pandemic, helped companies in this industry to adapt faster to the new situation. Its importance was especially reflected in the increased demand for home delivery service, and it is expected that the growth of buying and selling over the Internet will continue in the following period.

POSITIVE DEVELOPMENTS

In previous years, as well as this year, the improvement of all types of transport continued, not only in the technical sense but also in the sense of concluding contracts and negotiations with the executive authorities of the surrounding countries, as well as foreign investors.

Part of the projects facing the competent Ministry is the construction of the Belgrade-Budapest railway, the construction

of the Niš-Merdare-Priština highway, the reconstruction of the Belgrade-Bar railway, while project documentation for the Belgrade-Sarajevo highway is being prepared.

In the road sector, the emphasis was placed on the construction of Corridors 10 and 11. In August 2019, the highway from Obrenovac to Čačak on Corridor 11 was opened to traffic, and the works on the section Surčin - Obrenovac were completed in December 2019. The construction of the part of Corridor 11 Preljina - Požega started in May 2019, and the completion is planned within 36 months. Projects have been completed and building permits have been issued for the first phase of construction of this section, and expropriation procedures are being accelerated. The construction of the branch of Corridor 11 Požega - Boljare is also planned, as part of the road corridor Belgrade - South Adriatic. For the section of the Požega - Boljare Corridor, a Memorandum of Understanding was signed between the Republic of Serbia and the People's Republic of China, and the development of the Spatial Plan of the special purpose area is in progress. The southern branch of Corridor 10, the highway through Grdelica gorge, has been finalized and is open for traffic.

In water transport, the project "Introduction of an Electronic Waterway Marking System (AtoN)" which the Ministry of Construction, Transport, and Infrastructure is implementing in order to raise the level of navigation safety, was completed in May 2019. The delivered contracted equipment consists of the most modern IT technologies for water transport management. Also, within the project "Hydrotechnical and Excavator Works on Critical Sectors on the Danube River in Serbia, between Bačka Palanka and Belgrade", the technical acceptance of works on the critical sector "Futog" has been completed, and the handover of works on the critical sector "Čortanovci" is in progress. The works are expected to be completed by the end of 2020. The project for the construction of a new port in Belgrade, the completion of which is planned for December 2023, has been included in the Single Project Pipeline as a project of exceptional strategic importance. A Preliminary Feasibility Study is underway. During 2020, it is planned to start drafting a Feasibility Study with a Preliminary Design.

The railway sector continued to cooperate with regional countries. The preparation of documentation for initiating the tender procedure for the reconstruction of the Niš - Dimitrovgrad railway is underway, which is important since this part of the railway connects the Republic of Serbia and the Republic of Bulgaria, the completion of which is planned for the end of 2023. The project of modernization of the Belgrade - Budapest railway is also in progress. The project is of exceptional strategic importance as it is part of the basic traffic transversal of the Republic of Serbia, it connects three of the five largest cities in the Republic and is part of Pan-European Corridor X. On the section, Belgrade - Stara Pazova, 17.19% of works have been physically realized, while for the section Novi Sad - Subotica, it is expected that the Preliminary Design will be ready during 2020.

In air traffic, the project of a new runway for the "Morava" Airport in Kraljevo is planned, and the completion of the project of the reconstruction of the runway of the "Nikola Tesla" airport. For the "Constantine the Great" Airport in Niš, the extension of the terminal building and the rehabilitation of the runway is planned.

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

In March 2020, the Government of the Republic of Serbia passed the Decree on Subsidizing the Purchase of New Electric Vehicles, which directly encourages the use of an environmentally friendly mode of transport. The amounts of subsidies are 250 and 500 euros for electric motorcycles and between 2,500 and 5,000 euros (depending on the type of drive) for electric cars. Grants are awarded through the Ministry of Environmental Protection. In addition, by amendments to the law (on taxes on the use, possession, and carrying of goods), owners of hybrid vehicles are exempt from paying taxes on the use of motor vehicles.

REMAINING ISSUES

Traffic safety is the most important issue when it comes to transport problems. The number of injured and deceased is on the rise, which is contrary to the goals of the Road Traffic Safety Strategy 2015-2020. The ubiquitous problem of road traffic is also financing - funds from state revenues as well as foreign investments are not enough for maintenance, rehabilitation, and construction of new roads, and the aggravating circumstance is the fact that this problem is directly related to traffic safety.

One of the unresolved issues is the lack of adequate infrastructure for the use of electric vehicles, which could become a significant obstacle to the country's green energy agenda and could jeopardize the strategic importance of Corridors 10 and 11. On the other hand, it is encouraging that the Ministry of Construction, Transport, and Infrastructure has rec-

ognized the need for the improvement of this issue, therefore charging stations have been installed in certain places on Corridor 10. Some large oil companies have also installed charging stations on their PSs. However, there are several regulatory issues that need to be addressed to encourage this trend, as one of the obligations towards the EC and the EU is to achieve a certain share of energy from renewable sources in the transport sector. The bylaws were adopted in 2019, and are subject to fuel trading companies. As for the electricity consumed by EVs, the situation is as follows:

- Electricity consumed when charging electric cars cannot be charged, because no one has a permit/ consent from the Electricity Supplier and the Distribution System Operator for retail electricity trade;
- Therefore, for the realization of the share of RES in transport, in addition to not being able to charge for this electricity, taxpayers cannot even prove that they have met part of their obligations for RES through electricity placed in the transport sector;
- The new EU Directive from 2018 provides additional benefits if the trader/owner of PS gets the electricity used by EV from its own production of electricity from renewable sources, but this directive should be transposed into the legal framework of the Republic of Serbia.

Modernization is the biggest problem in the railway sector. It is necessary to work on the improvement of this type of transport because a large number of lines are not used, while in some sections the speed of trains is not satisfactory. Attention should be paid to a longer-term plan for the development of rail transport and its harmonization with road transport, with the aim of increasing intermodality. One of the problems is the image of the railway, which should be actively changed according to public opinion, by changing the marketing policy.

The usefulness of other airports, in addition to Belgrade and Niš, should be increased, and a long-term strategy for the use of the entire Serbian air infrastructure should be devised.

When it comes to water transport, the biggest problem is financing - large funds are needed only for the reconstruction of infrastructure dating back to the period of the former Yugoslavia. Modernization and maintenance of the water transport system cost a lot. It is encouraging that an investment in the total amount of 66.5 million euros has been announced in the coming years, which will be focused on the development of river transport and the protection of the natural characteristics of the Danube. One of the positive examples is the reconstruction of the port of Smederevo.

FIC RECOMMENDATIONS

- Introduce additional incentives for the construction of infrastructure for the use of electric vehicles. It is also necessary to provide an adequate regulatory framework that will enable the development of this sector which takes into account the constructive recommendations of relevant stakeholders. (2)
- Adapt the Energy Law to recognize and encourage the use of electricity in the transport sector. (1)
- Increase material quality control and inspection supervision when performing works; implement international quality and project management standards in the public sector as well. (2)
- Enter into public-private partnerships in transport areas that are vital and not reserved for the state, which the state is not able to independently train, restructure or modernize, or for which it is more optimal and efficient to do so in partnership with the private sector. (2)
- Additionally work on opening the market in railway transport, in order to establish the necessary institutional structures. The application of European standards in the implementation of technologies on the railway network, for the sake of interoperability and unhindered traffic with neighboring countries in order to increase transport through Serbia, is crucial in this regard. (1)
- Implement measures that will improve the characteristics of combined transport within the Serbian transport system. (1)

ENERGY SECTOR

CURRENT SITUATION

Electricity

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

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

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

The electricity market is fully liberalized on paper. Households and small consumers remain, for the time being, entitled to opt to be supplied under regulated prices (unlike other consumers which do not have the right to regulated prices). There is an intention to phase out the regulated supply of electricity, but the Energy Agency has taken the position that there is still a need for the regulation of electricity prices. On the other hand, the Energy Agency has allowed an increase of regulated prices - starting from the latest increase was in December 2019. The experts agree that this increase is insufficient and that new increases should be expected.

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

The day-ahead market is operated by the joint-stock company South East European Power Exchange (SEEPEX). SEEPEX has not yet introduced intra-day market.

Renewables

The incentives package finalized in 2017 is available only to the entities that obtained the privileged power producer status or preliminary privileged power producer status (subject to reaching the final status during validity of the preliminary status) by the end of 2019. This incentives package was the result of the notable efforts to make consistent, comprehensive and bankable framework for supporting renewable energy.

With this package expiring in the end of 2019, Serbia has requested the assistance of the European Bank for Reconstruction and Development (EBRD) in the preparation and implementation of new incentives package based on competitive renewables auctions. Although it was expected that the Serbian Government would pass a new scheme by the end of 2019, the new scheme is not likely to be in place before the end 2020, or, even more realistic in 2021.

In preparation of the new incentives scheme, the decision makers should ensure that the new scheme envisages a competitive process for awarding incentives, rather than the first-come-first-serve system that Serbia has historically employed. The incentive scheme should also follow other criteria set out in EBRD and Energy Community joint policy guidelines.

There is still no indication whether the new scheme would envisage the support through feed-in tariff or contract for difference. The stakeholders expect that the mechanics itself is of less importance if the support scheme follows the bankability criteria.

Energy Efficiency

No major changes in the legislation regulating energy efficiency have been made in the previous year.

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

To enable the implementation of these general possibilities, the Rulebook on Model Energy Service Contracts for the Implementation of Energy Efficiency when Users are from the Public Sector (ESCO By-Law) was finally adopted in May 2015.

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

The energy efficiency market is still developing. Energy performance contracting (EnPC) projects in the area of public lighting have been initiated in a significant number of local municipalities, while the market is yet to see a successful cooperation between the public and private sector

in the area of public buildings.

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

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

COVID-19

Electricity

COVID-19 has not particularly affected this sector.

Renewables

A few days after the declaration of the state of emergency, EPS invoked Force Majeure regime under power purchase agreements (PPA) with privileged power producers. Accordingly, effects of the PPA were suspended during the state of emergency.

This invocation of Force Majeure was arguably ungrounded and sent negative signal to the stakeholders in terms of reliability and predictability. Part of the sector perceived this also as a signal that EPS has notable liquidity issues.

Energy Efficiency

COVID-19 has not particularly affected this sector, except by general slow down in work process of administration due to rules that limited the number of persons i.e. employees in enclosed space.

POSITIVE DEVELOPMENTS

Electricity

SEEPEX membership grew to 21 members.

Renewables

A number of renewables projects, including large-scale wind power plants, reached commercial operations and started production in 2019.

Energy Efficiency

The number of awarded and initiated projects in the energy efficiency market has continued to grow, which is surely a positive step towards the further development of the energy efficiency market. In 2019, the competent Ministry published two tenders for award of funds from the Budget Fund. Based on the first tender, funds have been allocated to 24 projects, while funds from the second tender are still to be awarded.

The successful awarding of several energy performance contracting projects to private investors in the area of public lighting throughout Serbia continued during the previous year.

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

REMAINING ISSUES

Electricity

Coal remains dominant resource for electricity generation – more than 70% of annual production comes from the coal-fired power plants.

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

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

Renewables

The market does not seem to be mature enough to see a large-scale renewable projects realized solely on market basis, including on the basis of the corporate PPA. The customers are not currently driven to look into direction of corporate PPAs

as the prices for the electricity coming from EPS are still rather low and currently it would be hard to argue in favour of the need to ensure supply on the basis of the corporate PPAs.

In that sense, the lack of the incentive scheme for new projects seems to be the critical immediate factor obstructing further expansion of the RES projects.

Energy Efficiency

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

As to energy supply contracting (ESC), the adoption of a model contract by the relevant authority (i.e. the Ministry of Mining and Energy) would be very helpful in addressing projects involving both the public and private sectors and removing the existing ambiguities. The public sector is still overly careful in considering prospective projects, while the understanding of this concept and its practical implementation is still lacking on the authorities' side. This specifically relates to an absence of understanding of public budgeting procedures, with some important projects involving hospitals and schools in Serbia still lagging behind as a result thereof. Even though the Ministry started working on a model ESC contract which would allow for a greater transparency and feasibility of projects on the market, the relevant model has not yet been adopted.

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

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

FIC RECOMMENDATIONS

Electricity

- Regulation of electricity prices to be abandoned (but vulnerable customers to be protected), allowing new investments in the modernisation and revitalisation of coal and electricity production. (3)
- Intra-day market to be introduced. (2)
- Consider introducing carbon pricing instruments. (3)
- Introduce grid connection reservation security mechanism e.g. bank guarantee or cash collateral by developers in order to avoid existing grid queues holding up capacity; (3)

Renewables

- Incentive system to be tailored to accelerate investments in the renewables sector and follow the EBRD and Energy Community policy guidelines. (3)
- To improve the provisions of the Law on Agricultural Land pertaining to the utilization of the state-owned agricultural land for non-agricultural purposes, such as the development of renewable energy projects, in a way to regulate in more detail the conditions for granting the public agricultural land to renewable energy investors." (2)

Energy Efficiency

- Adoption of a functional model contract to govern energy supply contracting. (3)
- Improvement of capacities of the PPP Commission and other notable public stakeholders with respect to both energy performance contracting and energy supply contracting projects involving the public and private sectors. (2)

TELECOMMUNICATIONS

The activities in 2020 triggered by the coronavirus pandemic were marked by the synergy between the Government of the Republic of Serbia and the electronic communications operators. The results of such activities had a significant impact on the entire society and economy of the Republic of Serbia by enabling successful functioning in the conditions of the state of emergency that was declared on March 15, 2020 on the territory of the entire country.

COVID-19

The operators supported all measures imposed by the state and made their resources available for general interest and to help facilitate the functioning of the entire society affected by the coronavirus. In a short period of time, the operators provided short codes free of charge and free calls to citizens of the Republic of Serbia, for the needs of the National COVID-19 Call Center within the Ministry of Health. The operators also provided the necessary devices for recording the content of the primary and secondary school curriculum, which was broadcast on the channels of the public media service and on RTS Planeta digital platform. In addition, students were provided with free data transfer to the digital platform RTS Planeta and Moja škola during online lessons in the Republic of Serbia. In this context, free internet access for video conferencing such as Microsoft Teams and Zoom was provided, which made it possible for the lessons to retain their interactive property in digital form. In cooperation with the competent ministry, a large number of students were provided with internet access, and within the same initiative, this was made possible for students from socially vulnerable families for each month until the end of the year. At the end of April 2020, for the purpose of online mock final exam for 8th grade elementary school students, using the Tesla EDU digital platform, for a period of three months mobile telephony operators provided a donation of over 1000 smart mobile phones with appropriate SIM cards for internet access.

On the other hand, the competent ministry and the regulator provided a considerable support to the industry and the Council commends their timely and adequate response during the crisis period. Owing to the strong support of the Ministry of Trade, Tourism and Telecommunications, it was possible to perform works on the development of additional network capacities and maintenance of the current capacities during the curfew, which enabled the continuous quality of services for the customers. We also appreciate the fact that during this period, RATEL worked continuously and provided maximum efficiency, while their announcement on the importance of the role of mobile operators contributed to raising citizens' awareness in recognizing false news about the alleged connection between 5G technology and the epidemic.

Although the state of emergency was lifted by the National Assembly of the Republic of Serbia on May 6, 2020, the need for greater digitalization in all areas of life and work is still present and is expected to grow even more in the coming period. Thus, the appearance of the COVID-19 virus further encouraged a faster and more comprehensive digital transformation of the society, compared to the planned transformation in ordinary circumstances. Mobile telephony operators, as holders of critical telecommunication infrastructure necessary for connecting and functioning of the entire public system and the work of the economy in the "remote" and „WFH" mode, have proven to be the main pillar of the process of digitalization of the entire society.

Also an important moment in the state of emergency is the sudden increase of national traffic that exceeds the existing capacity of the operators, as a result of which one of the main priorities was significant investment in the network to ensure the expansion of capacity for all types of traffic

in the territory of the Republic of Serbia. At the same time, there is a drastic decline in roaming traffic due to restrictions on the movement of people outside the territory of national borders around the world, which resulted in a drop in revenues.

The implementation of the Agreement on the price reduction of the roaming services in the Western Balkans region continued in 2020. Namely, from January 1, 2020, RLAH + methodology has been applied for roaming charges, and from July 1, 2020, there has been a new reduction of retail and wholesale roaming prices of operators operating in the Western Balkans. However, in 2020, the expected effect of traffic increase due to further lowering of roaming prices is missing, on the contrary - there is a significant drop in traffic due to restrictions on the movement of people between countries.

CURRENT SITUATION

The impact of negative effects on the electronic communications industry due to the appearance of the COVID-19 virus is expected not only in 2020, but also in the years to come. The key to resolving open issues lies in the improvement of the existing regulatory framework and aligning it with current developments. The adoption of the new Law on Electronic Communications is a precondition for further growth and development, not only for the electronic communications industry, but also for further digital transformation of the society and economy of our country and beyond.

Digital transformation would contribute to the development of the entire domestic industry and enable a more competitive offer by domestic companies outside national borders. This would further contribute to a better positioning of our country in the regional and world market, on the one hand, while on the other hand, these conditions would have a favorable effect on attracting additional capital and investments in our country.

This requires infrastructure and finding a model/pattern of joint action of the state and industry to overcome the current barriers, related to the construction of base stations, which relate primarily to:

- arbitrary interpretation of the Law on Non-Ionizing Radiation Protection and excessive reference to the principle of prohibition of exposure to non-ionizing radiation sources and the proportionality principle by local secretariats for environmental protection as well as arbitrary interpretation of the meaning/definition of sources of special interest;
- arbitrary introduction of restrictions in urban plans determining the minimum required distance for sites where base stations can be set up in relation to adjacent facilities, although there are no grounds for such restrictions in the law governing protection against non-ionizing radiation;
- although the Law on Environmental Impact Assessment does not impose the obligation to develop an environmental impact assessment for setting up of each individual base station, and in practice, this assessment is almost always required by local environmental secretariats (we would like to emphasize that in Serbia restrictions on the permissible level of electromagnetic radiation are several times stricter than in the European Union member states and that the actual values of the electromagnetic field measured on site are often ten times below the maximum permissible values).

Issues that hinder the installation and building of base stations due to inadequate interpretation and enforcement of environmental regulations, as well as restrictions in local self-government regulations governing spatial planning require the improvement of the capacity of state administration in terms of interpretation of regulations in the field of environmental protection and their enforcement by local self-government units in the process of environmental impact assessment.

The process of drafting of the Spatial Plan of the Republic of Serbia for the period from 2021 to 2035 is underway (hereinafter referred to as the: „Plan") for the needs of which the mobile operators provided the Ministry of Construction, Transport and Infrastructure with the plans that include an overview of both existing and future locations of base stations and routes of fiber optic sections and cooperation with the working team in charge of drafting the said Plan is expected in the coming period.

The joint cooperation of the state and the operators in overcoming the existing barriers related to the construction of infrastructure is especially important from the perspective of the development of the 5G network in the Republic of Serbia. The activities planned in 2020 regarding the radio frequency spectrum auction intended for the development of 5G technology have been postponed for 2021 due to the coronavirus pandemic. It is crucial that the tender for 5G frequencies is organized in a transparent, efficient and optimal way.

The Strategy for the Development of Electronic Communications in the Republic of Serbia and the Strategy for the Development of the Information Society expire in 2020. We propose to make an analysis of the fulfillment of strategic goals defined by the above acts, ie new strategic documents harmonized with the current situation, challenges and expected development of the telecommunications sector in the Republic of Serbia. In addition, having in mind the dynamics of the relevant market and the past period since its adoption, it would be desirable to consider the current state of fulfillment of the goals of the New Generation Network Development Strategy, and inform operators about the market situation and upcoming steps.

Other important activities at the end of 2019 and the beginning of 2020 relate to public consultations organized by RATEL regarding amendments to the following bylaws:

- draft rulebook on quality parameters for publicly available electronic communications services, performance of measurements and testing and implementation of verification of activities of electronic communications operators;
- draft rulebook on calculation of cost-based prices according to the long-run incremental costs model;
- draft rulebook stipulating the Radio Frequency Allotment Plan in the radio frequency band 2500 - 2690 MHz;
- draft rulebook stipulating the Radio Frequency Allotment Plan in the radio frequency band 3400 - 3800 MHz;
- draft rulebook on obligations of value added services provider.

Amendments to the mentioned bylaws and more precise definition of certain provisions are aimed at improving certain areas of business and their harmonization with the current development of electronic communications in the country and beyond.

POSITIVE DEVELOPMENTS

Rulebook on changes to the Rulebook on the fee calculation for the provision of services within the competence of RATEL was adopted, which significantly reduced the costs of operators in case of status change, i.e. data change (change of name, business name, headquarters or identification mark) by reducing the fee for reissuance of license in electronic form from the previous 50% to 10% of the envisaged fee. In this way, RATEL encourages the use of e-business and contributes to further digitalization of Serbia and we should not ignore the positive effects in the field of environmental protection, given that each operator has thousands of individual licenses for the use of radio frequencies and licenses for radio-relay links that may be subject to replacement.

In early July 2020 Regulation on the establishment of Radio frequency band allocation plan entered into force, which provided the legal conditions for changes to the existing and adoption of new regulations in the field of radio communications.

At the end of 2019 and the beginning of 2020, new standard offers of fixed and mobile telephony operators were published, which included the possibility of connecting via IP interconnection, thus creating the conditions for the existing TDM technology to be replaced by IP technology. In addition to the advantages of planning and realization of transport capacities, IP technology has also brought significant savings in the costs of interconnection between operators.

At the end of 2019, in cooperation with the OSCE, RATEL and ETF, MoCTI organized workshops on the development of broadband communication infrastructure in Niš, Novi Sad and Belgrade, in order to raise awareness of local government representatives about the benefits of using broadband communication networks and elimination of possible doubts regarding their implementation.

In 2020, progress has been made in the field of information security. RATEL initiated the process of registration in the Register of operators of ICT systems of special importance and adopted the Regulations on the content, manner of registration and record keeping of special centers for prevention of security risks in ICT systems, as well as the Regulation on type, form and manner of submitting statistic data on incidents in ICT systems of special importance.

In anticipation of future public tenders for the right to use parts of the radio frequency spectrum, which are a precondition for starting work on the commercial implementation of 5G technology, the Ministry of Trade, Tourism and Telecommunications has formed a working group to determine the optimal 5G model and long-term approach to this important topic. In addition to the public sector, its members are industry representatives. Such an initiative encourages the expectation that, when creating a strategy for 5G, the state will take into account the attitudes and needs of further development of our industry. In this regard, the Council expects that in the future a simple model of public bidding for radio

frequency spectrum intended for the development of 5G technology (rather than auctions covering spectrum blocks of different bandwidth) will be selected, which will open space for necessary investments in network development and introduction of innovative business models.

REMAINING ISSUES

Adoption of the new Law on Electronic Communications is necessary as a precondition for further market development - public consultations on the draft proposal of the Law on Electronic Communications were held at the end of 2016. Since the new law has not been adopted yet, the existing regulations are not harmonized with European regulations and do not follow the actual situation on the national market in terms of technology share and customer needs, which creates difficulties in developing new business models of operators and thus slows down the development of the electronic communications industry.

Despite the huge contribution during the current health crisis, in the same period, mobile operators are facing an unprecedented negative campaign and a large number of unfounded claims about the alleged connection between the infrastructure of mobile operators, 5G base stations and the current pandemic. This irrational phenomenon leads to huge problems in the field, which are primarily related to the obstruction of works on the construction and maintenance of base stations. Thus, false news and conspiracy theories affect the availability and quality of mobile networks and services, lead to delays in work, increase costs and cause significant damage to operators. As a result, citizens are deprived not only of the usual use of mobile phones but also of vital calls to emergency services, while at the same time the efficiency of the economy and public services is impaired. In this regard, mobile operators have already addressed the Government, and we expect that in the coming period the state will take all measures to protect the critical telecommunications infrastructure. Also, we believe that it is very important that state institutions actively contribute to science-based education of the population on health aspects of telecommunications technologies and raising public awareness regarding the implementation of 5G technology from the perspective of positive impact on the country's economy and quality of life.

The adoption of amendments to the Rulebook on number portability in mobile and fixed network, which would speed up and simplify the number portability process - public consultations were conducted in May 2018, but the rulebooks have not yet been adopted without any official explanation. Their adoption would speed up and simplify the number portability process in mobile and fixed networks.

It is necessary to enable the provision of public electronic communication services at a fixed location via public mobile communication networks using CLL technology (Cellular Local Loop) throughout the Republic of Serbia.

Direct Carrier Billing (DCB) as the simplest, globally widespread way of purchasing apps from platforms such as Google Play, has not been enabled in Serbia yet. DCB involves the purchase of digital content for mobile devices in such a way that the billing of this content is done by charging payments to their mobile phone carrier bill. This model has been operating for years in the European Union, including the countries of the region, given that the Payment Services Directives (PSD1 and PSD2) recognize this transaction as an exception to payment services. Although the national legal framework is harmonized with the EU, specifically the Law on Payment Services is harmonized with the PSD1 Directive, the National Bank of Serbia has not changed its position that mobile operators should be registered as payment institutions in order to provide this service, which would make the model commercially unprofitable.

FIC RECOMMENDATIONS

- Improvement of regulations and their interpretation in the field of infrastructure construction: (3)

  a) Issuance of guidelines to local self-governments by the Ministry of Environmental Protection would contribute to the cessation of excessive reference and arbitrary interpretation of the principle of prohibition of exposure to non-ionizing radiation sources and the principle of proportionality referred to in the Law on Non-Ionizing Radiation Protection by local environmental secretariats;

b) In cooperation with the Ministry of construction and infrastructure and Ministry of State Administration and Local Self-Government, it is necessary to provide education to departments in local self-governments, in order to remove spatial restrictions for the construction and installation of mobile telecommunications infrastructure;

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

- Joint cooperation between the state and industry in choosing the model and period of public bidding for radio frequency spectrum intended for the development of 5G technology - operators propose and advocate a simple auction model to sell the bands that are most needed from the perspective of technologies used and market demands. (3)
- Adoption of the new Law on Electronic Communications and leaving sufficient time for the implementation of prepaid user registration and other innovations brought by the law. (2)
- Revision of results and preparation of new strategic documents for the forthcoming period, in terms of electronic communications, information society and development of new generation networks, with active participation of operators in the process. (1)
- When negotiating international agreements in the field of electronic communications, it is necessary to organize a process of public consultations and include industry representatives in order to consider the technical specifics, deadlines and financial implications, aimed at increasing business predictability. (1)
- Adoption of the Rulebook on Amendments to the Rulebook on Number Portability for Services Provided via Public Mobile Communication Networks and the Rulebook on Amendments to the Rulebook on Number Portability in Public Telephone Networks at a Fixed Location within the shortest possible period of time. (1)
- Enabling the provision of public electronic communications services at a fixed location using CLL technology in the Republic of Serbia, without restrictions. (1)
- More active role of the Government aimed at suppressing of conspiracy theories and false news about 5G technology in order to prevent attacks and disruption of critical telecommunications infrastructure necessary for the provision of basic electronic communications services such as voice and Internet access. (1)
- Issuance of a positive opinion of the National Bank of Serbia on the provision of Direct Carrier Billing service according to the EU model, in order to enable direct payment of digital content from Google Play and Apple Store via telecommunications operators according to the EU model. (1)

DIGITALIZATION AND E-COMMERCE

CURRENT SITUATION

The whole world has suddenly begun to adapt to the new situation and turn to e-business due to the completely changed way of life and business that we knew. Many positive changes have also taken place in Serbia. A large number of citizens have started using the services of the eGovernment portal, numerous new services have been developed, and administrative paperwork, which used to require queues, has never been faster and more accessible.

After digitalization has been proclaimed as one of the key priorities of the Government, most regulatory initiatives recognize the importance of digital business and electronic procedures.

Digitalization is increasingly perceived as an opportunity, not a threat, and it is important to work on its further improvement, not only in the public but also in the private sector.

The most important fact is that the consciousness of the citizens has started to change, and the Government has started to follow these significant changes rapidly. We are witnessing a sharp increase in the number of transactions performed electronically as well as the wider application of contactless payment using digital "wallets", which are available in a large number of financial institutions.

When it comes to digitalization as a constant process, there is still significant room for improvement, which are just some of the key areas for further action of regulators, especially in the speed of changing the regulatory framework.

The existing legal framework provides space for businesses to develop digital sales channels, as well as to protect the rights of consumers in the online environment. Although this type of trade is constantly growing, e-commerce still has great potential for development. According to the data of the Statistical Office of the Republic of Serbia, in 2019, 43% of citizens have never bought goods and services online. For comparison, in 2010 this percentage was as high as 87%, which shows that this branch of business is recording constant growth. If we look at the use of the Internet, in 2010, over 54% of citizens never used the Internet, while in 2019 this percentage dropped to only 19.4%, which is also an improvement compared to 2018 by as much as 28%.

It is interesting to note that the Internet is used by all age groups, from 16 to 74 years of age, with an emphasis on increasing Internet use among the oldest population (from 64 to 74 years of age) from 1.3% in 2007 to as much as 30.1% in 2019.

According to the NBS, in 2019, almost three million users made payments over the Internet, i.e. almost 2 million users made payments via mobile phone, which again represents a nominal growth of 13% compared to 2018.

On the other hand, electronic procedures are not sufficiently represented in practice and administrative bodies do not show a willingness to use them in procedures where the electronic form is not mandatory, often insisting on the use of paper documents. The amendment to the Company Law revoked the use of the seal for business entities, by which the Law declared provisions of 10 laws and 107 bylaws in which the seal is mentioned null and void. After the adoption of this amendment, no institution, bank or organization has the right to demand a seal from companies or entrepreneurs.

The IT and Electronic Administration Office of the Government of the Republic of Serbia is the central body whose competence is the coordination of activities in the field of electronic administration, management of public IT infrastructure, and information security. A coordination council for eGovernment has been formed within the framework of the representatives of the Ministries and under the auspices of the Prime Minister of the Republic of Serbia. This year, the focus is on work on the eGovernment development program for the next three years.

Announced last year and opened in March 2019, the Data Center in Kragujevac is an institution in which, in addition to the most modern protection system, data from the city, city administrations, public companies, and institutions will be stored, and also connected to national databases. The aim of this project is to centralize all relevant data in order to more easily implement activities in the field of digitalization of eGovernment. It is planned to create a meta-register and catalog of all services.

A secondary benefit of this data center could be the renting of infrastructure and content to corporations, which would

be an excellent form of monetization and a source of funding for further improvement of the center.

The key challenges remain, creating a register of citizens and a register of addresses.

In addition to the above, we are witnessing significant progress in the part of the legal framework that enables further digitalization of financial services, through a series of decisions prescribed by the regulator, the National Bank of Serbia, in the previous period. Thus, in addition to the possibility of video identification of natural persons, with the extension of the relevant Decision, the identification of legal entities has recently been enabled. Furthermore, through the national system IPS (Instant Payment System) using the QR code, it is possible to pay monthly bills, make purchases in retail outlets and online stores in an extremely simple way.

When it comes to digitalization as a constant process, there is still significant room for improvement, which are just some of the key areas for further action of regulators, especially in the speed of changing the regulatory framework.

It is necessary to finalize bylaws that more precisely regulate the use of electronic signatures. In these areas, cooperation between the business sector and the Government can provide excellent expertise. This cooperation directly contributes to the optimization of e-business and affects the acceleration and implementation of key points needed for smooth business. One such is the recently launched bill digitalization initiative.

Namely, the law regulates lending to citizens electronically, identification via video link, but not the acquisition of collateral, which must be filled in and signed in paper form. The bill of exchange digitalization initiative directly affects the optimization and digitalization of this process.

The Law on Prevention of Money Laundering and Financing of Terrorism regulates the identification of users upon each establishment of business relations with entities that are liable for this Law. Identification is done in a direct meeting with the client, which disables any digital contracting process. Having in mind this obstacle, in March 2019, the National Bank of Serbia adopted the Decision regulating the identification of remote users, i.e. the Decision on the Conditions and Manner of Determining and Verifying the Identity of a Natural Person Using Electronic Means of Communication. By making this decision, Serbia became one of the few countries in the region that regulated this area and provided legal preconditions for the purchase of financial services "from the chair".

Although adopted in March 2019, the Video Identification Decision has been implemented by a very small number of financial institutions. The reason for this lies not only in the fact that it is necessary to raise awareness about digital business but also about the complexity and investment requirements related to relevant video technologies, which a number of financial institutions still find difficult to monetize.

COVID-19

The pandemic has shown that the potential and necessity of digitalization is obvious, not only in the financial sector but also in all other sectors where business digitalization will enable easier and more efficient work, especially in circumstances of forced social distancing due to the COVID-19 virus.

Since the beginning of the pandemic, the government has passed laws and regulations in order to maintain the economic stability of the country and enable uninterrupted business in difficult conditions.

In order to carry out epidemiological surveillance related to the COVID-19 virus, the Government adopted a Conclusion on the Establishment of a Unique and Centralized Software Solution, which is established and managed by the Institute of Public Health with the technical support of the Information Technology and Electronic Administration Office and the Republic Health Insurance Fund. The aim of this solution is to collect data on the number of tested, infected, cured, and deceased from the consequences of diseases caused by COVID-19.

It is very important that the Government continues to be efficient in making decisions and regulations concerning the digital business, as well as to work on educating citizens in order to gain greater trust in digital services and information that is exchanged in this way.

POSITIVE DEVELOPMENTS

We are witnessing significant progress in the part of the legal framework that enables further digitalization of financial services, through a series of decisions prescribed by the regulator, the National Bank of Serbia, in the previous

period. Thus, in addition to the possibility of video identification of natural persons, with the extension of the relevant Decision, the identification of legal entities has recently been enabled. In addition, through the national system IPS (Instant Payment System) using the QR code, it is possible to pay monthly bills, make purchases in retail outlets and online stores in an extremely simple way.

On June 4, 2020, the Government of Serbia adopted the Program for the Development of Electronic Government 2020-2022, as well as the Action Plan for its implementation. In July 2020, only a month after the adoption of this Program, the data showed that over a million citizens of Serbia used the services of the Government and that over 70,000 requests were realized during this month alone. The eGovernment portal is optimized for mobile phones and tablets.

The new services that have been introduced represent a true relief for citizens in the situation of forced social distancing, shorter working hours of administrative offices, as well as the popularization of the concept of work from home. Very efficient service of electronic enrollment in primary and secondary schools was introduced, without the need to collect paper documentation and take it to school for enrollment. Furthermore, automatic notification of PCR test results via SMS or email as well as the availability of data to citizens from 20 electronic records were also enabled. Distance learning was established in record time, and a large number of educators quickly adapted to work in Google classrooms.

The adoption of the new Law on Trade and the amendments to the Law on Electronic Commerce are positive signs in the direction of further improvement of electronic commerce as a new business model that introduced the electronic store, electronic platform, and dropshipping.

Amendments to the Law on Foreign Exchange Operations have made some progress in the field of electronic payments. Among other things, it is possible to receive foreign currency payments for humanitarian purposes through services such as PayPal. Significant progress concerns the sale of software over the Internet, which is now included in the list of exemptions from performing payment transactions exclusively in dinars, including transactions between residents with each other. This enabled domestic IT companies to point out the price in foreign currency and sell their services without fear of being in violation if the buyer is a resident of Serbia.

However, although this exception is limited to software and digital services, liberalization has not been completed. Payment for citizens is possible with payment cards or through a domestic electronic money institution (in Serbia, after several years since the adoption of the Law on Payment Services, there is only one institution of this type), but not through the most famous global services such as PayPal or Skrill.

In October 2018, the system for instant payments was introduced, whose operator is the National Bank of Serbia - the IPS NBS system. As a participant in this system, banks have enabled their customers to transfer money in dinars in the branch, whereby the transaction is realized immediately. Users can perform transactions in real-time 24/7/365, up to the amount of 300,000 dinars per transaction. Banks have also enabled the option of instant payments on their digital channels.

The main progress has been made in the field of electronic payments on the eGovernment portal, where card payments are enabled, so now, for example, vehicle registration can be paid in this way. Payment by payment card as well as integration with electronic services of individual banks for services on the eGovernment portal is significant progress. In that way, one of the basic assumptions of eGovernment was realized, since without electronic payments it is not possible to get some of the most important services, and switching to physical payment channels made the purpose and advantages of electronic services meaningless in the past.

Decisions of the NBS enabled video identification, signing contracts through two-factor authentication, as well as instant payment. This created the conditions for lending, as well as other banking products to be offered electronically. The remaining point of contention is how to enable the acquisition of a bill of exchange (which must be signed) as collateral for the loan and as a mandatory and integral part of the client's credit file. The bill of exchange as security in paper form is issued by the Banknote Production Bureau. The digitalization of the bill of exchange is important not only from the aspect of banking operations but also for the economy as a whole.

In the past period, progress has been made on the issue of the eZup information system, which is used for electronic data exchange by state administration bodies and local self-government bodies.

REMAINING ISSUES

Although some progress was made in 2019, the high expectations from the basic, intermediate, and high-level electronic identification schemes, which were introduced by the Law on Electronic Business, have not yet been realized. Namely, the regulations in this area and technical standards in the EU, on the basis of which the Regulation on Conditions for Electronic Identification Schemes of a Certain Level of Reliability will be adopted, set rigid conditions for a high-level scheme so that it will not be more flexible than a qualified electronic signature. On the other hand, we can expect that the basic level scheme will not require user identification through physical presence and ID cards when assigning the scheme, but user identification will be done electronically. It remains to be seen what solution will be chosen for the medium-reliability scheme.

Also, when it comes to the digital agenda of the Government of the Republic of Serbia, the remaining activity is the formation of a national register of citizens and addresses. The Register of Business Entities exists within the Business Registers Agency and it is expected that such registers will be made for natural persons as well, in order to enable connection with other state institutions.

The remaining challenge is the greater focus of eGovernment on citizens, i.e. "completion of work from the chair", as most of the initiatives and implemented activities are aimed at optimizing the process within state bodies, so that they last shorter and citizens complete their obligations much faster, still at the counters.

One of the key steps in the following period is to enable the exchange of data on tax and utility obligations of clients between the Tax Administration and financial institutions in the first place, but also companies from other industries. In this way, by using advanced, centralized databases, an automatic verification system could be established, e.g. level of income, regularity in settling tax obligations, which would ultimately enable the full digitalization of the purchase of credit products by citizens, thus eliminating the need for a single paper document (such as the current certificate of employment and income).

Also, it is necessary to speed up the process of introducing eGovernment in the sectors of tax administration.

Further improvement of services and available information through eGovernment is a challenge for each year to come. Wider education of citizens and the economy is needed, as well as the promotion of speed, security, and safety in the use of electronic services, which will increase the trust of users and efficiency in work. Digitalization and further development of a unified electronic system of government have the effect of reducing bureaucracy, thus improving the quality of services needed by citizens and, consequently, reducing corruption.

In conclusion, the Committee notes that great efforts and progress have been made in order to enable further digitalization of the economy and the public sector in the past period and that the readiness of all state institutions to continue in that spirit in the future is noted.

FIC RECOMMENDATIONS

- Following the example of a large number of EU countries, it is extremely important to use centralized databases and enable the exchange of data between the Tax Administration and companies (primarily financial institutions) in order to ensure that data on citizens' incomes, with the consent of citizens, can be used in online lending processes, which would significantly eliminate the need for paperwork and enable the purchase of credit products completely online. (3)
- It is important to facilitate the use of digital identities/signatures so that they become available to the widest circle of citizens, in a simple way and without high costs. (2)
- In order to emphasize the reliability and ease of use of digital identity and electronic signature, as well as their dissemination and promotion, citizens should be informed about all the possibilities, rights, and benefits of this channel through educational campaigns. (2)

- It is necessary to legally regulate the institute of "digital bills of exchange" so that as such it can be registered in a single register of bills of exchange, i.e. signed electronically. (2)
- It is necessary to create a database of already identified citizens that will enable a simpler and more cost-effective introduction of digital solutions. (2)

REAL ESTATE AND CONSTRUCTION

According to the latest statistics of the World Bank, Serbia finds itself ranked 9th when it comes to obtaining building permits. For several years in a row, Serbia has established its place among the top 10 countries in this area.

The amendments to the Law On Conversion Against The Fee from 2020 enable the continuation of conversion procedures even if they are the subject of a request for restitution, if there is confirmation that it is not possible to return the property in kind.

As in other areas of business, the work of the Republic Geodetic Authority was extremely affected by the COVID-19 pandemic. After the initial confusion, some progress was made in communication through the issuance of electronic sheets of real estate and copies of plans, as well as the resolution of cases (however, slowly) submitted to the cadastre by notaries electronically.

CONSTRUCTION LAND AND DEVELOPMENT

CURRENT SITUATION

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

Construction Land and Development

The issue of property rights and mixed forms of private and public property remains a substantial obstacle in the construction sector in Serbia. Until 2009, the state was the sole owner of urban construction land, and the only right that someone could have to this land was a permanent right of use, or a long-term lease of 99 years.

Conversion of the right of use to ownership of construction land

The Planning and Construction Law provides for two types of conversion: no-fee conversion, set as a general rule, and conversion for a fee.

Conversion for a fee applies to holders of the right of use that are:

- entities which were privatized under the laws governing privatization, bankruptcy and enforcement proceedings, as well as their universal successors;
- entities which acquired the right of use on the land after 11 September 2009, through purchase of the building, with the accompanying right of use on the land, from the entities, which were subject of privatization in the past (as indicated immediately above);
- companies that acquired the right of use over state-owned undeveloped land which was acquired for development before 13 May 2013 or based on a decision of the competent authority;
- sport and other associations;
- socially-owned companies;
- entities incorporated in ex-Yugoslavia to which the Succession Treaty is applicable.

The Law on the Conversion of the Right of Use to Ownership of Construction Land for a Fee ("Law on Conversion for a Fee") prescribes conditions for the conversion of the right of use to ownership over publicly-owned construction land and the possibility of establishing a long-term lease on such land.

The conversion fee is set at the market value of land (by the local municipality) at the time of submitting the request for conversion. Reductions of the fee are possible, under the terms stipulated by law (the most notable reduction is in the case of developed land, where the fee is not payable for land under a building and for a regular use of a building). State aid clearance applies to reductions (to the extent applicable).

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

Construction

The Planning and Construction Law was amended several times in the past few years. The amendments may be gen-

erally considered as positive because their goal was to facilitate the procedures and to make clarifications, as well as to improve the regulatory framework.

Some of the most significant amendments are as follows:

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

Legalization

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

COVID-19

All the procedures which were not digitalized prior to the COVID-19 outbreak were significantly slowed down due to reduction of work force in the administration. This is yet another confirmation of necessity to proceed with implementation and development of new technologies that would make administrative procedures faster and available via online services.

We witnessed that there were no administrative hurdles, and procedures were not delayed only in those fields that were digitalized prior to the outbreak of this pandemic.

POSITIVE DEVELOPMENTS

Conversion of the right of use to ownership of construction land

- Article 11(6) of the Law on Conversion for a Fee should be confined to cases where the conversion applicant is a company with majority public or state-owned capital.

Provisions of Article 11, paragraph 6 of the Law on Conversion for a Fee, stipulated that the conversion process shall be immediately suspended by the competent authority if it is established that the plot of land is subject to restitution, until the final and legally binding completion of the restitution process.

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

- It is necessary to clarify when the conversion is carried out with the fee and when not.

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

Additionally, certain improvement was made regarding conversion procedures - the authorities are becoming more cooperative in this regard.

Construction

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

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

REMAINING ISSUES

Conversion of the right of use to ownership of construction land

Article 9 of the Law on Property Restitution and Compensation provides that only a public enterprise or other legal entity (i.e. an entity founded by the Republic of Serbia, autonomous province or a local government unit, a company with a majority state-owned capital and cooperatives, including enterprises and cooperatives in the process of bankruptcy or liquidation) is obliged to return nationalized property, and that restitution in kind is not possible in all other cases. Consequently, a stay of the conversion process in all these other cases is unjustified.

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

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

Also, although the amendments to the Planning and Construction Law have clarified the dilemma regarding cases when the conversion is carried out with a fee, it remains to be seen whether this will enhance the process of making a coherent legal practice and effectiveness in decision making by the competent authorities.

Construction

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

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

Subcontractor's license

The lack of precision regarding the obligation to obtain a license for contractors and subcontractors leads to uneven and unclear practice. The question arises as to whether subcontractors are obliged to obtain the license in cases when the main contractor (an entity with whom the investor entered into a direct construction agreement for the whole works) holds the license and is the main contractor obliged to have license if all subcontractors hold appropriate licenses. The answer to this question does not only affect the existence of the obligation to initiate the process of obtaining the license, but also other aspects of the subcontractor's and contractor's business, especially if it is a foreign entity. In addition, it is necessary to enact the rulebooks regulating issuance of the licences.

Legalization

Prohibition on disposal has created a problem when the title holder of an illegal building and the title holder of the land are not the same person. The Law should be amended in order to enable the legalization of such buildings when there is consent of both sides. Also, it is necessary to reconsider whether the prohibition on the disposal of illegal buildings should be limited to buildings that cannot be legalized because in practice, the existing prohibition significantly complicates legal transactions in situations

where legalization is possible and hence such prohibition is not justified. Also, prescribing the deadline for legalization which results in the rejection of a request for legalization is a principle that should be changed, because the procedure is conducted ex officio and does not depend on the will of the party, and therefore the owner of an illegal building should not bear consequences of the administration's inefficiency.

The Law is ambiguous on the issue of whether a decision on legalization substitutes a construction permit and a use permit. The practice has shown that a decision on legalization does not constitute, pursuant to the opinion of the competent institutions, a valid legal base for issuing an energy licence, which is why the energy licencing procedure requires performing a special technical acceptance procedure for buildings which have been subject to legalization, i.e. obtaining a special technical examination commission report in which it will be clearly stated that the building is fit for use in accordance with its purpose even though for such a building the purpose is stated in the decision. Furthermore, the owners of the buildings are exposed to additional expenses and are put into an unequal position compare to the owners of other buildings with different purposes for which it is not required to obtain an energy licence.

FIC RECOMMENDATIONS

- The implementation of the Planning and Construction Law should be monitored by all relevant stakeholders. (1)
- Digitalisation of public administration and all administrative procedures. (1)
- It is necessary to amend the Legalization Law in order to limit the prohibition of disposal to buildings that cannot be legalized, as well as to delete the provision that provides for rejecting a request for legalization if the legalization is not completed by 2023. (3)
- It is necessary that the Decision on legalization has the power of a construction permit and a use permit, which will be prescribed by the appropriate content of the decision (without an additional technical examination / obtaining of a special permit to use). (1)
- Article 11(6) of the Law on Conversion for a Fee should be confined to cases where the conversion applicant is a company with majority public or state-owned capital. (3)
- Creation of coherent legal practice and improvement of effectiveness in decision making in conversion procedures by the by the competent authorities, having in mind the latest amendments of the Law on Conversion for a Fee. (2)
- Enactment of rulebooks on issuance of licences and clarify the obligation of subcontractors engaged by a contractor to hold licenses which are already held by the contractor and vice versa should be clarified. (3)

MORTGAGES AND REAL ESTATE FINANCIAL LEASING

CURRENT SITUATION

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

We have to point out again that these latest amendments to the Law on Mortgage were not sufficiently far-reaching, the impression being that they lack additional clarifications, which could have been very useful. In addition, they also failed to introduce some new useful concepts.

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

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

COVID-19

There has been no impact to the current situation caused by COVID-19.

POSITIVE DEVELOPMENTS

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

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

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

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

REMAINING ISSUES

A situation that is not uncommon in practice, i.e., the registration of one mortgage as collateral securing multiple claims on different grounds and also by multiple creditors has not yet been explicitly regulated. Issues related to setting up a mortgage to secure claims of multiple creditors have appeared as a consequence of the opinion of public notaries that such a mortgage may be set up only in cases when the claims of different creditors have the same legal basis.

The introduction of the institute of a "third party" (in effect "the security agent") is a positive step, but the existing provision does not elaborate on the role of the security agent in relation to the relevant authorities. We believe that, in practice, the security agent will probably need to obtain special authorizations for undertaking actions on behalf of mortgage creditors before the competent authorities.

The form of the mortgage document has not been regulated in a satisfactory manner yet. Bearing in mind that the enforceable mortgage document must be drawn up in the form of a notary deed (in itself an enforceable document), the legislator's requirement with respect to the exact wording of the mortgage document is unnecessary. Conversely, given that the only requirement for a real estate sale contract is that it should be solemnized by a notary public, there is no reason why the same practice should not be applied to mortgage documents as well.

The position of the tenant in the case of an out-of-court settlement is not entirely clear. Specifically, following the

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

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

Finally, the Law on Mortgage has not explicitly stipulated more flexible forms of mortgage that exist in comparative law, such as deposits, credits or continuing mortgages, as well as the (im)possibility and effects of annexing existing mortgage documents.

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

FIC RECOMMENDATIONS

- The Law on Financial Leasing must be harmonized with current real estate regulations, in particular in terms of the possibility of registering an existing real estate lease in the real estate cadastre, which must be clearly prescribed by the Law on the Registration Procedure with the Cadastre of Real Estate and Utilities. Also, by elaborating the tax legislation, the state should create a more favourable climate for implementing financial leasing in the real estate sector. (3)
- The Law on Mortgage needs to be amended to explicitly regulate the procedure and consequences of amendments to registered mortgages, to regulate some of the more flexible types of mortgage envisaged by comparative law, such as conditional, credit and continuous mortgages, and allow a mortgage to be registered as collateral for multiple claims on different legal grounds, and for different creditors' claims. (3)
- The rights of the tenant in the case of extrajudicial enforcement should be specified. (3)

CADASTRAL PROCEDURES

CURRENT SITUATION

Over the past year, the Republic Geodetic Authority has worked intensely on the digitalization of procedures with the aim of establishing e-desk service and allowing an increasing number of users to download data from the cadastre electronically. By concluding an appropriate agreement with the RGA, notaries, geodetic organizations, attorneys, and real estate brokerage agencies obtain direct access to cadastre database, which reduced the number of new requests which mostly refer to the obtaining of cadastral excerpts. Electronic notice board represents an attempt to overcome the problem of decision delivery and, as such, it provides more transparency with regard to the acts adopted by the cadastre. An address registry was established, as well as a procedure for determination of house numbers on the territory of the entire country. Introduction of e-desks enhanced digital communication between geodetic organizations which realize operations envisaged by the Law on State Survey and Cadastre.

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

The exact number of unresolved cases in the first and second instance is yet to be determined, but the assumption is that there are hundreds of thousands of them. The lack of capacity and untimeliness of the staff bring about piling of unresolved cases, and the priority is given to the requests submitted by notaries. It is essential to improve the organization of services in order to reduce the number of unresolved cases as soon as possible.

There is still the problem of slow work of the utility cadastre departments, as well as the non-resolved issue of documentation required for registration of rights to lines (non-recognition of permits issued in accordance with applicable laws for lines built several decades ago, ie before introduction the possibility to register right on lines, but also for lines for which the permit was issued under the unified procedure due to non-listing individually all lines to which the permit refers).

COVID-19

As is the case with other areas of business, the operation of the RGA was extremely affected by the COVID-19 pandemic. Operation of the offices was hindered as the result of regulations on the number of employees that may be present at work, whereas remote work made it impossible to resolve the cases which require access to the archive. These circumstances further obstructed the work and delayed deadlines for the delivery of first-instance and second-instance decisions. In addition, it was noticed that during the state of emergency, real estate cadastre offices acted differently upon the same or similar requests.

After the initial confusion, a certain progress in communication was noticeable in the issuing of electronic cadastral excerpts and plan copies, as well as slow completion of the cases that were electronically submitted to the cadastre by notaries.

POSITIVE DEVELOPMENTS

In relation to the recommendations of the Council from the 2019 White Book, significant improvements were made in the digitalization of processes. A certain amount of progress has been made in relation to the following recommendations:

- It is necessary to ensure clearer and more transparent instructions on the implementation of laws and regulations with the aim of accelerating and improving the foreseeability of cadastral procedures – RGA website offers instructions, request forms, the possibility to monitor the status of the case and make an appointment with the person who processes the request

- Republic Geodetic Authority should contribute to the harmonization of practices of real estate cadastre offices/cable duct cadastre departments and strengthen control over their work, to ensure accessibility for the parties that request consultations, act more promptly upon complaints, and allow complaints about the work of cable duct cadastre departments to be filed via link on the RGA official website - the harmonization of practices was successful in certain cases,

- Software maintenance and improvement has to be more efficient – besides noticeable problems that are rapidly resolved, improvements have been made in the maintenance of the publicly accessible cadastre database.

The implementation of the above listed recommendations can be generally regarded as positive, as their adoption

contributes to timeliness, reduces clients' waiting time, simplifies and accelerates registration procedures, even though there is still plenty of room for improvement.

REMAINING ISSUES

The main problem lies in inconsistent interpretations of applicable regulations by different real estate cadastre services, which are often non-compliant with other laws and bylaws.

One of the major problems is the inconsistency of the Law regulating the issuance of permits for construction and use (Law on Planning and Construction - Unified Procedure) and the law on the registration of real estate / lines and rights on them (Law on the Procedure of Registration in the Real Estate Cadastre and Lines). Very often, a construction expert must be hired to confirm through the expert's findings the exact facilities to which the issued permit refers (construction, use and project-technical documentation), because without this finding the cadastre will not conduct registration since the permit disposition does not contain individual enumeration of lines e.g. to which the permit applies. This is primarily a problem with the registration of lines, which are not covered by the dispositives of the decision on construction and use. In this way, the time required for registration is extended, and the party who obtained a valid permit also incurs additional costs for hiring an expert and obtaining his findings.

There is also a problem with the registration of facilities built under the Law on Mining and Geological Research and the rights to them, especially in relation to facilities, primarily lines, built several decades ago under permits obtained in accordance with then applicable regulations, which are not recognized as valid in the procedure of registration of lines and rights to them in accordance with the valid Law on the procedure of registration in the cadastre of real estate and lines. This approach leads to the conclusion that there is practically no legal continuity between the previously valid and currently valid laws in this area, which certainly affects the legal certainty.

Even though there is an evident tendency that, through digitalization, the real estate cadastre becomes a register of real estate and all the occurring changes, it is also clear that there are a number of requests in which the decisions made by the cadastre have constitutive effect. It is particularly evident in the cases that were opened years ago, but which require public debate to be concluded. On the other hand, the law excludes the possibility of conducting a public debate in a cadastral procedure, which renders rapid and efficient conclusion of such cases impossible.

The deadlines for delivery of decisions upon clients' requests for registration in the cadastral registry represent one of the most significant problems, as the deadlines are routinely exceeded, due to the fact that cadastre offices are overloaded with unprocessed cases. Even though a certain amount of progress has been made, a number of cases from the past remains unresolved, some of which date years back. The aforementioned also applies to the second-instance cases.

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

A large number of unresolved cases include the implementation of lien statements and discharge statements in the process of registration and release of mortgages. In certain offices, the said cases remain unresolved for years, due to which there are instances where the client repays the entire loan to a bank while the request for the registration of a mortgage, which serves as a security for the said loan, has not been resolved.

The cadastre will be facing a major challenge with the beginning of complete digitalization as of 01/01/2021. In accordance with the law, as of this date, requests shall be submitted to the cadastre only in electronic form.

FIC RECOMMENDATIONS

- It is necessary to ensure uniform, transparent and clear implementation of laws for further acceleration and foreseeability of cadastral procedures, and to harmonize the laws according to which permits are issued with the

laws related to the registration of real estate and rights to them, ie to establish legal continuity by recognizing permits obtained in accordance with the provisions of previously valid laws regulating this area. (3)

- Connectedness and promptness of information systems and exchange of data between cadastres and other state authorities. (3)
- It is necessary to establish an efficient system for the resolution of clients' requests and simplify the manner of submitting updates to the so-called notary cases or introduce the obligation for the notaries to add the documents necessary for the completion of registration to the documents they are certifying. (3)
- Republic Geodetic Authority should conclude all unresolved first-instance and second-instance cases as soon as possible. (3)
- It is necessary to allow deployment of a party in the case which was opened by a notary, as it is the service performed by notaries. (3)
- It is necessary to determine the number of unresolved cases which include registration and release of mortgages and resolve them as a priority in order to introduce legal certainty into business processes. (3)
- Establishment of an electronic base for Utility cadastre which will be accessible to the public or registered users, as it has already been done with the real estate cadastre, with the possibility of issuing excerpts from the cable duct cadastre (as it has been done with real estate folios that are issued from the real estate cadastre). (2)
- It is necessary to register all lines in the utility cadastre without delay, but also the rights to them, which is of general importance (it is important to know who owns the line due to the needs of, for example, quick reaction in certain situations in order to protect life and health of people, property and the environment) . (2)
- Online access to real estate cadastre data should be free and unlimited, with real-time update. (1)
- Real estate sheets in electronic form from GKIS are illegible, primarily for plots with several objects, where it is not possible to get an overview of A list in which all objects / parts of one plot will be listed on one list / page. It is necessary to return the form in which LNs were issued by July 6, 2020. (1)

RESTITUTION

CURRENT SITUATION

Restitution

The urgency of restitution is grounded in its tremendous potential for promoting the security of property rights in a symbolic and exemplary manner, clearly showing the state's intention to return what was unjustly expropriated. The deadline for filing claims has expired, and institutions have started processing individual requests, but still the impression is that this will take some time.

The Law on Property Restitution and Compensation (Law) protects the acquired rights of individuals, while the statutory obligation of restitution arises only in cases when a property, which may be subject of restitution, is not in private ownership. Although the Law prescribes in-kind restitution (i.e. restitution of an unjustly expropriated property) as the primary model, there are numerous exceptions and it is likely that compensation will be the most prevalent form of redress. In-kind restitution is the obligation of the Republic of Serbia (RoS), local governments, public enterprises established by the RoS and socially-owned companies and co-operatives, while the disbursement of compensation is the exclusive obligation of the RoS. Rarely, privatized companies may be obliged to make restitution in kind.

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

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

Agricultural Land

Starting from 1 September 2017, EU citizens may acquire the ownership over agricultural land of a surface area up to 2 hectares, upon the fulfillment of the prescribed conditions. Foreign investments in Serbian agriculture are mainly made through the privatization of agricultural companies, whereby investors acquire a majority of shares in companies that own agricultural land. In some cases, companies face problems due to a misinterpretation of provisions of the Law on Agricultural Land.

The Law on Co-operatives adopted in 2015 does not contain any of the former provisions on the return of agricultural land to newly founded co-operatives. The abuse of rights by such co-operatives remains an issue since the final provisions of this Law stipulate that existing claims for the return of land filed by new co-operatives, founded with the aim of abusing this right, are to be settled under the rules of the former law, thus jeopardizing the acquired rights of foreign investors.

COVID-19

The COVID-19 epidemic did not impact the processes.

POSITIVE DEVELOPMENTS

Agricultural Land

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

EU citizens may acquire ownership over agricultural land.

Restitution

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

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

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

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

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

REMAINING ISSUES

Restitution

Ambiguities and inconsistencies in the Law have led to divergent practices by the Agency, which may jeopardize the acquired rights of foreign investors.

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

The question of the freedom of the assessment of proofs in restitution procedures has not been resolved. Claimants in restitution procedures who are not able to obtain the legally prescribed specific proof – the document on seizing – will not be granted the restitution right regardless of the existence of other proofs that the seizing of the property did occur. Unfortunately, the Constitutional Court of the RoS has taken the position that lawmakers are allowed to exactly specify the proofs that must be submitted in the procedures for proving a certain fact, as well as that lawmakers are entitled to determine that all the other means of proving are "insufficient and unreliable," so the initiative for determining the constitutionality and legality of the respective provision of the law has been rejected.

Agricultural Land

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

FIC RECOMMENDATIONS

- The Restitution Agency should conduct transparent restitution procedures granting the right to restitution to redress the injustice perpetrated 70 years ago, taking due care to protect basic human rights of the parties to the proceedings. (3)
- Foreign nationals should be allowed to exercise the right to restitution, equating them with Serbian nationals in these proceedings, irrespective of their citizenship and nationality, in accordance with decisions of judicial authorities and the Ministry of Finance. (3)
- State authorities should ensure that the acquired rights of foreign investors are protected in accordance with the law. (2)
- State bodies, specifically the Ministry of Finance, in administrative proceedings as initiated in line with the provisions of the former Law on Co-operatives by newly-founded agricultural co-operatives, should seek to protect the full private property rights of foreign investors. (2)

LABOUR

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

Priority in further reform of the Labour Law should be given to the need to recognize and regulate more flexible forms of work, such as different forms of teleworking, and internship when it is not part of a mandatory educational program; as well as digitalization and simplifying the very formal manner of communication between the employer and the employee, the complex salary structure, and the calculation of compensation for wages. It is necessary to further simplify and expedite the procedure for the employment of foreigners and labour mobility in general; recognize business activities which, due to their specificities, come with limited options for employing persons with disabilities; adopt subordinate legislation which would enable efficient implementation of the Law on Dual Education in practice; and further improve the education system in general. Staff leasing and staff leasing agencies' work have been regulated by adopting and entering into force Staff Leasing Act. However, there are still aspects in this area that could be improved.

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

LABOUR RELATED REGULATIONS

THE LABOUR LAW

CURRENT SITUATION

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

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

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

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

employees taken over from the predecessor employer, for a fixed term of up to 36 months.

The above-mentioned amendments to the Labour Law were adopted with the explanation of the petitioner that their aim is to enable:

- a better protection of mutual rights and obligations of employees and employers;
- conditions for collective bargaining and social dialogue with social partners;
- harmonization of labour regulations of the Republic of Serbia with the labour legislation of the European Union (EU Directive) and international law (International Labour Organization Conventions ratified by the Republic of Serbia);
- clarity of the norms of the Labour Law, in order to interpret them correctly and to provide for a good court practice; and
- increasing employment by attracting more investors and enabling a better labour turnover in the labour market.

The mentioned goals have not been achieved yet, namely, since the adoption of the amendments to the Labour Law from 2014 until today:

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

Last but not least, digitalization in business has led to the ultimate need to update the provisions of the Labour Law by enabling fast and reliable digital administration of rights and obligations arising from employment, and above all the adoption of all labour acts in in the form of an electronic document, with the possibility of using an electronic signature, in accordance with the Law on Electronic Document, Electronic Identification and Services of Trust in Electronic Business.

COVID-19

Recommendations of the Ministry of Labour
After the declaration of the state of emergency in the Republic of Serbia, the Ministry of Labour, Employment, Veterans and Social Affairs issued recommendations and announcements regarding the rights and obligations of employees and employers during the state of emergency caused by COVID-19 virus (work from home, benefits, employee rights who are in self-isolation, paid and unpaid leave, the rights of parents who have children under 12, temporary incapacity for work, use of annual leave, etc.) Guidelines have been obtained on certain controversial issues in practice, but many issues still remain open and unresolved.

Particularly vulnerable categories of employees
Based on the Decree on organizing the work of employers during the state of emergency, as well as on the measures to prevent the spread of COVID-19 virus, the Ministry of Public Administration and Local Self-Government issued a Recommendation for organizing work in public administrations and state institutions. The recommendation primarily applied to the employees in government bodies, public agencies, public services and local self-government units. However, the Ministry of Labour also issued a statement that the Recommendation should be applied to the employers in the private sector, if the employer's activity allows it. According to the Recommendation, the employer should primarily keep in mind that the persons with established chronic diseases and persons older than 60 are particularly vulnerable and that the parent of a child up to 12 years of age has special protection, and especially if he exercises parental rights alone or a work obligation has been established for the other parent. For the above mentioned employees, during the state of emergency it was necessary to enable work from home, and in cases where the activity and nature of work did not allow work from home, the employer was obliged to provide measures for protection and health of employees, as well as to organize work in shifts, so that a small number of employees could perform

work simultaneously in one room. Also, it was emphasized that the work schedule of the employed parent of a child under 12 should not coincide with the work schedule of the other parent who was also employed.

However, the Recommendation applied only for employees in the government bodies, public agencies, public services and local self-government units, excluding the private sector. It is necessary for the Ministry of Labour, Employment, Veterans and Social Affairs to adopt more precise and comprehensive guidelines for employers in the private sector when it comes to particularly vulnerable categories of employees.

Obtaining consent for paid leave in the case of Article 116 of the Labour Law electronically

At the proposal of the Ministry of Labour the Government of the Republic of Serbia adopted a Conclusion to give consent for sending employees on paid leave for more than 45 working days without prior opinion request from a representative trade union of a branch or activity established at the level of the Republic, with a due date no later than the day of the termination of the state of emergency. In this way, the prescribed procedure for sending employees on paid leave for more than 45 working days was shortened, and the fact that the reasoned request of the employer, the necessary documentation, as well as the decision of the Ministry was submitted electronically was especially important. It is necessary to establish this type of communication between employers and the Ministry of Labour as a regular practice that is also applicable in the absence of extraordinary circumstances.

Compensation of salary in the amount of 100% due to direct risk exposure for the purpose of performing work (self-isolation, isolation or employees suffering from the COVID-19 virus)

The Conclusion of 3.4.2020 was adopted, which primarily applies to doctors, medical staff, the army and the police. Employees who are temporarily absent from work due to direct risk exposure at work, such as the treatment, care of the sick because they are in self-isolation or isolation, or are infected with the COVID-19 virus are entitled to 100% salary compensation.

Employers can provide this right in the following way:
For the first 30 days of absence from work, employers should pay the amount of the compensation of salary from their own funds.

If the employee is temporarily prevented from working for more than 30 days, employers may, starting from the 31st . day, pay off the compensation of salary from the legally prescribed amount of compensation of salary from the funds of compulsory health insurance, and from its own funds to provide a difference of up to 100 percent of the compensation of salary. Employers are entitled to decide whether to apply the aforementioned provisions with a previous amendment to the general act or employment contract, so that the recommendation is not binding on employers in the private sector. However, the assessment of a higher right than the legally established amount of compensation of salary depends on the financial situation of a particular employer. In a situation where the private sector is affected by the effects of the pandemic and has difficulties in regular business, passing the difference in wage compensation up to 100% to employers is not a good solution. If the intention of the state was to provide special protection to employees who are directly exposed to the COVID-19 virus while performing their work, it is necessary to regulate that the compensation of salary of 100% is provided from the funds of the mandatory social insurance. Also, the mentioned Conclusion caused doubts in practice and problems with employees who, even in the situation when the employer did not change the general act, demanded payment of compensation of salary in the amount of 100%, even pointing out that it was an injury at work because employees were infected or were in contact with an infected person in the workplace. In the coming period, this issue will certainly be still relevant and will cause problems in practice.

Use of annual leave

The Government adopted a Conclusion dated 6.4.2020. year which recommends that the employers should enable to its employees the use of annual leave from 2019 until 31.12.2020 in a situation where their work obliges them to regularly perform work tasks in a state of emergency. As for the employees who are enabled to perform work outside the employer's premises (remote work and work from home), the employer is obliged to enable the use of a part of the annual leave for 2019. until 30.06.2020, in accordance with the Labour Law. Also, it is recommended for the employers to give priority to the use of the annual leave, especially in the situation when considering termination of employment, namely sending employees to the so-called "paid leave of absence " on the basis of Article 116 of the Labour Law. In regular circumstances, the provisions of the Labour Law on the use of annual leave are imperative in

nature and the employer and the employee cannot agree that the employee will use the annual leave from the previous year after June 30 of the current year. The Conclusion of the Government enables an exception to be made and employees who "have the obligation to perform regular work tasks" to be granted the use of annual leave even after the obligatory legal deadline. However, it is not entirely clear why the Government's Conclusion excluded employees who performed work outside the employer's premises from this possibility, since it is clear that in conditions of state of emergency and limited movement, these employees did not have the conditions to use their annual leave. they did so under normal circumstances.

Work from home

Before the declaration and during the state of emergency, employers in Serbia were faced with numerous challenges in how to organize work from home in a relatively short period of time, regulate relations with employees and harmonize their business with the recommendations of the Government and the Crisis Staff. Considering that the Labour Law regulates only the employment relationship that is established for the purpose of performing work outside the employer's premises, as well as the possibility for the employee and the employer to agree that the employee works from home certain part of working hours, within the agreed working hours, it is clear that the concept of working from home, which is recommended during the state of emergency (and which does not represent an employment relationship established for the purpose of performing work outside the employer's premises, or a type of occasional work from home within the agreed working hours) is not legally regulated. The need to resolve this gap in a pragmatic way during the state of emergency was recognized, and the Decree on organizing the work of employers during the state of emergency was passed. Pursuant to the said Decree, employers were obliged to enable work to be performed outside the employer's premises at all workplaces where this is possible on the basis of (i) a general enactment or employment agreement, or in situations where the general enactment or employment agreement do not regulate work from home, (ii) a unilateral resolution containing the duration of working hours and the manner of supervising the work of the employee. The enactment of the Decree did help to adjust the relations between the employer and the employee with relatively low administrative burdens. However, certain issues continued to cause difficulties and doubts in the application of the introduced solution in practice.

Primarily, the full pragmatism of arranging work from home in conditions of emergency, would necessitate the relaxation of the manner of delivery of resolutions for work from home and other documents to employees, given that the Labour Law provides for the obligation to personally submit resolutions deciding on rights, obligations and responsibilities of employees, at the employer's premises, as well as, when the said is not possible, strict rules of alternative delivery to the address of residence or stay or by posting on the notice board of the employer. The mentioned method of delivery was a particularly challenging request during the state of emergency, which once again confirmed that the amendments to the Labour Law should enable electronical formal communication between employers and employees, primarily via e-mail or other similar electronic communication channels.

The previously problematic issue of providing conditions for safe and healthy work by the employer in the case of work of employees from home has become relevant again. Namely, the Law on Safety and Health at Work stipulates that the employer is obliged to provide the employee with work at the workplace and in the work environment in which safety and health measures at work have been implemented, as well as that the employer is not relieved of obligations and responsibilities regarding the application of safety and health measures at work by appointing another person or transferring their obligations and responsibilities to another person. It remains unclear how employers meet their occupational safety and health obligations when work is conducted partially or completely from home, whether they are required to amend a risk assessment act, and even more so, how to assess that risk without entering the employee's workspace.

Finally, with the abolition of the state of emergency, the Decree on organizing the work of employers during the state of emergency ceased to be valid, and with it the basis for arranging work from home through a unilateral decision of the employer, provided by the Decree. However, in accordance with the recommendations of the competent authorities, and in order to ensure the safety of their employees, many employers continued to organize work from home, especially from the moment of the worsening of the epidemiological situation at the beginning of July. This also raised the question of the existence of a legal basis for further work of employees from home, the need to conclude an annex to the employment agreement to change the agreed place of work, which is (having in mind the

strict formality of the procedure for concluding an annex to the employment agreement) a solution which cannot be applied immediately, and which is exactly the response that the epidemiological situation has often required.

Status of employees referred to home self-isolation. During the state of emergency, but also after its abolition, employees who were exposed to COVID-19 carriers at the workplace or outside the workplace turn to a doctor, in order to obtain instructions for further action. In these circumstances, doctors refer these employees to home self-isolation, for a period of 14 to 28 days, since this is the estimated time interval during which symptoms of the disease may appear. However, doctors do not issue certificates and reports on temporary incapacity for work (remittances) to these employees, although this is the obligation of doctors, in accordance with Article 72 Paragraph 1 Item 4) and Article 161 of the Law on Health Insurance. The reason for the absence of remittances was not explained by the competent ministries.

In the absence of sick leave remittances, employers rely on verbal information from employees that a doctor has recommended them home self-isolation. Therefore, employers do not have a legal basis for the payment of salary compensation during the employee's absence from work, nor do employers know how long employees should be absent from work due to home self-isolation. Also, in these circumstances, employers face an increased risk of sick leave abuse.

The procedure for issuing certificates of temporary incapacity for work and sick leave is such that doctors issue them in paper form, so the question is raised whether the competent health authorities can organize the delivery of remittances in electronic form to the e-mail address of the patient (employee), so that employees can forward these remittances by e-mail to the employer.

POSITIVE DEVELOPMENTS

In the previous year we have not seen improvements in this area, although we expect them, not only through amendments to the law but also in courts' decision-making, especially since the law allows the court to adjudicate the equivalent amount of up to six salaries to the employee even when the grounds for termination of employment are met, if it determines that the employer violated the procedure for employment termination prescribed by the Labour Law.

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

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

REMAINING ISSUES

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

- **Employment for work outside the employer's premises.** Employers have doubts about the interpretation of the provision of the Law which prescribes that, in the case of work outside the employer's premises, the employment contract contracts should stipulate so-called compensation of other labour costs and the manner of their determination. The mentioned provision leaves room for different interpretations regarding whether the employer is obliged to determine these costs by a general act, namely by the employment contract, or the employment contract can leave the parties a freedom to agree whether in a particular case the respective costs have incurred to the employee or not.
- **Status of high school students and university students on work practice.** When it comes to engaging persons outside employment for the purpose of professional development, the Labour Law in Article 201 envisages the possibility of engaging persons through a contract on vocational training or a contract on professional development. Given that for the conclusion of a contract on vocational training it is necessary that the law or a rulebook require passing an internship or a professional exam, while for the conclusion of the professional development contract it is necessary that a special regulation envisages professional training for work in the profession or specialization, the application of both of these contracts in practice is limited and rare, especially when it comes to the private sector. In this way, along with the above-mentioned restrictions, work practices or engagement of high school students and university students who want to improve and acquire certain practical

knowledge and skills for easier future employment, remain outside the scope of the Labour Law, so employers in practice have difficulties with engaging young people, for their work engagement which would include learning through practice. In the absence of an appropriate form of contract, in order to implement the work practice of high school students and university students, employers most often use the contract on performing temporary and periodical jobs, since its flexible legal nature allows it, although the intention of the legislator was not to engage high school students and university students through the mentioned form of contract.

- **Criteria for annual leave.** Mandatory criteria (education, work experience, working conditions and contribution at work) determined by the Law for increasing statutory minimum for annual leave for employers are impractical and administratively burdensome. Instead of the Law determining the criteria for increasing the annual leave in advance, it would be more practical if the Law would leave it to the employer to determine the criteria for increasing the annual leave, whereby the amendments to the Law may stipulate that the employer may determine by a general labour act the criteria for annual leave increase.

- **Modification of the agreed working conditions in order to change the elements for determining the base salary.** Employers have difficulties in applying Article 171 Paragraph 1 Item 5) of the Labour Law, which stipulates that the employer may offer the employee amendments to the Employment Contract (Annex) in order to change the elements for determining the base salary. Namely, in order to eliminate ambiguities and for the purpose of legal safety, it would be necessary to adopt amendments to the Law, prescribing the elements for determining the basic salary. Also, Article 107 Paragraph 1 of the Law determines that the base salary is determined on the basis of conditions, determined by the rulebook, that are necessary for work on jobs for which the employee has concluded an employment contract and the time spent at work. Therefore, it is not clear from the Law whether the elements for determining the base salary are the same as the conditions for determining the basic salary, and it is also unclear by which general act it is necessary to determine the conditions or elements for determining the base salary, i.e. whether they are determined by the employment rulebook or by the rulebook on job systematization. The mentioned ambiguities and inconsistencies of legal provisions lead to problems in practice, when employers want to offer employees a change in the amount of base salary, because in the absence of clear legal norms, a large number of employers have not determined or clearly determined the elements or conditions for determining basic salary. Therefore, due to the mentioned vague and inconsistent legal provisions, the employer faces the problem that there is no formal legal basis to offer the employee a change in the agreed base salary.

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

- **The structure and calculation of salary and salary compensation for sick leave, national holidays, annual leave, paid leave, etc.** Salary structure in the Labour Law is regulated so as it consists of salary for the work performed and time spent at work, salary based on employee's contribution to the employer's

business success (rewards, bonuses etc.) and other income based on the employment relation, according to the general act and employment contract. Furthermore, salary for the work performed and time spent at work is based on basic salary, work performance and increased salary. All those elements are regulated in more detail by general act and employment contract. The aforementioned structure is quite complicated and therefore, the international companies which are doing business in Serbia do not have the possibility to calculate salary for their employees as elsewhere in the world where they operate, so they are practically forced to apply complicated salary structure and calculation in Serbia. That is why it is necessary to simplify the salary structure and its calculation. Besides that, although the new Law on Health Insurance introduced certain novelties regarding the salary compensation during sick leave, there remains a problem that salary compensation is equivalent to the average salary in the previous 12-month period, the same as with salary compensation during national holidays, annual leave, paid leave, etc. This leads to a situation where salary compensation is higher (mostly due to bonuses) than the salary employee would get if he had worked. The direct consequence of this is inability to plan companies' budgets.

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

- **Termination of employment due to technological, economic or organizational changes, subjective and objective statutes of limitations, notice period in case of dismissal by the employee.** Labour Law does not regulate clearly: the procedure of termination of employment due to technological, economic or organizational changes - redundancy. In cases of termination of employment when due to technological, economic or organizational changes the need to perform a certain job ceases or there is a reduction in the scope of work, the Labour Law did not regulate the procedure for the case of individual redundancy. Also, there are numerous doubts related to the redundancy program, and it is unclear whether the employer should first change the rulebook on job systematization or adopt a redundancy program. Furthermore, subjective and objective statute of limitations for termination of employment contract - six months from the date of learning about the facts / one year from the date of occurrence of the fact, is too short defined, which is especially evident for employers with large numbers of employees, complex structures and processes, mainly regarding the employers who can initiate the procedure for termination of the contract only after the internal controls determine the overall factual situation. For these reasons, in complex cases, legal deadlines are often breached, and the situation is that employees who have grossly violated their work obligations or have not respected work discipline remain employed. In practice, a major problem is the inability to arrange a notice period longer than 30 days in the event of dismissal by an employee. This is especially evident when the employment termination is initiated by the director or another member of the management, because usually it is extremely difficult to find adequate replacement in a short period of time.

- **Digitalization in labour regulations.** New information technologies have brought changes to all segments of life which inevitably affects the very essence of work and labour relations (virtual and online employers, digital employees, work at distance and on platforms, e-nomads, agile work, etc.) and which the existing labour legislation doesn't fully recognize. Having in mind that digitalization is an inevitability and that it is already applied or can have a wide application in labour relations, and given that the preconditions for implementation are regulated primarily by the Law on Electronic Document, Electronic Identification and Trust Services

in Electronic Business (hereinafter referred to as: E-business Law) but still limited by traditional regulation and interpretation of the provisions of the Labour Law, it is of great importance for all companies looking to invest in the digitalization of their business operations to amend the labour regulations by defining an alternative way of administrating rights and obligations from labour relations with usage of electronic documents (decision's enactment and conclusion of contracts), primarily through e-mail or other similar electronic communication channels. It is not an issue that the first contact and conclusion of the first contract between the employee and the employer is in the traditional, paper form, or with the use of a qualified electronic signature. However, it is necessary on that occasion to enable the introduction of official means of electronic communication and the mechanism of authorization of employees and employers' representatives through more flexible mechanisms such as electronic identification schemes, based on which any subsequent interaction between the two parties can be validly conducted electronically. Although Art. 7 of the E-business Law stipulates that the electronic form is one of the forms of written form, thus the electronic form is fully equated with the traditional written form which implies paper form, however, we conclude that the Labour Law did not actually follow the trends of digitalization. Namely, in the provisions in which the Labour Law regulates the conclusion of a contract, the written form, in fact, presupposes the conclusion of a contract in paper, with the handwritten signature of the authorized person between the employer and the employee. The situation is identical with the decisions on termination of employment, as well as the decisions on the rights and obligations of the employee. In support of this is the norm of Article 75, paragraph 6 of the Law, which allows the employer to submit in electronic form a request for deciding on the use of annual leave, but at the request of the employee, the decision must be submitted in writing. Also, the problem is the rigid position of the Labour Inspectorate on this issue - employment agreements, decisions on the rights and obligations of employees, dismissal by the employee must be on paper, with handwritten signatures, with a required stamp on the employer's side. Therefore, it is necessary to recognize digitalization in business through modernization of the provisions of the Labour Law by enabling the adoption of all labour acts in the form of an electronic document, with the possibility of using an electronic signature, in accordance with the E-business Law.

- Along with the change in relevant provisions of the Labour Law, we also consider it necessary to amend the Law on Labour-Related Records and adjust the obsolete regulation to contemporary digitalization processes, by introducing the explicit possibility of keeping documents in electronic form and adjusting the safekeeping periods for documents. If work on digitalization is intensified, positive effects on the business would be multiple, primarily through the improvement of business efficiency, cost savings, but also with significant ecological effects (minimum use of paper).

FIC RECOMMENDATIONS

- We suggest to prescribe that employee performance is only an option and not the mandatory part of salary. We also suggest the base for salary compensation during leave from work to be equal to the base salary increased for seniority. That would be a great relief to all employers to manage salaries and to have more flexibility when contracting a salary, but also regarding budget planning, while salary structure itself would be much more comprehensible. (1)

- We propose amendments to the Labour Law in the part regulating vocational training and development. This law should provide for appropriate modalities for the engagement of high school students, university students and other persons outside employment relationship (both in and outside the area of education) in order to acquire practical knowledge and experience in a real working environment, career development and easier future employment. Additional conditions limiting the possibility of such engagement should be removed from the existing provisions on vocational training and development, regardless of the activity of the employer and whether it is the public or private sector. The competent ministry may determine all necessary mechanisms to

prevent the misuse of this institute, if this was the reason for imposing restrictions in Article 201. In this respect, in order to develop good and safe practice, it is necessary to harmonize and amend the provisions of the Labour Law so that they form a consistent labour regulation with the provisions of the Law on Dual Education and the Law on the Dual Model of Studies in Higher Education, which regulate the conditions of work practice for high school students and university students. (3)

- We propose that the amendments to the Labour Law clearly define what are the elements or conditions for determining the base salary and which general act of the employer determines those elements, as well as to determine the conditions for offering an annex agreeing to change the base stipulated salary. Also, we would suggest that the amendments to the Law clearly define whether in the offer for concluding an annex to the employment contract, in order to transfer to another suitable job, it is necessary to explain in detail the "needs of the process and organization of work" that led to the offer for conclusion annex to the contract, i.e. to define by the Law that a detailed explanation is not necessary if the needs of the process and organization of work are real, and if the offered jobs are appropriate and the employee is trained to work on the offered jobs. (2)

- Introduction of the possibility of editing the employment relationship during the establishment or during employment relationship to partially work outside the employer's premises (not only from home) as well as the possibility of changing the working regime during the employment relationship on a special basis for changing the agreed working conditions. The difference between work from home and remote work should be precisely defined (by workplace or work tools) and relativize the need to define the "workplace" as a compulsory element of employment contracts by introducing f.ex. "Primary place of work" for the case of work outside of employers' premises as well as to specify the mandatory item of the employment contract outside the employer's premises "Compensation of other labour costs and the manner of their determination" because legal certainty and security is necessary. The Occupational Health and Safety Law should define obligations of both the employer and employees for work outside the employer's premises. Work organization flexibility needs to be expanded to include the possibility of introducing overtime, not only in connection with unforeseen circumstances and emergencies. The employer and employees should be free to agree on the reason and purpose of overtime, while employers should be entitled to contract a management fee that would also include compensation for managers' overtime. (3)

- It is necessary to: (a) extend the statute of limitation periods for the conduct of proceedings (the subjective period of 6 months to be extended to at least one year and the objective period to 3 years), (b) in the event of the employment contract termination, extend the maximum duration of the notice period from 30 to 60 days (c) enable employers to issue decisions in the form of an electronic document determining measures (dismissal or milder measure) or releasing employees from liability, as well as delivery these decisions are executed electronically, (d) the employee's refusal to receive the decision served on the employer's premises as if the act had been delivered, (e) enable the employer to unilaterally release the employee from work during the notice period (when the notice period is prescribed/contracted) with the salary compensation payment in the amount of the employee's basic salary, (f) regulate the procedure of termination of employment due to technological, economic or organizational changes - redundancy, clearly stating the obligations of the employer or whether the employer is obliged to address a representative union within the company and the republic organization responsible for employment, whether he is obliged to take measures for new employment, etc. (2)

- For the purpose of keeping pace with trends, solutions and possibilities that the digitalization process entails, it is necessary to amend the Labour Law so as to define an alternative way of administration of rights and obligations arising from employment with the use of electronic documents (decisions' enactments and conclusion of contracts), alternative way of conducting formal communications between the employer and employees

electronically, primarily through e-mail or other similar electronic communication channels, and use of the electronic bulletin board, electronic record keeping, etc. Also, we consider it important to amend the Law on Labour-Related Records as regards three key items: setting the document retention period at a maximum of five years from the date of employment termination, explicitly enabling electronic records and use different IT tools for this purpose, and regulating the proper way of disposing of the hard copy employee records. (3)

LAW ON VOCATIONAL REHABILITATION AND EMPLOYMENT OF PERSONS WITH DISABILITIES

CURRENT SITATION

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

COVID-19

Pursuant to the company's obligation to employ persons with disabilities, there is a challenge in practice that these persons may have the status of a particularly vulnerable category in relation to COVID-19 infection and the companies may find themselves in an extremely difficult situation to meet all necessary measures for employment of persons with disabilities.

POSITIVE DEVELOPMENTS

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

REMAINING ISSUES

Problems remain the same and are reflected in the following:

- The problem for employers is the lack of staff that would apply for jobs appropriate for PwD.
- Working in some industry sectors (such as construction, private security, manufacturing, etc.) requires specific medical fitness and it is therefore practically impossible to employ PwD.
- Failure to carry out the classification of business activities of employers that, due to their nature, cannot be subject to the application of the Law in the same way as business activities not requiring special medical fitness or special mental or physical abilities of employees for certain jobs. Furthermore, companies selling services rather than products, where employees with special mental and physical characteristics are a key factor in performing core business activities, are unable to meet the requirements set by this Law.
- The Law on Vocational Rehabilitation and Employment of Persons with Disabilities is in conflict with the Law on Private Security. The latter stipulates that, starting from 1 January 2017, private security activities can only be carried out by persons with an appropriate license the acquisition and maintenance of which requires appropriate mental and physical abilities. This especially applies to employees handling weapons, who are required

to undergo annual health check-ups. Thus, companies from the private security industry are additionally prevented from complying with provisions of the Law on Vocational Rehabilitation and Employment of Persons with Disabilities.

- Although there is a possibility for current employees to undergo an assessment of their working ability to be recognized as PWD, in practice such a procedure is very complex and administratively cumbersome, as it includes the submission of numerous documents by the employee and the involvement of different state authorities with somewhat overlapping powers within just one procedure (the National Employment Service [NES] and the National Pension and Disability Insurance Fund [NPDIF]).

FIC RECOMMENDATIONS

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

- Classify business activities subject to a limited application of the Law, due to their specific nature (e.g. private security, manufacturing, construction, etc.), meaning that in these activities the number of PwD the employer must hire should be calculated relative to the number of employees in jobs that do not require special medical fitness pursuant to the law and/or nature of the business activity and that can be performed by employees with disabilities. (1)

- The assessment of and the issuing of a decision on working ability should be performed by the same body to accelerate the procedure. We suggest that the procedure and decision-making should be accelerated and the list of documents required by the authorities from the employee be reasonably decreased. (2)

- We believe that a more efficient manner for increasing the employment rate of PwD would be to incentivize employers with subsidies for their employment. (3)

EMPLOYMENT OF FOREIGN NATIONALS

CURRENT SITUATION

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

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

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

fessionals and professional training). A personal work permit is issued at the personal request of a foreign national, whilst a work permit (except for a work permit for self-employment) is granted at the request of the employer. All of the abovementioned types of work permits have specific requirements with regard to the necessary documentation and conditions that have to be fulfilled for their issuance.

For a given time period, a foreign national who seeks employment in Serbia may be granted only one type of permit to work, and a foreign national may only conduct the business activity for which he/she was issued the work permit. A requirement for obtaining a work permit is holding a temporary residence permit in Serbia, or visa for longer stay issued on the grounds of employment (type D visa), and a work permit is issued for the period of validity of the temporary residence/type D visa. The work permit on the ground of type D visa is issued for a period of time of 180 days at most, and for its extension the foreign national must first obtain temporary residence permit. The Serbian employer may submit the request for the issuance of work permit for the foreign national, while the procedure for issuance of type D visa is still ongoing, which enables the foreign national to commence with work for the Serbian employer immediately after entering into the country. As of 1 December 2020, it will be possible to submit a single request for issuance/extension of the temporary residence and work permit, personally or electronically.

COVID-19

Measures of restrictions of movement and travel, as well as social distancing the countries implemented in order to protect the public health during the COVID-19 pandemic, have impact on the position of foreign nationals working in Serbia. Due to these measures, many foreign nationals could not leave the territory of Serbia, while conducting of the procedure concerning their status before the Serbian authorities became significantly more difficult.

The Government of the Republic of Serbia implemented measures concerning status matters of foreign nationals working in Serbia and adapted them to the new situation, as follows:

- Under the Conclusion of the Government on the Suspension of Work with Parties via Direct Contact dated 18 March 2020, the state administration bodies were obliged to suspend direct contact with parties and continue their work via written or electronical correspondence or via telephone, while the state of emergency is in force. In this regard, the Foreigners Department within the Ministry of Interior and the National Employment Service, introduced certain changes compared to previous manner of work. The Foreigners Department, apart from the fiction that their documents were valid during the state of emergency (see below), also enabled, for foreigners who needed to regulate their status during the state of emergency, to submit the signed request via post to the competent local police department, along with the required original copies of documents. According to the practice of the National Employment Service, the request for the issuance of work permit could have been submitted via post or electronically if the submitter has valid electronic certificate. During the state of emergency, the National Employment Service allowed the submitters of electronical request who did not have valid electronical certificate, to subsequently submit via post the signed original copy of the request, in which case the moment of submitting the electronical request is considered as the moment of submitting the request;

- By the Decision on the Status of Foreign Nationals During the State of Emergency dated 24 March 2020, it was prescribed that the foreign nationals who, on the day when the state of emergency was declared, were legally residing in Serbia, may legally remain in its territory while the state of emergency is in force. Also, it was stipulated that the personal documents of the foreign nationals which expired during the state of emergency, will be valid until the state of emergency is revoked;

- By the Decision on Validity of Work Permits Issued to the Foreign National During the State of Emergency dated 27 March 2020, the work permits which validity period expires during the state of emergency, will be considered valid while the state of emergency is in force. The deadline for submitting a request for their extension is 30 days from the day the state of emergency is revoked; and

- Based on the Decree on Measures for Prevention and Suppression of Infectious Disease COVID-19 dated 7 May 2020, the proceedings for determining the status of foreign nationals not initiated during the state of emergency, will be initiated within 30 days from the day the state of emergency is revoked, and until those proceedings end, it will be considered that the foreign nationals reside in Serbia legally.

POSITIVE DEVELOPMENTS

There were no new positive developments in the previous

period, comparing to the previous edition of the White Book.

REMAINING ISSUES

- The provisions of the Law on Employment of Foreigners prescribing that a work permit will only be issued to an employer if that employer had not dismissed employees as redundant prior to filing a request for a work permit create problems in practice .
- A labour market test is still required for all situations of obtaining a work permit for employment, which creates problems in practice when it comes to hiring senior management.
- The issue of the maximum period of validity of residence and work permits (up to one year) is still outstanding, and the provision of the Law on Employment of Foreigners which stipulates that a work permit may be issued on the basis of an approved temporary residence makes the procedure for obtaining a work permit significantly more difficult, given that obtaining a temporary residence permit is an excessively complex and time-consuming process. Furthermore, it is still not possible to submit a request for issuance/extension of the approval for temporary residence electronically, even though, according to the latest amendments of the Law on Foreigners, it should have been possible from 1 January 2020.

FIC RECOMMENDATIONS

- The Central Registry's certificate regarding whether an employer, prior to filing a request for a work permit, had dismissed employees as redundant should contain the exact job title of the redundant employee; (2)
- The labour market test should be excluded in the case of hiring high-ranking managers; (2)
- In the procedure for issuance of temporary residence permit, it is necessary to shorten the duration of the procedure, reduce the number of the required documents, as well as to enact a relevant bylaw and commence with the implementation of the provision which enables to submit the request for issuance/extension of temporary residence electronically. (3)

SECONDMENT OF EMPLOYEES ABROAD

CURRENT SITUATION

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

The Secondment Law does not apply to business trips abroad which last up to 30 days continuously or 90 days in total in course of a calendar year. The Ministry of Labour has issued an opinion which states that the

employer can assign its employees to business trips abroad irrespective of the above described limitations, if such business trip does not fall under one of the cases (i) – (iii) from the paragraph above (e.g., business trip abroad for the purpose of conducting negotiations with potential business partner and concluding a business cooperation agreement).

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

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

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

COVID-19

Due to prevention of spread of the COVID-19, the states are imposing certain measures aimed to protect public health, as a result of which the secondment of employees to temporarily work abroad can be constrained by the public policy of control of entry to territory of a particular state. This restriction varies from state to state, it depends on the employee's citizenship and it is subject to changes from time to time depending on the epidemiological situation. Return of employees from temporary work abroad can also be constrained by the policy of control of entry to the Republic of Serbia, which varies depending on whether the employee is a Serbian or foreign citizen and which is subject to changes from time to time depending on the epidemiological situation in the Republic of Serbia.

In accordance with restrictions on international travel of passengers, the Republic of Serbia enacted the Decree on organisation of the work of the employers during the state of emergency, which obliged employers to postpone business trips abroad during the state of emergency having in mind a prohibition or restrictions on border crossing and/or movement, which is analogously applicable to the secondment of employees to temporarily work abroad.

POSITIVE DEVELOPMENTS

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

REMAINING ISSUES

Although the Secondment Law does not apply to business trips abroad which duration does not exceed 30 days continuously nor 90 days in total in course of a calendar year, in practice of large number of employers, this limitation has proved inadequate when it comes to managerial positions which require frequent business trips for the purpose of performing work for the employer abroad, since the employees who work at managerial positions are often required to be on business trip abroad more than 90 days in total in course of a calendar year.

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

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

FIC RECOMMENDATIONS

- Extend the maximum period employees at managerial positions are allowed to stay abroad on the basis of assignment to business trip, without application of the Secondment Law to, up to 180 days in total, in course of a calendar year, instead of the currently applicable 90 days. (2)
- Allow secondment abroad for the purpose of vocational training also to entities which are not necessarily related to the employer by equity or control. (1)
- Allow the secondment abroad of employees under the age of 18. (1)

STAFF LEASING

CURRENT SITUATION

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

COVID-19

Considering that, in accordance with the Staff Leasing Act, the staff leasing agencies are formal employers of the leased employees, the agencies faced problems in relation to fiscal incentives and direct financial aid the state provided in order to mitigate the economic consequences of COVID-19 disease. As the condition for using fiscal incentives and direct financial aid was that an employer does not reduce the number of employees for more than 10% of its total worforce until 31 October 2020, the agencies could not avail themselves of this type of state aid. Namely, the agencies cannot commit not to reduce the number of employees as they cannot influence the employment policies of their clients. During COVID-19 pandemic the state failed to recognize that staff leasing, as an industry employing thousands of employees, was in need of support, as the business of staff leasing agencies was jeopardized just like many other businesses.

POSITIVE DEVELOPMENTS

The lawmakers adopted the last year's recommendation that staff leasing should be regulated by a separate law which would regulate all important issues in this area and be harmonized with accepted international standards (primarily ILO and EU documents), as well as with the legislation of the Republic of Serbia (Labour Act).

REMAINING ISSUES

The Staff Leasing Act prescribes that a beneficiary can engage leased employees who are on a fixed-term

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

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

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

FIC RECOMMENDATIONS

- We recommend deletion of Article 14 of the Staff Leasing Act, which limits the number of employees employed at the staff leasing agency on a fixed-term basis that a beneficiary can lease. (3)
- We recommend deletion of Article 2 paragraph 5 of the Staff Leasing Act, which regulates situations in which there is no comparative employee at the beneficiary. (3)
- We recommend deletion of Article 17 of the Staff Leasing Act, which prescribes the staff leasing presumption. (2)

HUMAN CAPITAL

CURRENT SITUATION

The state of the labour market has slightly changed in comparison to the previous year. The unemployment rate in Serbia at the end of the second quarter of 2020 is 7.3% according to the data of the Statistical Office of Serbia, which is a decrease against last year's by 2.4 (it was 9.7% at the end of 2019). The unemployment rate varies across Serbia, reflecting to a great extent the economic conditions in different parts of the country. The lowest unemployment rate was again registered in Vojvodina, which poses a great challenge to employers in terms of recruiting and selecting adequate staff.

The educational structure and the labour market indicate that finding candidates who meet the requirements of high-level, expert and strategic positions is still challenging. Also, finding candidates for lower positions is becoming more difficult due to various restrictions. The retention of high-skilled workers and development of own resources are still very popular trends, having in mind market conditions. Highly qualified people as well as people with lower education for basic positions are very difficult to recruit and retain since they are leaving the country trying to find better paid jobs abroad.

COVID-19

What has severely affected the labour market in Serbia, as well as in region and the whole world is COVID-19 pandemic. As of March 2020, the market has drastically changed - the economy is struggling to stay alive and due to state subsidies many companies did not conduct severe layoffs. Those companies that did not apply for the government subsidies started with layoffs - still the number of people who lost their jobs since the beginning of pandemic has not been determined and officially confirmed. It is extremely difficult to discover the real number of job losses - the numbers vary from 15.000 to 220.000 people and even more. Also the percentage of employees absent from work due to pandemic, home quarantine and isolation increased by 11.4% compared to the end of the first quarter of 2020. The same refers to people working from home, where the percentage increased by 12.1% Due to economic difficulties, more companies refused to receive the second round of state subsidies since their analysis shows that it is not financially justified. In the forthcoming period the situation in the labour market is expected to worsen, while the real statistics of the unemployment rate and the number of people that lost and will lose their jobs due to COVID-19 will continue to increase.

Taking the above into consideration, and despite the economic crisis that hit the whole world, the negotiation between the government and trade unions about the increase of minimum wage, continues. Even though nobody expects it to be increased, there is still a chance of its change.

POSITIVE DEVELOPMENTS

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

REMAINING ISSUES

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

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

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

With the current situation and the agreed and planned changes of Labour Law in 2021, there is great need of amendments to be done in various areas.

FIC RECOMMENDATIONS

- Improvements of the educational system should be continued. To this end, regular contact between the FIC and the Government, the ministers of education, youth and sport, as well as the universities. The FIC and the business community in Serbia are ready to provide support and put their experts at disposal. Based on an analysis of needs of the economy and the real sector, new educational profiles should be created and implemented, and the university enrolment quotas should be adjusted in line with the market needs. (1)
- Define the legal framework for the employer-student relation to simplify the implementation of vocational internships in parallel with regular education. (1)
- Define the legal framework for preparing persons with high education profiles to work independently in their profession, regardless of whether they meet the requirements for taking an expert exam and/or taking part in an internship program. (2)
- The National Employment Action Plan should clearly define, redefine and widen the range of educational profiles that are going to be included into the action plan and employment policy, i.e. be attuned to the needs of the market and employers. (3)
- Design a human capital internal migration plan for Serbia to evenly develop underdeveloped regions and lessen the gap in the economic needs of different parts of the country, prevent migration from Serbia and stimulate citizens to search for a better place for life and work in the country, and not abroad. (3)
- Due to COVID-19 situation and upcoming economic effects of it, consider to support employment through reducing employment costs regarding taxes and contributions. (2)

DUAL VOCATIONAL EDUCATION

CURRENT SITUATION

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

Pursuant to the Law on Dual Education:

- Mutual rights and obligations of employers and schools will be regulated by an agreement on dual education, to be concluded for a minimum period of three or four years.
- Mutual rights and obligations of employers and students will be regulated by an on-the-job training agreement to be concluded between the employer on the one side, and the parent or legal guardian of a student under the age of majority, or an adult student, on the other side;
- Employer may terminate the agreement on dual education in case of unforeseen technological, economic or organizational changes preventing, aggravating or substantially changing the performance of the employer's activity, and for other reasons stipulated by the Law.
- For the purpose of dual education, the employer is obliged to provide an instructor with experience of no

less than three years in the relevant profession, one who has undergone the appropriate training and has acquired a relevant licence issued by the Serbian Chamber of Commerce and to fulfil other conditions stipulated by the Law, such as: conducting a business activity that enables on-the-job training; having the appropriate work space and equipment; ensuring the implementation of measures for health and safety at work.

- The employer will provide the students with personal protective equipment at work, compensation for actual costs of transport from school to work and back, meal allowance, and insurance against injury while attending on-the-job training.

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

- For each hour of on-the-job training, the employer will pay the student compensation in the amount of no less than 70% of the minimum wage.

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

- A higher education institution which wants to implement dual study programs shall form a network of employers who need to employ persons with appropriate qualifications, and the dual model of studies shall be implemented on the basis of an accredited study program in accordance with the law on higher education.

- Mutual rights and obligations of employer and higher education institution will be regulated by a dual model agreement, to be concluded for a period which cannot be shorter than the number of years of the study program.

- Mutual rights and obligations of employer and student will be regulated by an on-the-job training agreement to be concluded by the employer and the student.

- The Law prescribes conditions under which either party may terminate the dual model agreement or the on-the-job training agreement.

- The employer is obliged to provide an adequate number of mentors who have at least the type and level of higher education corresponding to the education that the student acquires according to the study program and three years of work experience, as well as to meet other requirements prescribed by the Law in terms of providing working conditions and material security of students (the same conditions required of employers in the vocational dual education).

- The employer will pay the student a monthly compensation for each hour of on-the-job training in the net amount of at least 50% of the basic salary of an employee working on the same or similar jobs (where such compensation can be paid in different amounts per years of study, in range from 30-70% of the basic salary of an employee working on the same or similar jobs, but the total compensation paid at the level of the study program must be at least 50% of the basic salary of the employee paid for the same period).

COVID-19

Competent Ministry has formed a team for organizing online classes in dual education.

If the epidemic continues, it is not clear how dual education at the employers' premises will be realized in the next school year, whether the special regulations adopted by the Government for employees shall apply to the students engaged by employers under this model as well and which will be the obligations of employers included in the dual education system.

POSITIVE DEVELOPMENTS

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

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

REMAINING ISSUES

Given that the implementation of the Law on Dual Education and the Law on Dual Model of Studies in Higher Education has begun only in the school year 2019/2020, the effects of the implementation of these Laws and practical issues of the employers in implementation thereof remain to be seen in the future period.

It is necessary to determine more precisely how the laws on dual education are to apply in relation to the Labour Law, the Law on Occupational Health and Safety and other laws regulating different aspects of employment.

Although a will of the authorities to consider providing subsidies and tax breaks for the companies participating in the dual education system has been generally expressed, such incentives have not yet been prescribed.

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

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

FIC RECOMMENDATIONS

- By-laws should be adopted or authentic interpretations or opinions should be given to determine how the laws on dual education are to apply in relation to the Labour Law and other laws regulating different aspects of employment. (3)
- Incentives in form of subsidies or tax breaks that would attract companies in Serbia to join this system should be provided. (2)
- Provisions on payment of students by the employer should be regulated in more detail, especially in terms of evaluating the performance of the engaged students and the possibility of introducing a performance-based compensation system. (3)
- Obligation of a student to compensate the employer in case of retaking of the year or causing damage to the employer should be prescribed, as well as the right of an employer in such cases to terminate the on-the-job training agreement, in addition to the right to damage compensation. (3)
- If the COVID-19 epidemic continues in the next school year, the manner of realization of dual education and the obligations of employers in that sense should be prescribed. (2)

LEGAL FRAMEWORK

What has undoubtedly marked the year 2020 is the pandemic of contagious disease COVID-19 caused by the virus SARS-CoV-2. Each state has undertaken measures to combat the negative effects of the COVID-19 virus, both on human health and the economic system. In addition to declaring State of Emergency in the Republic of Serbia, measures were adopted which were designed to help citizens and business entities in these difficult and unforeseen circumstances.

As the most important novelties introduced into the legal system of the Republic of Serbia, we may point out the following:

- **Decision on declaring the state of emergency** – On March 16, 2020 a State of Emergency has been declared in the Republic of Serbia. By passing this decision and declaring a State of Emergency in the Republic of Serbia it was necessary to pass a series of other decisions, rulebooks, orders and measures in order to regulate the new situation more closely. The State of Emergency has been lifted on May 6, 2020.

- **Decision on declaring COVID-19 disease caused by virus SARS-CoV-2 a contagious disease** – This Decision regulates more precisely the measures of isolation, treatment and testing of persons infected by virus COVID-19.

- **Decree on fiscal benefits and direct benefits to economic entities in the private sector and financial assistance to citizens in order to mitigate the economic consequences caused by the disease COVID-19** – This Decree regulates fiscal benefits and direct benefits from the budget of the Republic of Serbia to economic entities in the private sector in order to mitigate the economic consequences of COVID-19 disease, VAT treatment of trade in goods and services free of charge for health purposes, and payment of one-time financial assistance to all adult citizens of the Republic of Serbia from the budget. Legal entities that did not reduce the number of employees by more than 10% had the right to fiscal benefits and direct benefits from the budget, while all adult citizens who registered in a timely manner were paid a one-time financial assistance in the amount of 100 EUR.

- **Decision on temporary measures for banks to mitigate the consequences of the COVID-19 pandemic in order to preserve the stability of the financial system** - This Decision regulates the measures and activities that the bank is obliged to undertake in order to facilitate the position of debtors (natural persons, agriculturists, entrepreneurs and companies), to offer a delay in repayment of obligations (moratorium) which cannot be shorter than 90 days, or from the duration of the State of Emergency imposed due to the pandemic.

- **Law on the Centralized Records of Beneficial Owners** – The deadline for recording data on the beneficial owner of registered entities has been extended to January 31, 2020.

- **The Law on Amendments to the Company Law** – The latest amendments to the Company Law introduces two new legal institutes within limited liability companies: the reserved own share and financial instrument – the right to acquire a share. These financial instruments are primarily aimed at encouraging new start-up companies, especially in the IT sector.

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LAW ON BUSINESS COMPANIES

CURRENT SITUATION

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

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

The main characteristics of the Company Law are:

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

By the latest amendments to the Company Law, which came into force in 2020, it was introduced the institute of reserved own share of a limited liability company, as well as term, emissions / issuance, registration, clearing of a financial instrument – the right to acquire a share of a Limited Liability Company that may be granted to employees. These amendments also allow the distribution of the remaining profit in the form of payments to the employees of the company by the decision of the General Meeting. These institutes provide an opportunity for the LLC to stimulate its employees to perform their jobs in the best way possible in a way not previously envisaged, by giving them the opportunity to become members of that company, following the example of joint stock companies and economic systems of the European Union and the United States of America.

The draft law on amendments to the Company Law, which is under preparation, tends to prevent abuses of by members and director, through the institutes of approval of legal work in which there is a personal interest, and by increasing scope of activity of the General Meeting and control over the director through the availability of data on the amount and structure of the director's remuneration and incentives, as well as to ensure the resolution of such disputes amicably by prescribing that the company is obliged to try to mediate in resolving disputes between a member of the company and the company itself.

COVID-19

The state of emergency in the Republic of Serbia, introduced by the Decision on the introduction of the state of emergency ("Official Gazette of the Republic of Serbia", No. 29/2020), significantly changed the operations of business entities.

The COVID-19 pandemic and the introduction of a state of emergency in the Republic of Serbia significantly affected the work of the Business Registers Agency (hereinafter: BRA) which suspended direct contacts with its customers. BRA has intensified the work of its info center and its customers can continue using the following BRA's e-services: e-Registration of incorporation of a single-member and multi-member limited liability company, e-Incorporation of Sole Proprietors, e-Construction permits, e-Submission of financial statements and e-filing with the Central Records of Beneficial Owners.

The Decree on deadlines in administrative proceedings during the state of emergency ("Official Gazette of the Republic of Serbia", Nos. 41/2020 and 43/2020) had a concrete impact on the conduct of proceedings of business entities. Decree prescribes that during the state of emergency in the Republic of Serbia the parties cannot bear the consequences of failing to comply with the time limits prescribed by law, so this provision should also be taken into account when assessing the timeliness of registrations, appeals and other remedies, as well as that all deadlines prescribed by the Company Law shall be interrupted and shall continue to run from the date of the termination of the state of emergency which also applies to the initiated procedures for forced liquidation of companies.

POSITIVE DEVELOPMENTS

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

Amendments to the Company Law that are in force, contributed to the approaching economic systems that exist in comparative law countries with developed market economies through institutes financial instrument - the right to acquire shares, which is a non-transferable financial instrument issued by a limited liability company that gives the consenting holder the right to acquire a share on a particular day (maturity day) at a certain price and the manner of acquiring this financial instrument - the institute of reserved own shares. This way of stimulation has not existed in Serbia so far, and it has proven to be especially effective in the information technology industry, having in mind that these companies have limited funds in the initial phase of business and therefore are not able provide high salaries to quality staff.

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

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

REMAINING ISSUES

One of the disadvantages of the Company Law is the absence of the concept of limited liability partners in a partnership. The existence of such a concept would be particularly relevant for partners in professional partnerships, since they should be allowed to enjoy limited liability protection, while third parties' risks could and should be covered by liability insurance.

The provisions of the Company Law restricting the powers of representatives to represent the company are still inconsistent with the relevant provisions of the Law on Contracts and Torts, which is sedes materiae for this area.

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

Other inconsistencies of the Company Law include the provision prohibiting a single-member LLC from acquiring own shares, which is contrary to the Company Law's provisions on status changes. Also, the FIC pointed out the need for changing the Company Law, Article 150 in particular, in order to avoid interpretation according to which the value of a share cannot be reduced, so an explicit prescription of this possibility would be a significant improvement.

One of the insufficiently clear institutes of the Company Law is "lifting the corporate veil". When stating the reasons for the application of the related provisions, legislators made a clumsy formulation creating a dilemma on whether those reasons are the only applicable ones or are given exempli causa.

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

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

FIC RECOMMENDATIONS

- Limited liability partnerships (LLPs) should be prescribed by the Company Law. (1)

- The provisions in the Company Law that deal with limitations to the authority of a company's representatives should be harmonized with the provisions of the Law on Contracts and Torts. (1)
- Common practical issues should be resolved, such as regulating members' additional payments, the reduction of share capital of a single-member limited liability company, etc. (3)
- Clearly defining reasons for lifting the corporate veil. (1)
- Corrections of technical flaws in the Company Law should be made to eliminate inconsistencies and provide clear procedures and competencies, harmonizing provisions within the Law itself. (3)
- The increase in the share capital through debt-to-equity swap (conversion) should be clearly regulated. (2)

CAPITAL MARKET TRENDS

CURRENT SITUATION

The existing regulatory framework is partly harmonized with European Union legislation and IOSCO principles, but the Serbian capital market is still underdeveloped and the regulatory framework has yet to be tested in practice, so all the potential flaws of the reforms implemented back in 2011, and of the additional reforms from 2016 and 2018, cannot be duly assessed.

Although noticeable, regulatory reforms alone were not enough to stimulate growth of the capital market.

Despite the emergence of interesting new products on the debt instruments market, we need to note once again that the capital market in Serbia is still developing and that there are still issues associated with quality and liquidity of capital market products.

Just before entering the White Book to the press, amendments to the Law on Capital Market were published and will be analyzed in the next edition of the White Book.

COVID-19

COVID-19 pandemic outbreak caused global crisis of capital markets, and had negative impact on Serbian capital market as well. Magnitude of the consequences of the pandemic outbreak, and the manner in which the market will respond thereto, are still unforeseeable having in mind that the crisis is still in full swing. According to publicly available data of the Belgrade Stock Exchange, year low trading levels on monthly basis were hit in June.

As most important reaction of the State in this segment, we highlight enactment of the Regulation on the Procedure for Issuance of Debt Securities, whereby the procedure for issuing corporate bonds, as an additional financing option, was eased – for the period of emergency state and within 6 months thereafter.

POSITIVE DEVELOPMENTS

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

- The issuance of state and municipal bonds for the financing of infrastructural and other large communal projects should be stimulated, while IPOs and issuance of corporate bonds in the private sector should be encouraged.

Enactment of the Regulation on the Procedure for Issuance of Debt Securities, although in relation to COVID-19 pandemic, could generally make positive effects on stimulation of the issue of corporate bonds as way of financing, and on the potential development of this segment of the capital market even after cessation of the effects of COVID-19 pandemic and said Regulation.

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

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

We also commend efforts of the Ministry of Finance so to create better market environment for more effective emission of state bonds through arrangements with EUROCLEAR.

- The general legal framework for performing operations with financial derivatives and more complex financial instruments should be improved.

As the most important novelty and development in this segment, we emphasise enactment of the Regulation on Financial Derivatives Transactions for the Purpose of Managing the Republic of Serbia's Public Debt, which came into force in the begging of 2020, and which lays down the general conditions for the performance of financial derivatives transactions by the Serbia for the purpose of hedging i.e. adequate management of the currency risks, interest rate risks, and other risks associated with public debt management. We believe that by the enactment of the subject Regulation certain step forward was made in relation to regulatory framework for the financial derivatives transactions on the OTC market when the Serbia is a counterparty, which could have a positive effect on entering into ISDA master agreements on financial derivative transactions.

Additional developments:

We commend the enactment of the Law on Alternative

Investment Funds and amendments to the Law on Investment Funds, as well as relevant bylaws.

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

We note the readiness of competent authorities, especially the Securities Commission and the Central Securities Depository and Clearing House (CRHoV), to enable the further growth of the capital market in Serbia by adopting the required by-laws and issuing relevant opinions. In this context, we commend the Securities Commission for carrying through the open discussion on the regulation of crypto property rights in Serbia, which was initiated in March 2019.

REMAINING ISSUES

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

Municipal bonds are still rare, and these bonds were not traded on the secondary market. The same applies for corporate bonds. Certain types of bonds are still not present on the market, such as so-called green bonds.

Regulatory should be improved to enable transactions with more complex financial instruments, including the regulatory framework by which more liberal approach and better legal certainty in relation to Employee Share Plans, as well as regulatory framework in relation to securitization. In that sense, there seems to be need for additional liberalization / definition of possibility of Serbian residents to invest in exotic market products abroad in line with EU laws and ESMA guidelines.

Despite some positive regulatory developments in relation to entering into financial derivative transactions according to ISDA master agreement by Serbia, there is still couple of open issues (for instance, in relation to the extent of applicability of public procurement regulations).

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

FIC RECOMMENDATIONS

- The issuance of state and municipal bonds for the financing of infrastructural and other large communal projects, including green bonds, should be stimulated, while IPOs and issuance of corporate bonds in the private sector should be encouraged. (3)
- The legal framework for performing operations with financial derivatives and more complex financial instruments should be improved, including in relation to establishment of regulatory framework in connection with Employee Share Plans, and crowd financing and its manifestations. (2)
- Further stimulation of the possibility of Serbian residents to invest in more complex securities on foreign markets, including structural products, structural deposits, ETFs and investment funds, all in accordance with European standards and ESMA guidelines. (1)
- Establish a close and timely dialogue with business associations and other relevant financial actors on prioritizing measures for capital market development in Serbia. (2)

JUDICIAL PROCEEDINGS

CURRENT SITUATION

During 2019 and in the first quarter of 2020 the legal framework for judicial proceedings was not significantly changed, nor were there important legislative reforms that would affect judicial proceedings in the Republic of Serbia.

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

The Law on Civil Procedure (RS Official Gazette Nos. 72/2011, 49/2013, along with the Decision of the Constitutional Court 74/2013 and the Decision of the Constitutional Court 55/2014, 87/2018 and 18/2020) now applies to a substantial number of active judicial proceedings, so there is not a significant number of active judicial proceedings to which the previous Law applies. The latest amendments to the Law on Civil Procedure, adopted in 2020, concerned exclusively inclusion of paragraph 3 to Article 355 of the Law on Civil Procedure (the article of the law that regulates the obligatory elements of the verdict), while other provisions of the Law on Civil Procedure were not amended in any way.

The Law on Enforcement and Security (RS Official Gazette No 106/2015 and 106/2016 - authentic interpretation,113/2017- authentic interpretation and 54/2019) has not been significantly changed.

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

The Law on the Protection of the Right to Trial within a Reasonable Time (RS Official Gazette No 40/2015), which entered into force on 1 January 2016, is increasingly applied in practice, having in mind that courts are still overburdened with cases, especially in civil litigation, which often leads to breaches of adjudication deadlines.

Dispute Resolution

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

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

In accordance with the Legal Practitioners Law, the Bar Academy has been introduced as a special body established by the Bar Association of Serbia, responsible for the professional education and specialization of attorneys and graduate lawyers, but its work so far has not been noteworthy. Ever since its establishment the Bar Academy has organized seminars only sporadically, but in the past year it has intensified its activities, primarily by organizing lectures and professional trainings for lawyers and law graduates, and today we can say that the situation has significantly improved.

COVID-19

During the declared state of emergency due to the COVID-19 pandemic, the courts were obliged to postpone hearings except in the cases of urgent proceedings (interim measure proceedings etc.). During the same period the courts operated with the reduced capacity. After state of emergency has been lifted the courts continued to operate on the normal basis.

POSITIVE DEVELOPMENTS

All courts in Serbia have established online databases showing the status of ongoing cases, which has facilitated access to information on the status of cases. The

databases are regularly updated, so in most situations it is possible to promptly obtain information on the status of a case. From 2014, when the Commissioner for Information of Public Interest and Personal Data Protection banned any processing of data contrary to the Law on Personal Data Protection, database search by personal names of parties is no longer possible, and there are no signs that it will be introduced again.

Dispute Resolution

The Law on Civil Procedure was last substantially amended in 2014, when significant developments were introduced, such as the expansion of the possibility of filing a request for a revision as an extraordinary legal remedy by prescribing new situations where a revision is always allowed, as well as by reducing the threshold to EUR 40,000; i.e. up to EUR 100,000 for commercial disputes (amounts calculated according to the median exchange rate of the National Bank of Serbia (NBS) on the filing date of the lawsuit).

Enforcement

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

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

REMAINING ISSUES

Extensive education of judges and the introduction of better mechanisms for the liability of judges in wrongful decisions.

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

Enactment of new amendments to the Law on Civil Procedure to assure flexibility of the timeframe and deadlines for certain actions.

Electronic communication between the parties and the court is still not possible due to the lack of clear regulations and by-laws in this field, as well as the lack of funds necessary for the technological equipment for the courts. The timeframe, although potentially very promising in terms of an efficient completion of litigation, is not flexible enough, since litigation is often unpredictable, and legal possibilities for extending deadlines are insufficient. On the other hand, judges either fail to comply with the timeframe or set unreasonably long timeframes, of two or even more years, which again contributes to the prolongation of proceedings and defeats the purpose of the concept of procedural timeframes. Some of the deadlines are unrealistically short, and the deadline for providing evidence is too strict, which may lead to abuse by parties.

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

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

Article 204 of the Law on Civil Procedure, which provides the possibility to complete a litigation case between the same parties, if a party has disposed of an asset or right subject to litigation, has resulted in a progressive stance of the jurisprudence regarding the reversal of the claim by the assignor – according to which the respondent could be obliged to pay the assignee at the request of the claimant. However, such

reasoning is not uniformly accepted by the entire jurisprudence, which leads to unequal treatment before the courts and legal uncertainty in terms of the rigid interpretation of the law, contrary to the jurisprudence in jurisdictions that have similar provisions in their legislation. Finally, even though Article 204 was amended with the previous amendments of the Law on Civil Procedure, only time will show whether the envisaged amendments will lead to the resolution of the above-mentioned problem in the jurisprudence.

Concepts that allow for delay of procedure, such as postponement and restitutio in integrum, have to be restrictively interpreted and implemented.

The concept of restitutio in integrum has been restored to the enforcement procedure system. The legislature has foreseen that restitutio in integrum is allowed only in the case of a failure to comply with the deadline for submitting an objection or appeal in the procedure of contesting the decision on enforcement based on a directly enforceable title. Although the scope of the application of this concept has been significantly narrowed, abuse of this concept can be reasonably expected. Also, it is not clear why the legislature has foreseen the application of this concept only in the enforcement procedure based on a directly enforceable title.

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

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

As mentioned before, the concept of postponement has been restored to the enforcement procedure. Although the postponement of enforcement upon the request of the enforcement debtor is possible only once, it opens the door for malpractice as the criteria for the assessment of legal grounds for postponement is too broadly set, and there is a possibility that, in theory, the postponement could last for a longer period of time, depending on the public bailiff's assessment.

FIC RECOMMENDATIONS

- Extensive education of judges and the introduction of better mechanisms for the liability of judges in wrongful decisions. (3)
- Improve and justify the allocation of cases among courts and judges. (3)
- Enactment of new amendments to the Law on Civil Procedure to assure flexibility of the timeframe and deadlines for certain actions. (3)
- Concepts that allow for delay of procedure, such as postponement and restitutio in integrum, have to be restrictively interpreted and implemented. (2)
- Consensus on the cases arising under Article 204 of the Law on Civil Procedure. (2)

ARBITRATION PROCEEDINGS

CURRENT SITUATION

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

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

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

COVID-19

COVID-19 and the measures adopted to combat the COVID-19 epidemic had not significant impact in the field of arbitration proceedings.

POSITIVE DEVELOPMENTS

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

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

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

REMAINING ISSUES

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

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

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

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

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

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

FIC RECOMMENDATIONS

- It is necessary to clarify the relationship between bankruptcy and arbitration proceedings in the Bankruptcy Law. (3)
- Promote the possibilities and advantages of dispute resolution through arbitration by providing institutional support to the relevant governmental and non-governmental bodies as well as by instructing professional organizations and companies to accept the jurisdiction of local arbitration institutions. (1)
- Develop a supportive legal framework for the activity of arbitration institutions in Serbia to ensure conditions for regional companies to accept its jurisdiction, subsequently creating a regional arbitration centre in Serbia. (1)

LAW ON BANKRUPTCY

CURRENT SITUATION

According to data available on the website of the Bankruptcy Supervision Agency, as of 1 July 2020 there were a total of 1,980 pending bankruptcy proceedings under way in the Republic of Serbia, with the exception of bankruptcy proceedings conducted under the Law on Enforced Collection, Bankruptcy, and Liquidation (SFRY Official Gazette Nos. 84/89, SRY 37/93, and 28/96) and bankruptcy proceedings conducted against banks, which are within the jurisdiction of the Deposit Insurance Agency. The average duration of the procedures initiated under the Law on Bankruptcy Proceedings is about 3 years and 10 months, while average duration of the proceedings initiated under the Law on Bankruptcy is about 1 year and 7 months..

In the first six months of 2020 there were 145 bankruptcy proceedings initiated. This means that 24 bankruptcy proceedings were averagely initiated per month. Compared to 2019, when the monthly average was 36 initiated bankruptcy proceedings, the decrease in the number of initiated bankruptcy proceedings is noticeable. That number is still significantly below the monthly average of 80 initiated proceedings in 2012. The grounds for such a decrease in initiated bankruptcy proceedings after 2012 were presented in previous editions of the White Book, and the main cause was the Decision of the Constitutional Court of Serbia on the unconstitutionality of automatic bankruptcy. This year the decrease was caused also by COVID-19 pandemic, because during the state of emergency in Republic no hearings for examination of existence of the reasons for bankruptcy were held, thus no bankruptcy proceedings was open.

During 2020, the Draft Law on Amendments to the Law on Bankruptcy ("Official Gazette of RS", No. 104/2009… 113/2017, 44/2018, 95/2018) was prepared, as well as the Draft Law on Amendments to the Law on the Bankruptcy Supervision Agency ("Official Gazette of RS", No. 84/2004, 10/2009 and 89/2005). The drafts should enter the procedure of discussion and adoption before the National Assembly of the Republic of Serbia during this year. These are the fifth amendments to the Law on Bankruptcy since its entry into force in early 2010.

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

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

COVID-19

Due to the COVID-19 pandemic, the state of emergency was introduced in the Republic of Serbia in mid-March 2020, which affected the bankruptcy proceedings in such a way that the courts postponed all hearings during the state of emergency and during the same period the courts worked with reduced capacity. Also, during the state of emergency, there were no deadlines for filing legal remedies or for undertaking other procedural actions in court proceedings. After the state of emergency was lifted, from mid-May 2020, the courts continued to operate at normal capacity and bankruptcy proceedings conducted in regular way.

POSITIVE DEVELOPMENTS

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

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

Improved position of secured and pledged creditors

In the previous edition of the White Book, it was pointed out that one of the remaining problems related to the lifting of the ban on enforcement against pledged property in the reorganization procedure was the provision according to which the bankruptcy judge would not make a decision on lifting the ban on enforcement if the bankruptcy administrator proves that pledged property is crucial for reorganization of the debtor or for the sale of the bankruptcy debtor as a legal entity. It is pointed out that this wording gives the bankruptcy administrator the opportunity to avoid lifting the enforcement ban because it seems that the bankruptcy administrator can easily prove that some of the

property is necessary for reorganization or sale of a legal entity, while a secured creditor can hardly prove otherwise. Additionally, one of the recommendations in the last year's White Book was to additionally restrict possibilities for banning enforcement against the bankruptcy debtor's property during the procedure of the adoption of a pre-packaged reorganization plan, in order to prevent bankruptcy debtors from averting an enforcement settlement over an indefinite period of time and without the support of the majority of creditors through multiple consecutive bankruptcy filings.

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

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

Additional increase of transparency and efficiency of the proceedings

Amendments to the Law on Bankruptcy have been proposed in order to expand the principles of publicity and information, to collect, process and analyze statistical data related to bankruptcy proceedings and now, in addition to allow all creditors to explicitly request and receive all information related to the bankruptcy debtor, on the course of the bankruptcy procedure, on the property and management of the property of the bankruptcy debtor and all state authorities have the obligation to submit to the bankruptcy administrator data on the property, rights and interests of the bankruptcy debtor, free of charge. Also, it is proposed to introduce the sale of the bankruptcy debtor's property electronically, through the portal of the authorized organization for the sale of property. It is proposed to shorten the deadline for filing bankruptcy claims from 120 to a maximum of 60 days, as well as to shorten the deadline for scheduling hearings to decide and vote on the reorganization plan from 90 to 60 days. In addition, the draft Law on Amendments to the Law on the Bankruptcy Supervision Agency proposes, among other things, the addition of two new articles, which regulate the implementation of actions in bankruptcy proceedings through an electronic portal, and collection and statistical processing of the data related to bankruptcy proceedings.

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

REMAINING ISSUES

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

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

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

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

We also underline the problem with the procedure of the distribution of funds collected through the sale of a bank-

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

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

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

One of the outstanding issues where no progress was seen is that of personal insolvency. Specifically, we believe that the resolution of this issue would benefit both creditors and insolvent debtors. The existing options available to creditors regarding insolvent debtors who are natural persons do not lead to the most favourable collective settlement. On the contrary, they result in the settlement of the claims of some creditors through some kind of enforcement procedure, while other creditors, in most cases, do not have any possibility to settle their claims with over-indebted natural persons. In that sense, we consider that the introduction of the concept of personal insolvency would ensure creditors higher settlement amounts, while at the same time protecting the integrity and basic needs of over-indebted individuals.

Finally, the situation caused by the COVID-19 pandemic, which duration is uncertain, definitely imposes the need for increasing digitalization in the field of court proceedings and especially in bankruptcy proceedings, which often require the presence of a large number of people at hearings, meetings of creditors, public sales, etc. In that sense, it would be useful to regulate in more detail the procedure of electronic sale, as well as the way of functioning of creditors' bodies and communication between the bodies in bankruptcy procedure electronically.

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

Some of the expectations presented in the previous editions of the White Book regarding comprehensive amendments to the Law on Bankruptcy have been met, but many other insufficiencies of legal solutions have not yet been fixed, and we sincerely hope to see at least concrete proposals of amendments this year.

FIC RECOMMENDATIONS

- Regulate the issue of delivery in bankruptcy proceedings in a way to make it faster and more efficient and to specify the provisions related to the finality date and starting date for the implementation of the reorganization plan so that all participants can know with certainty when the adopted plan begins to be implemented. (3)

- Regulate additionally the position of secured and pledged creditors in a way that provides the two-instance procedure with respect to their settlement from the sale of pledged property. (3)
- To regulate in detail the procedure of electronic sale, if possible, by following the example from the Law on Enforcement and Security. (3)
- Due to the COVID-19 pandemic, to consider legal regulation of digitalization process in operations of creditors' bodies and communication between bankruptcy bodies. (2)
- Stipulate that the opening of bankruptcy proceedings produces effects as of the date of publishing the notice of the opening of bankruptcy proceedings in the Official Gazette. (2)
- The provisions on automatic bankruptcy in the case of a debtor's permanent insolvency should be incorporated into the bankruptcy regulatory framework, but in a form that would be in accordance with the Constitution of the Republic of Serbia. (2)
- Stipulate the possibility and procedure for amending the adopted reorganization plan. (1)
- Regulate the procedure of personal insolvency either by amendments to the current Law on Bankruptcy or the adoption of a separate law. (1)
- To establish electronic sale of debtor property. (2)

INTELLECTUAL PROPERTY

CURRENT SITUATION

The intellectual property legal framework mainly consists of the substantive laws enacted in 2009 and afterwards. In the past year, changes occurred in the fields of copyright, patents, trademark and topographies of semiconductor products. They reflect further approximation of the laws to the rules set in sthe relevant international conventions, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and in the EU standards. The principal substantive provisions regulating intellectual property in Serbia are contained in the following pieces of legislation:

- The Law on Trademarks (2020);
- The Law on Geographical Indications (2010, amended in 2018);
- The Law on Copyright and Related Rights (2009, amended in 2011, 2012 2016 and 2019);
- The Law on the Legal Protection of Industrial Design (2009, amended in 2015 and 2018);
- The Law on the Protection of Topographies of Semiconductor Products (2013, amended in 2019);
- The Law on Patents (2011, amended in 2017, 2018 and 2019);
- The Law on the Protection of Confidential Information (2011);
- The Law on Trade (2019).

The Law on Trademarks governs the acquisition and protection of rights with respect to marks used in the trade of goods and/or services. A trademark is defined as a right that protects a mark used in the course of trade to distinguish goods and/or services of one individual or legal entity from identical or similar goods and/or services of another individual or legal entity. The text of the current law is in accordance with the Madrid Agreement Concerning the International Registration of Marks, as well as with the Protocol to the Madrid Agreement.

The Law on Geographical Indications regulates the acquisition and legal protection of geographical indications (appellations of origin and geographical indications), following the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.

The Law on Copyright and Related Rights regulates the rights of authors of literary, scientific, and artistic works, computer programmes, as well as rights related to copyright: the rights of performers, producers of phonograms, videograms, broadcasts and databases, and 'publishers' rights (rights of the first publisher of a free work and rights of the publisher of printed editions).

The Law on the Legal Protection of Industrial Design governs the acquisition of the rights to the external appearance of an industrial or handicrafts product (defined as the overall visual impression that the product makes on an informed consumer or user) and the protection of those rights.

The Law on the Protection of Topographies of Semiconductor Products regulates the subject matter and requirements for the protection of topographies of semiconductor products; the rights of creators and the ways to exercise those rights; the rights of companies and other legal entities in which the topography was created; and the limitations concerning the protection of such rights.

The Law on Patents regulates the legal protection of inventions in the field of technology which are new, which involve an inventive step, and which are capable of industrial application.

The Law on the Protection of Confidential Information regulates the legal protection of information constituting a business secret (especially financial, economic, business, scientific, technical, technological and production data, studies, tests, research results, etc.)..

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

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

- The Law on the Organization and Competences of State Authorities in Combating High-Tech Crime (2005, amended in 2009);
- The Law on Special Powers for the Efficient Protection of Intellectual Property Rights (2006, amended in 2009);
- The Criminal Code (2005, amended in 2009, 2012, 2013, 2014,2016 and 2019);
- The Customs Law (2010, amended in 2012, 2015, 2016, 2017 and 2019); and
- The Law on Optical Discs (2011).

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

COVID-19

COVID-19 pandemics reached Serbia after electronic portals of the Customs and the IP Office have been established. However, the initial filing through the INES portal operated by the Customs is possible after a regular written contract with the Customs is signed. Besides that, electronic portal operated by the IP Office does not enable full electronic communication between this body and the right holders. Among other options, it does not enable:

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

POSITIVE DEVELOPMENTS

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

The amendments to the Law on Patents introduced more precise rules in the field of innovations made in the course of employment.

The Law on Copyright introduced provisions that regulate software interoperability and it granted new rights to the creators of databases. Latest amendments seem to ensure more transparency in regard to the activities of collective management organisations, through more detailed and stringent procedures of fee determination, and transfer of management authorisations from the organisations' founders to their members in line with their natural position of stakeholders in this area.

The Law on Trademarks introduced the opposition system during the trademark examination procedure. However, the IP Office will keep on examining both absolute and relative grounds for refusal itself, as well. The change that also occurred is that the principle of international exhaustion of rights is introduced. This disabled prevention of parallel imports using trademarks. It is worth noting that introduction of this principle got Serbia further away from the EU standards. The EU adopted the regional principle of exhaustion, which means that it recognises the outer borders of its market to be relevant. Therefore, this chapter of the law will have to be changed once again before Serbia accedes to the EU. Improvements regarding the length and quality of court proceedings through the creation of special court panels for intellectual property within the Commercial Court and the Higher Court in Belgrade are now clearly visible, with first-instance proceedings lasting up to a year on average.

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

REMAINING ISSUES

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

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

FIC RECOMMENDATIONS

- COVID-19: (3)
  - The Customs should enable full electronic communication;
  - The software operated by the IP office should be enchased, so that it can enable full electronic communication, along with the changes of the Law on Trademarks, if it imposes hindrances for such digitalisation.
  - Use the opportunity this opportunity to amend the provisions of the Law on Trademarks that regulate exhaustion of rights.

- State authorities should enhance their efforts to combat online copyright infringement, concerning the software, music, and film industries. (1)

- The Government needs to provide more resources to the courts, prosecutors and police units dealing with cybercrime. (2)

- Adoption of further amendments to the Law on Copyright and Related Rights in terms of TV broadcasting and re-transmission, in line with the changes of EU SatCab Directive passed in 2019. (1)

- Amendments to the Criminal Proceedings Law and related legislation with regards to cybercrime. (1)

PROTECTION OF COMPETITION

COMPETITION LAW

CURRENT SITUATION

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

During 2017 the Ministry of Trade, Tourism and Telecommunications, as the authorised proposer, and the Commission for the Protection of Competition began drafting the new competition law. We greatly appreciate the decision of the Ministry and the Commission to invite representatives of the business community in Serbia, including the FIC, to take part in the preparation of comments to the draft law. The adoption of the new law seems to be postponed to 2021.

In late 2019, the new members of the Commission's decision-making body, the Council, have been appointed, whereby Mr. Nebojša Perić was elected as the new president of the Commission. The other members of the Council are Mr. Čedomir Radojčić, Ms. Miroslava Đošić, Ms. Danijela Bokan, and Mr. Siniša Milošević PhD.

Given that the annual report of the Commission has not yet been published at the time of writing this text, the information below is presented in accordance with the information available on the Commission's official website. Out of 175 resolved concentrations, 171 were cleared in summary proceedings, 2 were cleared with conditions, while 1 proceeding was terminated. Therefore, still a vast majority of the Commission's decisions on merger control were adopted in summary proceedings. Short form merger notifications are primarily convenient for those mergers taking place abroad which have no impact or have insignificant impact on competition on the Serbian market, but which have historically taken up a significant portion of the Commission's activities. However, even though the Merger Control Regulation has introduced this form of merger notification, the Commission is also entitled to request submission of a full merger notification when the circumstances indicate that the conditions for allowing the merger have not been fulfilled, granting the Commission a considerable amount of discretion in this regard.

Information on the total number of cases in which the Commission has brought a decision, as well as the total number of opinions issued by the Commission are not available to the public as of yet, given that the annual report of the Commission has not yet been published at the time of writing this text. In the previous period, the Commission used to a greater extent some of the more complex authorizations at its disposal under the Law, which included significantly relying on dawn raids for the purpose of collecting evidence, while there is a noticeable decrease in use of certain other procedural powers such as the suspension of the antitrust proceeding upon accepting the commitments proposal by a party to the proceeding. The Commission imposed one penalty in a case in which a violation considering the conclusion of a restrictive agreement was established and it terminated one antitrust proceeding in 2019. In the one case of merger control that was subject to investigation, the Commission imposed behavioural measures as conditions for carrying out transaction.

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

COVID-19

The COVID-19 situation has impacted the Commission's activities, and especially its activities during the state of emergency in Republic of Serbia in the period between 15 March and 6 May 2020. Nevertheless, the Commission generally remained operational and responsive, although working remotely and/or with reduced capacities. Furthermore, the deadlines for issuance of Commission's decisions were suspended during the state of emergency, but the Commission continued to issue merger clearances and was generally open to parties for consultations.

During the state of emergency, the communication with the Commission was made via telephone, e-mail and regular mail. The Commission has accepted submissions in electronic form (save for merger notifications and files exceeding 100Mb which still had to be filed by hand). After the termination of the state of emergency, the Commission resumed its regular activities (e.g. by allowing the parties to review case files, holding meetings with the interested parties etc.).

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

POSITIVE DEVELOPMENTS

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

In the area of the harmonization of competition regulations with the EU standards and rules (alignment with the acquis), there has not been any significant progress with regards to previous year, given the fact that there was no adoption of several other by-laws, which should regulate in more detail the exemption of restrictive agreements in sectors such as the sale of spare parts for motor vehicles, insurance, transfer of technologies, and road, rail and inland waterway transport. The relevant bylaws addressing the exemptions of restrictive agreements in mentioned sectors were drafted back in 2017 – however, not even in 2019, none of these bylaws was adopted, probably due to intensified work on the adoption of the new competition law. The work on the new competition law is entering its finishing stages, with the FIC actively participating by providing extensive comments on the proposed draft. In the last publicly available version of the draft law, approx. 60% of Foreign Investors Council's comments were adopted either fully or partially.

In 2019, the results of sector inquiries in the retail sale of petroleum products and retail market for fast moving consumer goods, were published, while at the beginning of 2020, an analysis of the conditions of competition on the market of production and sale of sunflowers on the territory of the Republic of Serbia for the period 2016-2018 was published.

Concerning the meetings with parties, it is noticeable that the Commission improved its practice, and is open to meetings with the parties. Scheduling a meeting became pretty straightforward and without undue delays. Its efficiency in allowing the parties to review case files also increased and the Commission now usually awards access to case files promptly after the submission of the request.

In 2019, the Commission continued making progress in competition advocacy and public relations. The Commission regularly informs the public on its activities, and publishes a great majority of its decisions on its official website. However, it is noticeable that the Commission does not publish all the decisions in relevant areas or that it publishes them with significant delays, which does not contribute to either transparency or legal certainty. The Commission published on its website the Guidelines on Rights and Obligations of the Parties during Dawn Raids, as well as the Leniency Policy Leaflet. This positive development concerning competition advocacy is important as it contributes to the overall improvement of the current legal framework and to better understanding on the part of the general public and the media of competition rules and activities and the importance of the Commission's role.

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

REMAINING ISSUES

The Commission publishes a majority of its decisions, in large part or to an extent, on its website (especially merger clearances), which is seen as progress. However, relevant court decisions issued in the process of control of the Commission's decisions are not publicly available at all since such decisions are not published on the Commission's website. The noticeable decrease of the number of opinions and individual exemptions published represents a step back given that this poses a significant obstacle to transparency and free access to information on key decisions of the Commission. Another shortcoming is the fact that the database of the Commission's decisions does not allow for advanced search (with more detailed criteria). Additionally, the Commission does not publish information on submitted initiatives, even after the decision on such initiatives have been made.

The proceedings before the Commission still do not sufficiently guarantee all procedural rights of the parties, such as the rights of the parties to have access to the case file and powers of the Commission in terms of the treatment of privileged communication. Certain cases in the Commission's practice indicate potential concerns with regards to

a privileged treatment of state companies in the proceedings before the Commission, which was also pointed out by the European Commission in its annual progress report for Serbia.

As for dawn raids, it seems that the Commission's decisions on dawn raids lack explanations of reasonable suspicion that evidence will be removed or altered, which is a statutory condition for carrying out dawn raids. Although the Commission has made serious efforts to improve the quality of economic analyses, it is necessary to consistently apply economic analyses in all proceedings before the Commission, taking into account the specifics of each particular case, and further work is needed in improving the quality of reasoning behind the Commission's decisions. In the previous period, it was evident that the Commission has issued contradictory decisions with regards to its previous practice in certain cases, without proper reasoning for doing so.

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

As for the leniency programme, the Commission made efforts concerning the promotion and development of this institute with additional education of its employees. However, the use of this institute is hardly noticeable in practice and is still fairly underdeveloped.

Some legal uncertainty is also caused by a lack of clarity in the application of merger control rules to transactions that involve the acquisition of control over parts of undertakings, as well as the acquisition of control on a short-term basis. These problems often arise in the interpretation of the term "independent business unit", usually related to the acquisition of control over real estate, where the business community needs a clear and timely guidance from the Commission in respect of future practices, which still do not exist, i.e. are not published.

It is noticeable that the Commission has been applying a more complex methodology in analysing the individual exemption of restrictive agreements. While the need for a detailed examination of complex cases is clear, the speed of business developments and the fact that parties to proceedings cannot implement a restrictive agreement without the Commission's decision, it is essential that this practice should not adversely affect the efficiency of the Commission's decision-making process, in terms of avoiding any unjustified delay. In practice, the review period of individual exemption requests is often prolonged beyond the 60 days deadline as envisaged by the Competition Law (and in some cases even lasts for 4-5 months). This is causing practical problems to the business community when it comes to implementing agreements and business policies which require prior approval of the Commission. The economic reality requires swift action from all parties including the Commission. Additionally, the rather restrictive and formalistic approach of the Commission is more evident, as well as deviations from the comparative EU practice in the interpretation of certain procedural legal institutes, which is especially relevant in the procedures of individual exemptions. It is necessary, in the context of preparations for the new competition law, to examine the acceptability of the concept of individual exemption, which the European Union abolished several years ago. In the last version of the draft law, the legal institute of self-assessment was introduced, whereby the system of individual exemptions was also retained, which was the proposal of Foreign Investors Council.

Finally, the method of determining penalties is characterized by inconsistency and unpredictability in the application of the Law. For example, a substantial part of the existing guidelines is not in compliance with the law, the methodology for determining coefficients for individual factors in meting out the penalty is unclear, the Commission's decisions often do not include an overview of the established coefficients for individual factors nor a proper reasoning, and total revenues of the party to proceedings

is taken as a basis for the calculation of the fine, instead of calculating the fine based on revenues derived from only the relevant market where competition was infringed. In the last version of the draft law it was provided that penalties will be calculated based on the relevant turnover, i.e. turnover generated on the relevant market on which the competition infringement was made, which is a significant progress with regards to previous situation.

FIC RECOMMENDATIONS

- Adoption of the new Competition Law as soon as possible. (3)
- In order to enhance transparency and legal certainty, the Commission should issue clear guidelines and instructions containing the manner of application of certain provisions of the Law, with the involvement of interested parties in commenting proposed documents. (2)
- The fees in the Tariff Rules should be decreased to a reasonable sum, especially in the merger control area. (3)
- The Commission should publish issued opinions and decisions on individual exemptions, i.e. to altogether improve transparency and predictability of decisions. (1)
- The Commission should issue publications of the relevant definitions of product markets grouped by industries every six months, with the aim of harmonizing practice. (1)
- The Commission should invest more resources into further digitalisation of its processes in order to ensure undisrupted and efficient work in the COVID-19 pandemic. (3)
- Judges of the Administrative Court should complete advanced training in both competition law and economics. All rulings of said court should be made publicly available, and explained in detail in terms of the substantive issues of the Commission's decisions. (2)
- The Commission must allow legitimately interested third parties to comment on procedures which affect their business, for the complete and correct determination of facts. (2)
- The Commission's practice should be consistent with respect to all market players. Considering the penal nature of decisions in the area of competition protection and the significant powers of the Commission, predictability as well as consistency and legal certainty are of crucial importance for all market players. (2)

STATE AID

CURRENT SITUATION

The legal framework regulating the granting of state aid in the Republic of Serbia consists of the Law on State Aid Control – newly adopted in October 2019 ("Law"), and its bylaws.

The latest publicly available edition of the Annual Report of the Commission for State Aid Control (CSAC) is for 2018. The total amount of state aid in Serbia was EUR 818 million, a 3% increase compared with 2017. Serbia's state aid expenditure as a percentage of GDP was 1.9%, which was a decrease against 2017, when this percentage was 2.2%. By comparison, in 2018 EU Member States spent EUR 120.9 billion, or 0.76% of the EU's GDP, on state aid.

In 2018, 28% of the total state aid went to the agricultural sector and the remaining 72% to industry and services, a small decrease compared with 2017, when this percentage was 73%. The largest chunk of the total aid to industry and services was horizontal aid (34.4%), followed by sectoral and regional aid, with 9.1% and 28%, respectively.

The share of subsidies in the total state aid continued to increase in 2018, reaching 69.6% (compared to 66.8% in 2017), while tax incentives accounted for 27.6%, guarantees 1.3% and soft loans 1.2%.

COVID-19

The COVID-19 pandemic was fought on the State aid front too, through financial measures of the Government aimed at helping the affected businesses stay afloat. This also led to an increased activity of the CSAC in the first half of 2020.

Following in the footsteps of the European Commission, the CSAC issued a notice on the application of the Law in the context of COVID-19 in March 2020. The notice aimed to clarify what is necessary for certain measures to constitute State aid and under which conditions they are likely to be compatible with the rules. The rolling out of the Government's package of economic measures in April 2020 was accompanied by two new regulations setting out the rules and criteria for compatibility of the COVID-19 related State aid. Applying the rules laid out in these regulations, the CSAC assessed the compatibility of the economic measures in May 2020, reaching a conclusion that certain measures were either compatible with the Law (direct grants, favourable loans and state guarantees) or need to be adjusted to ensure compatibility (fiscal measures).

POSITIVE DEVELOPMENTS

The new Law which aims to regulate this area in more detail, align local rules with the EU acquis and remove some of the main concerns the European Commission previously flagged its Progress Reports.

The Law entered into force in January 2020 when the wholly new CSAC commenced its mandate, replacing the old regulator which was an arm of the Ministry of Finance. Under the Law, the CSAC - consisting of the president and Council - functions as an independent body, formed by and accountable to the Parliament. This change removed one of the European Commission's main concerns about the previous framework that brought into question the old CSAC's independence. In the upcoming period, the new CSAC should work further to increase and strengthen its capacities.

The new CSAC has a duty to publish its decisions on its website and to maintain a registry of granted aid, including a separate de minimis aid registry. These rules, aimed at achieving a higher level of transparency of the CSAC's work and thus legal certainty too, seem to be yielding results - since its constitution in January 2020 the CSAC is more prudent with the publication of notices and decisions. Aid registries are yet to be set up, however.

REMAINING ISSUES

In its previous Progress Reports (the newest, 2020 one is not available during the preparation of this text), the European Commission continuously pointed out that a number of existing state aid schemes in Serbia, including fiscal ones, still need to be aligned with the EU acquis. The same holds true for the harmful practice of exempting companies in the process of privatization from the rules for granting state aid. At the normative level, Serbia has not yet adopted regional state aid maps.

The trend of a lack of aid for research and development remains notable, whereas environmental protection state aid continues to record a small growth (10.2% in 2018, com-

pared to 8.3% in 2017), which is a positive sign but nevertheless leaves plenty of room for improvement.

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

In 2018, the CSAC adopted 70 decisions on permissibility of state aid out of which 14 were cases of subsequent control. The new CSAC has, in the first half of 2020, had only one (out of 17) case of subsequent control. The CSAC is yet to order the return of granted state aid – although this is not entirely atypical for a relatively young authority in the pre-EU accession period, it could also bring the independence and integrity of the CSAC into question.

State aid policy must become predictable and consistent. Clear plans and programmes, based on which companies and the public can be informed about the said policy, have to be adopted. Attracting investments in the underdeveloped regions, as well as pinpointing areas to strengthen competitiveness, are essential starting points for achieving the clear and cost-effective granting of state aid.

With the new Law in place, the CSAC also needs to prioritize its advocacy activities and increasing the stake holders' awareness of the relevant rules. This should further enable the inclusion of both state aid beneficiaries and the general public in drafting state aid policy, so that specific, predictable, and effective solutions can be reached jointly.

FIC RECOMMENDATIONS

- Increasing and strengthening personnel capacities of the CSAC. (3)
- Securing a timely adoption of the relevant bylaws that are aligned with the EU acquis (especially with regards to companies in the process of privatization), as well as a proper implementation of the Law in the area of transparency (registries, reports). (3)
- Effective state aid control – utilizing different mechanisms envisaged in the Law in order to monitor granted state aid and also impose measures for incompatible state aid. (2)
- Consistent application of state aid rules, EU standards and practices and the harmonization of the fiscal schemes with the EU acquis. (2)
- Continued advocacy efforts towards aid grantors, beneficiaries and third parties alike. (1)

CONSUMER PROTECTION AND PROTECTION OF USERS OF FINANCIAL SERVICES

CONSUMER PROTECTION

CURRENT SITUATION

In June 2014 the Serbian Parliament adopted the currently applicable Law on Consumer Protection (hereafter: the Law), effective from September 2014. This is the third piece of consumer protection legislation aimed at further improving the protection/position of consumers compared to the previous legislative solutions. The Law was changed to a lesser extent in 2016, when the provision of Article 11 of the Law ceased to be valid due to the implementation of the Law on Advertising as well as during 2018, when certain provisions ceased to apply due to the beginning of the implementation of the Law on Protection of Financial Services Users in Distance Contracts.

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

During 2019, the Government adopted a program for the development of e-commerce for the period 2019-2020 which determines the specific goals of improving e-commerce in the domestic market as well as the action plan for the implementation of the program.

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

In accordance with EU guidelines on active consumer protection policy, the Law devotes significant attention to the effective resolution of consumer disputes. Court fees are waived for consumer disputes with a value not exceeding RSD 500,000 to encourage consumers to "fight for their rights" in court and out of courts (Ministry publishes the list of bodies meeting the requirements for such out of court procedure).

The Law further abolished the possibility of imposing the repair of goods on the consumer within the first six months of purchase, meaning that repair is only possible with the express consent of the consumer. In the case of a lack of conformity of goods or services within six months of purchase, the consumer is entitled to choose between a replacement, a corresponding price reduction, or a refund. A significant improvement introduced by the Law is the expansion of the misdemeanour liabilities of traders.

Traders are required to keep records of received complaints, and the inability of consumers to deliver the packaging of goods to the trader cannot be an obstacle for resolving a complaint or a reason for refusing to remedy the lack of conformity. The deadline for responding to a complaint is eight days, whereas the deadline for the resolution of a complaint acknowledged by the retailer cannot exceed 15 days from the date of the filing of the complaint, or 30 days for technical goods and furniture.

The Law created the basis for a higher level of consumer protection in certain fields, e.g. contracts for the sale of goods and services of general economic interest.

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

Additionally, the Law introduced new and expanded the current powers of market/tourist inspectors.

COVID-19

N/A

POSITIVE DEVELOPMENTS

Compared to the previous year, there have been certain improvements in the expansion of the scope of activities undertaken by consumer protection associations, includ-

ing: educating consumers about their rights, organizing roundtables to discuss important issues in this area, performing tests for a large number of consumer products and providing information to consumers about detected irregularities, etc. The websites of these associations provide an increasing number of useful publications for consumers and presentations of on-going issues in this area, which (together with the above described activities) enables a better fulfilment of their main role.

Positive developments are also visible in relation to educational activities on consumer-related topics organised by both local self-government units and the competent state authorities (including primarily ministries, inspections and courts), such as staff trainings, conferences and roundtables, aimed at raising their competences and implementation of EU standards as well as on the activities of the Government to improve the framework for development of e-commerce, bearing in mind that e-commerce, according to the research of the Serbian Chamber of Commerce, doubled during the state of emergency compared to the time before the COVID-19 pandemic, and the growth of e-trade is expected in the future.

REMAINING ISSUES

Although the Law formally established a deeper balance in the relationship between traders and consumers, the results in practice demonstrate that this is still far from real equality. According to the Report on the work of the National Register of Consumer Complaints for 2018 (the report for 2019 has not been published), there is a noticeable increase in consumer complaints compared to the previous year. It is to be expected that this moment will continue especially if one takes into account the increase in the volume of e-commerce.

Although improvements in terms of consumer education and raising consumers' awareness of their rights are visible, campaigns should be actively continued nationwide to ensure a better balance of consumer awareness in all regions of Serbia

FIC RECOMMENDATIONS

- Active participation and involvement of FIC in the drafting of the announced new Law and Consumer Protection Strategy until 2024, in order to improve this area. (2)
- Building the capacity, expertise, and role of consumer NGOs. (2)
- Continue work on consumer education and the implementation of topics related to consumer protection in the primary and secondary schools curricula. (1)
- Promotion of consumer protection rights and interests on the local government level. (1)

PROTECTION OF USERS OF FINANCIAL SERVICES

CURRENT SITUATION

The rights of financial services consumers provided by the banks, issuers of financial leasing and merchants, and the terms/conditions and manner in which these rights are exercised and the protection of these rights are regulated via the Law on the Protection of Financial Services Consumers (hereinafter: the LPCFS) with its latest amendments of 2015. In addition to the aforementioned law, overall technological development and the increasing significance of doing business electronically in modern society, has contributed to the development of new ways of sending offers and advertising financial services, which has created a need for additional

regulation in this area through the rendering of the Law on the Protection of Financial Services Consumers in Distance Contracts, which entered into force in September 2018. The advantages of this regulation are strengthening the trust of financial services consumers in distance contracts, reduced costs of financial services providers, and the establishment of a unique legal framework for the protection of users in negotiating distance contracts on the provision of financial services. For the purpose of creating a legal framework that acts as a unique solution to the issue of loans indexed in Swiss Francs, the Law on the Conversion of Housing Loans Indexed in Swiss Francs (hereinafter: the Law) was adopted, which entered into force on May 2019. The Law applies exclusively to private individuals who have concluded housing loan agreements with banks indexed in Swiss Francs (CHF), while this Law does not apply to those who have already converted their debt into the Euro, in accordance with some earlier available model.

To ensure that the rights and obligations of financial services consumers and providers are clearly and comprehensively regulated, the National Bank of Serbia (hereinafter: the NBS) has rendered a set of decisions regulating the area of the protection of financial services consumers. The following are the most significant of these Decisions. From April 2019, the Decision on Detailed Conditions of Financial Services Advertising, which regulate, in detail, the overall and specific conditions of advertising financial services and the obligations and responsibilities of financial services providers which refer to this type of advertising. In line with the decision, the NBS shall control how financial services providers advertise, whether or not they act in accordance with the decision, i.e. whether the advertising message lasts long enough so that the average consumer can read it unhindered, and/or hear the message, uses the right font which must be used depending on the advertising form, etc. Furthermore, the Decision on Handling Complaints of Financial Services Providers, the latest version of which entered into force in July 2019, regulates the manner of submitting complaints of financial services consumers to the providers of financial services and the NBS, and how these institutions are to respond to these complaints. Financial services providers are, inter alia, obliged to issue confirmation of the receipt of a complaint, to allow clients to submit complaints via the providers' websites, as well as to visibly display on their websites, notifications containing information on the protection of the consumer rights process. Pursuant to this Decision, financial services providers are considered to be banks, financial lessors, payment institutions, electronic money institutions, and the public postal operator in relation to payment services provision and electronic money issue.

On the other hand, the manner in which the rights and interests of the insured, policyholders, insurance beneficiaries and third injured parties and the manner of mediation in the settlement of claims for damages, complaint filing by the insurance service consumer and the handling of such complaints is regulated via the Decision on the Manner of Protecting the Rights and Interests of Insurance Service Consumers which entered into force in November 2015. Additionally, the protection of insurance service users is regulated by the Law on Insurance from 2014. An important segment of informing insurance policyholders is pre-contractual information, defined in Article 82 of the Insurance Law. In the pre-contractual information, the insurer / insurance company transparently provides all relevant information before concluding the insurance contract, including the manner of protection of the rights of insurance policyholders and protection of interests of insurers, manner and deadline for filing claims, information on the supervisory body for insurance companies. Both the manner and the protection of the rights of the insurance contractor with that body. Pre-contractual information must be signed by the policyholder, and must be part of each case. If the policyholder and the insured are not the same person, and it is a case of collective insurance or insurance that is a related contract, the insurer is obliged to provide the insured with a set of pre-contractual information, as well as to provide the insured with insurance conditions applicable to the insurance contract.

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

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

COVID-19

The outbreak of the pandemic caused by the COVID-19 virus did not result in the rendering of regulation which would especially protect the financial services consumer as defined by the LPCFS. The measures rendered aimed to preserve the stability of the financial system as a whole and to assist both the people and the economy. One such measure rendered was the Decision on Temporary Measures for Preserving Financial System Stability whereby the banks were obliged to provide all debtors (private individuals, agricultural producers, entrepreneurs and companies) with a suspension of debt payments (moratorium) which may not be shorter than 90 days (which in practical terms means three monthly loan instalments).

However, the outbreak of the pandemic caused by the COVID-19 virus, perhaps now more than ever has imposed the need for financial services to be digitalised to the highest degree possible, which is evident in particular, in the area dealing with payment services where the NBS (by issuing various instructions) regulated the payment of funds to consumer who were not able to personally visit the banks' premises and did not have the established payment instruments in place through which to initiate transactions.

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

POSITIVE DEVELOPMENTS

As regards the recommendations provided in last year's text on the further education of financial services consumers in regard to their rights, we believe that said has been partially fulfilled. The NBS, as strategists in the field of financial education, has a section on its website dedicated to financial services consumer protection, whereby financial services consumers can find detailed information on all the concepts of financial services as well as their rights. In this regard, it cannot be said that no progress has been made. However, data from NBS's 2019 Report show that less than 15% are well-founded complaints (a total of 1,976 complaints were filed, 1,297 complaints were unfounded, 280 complaints were founded, 399 complaints are ongoing). This data clearly indicates that financial services consumers remain unaware of the rights and obligations of providers and financial services consumers, and, we believe that further efforts of the NBS are necessary to educate said consumers (not only through information posted on the website, but also through further education available via other media forms).

In the section in the previous year's recommendations where regulations are to clearly and unambiguously define the possibility to negotiate financial services providers' fees, we must admit that there has been no improvement here. Actually, the situation is much worse than it was in 2019. The number of judicial proceedings as a result of loan processing fees is continually increasing by the day (on 3 March 2020 there were over 40,000 active proceedings regarding this matter). Judicial practices between the courts of general jurisdiction and the commercial courts (competent in terms of company agreements) are unequal. The banks continue to charge loan processing fees, despite the fact that they are hit with dozens of new lawsuits, every day. In 2019, the NBS did not publish its stance on this issue, and the position of the Supreme Court of Cassation which is that the negotiating of loan processing fees is permitted, is interpreted by the courts such that said negotiating is permitted only if the client is clearly presented with what constitutes the structure of these fees. It is not enough to simple present the client with the fee amount, rather, the banks are asked to present the fee structure to clients (i.e. its components).

Additionally, one of the recommendations was that it was necessary to harmonise case law with the new regulations in force, such as the Law on the Conversion of Housing Loans Indexed in Swiss Francs, bearing in mind that prior to the adoption of the cited law, the Supreme Court of Cassation took the position whereby it established that the clause on the indexation of loans in the CHF is deemed null and void, unless the bank has reliable written proof that it obtained the lent dinar funds through its own borrowings in this currency and that before concluding the agreement, it provided the borrower with complete, written information on all risks arising from negotiating the application of such a clause. As the law failed to include all categories of consumers indexed in Swiss Francs, disputes are continued to be filed against the banks, in particular, by consumers who repaid their obligations prior to the entry of said law into force or those who did not accept conversion, however the number of this second type of dispute is significantly less.

REMAINING ISSUES

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

The rationales of a large number of court judgments regarding loan processing fees, indicate that the judicial functionaries do not have the necessary knowledge to make legal decisions in the field of banking. Here, it is necessary for the NBS, in cooperation with the Association of Serbian Banks and representatives of eminent law firms (those who deal with banking), to organise the constant training of judicial officers, in order to educate and acquaint them with banking regulations.

The most urgent possible adoption of a sector-based solution to the problem related to loan processing fees, i.e. disputes arising from the collection of loan processing fees by banks. We see the adoption of a special law (similar to loans in Swiss Francs) or the authentic interpretation of the provisions of the Law on Obligations, as the only possible way to resolve these disputes burdening the banking system, both costly and operationally. This special law should clearly answer the following key questions: are the banks allowed to negotiate fees, i.e. the cost of loan processing? is it enough that the fee is presented to the client as a percentage, i.e. in an absolute amount? or is it necessary to show the client the structure of the fee, i.e. cost relations? The current situation is absolutely unsustainable and leads not only to legal uncertainty, but also to the paradoxical situation in which a few days after a bank pays out a loan to a client, that same client files a law suit against the bank. In addition to banks, the judicial system itself is under great pressure due to the daily increase in the number of new lawsuits and the inability to process them all.

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

Furthermore, the pandemic caused by the COVID-19 virus has imposed a need to increase the legal limit for the negotiating of remote financial services without the use of a qualified electronic signature. The Law on the Protection of Financial Services Consumers in Distance Contracts has provided for the possibility of negotiating financial services by using means of distance communication, and therefore including the negotiating of a distance loan agreement. The cited law has envisaged that "If the law requires a specific type of financial service contract to be concluded exclusively in writing, the distance contract may be concluded also by using a means of distance communication in the form of electronic document, bearing a qualified electronic signature, in accordance with the law governing electronic signature." It is evident in this provision that any financial services agreement, regardless of its amount, may be concluded at a distance, with the necessary qualified

electronic signature. However, the legislator has recognised that a large number (especially private individuals) do not have a qualified electronic signature certificate, and it is therefore envisaged that a distance contract "with a value of up to RSD 600,000 may be concluded by a consumer without using his/her qualified electronic signature, if he/she gave consent to conclude that contract using at least two elements of consumer identity verification (authentication) or using an electronic identification scheme with a high level of reliability," We feel that digitalisation in the provision of finance services on the one hand, and the fact that a large percentage of private individuals do not have a qualified electronic signature, on the other, imposes a need to increase the given limit and thereby allow for financial services of greater value to be concluded using at least two elements of consumer identity verification (authentication) or using an electronic identification scheme with a high level of reliability, as, the use of, for example, e-bank and OTP (one time password) for concluding agreements, fulfils all security standards.

Also, there are no clear instructions or guidelines on how to enter a case in the Register of Complaints where the complainant expresses dissatisfaction on several grounds. In that case, the insurer should enter only one complaint and choose one of several grounds prescribed by the NBS instruction, and assessing it as primary, or for the same complainant should enter several consecutive complaints, entering each basis of complaint separately, even if it is the same applicant. objections and the same insurance contract. In practice, it is most common for clients to file an objection in an improper form without often providing primary data or evidence to substantiate their allegations, which puts insurers in a position to defend the unfoundedness of such allegations in later statements of the NBS. by the objector.

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

FIC RECOMMENDATIONS

- Further educating financial services consumers on their rights, as well as insurance service users. (1)
- Educating judicial officers on banking operations and insurance sector. (2)
- Resolving disputes initiated by loan processing fees via a special law or the authentic interpretation of the existing law. (3)
- Permitting the electronic issue of bills of exchange. (3)
- Regular workshops and seminars are proposed in cooperation with the NBS and insurance companies, and for the purpose of constructive discussions, exchange of opinions and obtaining instructions and guidelines in the field of finding the best solutions in the field of protection of rights and interests of insurance users
- Increasing the limit stipulated in Article 3, paragraph 3 of the Law on the Protection of Financial Services Consumers in Distance Contracts. (2)

PUBLIC PROCUREMENT

CURRENT SITUATION

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

Due to short period of application of the New Law, FIC is not in the position to comment possible effects of the New Law on wellbeing of commerce and citizens. However, the New Law is expected to bring more transparency in public procurement procedures and create more favourable framework for competition and accordingly provision of improved quality of goods to citizens. FIC has many times insofar urged for better coordination of stakeholders to implement relevant provisions of the Law on Public Procurement and other applicable laws to combat corruption in public procurements efficiently. Unfortunately, there was no progress since the first Public Procurement Law in 2002 was enacted. The same applies to providing effective mechanisms to control fulfilment of public contracts, reduction of percentage of intergovernmental agreements with third countries in public procurement sector and more active role of stakeholders to promote application of the Public Procurement Law by annulling awarded public contracts which have not been subject to relevant public procurement procedure.

As the New Law creates more favourable conditions to promote competition in public sector, FIC expresses optimism that condition in public procurement sector will move in positive direction.

COVID-19

FIC expresses concern that spread of COVID-19 produced negative effects on application of the New Law. This is particularly related to public procurements in health sector to combat spread of COVID-19, where the contracting authorities, contrary to the New Law classified data on quantities of procured medicines and tests and medical equipment as secret data.

POSITIVE DEVELOPMENTS

The main novelties provided in the New Law are as follows:

1. Exceptions in the application of the New Law can be challenged before the Republic Commission for Protection of Bidders' Right in Public Procurements ("the Commission"). The request for annulment of the awarded contract shall be submitted along with a request for protection of the right. In case the Commission annuls the contract, it shall sentence the contracting authority to fine in the amount up to 30% of the awarded contract;

2. Financing procurements under donation is not provided as an exception in the application of the New Law;

3. New thresholds for application of the Law are prescribed:

   a) Above estimated value of RSD 1.000.000, 00 for procurement of goods and services;

   b) Above estimated value of RSD 3.000.000, 00 for procurement of works;

   c) Above estimated value of RSD 15.000.000, 00 for procurement of goods and services and above the estimated value of RSD 650.000, 00 for procurement of works for diplomatic missions and diplomatic and consular office abroad;

   d) The above-estimated value RSD 15.000.000, 00 for procurement of social and other special services conducted by the public contracting authority and above estimated value RSD 15.000.000, 00 for public procurements conducted by the sectorial contracting authority.

4. The contracting authorities shall publish amendments of public procurement plan on Public Procurement Portal and their website within ten days since its amendment;

5. Contracting authority can limit the number of lots to be awarded by one bidder even in the case when the bid-

der can submit offers for several or all lots, under the condition that maximal number of lots is determined in the public invitation;

6. The general rule that all communication and exchange of documents in public procurement procedures shall be performed electronically on Public Procurement Portal is established;

7. The new public procurement procedure is prescribed – partnership for innovation, in case when the contracting authority needs innovative products, services, or works which are available on the market;

8. There are differences in the procedure - negotiation procedure without publishing the public invitation concerning grounds for initiation (new repetitive services and works awarded to the prior bidder with whom the basic contract is concluded and procurement of goods for research purposes, experimenting, examination or development) and manner to conduct this procedure;

9. Negotiation procedure with a public invitation can be conducted only by sectorial contracting authorities;

10. Framework agreement cannot last more than four years (this period does not apply to contracts concluded on the ground of framework agreement);

11. Sectorial contractual authorities may establish and maintain a system of qualification for companies;

12. The New Law introduces new services subject to public procurements – social and other special services for which less formal regime is established (certain health services, social services, education services, etc.);

13. Collateral for seriousness of bids in public procurement procedures is reduced to 3% of the value of offer (VAT excluded);

14. Terms for contracting authorities to provide clarifications to bidders in regard tender documents are extended;

15. Contracting authorities may publish on their profile prior informative notification to inform companies its intention to execute certain public procurement procedure to reduce terms for submission of offers while sectorial contracting authorities may publish on their profile periodical indicative notification for the same purposes;

16. Bidders are not obliged to provide documents to prove fulfilment of conditions to participate in tender procedure; they can provide statement on fulfilment defined tender requirements; contracting authority is obliged to request from selected bidder to submit documents proving fulfilment of conditions to participate in tender procedures for which estimated value is above RSD 5.000.000, 00 (non-certified copies);

17. Bidder may prove tender conditions by capacities of subcontractors (financial, economic, HR, references and technical requirements) - not only as single or joint bidders, while, on the other side, technical requirements (technical equipment) can be proved by capacities of other companies which do not joint bidder or subcontractors);

18. Criteria for awarding the contract must be most economically favourable offer;

19. Awarded contract may be amended/value of contract increased for not more that 50% of the contract for the following reasons:

    a) change of the awarded bidder is not possible due economical or technical reasons (compatibility requirements with existing equipment, services or works procured in the prior public procurement;

    b) change of awarded bidder may cause significant difficulties or costs for the contacting authority

20. Awarded contract may be changed due to unpredicted circumstances and contractual party may be changed as well to status changes on side of the contractual party;

21. Scope of the awarded contract may be changed for less than 10% for goods and services and 15% for works and the value of change must be lesser than RSD 15.000.000, 00 for goods and services and RSD 50.000.000, 00 for works;

22. Subcontractors can be replaced under certain conditions;

23. Terms for submission of request for protection of right ("request") are amended;

24. 25.Foreign applicants must appoint proxy for receipt of documents;

25. The applicant must submit the proof on paid fee along with the request, otherwise, the request shall be rejected;

26. The contracting authority must deliver the request to selected bidder which can provide its opinion on the request.

PPO enacted by laws necessary for application of the New Law, conducted two webinars for usage of new Public Procurement Portal and issued guidelines for preparation of tender documents and submission of bids through new Public Procurement Portal.

REMAINING ISSUES

In the previous year, no progress was made in the field of fight against corruption in public procurement or in the sanctioning of criminal offences in the field of public procurement. There is no evidence of the implementation of the numerous information-sharing agreements concluded between anti-corruption state bodies, with the aim of prosecuting the perpetrators in cases of corruption, bid rigging, restrictive agreements and unusually low bids.

A remaining issue is the application of the rules on an "unusually low bid." Despite FIC's effort to draw attention of inadequate provisions with regard to "unusually low bid" and proposal to set limits i.e. percentage in the New Law defining what exactly "unusually low bid" and obligation of the contracting authorities to reject "unusually low bids", FIC proposal was rejected. The point is, that the official position of the Commission is that the contracting authority has the discretionary right to assess whether a bid is unusually low, i.e. whether a bid differs from the comparable market prices and raises doubts as to the ability of the bidder to execute the procurement in accordance with the offered terms. The lack of clear criteria that would oblige the contracting authority to demand a detailed explanation of all the elements of the bid brings uncertainty in public procurement procedures. Bidders who suspect that a contract has been awarded to an unusually low bid have an opportunity to protect their rights before the Commission, however, the Commission has regularly refused such requests so far.

The mechanisms for the enforcement of the New Law in cases when the public procurement eligibility criteria in a particular procedure are changed with respect to the previous year's criteria are also at issue. This particularly relates to the amendment of criteria with respect to financial indicators in cases of awarding framework agreements of significant importance for the state. In this particular case, filing a request for the protection of rights due to the criteria set in the tender documentation is not an efficient legal remedy.

In 2019, there was a increased share of exemptions from the application of the Law on exemption grounds under Article 1, paragraph 1, items 2) of the New Law, i.e., in the case of procurements paid for with foreign loans received from international organizations and international financial institutions, or under international agreements. The share was 14% in 2019 in comparison to 10% in 2018. FIC proposal that the international organisations exempted form application of the new Law shall be defined in the New Law to avoid possible misunderstandings in interpretation of this notion was rejected. Intergovernmental agreements with third countries continue to violate the principle of equal treatment of bidders, the prohibition of discrimination, transparency and the protection of competition. Also, the implementation of these agreements is often inconsistent with the adopted solutions in both domestic and EU law.

The monitoring of the execution of contracts awarded in public procurement procedures is completely neglected. The Foreign Investors Council is not aware of any cases where the Commission has exercised the power envisaged in Article 163 of the previous Law, to file a lawsuit for the annulment of the contract on grounds set forth in this article.

Bearing in mind the limited capacities of the PPO, it is questionable whether it will be able to control public procurement plans and amendments to such plans. In accordance with the New Law, the contracting authority may initiate a public procurement procedure if procurement is foreseen in the annual plan of public procurement. However, in accordance with New Law, the possibility of misuse, in the event that exceptional cases where public procurement cannot be planned in advance or for urgent reasons, the contracting authority may initiate the public procurement procedure and if the procurement is not foreseen in the public procurement plan.

FIC RECOMMENDATIONS

- Urgent adoption of the new Law, harmonized with the EU Directive 2014/24. (3)
- Active cooperation between the PPO, the Ministry of Finance, the Ministry of Economy, the Anti-Corruption Agency, the budget inspectorate, the State Audit Institution and the Government of Serbia in the implementation of the Public Procurement Law and the Memorandum on Cooperation of 15 April 2014. (3)
- Expansion of the administrative and expert capacities of the Public Procurement Office and State Audit Institution to effectively oversee the planning and execution of public procurements by contracting authorities and combat corruption. (3)
- Strengthening the Law in relation to the Public Procurement Office's and the Commissions' authorities in cases of suspected "bid rigging," (the ability to implement special procedures to control the implementation of awarded contracts and submit proposals for the annulment of a public procurement contract). (3)

PUBLIC-PRIVATE PARTNERSHIP

CURRENT SITUATION

Serbia has been active in promoting the need for investing in its infrastructure and public services, to which end public-private partnerships (hereinafter: "PPP") appear to be considered more and more as a potential option for realising such investments.

Despite the PPP Law having been adopted in 2011 and amended twice in 2016, its practical implementation has mostly been seen in the past several years, in relation to which it is noted that the Public Private Partnership Commission has to date approved 154[1] public private partnerships.

COVID-19

The global outbreak of the newly uncovered corona virus-COVID-19 (hereinafter: COVID-19) triggered a round of measures Serbia undertook, among which the proclamation of a state of emergency as of 16 March 2020. A wide variety of legislation was adopted in an attempt to deal with the effects of COVID-19 ranging from measures aimed at controlling prices of essential goods, to restricting at times the free movement of persons within the country but also international transit.

Undoubtedly the effects of COVID-19 affected contract performance across many industries, and PPPs are not immune to this consequence. The global health crisis has raised various legal questions e.g. those related to force majeure, changed circumstances and hardship to name a few which could all have an impact on contractual arrangements under a PPP. Besides, COVID-19 has already seriously affected demand in many sectors/industries and due to its extended consequences carried-out through upcoming months it is expected to open serious questions in respect to availability payment, insurance affecting the costs, amending PPP contracts, etc.

POSITIVE DEVELOPMENTS

2020 marks the coming into force of the new Public Procurement Law which in large part has been aligned with relevant EU legislation, which should bode well in terms of positive legislative amendments in Serbia.

The National Assembly of Serbia issued an authentic interpretation on the application of the Law on General Administrative Procedure stating that the provisions of the Law on General Administrative Procedure (LGAP) will not apply to contracts procured under other laws which do not expressly categorise such contracts as "administrative". The interpretation of the National Assembly helped relieve concerns as to the potential implications of the LGAP for PPPs.

In other positive developments, 2020 is also the year in which another large-scale PPP reached financial close, namely the PPP project for waste management in Vinca.

REMAINING ISSUES

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

In terms of the legislative framework, the PPP Law needs to be improved. Aside from the PPP Law, which is the key law to regulate this area, intrinsic to a PPP project are the way in which public services are dealt with, public companies, public debt provisions and other sectoral laws and regulations which are not aligned amongst themselves, which ultimately raises the level of legal uncertainty associated with a PPP project. Overall, further regulatory harmonisation in aspects related to PPPs would bode positively on the perception of the legal environment in Serbia for this type of investment.

Accounting for the fact that launching a PPP project requires large resources as well as specific know-how to successfully launch, tender and deliver, focus should be drawn to the methodology development related to preparation of a PPP project, approving a PPP project proposal and equipping the public sector with the required know how. Currently the legislative framework is lacking in this respect, and the public sector is not sufficiently experienced to apply a tool set to identify which PPP project proposal provides for the best "value for money." It is crucial that the public sector is entirely familiar with the preconditions for the project to be realized pursuant to a PPP model, project implementation requirements and that a designated team is assigned this task on behalf of the public partner at very early stage.

Due to the lack of sufficient market practice in implementing PPP projects in different sectors, there is no agreed outline of key contracting principles that could be used

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

as a starting point for any PPP project. Furthermore, the provisions of the PPP Law regarding the submission of the self-initiative proposal by a potential private partner creates dilemmas and perplexities with regards to the vaguely defined mandatory content of such a proposal and proven problems in recognition and collection of costs incurred by private partner in preparation of self-initiative proposal PPP when such private partner is not awarded a PPP contract.

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

FIC RECOMMENDATIONS

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

In particular:

- Better coordination among institutions dealing with PPP (better coordination and streamlined cooperation of all relevant PPP institutions with project initiators at all levels of government). (3)
- Institutional support to small local autonomies in demand of PPP projects of smaller scale and value which autonomies lack the funds to engage multidisciplinary experts. (3)
- Avoiding practice of having the same International Financial Institutions (IFIs) being engaged in support to public partner in preparation of PPP project and later procuring the financing to project company. (3)
- Raising PPP awareness (PPP promotion campaign illustrating its advantages and potential, possible inclusion of PPP in universities curriculum to enhance fairness, transparency and competition, increasing the average number of participants to a single tender to at least 3, to avoid the risk of cartels being formed and competition being restricted). (2)
- Raising the awareness of public partner of the importance of proper, fair and justifiable risk allocation and its embedding into PPP contract. (3)
- The institutional capacities of the PPP Commission have to be further improved and strengthened for more consistent project reviews, including an increase of its competences (to include project preparation and monitoring) and capacities (to have more people with sector-specific expertise). (2)
- Promote available and officially approved contract templates developed in accordance with the best international practice but in full compliance with Serbian law applicable to PPP contract, as well as investing resources in

training public sector partners to successfully navigate a PPP project from inception to realization. (2)

- Amending the rules of the LGAP so as to exclude or limit the applicability of its provisions relating to "administrative contracts" to PPP contracts. Further amendments to key legislation to align with legislation of the EU. And the legal framework has to be amended in order to eliminate identified deficiencies in relation to the self-initiated proposal and consequently, in order to make room for more proactive approach of the private sector in initiating PPPs. (2)

- Practical implementation of the rules relevant for determining the project value that are PPP-specific needs to be improved and the capacities of the public sector strengthened to fully delineate such projects from purely public procurement projects. (1)

- Take advantage of the International Financial Institutions' (IFI) support for project preparation and their know-how on PPPs. Resources from the European Investment Bank's (EIB) European PPP Expertise Centre (EPEC), the International Finance Corporation's (IFC) advisory services in PPPs or the European Bank for Reconstruction and Development's (EBRD) Infrastructure Project Preparation Facility (IPPF) can be used for project preparation. (3)

- Due attention be given to supervening events in future PPPs and the way in which parties will chose to deal with their consequences, as well as properly assessing the right risk allocation for such events. (3)

- Institutional capacity building and development that should be aimed at preparing the public sector for project implementation once the PPP contract is signed. (3)

TRADE

CURRENT SITUATION

The Law on Trade (Zakon o trgovini, Official Gazette of the Republic of Serbia, no. 52/2019) (the "Law on Trade"), which occupies a central place among the regulations governing the trade of goods and services, entered into force and has been applicable since 30 July 2019. Although the Law on Trade itself stipulates that bylaws will be adopted within 12 months from the date of its entry into force, no significant steps in that direction have been taken, and bylaws adopted until the date of entry into force of the Law on Trade shall apply until further notice, except for the provisions which are contrary to it.

Key novelties of the Law on Trade are:

1. Better definition of the sale incentives

Main forms of reduced-price trade are finally defined, followed with the special rules for each of them. These forms are: seasonal discount, action sale and clearance sale. Seasonal discount may be arranged up to two times a year, provided that the start of the seasonal discount period starts between 25 December and 10 January and between 1 July and 15 July, with restriction that every seasonal discount period cannot exceed 60 days. Action sale is defined as trade of goods/service at a lower price than the previous price of such goods/service and it cannot exceed 31 days. Clearance sale of goods is defined as sale with reduced price in comparison to the previous price, which may be arranged only in case of termination of trader's activity, termination of activities in certain sale point or termination of trade with certain goods, with additional restrictions referring to the allocation of goods on clearance sale and procurement of new quantities.

2. Introduction of the definitions of types of distance trade

For the first time, electronic platform and electronic store are defined, whereas the distance trade is now split to e-commerce and other distance trade. Additionally, specific forms of e-commerce are defined: webshop, electronic platform and drop-shipping. Webshop is a basic form of e-commerce and represents sale of goods and/or services through an electronic store that the trader provides on his website. The electronic platform connects traders and consumers, in a way that the consumer concludes an agreement with the trader, whereas such agreement should determine the platform for ordering, paying and delivery. Specific about drop-shipping is that the goods are delivered directly from the manufacturer's warehouse to the consumer.

3. Labeling requirements

The Law on Trade imposes obligation of distance trader to make mandatory labeling data directly and permanently available.

4. Lifting the obligation of publishing the retail format

The Law on Trade lifts the obligation of publishing retail format applicable so far, so that the traders can now freely decide whether to publish retail format. In case they decide to publish retail format, the bylaws referring to such format continue to apply.

5. Concealed shopping as new authorization in supervisory procedure

A trade inspector now has the authority to conduct concealed purchase of goods/service, in accordance with regulations related to the supervisory procedure, in order to achieve more efficient detection of illegal trade.

Along with the adoption of the new Law on Trade, the amendments of the Law on Electronic Trade (Zakon o elektronskoj trgovini, Official Gazette of the Republic of Serbia, no. 52/2019) (the "Law on Electronic Trade") were adopted.

(The Law on Trade and the Law on Electronic Trade are hereinafter referred to as the "Laws")

COVID-19

Trade, as well as all other aspects of economy, suffered severe consequences due to the COVID-19 pandemic. Namely, the state of emergency in Serbia was introduced on 15 March 2020, followed by the imposition of the movement restriction, which subsequently affected the working hours of all traders. Further, due to the closure of boarders and suspension of air and road traffic, import and export of goods experienced major difficulties.

POSITIVE DEVELOPMENTS

As mentioned above, positive steps were taken with by adopting the Laws. However, there were no further improvements of the Laws during the previous year.

REMAINING ISSUES

Even though the Law on Trade itself envisaged that a set of by-laws would be adopted within 12 months from the date of its entry into force, no further efforts have been made in that direction. Therefore, bylaws adopted until the date of entry into force of the Law on Trade apply until further notice, which creates difficulties with respect to the newly introduced provisions of the Law on Trade.

When it comes to the Law on Electronic Trade, several provision will be applicable only after the admission of Serbia to the European Union.

FIC RECOMMENDATIONS

- Devote attention to by-laws. (3)
- Harmonization with EU regulations and standards is further needed. (3)
- Simplification of the importation procedure. (3)

ILLICIT TRADE PREVENTION AND INSPECTION OVERSIGHT

CURRENT SITUATION

Activities of state institutions towards improving the system of illicit trade control have continued in the past period as well, with the adoption of and application of measures of the new Action Plan for the implementation of the National Programme for Countering the Shadow Economy for 2019-2021 Additionally, continuous work of the Coordination Commission for inspection oversight as an umbrella institution, operational activities of the Support Unit of the Coordination Commission on the inspection oversight modernization and effective implementation of the Law on Inspection Oversight as well as of the Working Group for Combatting Illegal Trade within the Coordination Commission in control of specifics sectors and products resulted in preparation and implementation of a number of measures that have contributed to the more efficient control of illegal trade in 2019 and 2020 Inspection and control bodies made a significant contribution to suppression of illegal trade through their activities and engagement in the field, although constrained with material and personnel issues.

COVID-19

Due to the COVID-19 epidemic and imposed restrictions on movement in the country as well as abroad, implementation of measures for further improvement of inspections oversight system have justifiably slowed down. On the other hand, control authorities were under lower pressure. However, the abolition of movement restrictions and resumption of trade have returned the focus on the need for efficient control.

Since the initial closure of borders and resulting confusion in transport, analogously with the new measures of European Commission members of CEFTA have adopted the system of "Green Corridors" in order to speed-up cross-border trade. Within the "Green Corridors" system, each country has designated border crossings for transport of goods with customs and inspections available 24 hours. Furthermore, list of priority goods for swift crossing of border crossing was adopted and a system for announcing trucks with priority goods has been introduced in order to simplify all import-export procedures.

In accordance with previous plans and soon after the COVID-19 epidemic was declared in the country, a contact center for submission of reports to inspections was established. Since a number of measures and restrictions were imposed during the epidemic, instead of center's planned focus on measures for economy and citizens, work was shifted on the measures to combat the epidemic and control the prices of products of importance (food, medical supplies, etc.)

POSITIVE DEVELOPMENTS

As previously mentioned, in 2019 a new Action Plan for the implementation of the National Programme for Countering the Shadow Economy for 2019-2021 was adopted. From the prescribed measures for inspections oversight system modernization, a Functional analysis of capacities of state inspections was prepared, identifying a clear need for new employment of inspectors and paving a way for the adoption in 2019 of a three-year Action plan for inspector employment. The plan envisions an engagement of additional 1.272 inspectors by the end of 2021, in addition to the currently employed 2.400 state inspectors. The use of E-Inspektor information system has also expanded for the use of majority state inspections, from the initial four. By using E-Inspektor IT solution, acceleration and greater transparency of inspection controls is expected.

Cooperation between misdemeanor courts and inspections was enhanced due to intensifying mutual trainings and connecting their databases. Additionally, specialization of courts for misdemeanor proceeding in underway, which should contribute to the more efficient punishment of offenses and strengthen the preventive role of inspections in the economy.

Usage of mobile applications for instant payment for goods and services using the IPS QR code was enabled, allowing customers to pay for purchased goods and services safely and fast, and thus accelerating the increase the level of non-cash payments in the country.

REMAINING ISSUES

It should be noted that the Law on Inspection Oversight has not yet been fully implemented in the area of harmonizing sectoral laws with the umbrella law, although the Government of Serbia has adopted a Conclusion envisaging the harmonization of 78 laws with the Law on Inspection Oversight.

It is necessary to continue with the improvements of personnel and technical capacities of inspections, further increases in inspectors' salaries, creating and adequate

performance appraisal system and provide the necessary equipment.

Although there are certain improvements in the judicial area of penalizing illicit trade, given the complexity of this subject, a further specialization of misdemeanor courts should be continued.

Even though the Guidelines on development and reporting of action plans (flowcharts) have been adopted, a system of reporting on the implementation of adopted flowcharts for control of illegal trade of specific sectors and goods has not been fully implemented.

Regarding the further regulation of the parafiscal area, an electronic registry and a portal listing applicable fees for the use of public resources was not established.

An efficient system for storing seized goods was also not introduced in the past period. The consequence is a limitation of inspection bodies' activities due to insufficient storage capacities available to them. On the other hand, companies have additional capacities, which could be utilized for this purpose using adequate procedures.

With the aim of stimulating an increase of transaction in the economy, we believe that the introduction of a new payment system using online fiscal registers would be of great assistance.

Apart from above mentioned problems in control of illicit trade, we would like to emphasize the importance of efficient import and export procedures since the complexity of these also affects the decision of companies on how to place purchased od manufactured goods. In order to simplify trade procedures, companies are facing a great number of difficulties arising partly from procedures in the country and partly due to non-customs barriers abroad. Regarding the problems with Serbia, companies are faced with an uneven treatment on border customs offices, uneven practice for issuing certificate of origin due to non-recognition of productions inputs, insisting on paper documents due to the lack of electronic systems connectivity between customs and inspections, slowdown of imports/exports due to installation and removal of electronic truck locators, non-efficient railway transport, complicated river-shipping procedures, etc. Moreover, non-customs barriers between the countries include non-recognition of quality of goods certificates between Republic of Serbia and other countries, inefficient border import procedures in the neighbouring countries as well as the need to harmonize technical regulations and standards for transportation vehicles.

FIC RECOMMENDATIONS

- Continue with the implementation of the National Programme for Countering the Shadow Economy and its associated Action Plan for 2019/2020. (3)
- Prescribe and implement a prompt and effective procedure of regulating the storage of seized goods between the public and private sector. (3)
- Improve import and export procedures. (3)
- In order to increase the efficiency of the punishment system in the field of illicit trade, introduce the specialization of judges for misdemeanor offences in business. (2)
- Improve the level of fiscal burden on businesses operating in the Republic of Serbia with further regulation of parafiscal charges by creating a registry of fees payable by businesses. (2)
- Create a system of reporting on measures and effects of flowcharts, and continue with the adoption of a new flowchart for the control of LPG as well as other products of interest. (1)
- Introduce online fiscal cash registers. (1)

CUSTOMS

CURRENT SITUATION

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

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

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

COVID-19

With the aim to prevent the spread of the COVID-19 epidemic and to eliminate the economic consequences of the epidemic, the Government of the Republic of Serbia and the business community have taken the following measures that have ensured business continuity under the given circumstances:

- Limited moving of goods and people, as well as closing certain border crossings for commercial freight traffic led to delays in border procedures. At the suggestion of the business community, the "Green Corridors" were introduced for faster flow of goods in the CEFTA region, and in EU countries.
- "Essential products" – medicines, medical devices, food etc. had priority treatment at the border that further accelerated the customs procedures. Goods imported with priority have been aligned with CEFTA and EU members on the 6 digit tariff number level.
- Vehicles transporting priority goods were enabled to deliver goods information before arrival via the SEED system and thus perform the customs procedure more quickly.
- Certain "essential" products export was prohibited, which ensured the domestic market supply.
- The collection of the customs debt determined in the procedure of subsequent control, as well as the deadlines for submitting legal remedies to the decisions by which that debt was determined, were suspended during the state of emergency. In this way, economic entities were enabled to defer the incurred financial obligations, which further facilitated the elimination of the economic effects of the pandemic.

POSITIVE DEVELOPMENTS

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

- Further alignment with the EU regulations in the field of classification of goods
- Ratification of the FTA concluded between Republic of Serbia and the EAEU. The entry into a force of the Agreement will have a positive impact on the market access of the Russian Federation, Belarus, Kazakhstan, Kyrgyzstan and Armenia, as well as on future foreign investments in Serbia.
- Instructions and opinions of the CA changed the practice according to which the written contract, and stamp of the foreign seller on a commercial document was required. The invoice in electronic form was accepted as a valid document, although the obligation to submit a paper copy was retained.

REMAINING ISSUES

General Comments of the Council

- Liberalization of customs preferences for import significantly affects existing operations of legal entities in terms of planning and making future business decisions. In order to ensure the continuity of operations of existing legal entities, it is very important that planned preferences are timely and transparently communicated, as well as to ensure an agreement with the affected industry regarding the abolishment or reduction of import duties.
- In 2015 a significant customs duty relief was abolished for the import of new equipment not produced in the country for the purpose of expanding and modernizing existing production. We believe that duties for equipment, prescribed by the Law on Customs Tariff should be revised and reduced or abolished for products which are not produced in Serbia. Generally, duty relief can be a crucial driver for business expansion and further investments.
- Foreign entities have no access to easy registration and participation in a customs procedure, in particular with regard to completing the customs declaration. This issue has become particularly relevant now that foreign entities

can register as VAT taxpayers through a VAT proxy. This has a direct impact on VAT treatment, since in practice the Tax Administration determines the right to deduct input VAT, i.e. tax exemption for exports, primarily on the basis of the customs declaration. The notion of similar rights of disposal of goods, in the context of the definition of importer, is not clear and needs to be precisely defined. It is also necessary to enable foreign persons to participate as exporters in the customs procedure.

- The Decree on Customs Procedures and Customs Formalities prescribes that when considering a request for a binding information, if it is necessary to carry out the examination of goods that cannot be performed in the competent customs laboratory, the Customs Administration (CA) will obtain the offer of the organization or the person who will perform the analyses, and the person who submitted the request is obliged to pay the costs of those analyses. Considering that in accordance with the new Customs Law, the administrative fee for the analyses service should be payed to the CA, it would be appropriate that the applicant should pay only the statutory administrative fee, while the fee for the service of the authorized laboratory should be paid by the CA.

- The new Customs Law stipulates that economic operators may be authorized to use a comprehensive guarantee with a reduced amount for customs debt and other charges, or to have a guarantee waiver. This right is restricted by Article 141 of the Regulation on Customs Procedures and Customs Formalities, which only prescribes the possibility of reducing the reference amount by 50%.

Application of legislation

- The Customs Law stipulates that the maturity period of a customs debt may not exceed 8 days, which is too short for taxpayers who process a lot of customs documents on a daily basis. We suggest that customs authorities should enable the debtor to pay the customs debt within a period not exceeding 31 days. We believe that this would allow flexibility in customs clearance, resulting in a reduced number of errors in the processing of customs documents. It has been noted that this option is not in regular use, so there has been no process improvement.

- The Customs Law excludes the possibility of rectifying customs documents if, following customs clearance, based on the inventory stock count of goods at the receiving dock, the receiver identifies a discrepancy in the inventory relative to the quantity reflected in the customs documents. Such omissions are mainly unintentional and occur during the loading or delivery of goods, but they result in legal violations on the part of the legal entity, even when the declarant self-declares the omission.

- Quality control inspections are regular at each importation of goods but are slowing down the customs clearance process even for the regularly imported goods that have been inspected by foreign accredited laboratories. Overall, the quality control tests are without deficiencies in the case of regular importers.

- The Decree on Customs Procedures and Customs Formalities provides that, until the date of deployment of electronic systems the movement of goods between the temporary storage facilities shall be effected by applying the transit procedure. This restricts the rights of holders of the AEO authorization.

- The Foreign Exchange Law, stipulates that the middle exchange rate of the dinar used for the calculation of the customs duties is determined on the last day of the week preceding the week in which the duties are levied. Consequently, the period for lodging the supplementary declarations is limited to only 10 days, even though this deadline could be extended up to 31 days, having in mind that the goods released to one person during the period which may not exceed 31 days, may be covered by a single entry into accounts at the end of that period and the opportunity can be given to a debtor to pay duties globally after the period of aggregation.

- The fee for the parking at the terminals where the customs formalities are performed, in the amount of RSD 1,200, it is contrary to the new Customs Act, which stipulates that customs authorities do not charge fees for performing customs controls, which should include the possibility of access to customs premises at no additional cost.

- In addition, the following deviations have been noted in practice: i) decisions on the request to amend the customs declaration are made after the prescribed deadlines; ii) full implementation of Article 158 of the Law is not allowed, declarations are still forwarded electronically, iii) very restrictive approach when it comes to discounts still insists on submitting contracts in writing although it is no longer necessary.

- When performing financial analysis deciding on the approval of simplified procedures (so-called "home cus-

toms clearance", AEO), not all facts relevant to the decision are taken into account, but the decision is based solely on Altman's method, which is based on financial results. This can put new businesses that initially have large investments at a disadvantage.

- There is no explanation from the CA on how the duties are calculated and the customs value is determined for finished products that are exported to the territory of Serbia outside the zone, and which are produced in the free zone from materials for which exemption from customs duties was applied.
- The new customs regulations do not define temporary export as a special customs procedure, which means that the temporary export of goods (unchanged) does not require the approval of the customs authority, but to apply the provisions relating to the export of goods. However, the customs authorities require temporary export to be applied for and an authorization issued, which unnecessarily slows down and complicates the implementation of the export procedure.
- It is necessary to prescribe a simplified procedure which defines the process of correction of the customs value of previously imported / exported goods for a longer period of time.

Free Trade Agreements ("FTA")FTAs are applied without major difficulties, but documents of origin should be issued and processed more efficiently.

FIC RECOMMENDATIONS

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

- Transparently communicate the planned liberalization of customs preferences with the interested industries and ensure the industry's consent at least 12 months prior to the commencement of the preference. (3)
- We propose the following changes to customs declarations: (1) the date of issue of the customs invoice - it is recommended that the date of issue of the customs invoice should be the final date of clearance of goods and not the date of the acceptance of a declaration; 2) allow the use of a comprehensive guarantee with a reduced reference amount for several customs procedures, as well as relief from the obligation to provide the guarantee, in the manner prescribed for the transit procedure. (3)
- A significant number of legal provisions require a further specification through by-laws as well as compliance with other relevant laws, such as: (1) alignment of customs procedure with VAT Law, regarding the treatment of a foreign legal entity in a customs procedure; (2) decrease the frequency of sample-taking for core products and accept the analysis of accredited foreign laboratories; (3) adopt new Explanations of the Customs Administration related to the inward processing procedure and the procedure in free zones. Also, the opinions of the Customs Administration should contain an interpretation, and not just a citation of regulations; (4) specify the procedure for determining and changing the customs value in the event of a goods' price change; (5) by adopting an appropriate Explanation from the CA, change the interpretation that the implementation of temporary export requires the approval of the customs authority, as this is contrary to the legislation or harmonize the regulations; (6) adoption of an act of the CA which would explain the procedure for determining and changing the customs value in case of transfer prices. (3)
- Increase the efficiency at all levels of administration: efficient handling of requests that are in the administrative procedure; a better on-line information system available to all parties involved in customs process; introducing a simplified correction of a customs document based on the correction of the quantity of goods cleared, improve the risk analysis system according to which goods and / or importer type would be identified for an accelerated or simplified import procedure. (1)
- Align the Decree on Customs Procedures and Customs Formalities with the new Customs Law, in such a way that the additional costs of the laboratory analysis are not borne by the applicant for the issuance of a binding information and abolish the fee for using customs terminals. (1)

PAYMENT SERVICES

CURRENT SITUATION

Three years after the beginning of the application of the Law on Payment Services, on June 8, 2018, amendments to the Law were adopted, which have been in force since March 17, 2019. These changes are aimed at greater transparency of fees charged by payment service providers, better information, and greater protection of payment service users.

The law removed administrative barriers to changing the payment account for payment service users. The introduction of the bank's obligation to enable a consumer who has a legal stay in the Republic of Serbia to open and use a payment account with basic services at his request creates conditions for encouraging the development of modern forms of payment and making payment services available to more people.

At the end of 2018, a set of bylaws was adopted that further regulate the area of payment services and payment systems, including issues related to fees of payment service providers (their transparency, manner of publishing and delivery), list of representative services, rules of payment systems (including instant payment system - IPS), supervision of payment systems, etc.

In order to encourage the growth and efficiency of non-cash payments by payment cards and protect the interests of users of these payment services, in June 2018, the Law on Interbank Fees and Special Business Rules for Payment Transactions Based on Payment Cards was adopted. Regulators expect that the regulation of this specific area will contribute to reducing the cost of accepting payment cards, increasing transparency and competitiveness in the market, promoting modern forms of payment, reducing the amount of cash on the market, and the gray economy.

In 2019, there were no significant changes in the law that would affect last year's recommendations of the Council.

COVID-19

On March 15, 2020, a state of emergency was introduced as a consequence of the COVID-19 epidemic caused by SARS-CoV2 coronavirus. The state of emergency and measures against the spread of the epidemic have caused a significant change in consumer habits. Banks have made great efforts to provide conditions for adequate provision of services to customers at a distance, which in the field of payment services would mostly refer to the increased turnover of payment transactions for the purchase of goods and services over the Internet. Based on NBS data, the number of transactions for the purchase of goods and services over the Internet increased by 106% in the second quarter of 2020 (3,205,385 transactions) compared to the same period in 2019 (1,559,128 transactions). The volume of transactions for the purchase of goods and services over the Internet increased by 78% in the long quarter of 2020 (RSD 4,103,241,900) compared to the same period in 2019 (RSD 7,300,490,184). Based on the data, it can be concluded that the banking system is ready to welcome these significant changes in the functioning of the payment system.

The Decree on Fiscal Benefits and Direct Benefits to Business Entities in the Private Sector and Financial Assistance to Citizens in order to mitigate the economic consequences caused by COVID-19 entered into force on April 10, 2020. The Decree regulates fiscal benefits for legal entities and entrepreneurs through tax deferral and contributions, and direct benefits for entrepreneurs and legal entities through the payment of non-refundable funds from the budget. For the purpose of payment of direct benefits, a special purpose account was opened for the economic entity with the bank with which it has a current account. Based on the instructions of the NBS, the banks managed to implement the opening of dedicated accounts, despite the technical complexity of the task. In addition to assistance for legal entities, payment was provided to all adult citizens of the Republic of Serbia in the form of one-time financial assistance in the amount of 100 euros in dinars.

POSITIVE DEVELOPMENTS

Amendments to the Law on Payment Services reduced the payer's liability for loss in the execution of an unauthorized payment transaction by a stolen or misused payment instrument from RSD 15,000.00 to RSD 3,000.00, which increased the bank's liability. In addition, banks are required to invest in additional security measures to reduce the number of abuses.

The position of payment service users is further improved by stipulating that in the pre-contractual phase, in addition to other information determined by law, the bank will receive a document containing a list of services from the list of representative services and data on individual fees for each such service. It enables a complete overview of offers on the market in order to make a decision on the choice of a payment service provider, and one can also submit a request to change the payment account, or transfer

certain payment services, with or without closing the payment account opened with the previous payment service provider, quickly, simply and without unnecessary administrative requirements of the payment service provider. Also, the position of payment service users has been improved by the obligation of banks to inform them about the fees collected in the previous year.

On April 1, 2019, the last bank in Serbia accepted the Instant Payment System of the National Bank of Serbia - IPS NBS system, completing the list of banks participating in the NBS IPS payment system. IPS is a modern payment system that provides payment service providers with the execution of individual instant transfers of approval (instant payments) 24 hours a day, seven days a week, 365 days a year (24/7/365), i.e. at any time of the day during any day of the year, and almost instantly or within just a few seconds. Due to the epidemic, consumers were forced to turn to electronic and mobile banking, and the introduction of the IPS payment system before the outbreak additionally contributed to its popularization. On February 27, 2020, instant payment with a QR code was introduced at points of sale via the "IPS Scan" / "IPS Show" functionality, which the Banks implemented in their m-banking applications. The customer can pay using the QR code, in two ways. One way is for the customer to generate a QR code on their mobile phone, which will then be scanned by the merchant, and the other is for the trader to generate a QR code at their point of sale, so the customer can scan it and pay in that way. In addition to speeding up the payment process, it also competes with card payments, because it allows the trader to have funds immediately available on their account, without having to wait a few days as with card payments. With a more favorable tariff policy than cards, the NBS has created conditions for the costs of accepting instant payments to be lower for traders. This motivates small traders who do not accept payment cards today to enable the use of this innovative method of payment at their points of sale. In the following period, banks will continue to expand the range of their offer by introducing solutions for accepting instant payments via mobile applications intended for small traders, which traders will easily install on their devices (mobile phone or tablet), thus enabling consumers to pay via NBS IPS QR code at the point of sale. In addition to the introduction of the IPS QR code in retail outlets, several businesses have started issuing monthly invoices with the IPS QR code printed. Consumers have the option of paying by scanning the IPS QR code, without having to enter data into a payment order.

REMAINING ISSUES

According to the data published by the National Bank of Serbia, there are 13 companies in the Register of Payment Institutions, and only two electronic money institutions, so that the impact of the Law on the development of this business segment still does not give satisfactory results. As the conditions and initial and minimum capital for performing payment system operations have been stricter, the regulator's intention is obviously no longer to increase the number of "players" on the market but to achieve a greater degree of protection against general business risk.

With the new legal solutions, payment service providers are expected to develop a series of system solutions in order to fulfill the new obligations imposed on them by the regulations on payment services, which leads to an increase in operating costs.

Although the volume of IPS transactions is growing, it is still not significant in relation to the total number of payment transactions.

FIC RECOMMENDATIONS

- Establishment of a common platform of banks for the exchange of information in the process of changing accounts and in opening and maintaining accounts with basic services. (3)
- Longer deadlines for the implementation of regulations that require system solutions (including complex technical solutions) for payment service providers. (2)
- Amendments to the Law on Interbank Fees and Special Business Rules for Payment Transactions Based on Payment Cards in such a way that the issuance of cards that are not processed in domestic payment transactions in the Republic of Serbia is not conditioned by the previous issuance of a payment card for domestic payment transactions. (2)

NON-PERFORMING LOANS

CURRENT SITUATION

During the course of last year, the share of non-performing loans (hereinafter: NPL) in overall loans in the banking sector had been decreasing and reached its lowest level of 4.1% at the end of year.

The active involvement of the Serbian government and of the National Bank of Serbia (hereinafter: NBS) certainly contributed to this result because they adopted Action Plans as well as amendments and supplements to: the Decision on Reporting of Banks; Decision on Classification of Balance Sheet Assets and Office Balance Items of the Bank; Decision on Bank Risk Management; Decision on Bank Capital Adequacy; Decision on Management of Bank Liquidity Risk; Decision on Accounting Write-Off of Balance Assets of Banks, whereby the NBS as regulatory body undoubtedly influenced the heightened responsibility and caution in the activities of banks, as well as on good capitalization of the country's banking sector.

COVID-19

The outbreak of the COVID-19 pandemic triggered the enactment of a set of economic measures adopted by many EU members, upon reviewing the consequences which the pandemic might inflict, especially to small and medium-sized companies, entrepreneurs and citizens that may face lack of liquidity and difficulties in duly settling their financial and other obligations. In order to prevent the crisis, the European Banking Authorities – EBA enacted on April 2, 2020 Guideline EBA/GL/2020/02 ("Guidelines on legislative and non-legislative moratoria on loan repayments applied in the light of the COVID-19 crisis") which regulates the terms of application of the Moratorium with validity date until June 30, 2020, amended on June 25, 2020 by way of Guidelines amendment EBA/GL/2020/02 ("GUIDELINES AMENDING GUIDELINES EBA/GL/2020/02 on legislative and non-legislative moratoria on loan payments applied in the light of the COVID-19 crisis"), which extends the period of moratorium application until 30th of September this year.

Soon after the introduction of state of emergency (15.03.2020) due to COVID-19 pandemic, a set of regulations was adopted by the Government of the Republic of Serbia and National Bank of Serbia enacted a set of regulations which, in addition to the medical aspect, also deal with the economic aspects of the pandemic.

POSITIVE DEVELOPMENTS

The NBS enacted, among the others, the decisions that regulate standstill (a moratorium), in the repayment of obligations of borrowers or leasing clients, specifically the following:

- Decision on Temporary Measures for Preserving Financial System Stability
- Decision on Temporary Measures for Lessors aimed at Preserving Financial System Stability
- Decision on Temporary Measures for Banks aimed to reduce the impact of COVID-19 and preserve the Financial System Stability, that has been brought into force on 28.07.2020, and that has extended the moratorium validity period until 30th of September, 2020.

The Moratorium enables the borrowers not to settle their liabilities towards creditors on the basis of credit or leasing, including the payment of any costs, as well as the payment of default interest on the unsettled claim, and has suspended initiating enforcement proceedings, forced collection, etc., until the moratorium expiration date after which banks were to submit new repayment schedules to their borrowers.

In order to prevent possible deterioration of borrowers standing for certain loan categories (consumer, cash, except current account overdrafts and housing loans), the NBS has granted relief in the repayment terms to individuals with lower income and citizens wishing to extend their repayment period, specifically by means of:

- Decision on Supplement to Capital Adequacy Decision
- Decision on Amendments and Supplements to Decision on Managing Concentration Risk arising from Bank Exposure to Specific Products.

This foresees the possibility for refinancing i.e. to change the maturity date of the last loan instalment by an additional two years after present maturity term for the respective loan categories, provided that the borrower is creditworthy within a certain category type. This method of refinancing the obligations of debtors has a direct positive impact on reducing potential NPLs, given that all loans, which are subject to a moratorium (old and new) are not considered as restructured loans.

Having in mind abovementioned, in summary, the first wave of the epidemic was clearly well supported by bylaws passed on by the Government of the Republic of Serbia and NBS, however, it is also the fact that the decisions adopted by NBS

in the previous period and executed by the banks enabled the financial sector to have enough funds and to sustain the state of emergency without any significant issues. However, as the situation with COVID-19 is still ongoing, nobody can accurately foresee the direction in which the global and local health situations are headed in, and by that, how it is going to impact the business environment. Hence, it is of crucial importance to monitor the situation in other to ensure the timely reaction by the both the state and NBS, followed by the adoption of necessary legislations enabling the control of NLP flows and their impact on the security of the financial sector as whole, especially having in mind that answer on question - how much will be increase of NPL percentage, we will be able to obtain at the end of Q1 of next year.

REMAINING ISSUES

Therefore, it is undeniable that because of COVID-19 on one hand and the set of measures on the other hand, and especially the measures referring to moratorium and guarantee scheme – there were no increase in NLPs, as there were no delays in payment, but generally speaking there was an increase in coast of provisions – because of which there is a room for action.

Last years' edition of the "White Book" on the topic of managing NPL portfolio has explained the necessity for the amendment of the regulations in detail, as well as its practical execution with the special regard to the Law on Consensual Financial Restructuring, Law on Enforcement and Security, Law on Tax Procedure and Tax Administration, as well as to the obstacles, such as the assigning of the regular loans outside of the banking sector. Having in mind the current COVID-19 situation, in this years' edition we haven't referred to the topic of NPL in the light of the existing regulations, however we still consider that these matters also require resolution, as stated below in the Recommendations section.

FIC RECOMMENDATIONS

These recommendations are in line with the White Book edition for 2019:

- Promoting out-of-court restructuring of debts in practice, in line with legal framework, in the process of out-of-court voluntary debt restructuring. (2)
- Enabling transfer of NPLs between resident bank and from resident to non-resident, regardless of whether it involves participants in syndication. (2)
- Removing obstacles for transfer of duly repaid receivables from legal entities from banks onto other legal entities, and not just onto other banks. (2)

Recommendations regarding mitigating the consequences of COVID-19

- To keep work on timely amendment of the regulations. (3)
- Consider possibilities for relief in provisions of banks. (3)
- Amendments to the Law on the Protection of Financial Service Consumers in order to enable that a bank may assign receivables from a natural person – financial services consumer to another legal entity. (3)

FOREIGN EXCHANGE OPERATIONS

CURRENT SITUATION

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

Since the last edition of the White Book, several by-laws have been adopted and amended. In general the changes referred to opening and maintaining the funds on bank accounts abroad, regulation on foreign exchange market, currency exchange operations, etc. Second quarter of 2020 is marked by the COVID-19 outbreak which in addition to the forex operations had an impact on all other areas of business.

During 2019 Serbian business community represented through various domestic and foreign business associations (including FIC) submitted an initiative to the National Bank of Serbia (NBS) and Ministry of Finance (MF) directed towards liberalization of forex operations in Serbia. Although the NBS was of the opinion that the liberalization is not justified from the perspective of financial stability, there seem to be willingness of the NBS to consider (together with MF) some liberalization in the area of transfer of cross-border receivables/debts.

COVID-19

COVID-19 outbreak impacted the volume of cross-border transactions, but was not followed by radical legislation changes in this field. Certain technical changes to the legislation which occurred were directed mostly towards relaxation of administrative burdens in delivery of the documentation to the NBS. However, the measures and restrictions in other fields of law had the implications to forex operations and foreign investors activities in Serbia. During the state of emergency which was in force from mid-March to beginning of May 2020, almost all authorities (courts, notaries, public bailiffs, etc.) worked under a special regime (lower capacity, shortened working hours). Although the state of emergency is over, court and administrative procedures may be expected to be prolonged due to accumulated workload. During the state of emergency, the NBS and public financing institutions in Serbia (e.g. Development Fund) declared moratorium on loan and financial leasing repayments for domestic participant on the market, which moratorium was over end of June.

POSITIVE DEVELOPMENTS

During the last year there have been no material changes of the Law and/or the bylaws, and thus significant positive developments in this area have not been made. Developments are to the large extent slowed down due to COVID-19 outbreak during 2020.

REMAINING ISSUES

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

We believe it is necessary to adapt the wording of the Law and the interpretation in practice to the approach in which prohibited operations are explicitly prescribed as such, while all other activities should be considered permitted. This principle has already been set out in Articles 3 (1) and 10 (1) of the Law, however, due to the legislative approach prescribing, in other parts of the Law, which transactions residents and non-residents may perform, the predominant interpretation in practice remains that all other unregulated activities are not in accordance with the Law. Legal transactions and the market continuously evolve, and it is neither possible nor expedient to apply a legislative technique that lists the allowed operations, while regarding the others as unpermitted. In practice, this perennial approach results in situations where certain operations, which the legislator does not seem to intend to exclude, cannot be performed due to the lack of governing norms. In addition, it is noticeable that, in certain matters, the competent authorities' interpretation narrows down the scope of application of certain rules, thereby constraining the operations of participants in the field of forex operations. However, if a list of permitted transactions is retained, we believe that it needs to be expanded wherever justified and feasible, especially when it comes to groups of affiliates, which seek to simplify financial relations within the group. Therefore, the issue of liberalisation of foreign credit and deposit operations remains open, and such liberalization is necessary to enable the provision of more sophisticated banking services, such as cash management, cash pooling and similar packages.

Practical obstacle in conducting cross-border loan transactions arises from the ex-ante reporting procedure of the NBS which is a precondition for utilization of funds by res-

ident companies. Given the purely statistical purpose of reporting, simplification of the said procedure is necessary, e.g. by introducing the obligation of ex-post aggregate reporting by e-mail, with a reduced volume of documentation or in a similar manner.

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

Moreover, in relation to the Article 6 of the Law and the relevant by-laws, it remains necessary to liberalize the cross-border set-off of mutual receivables and debts, in accordance with the general rules of contract law. The current set-off rules are defined only for certain types of operations, while there remains a gap when it comes to other operations (e.g. real estate operations) and the interpretation in practice that these are unpermitted. Also, there is a need in practice to liberalise foreign deposit operations of residents, especially for companies that are the subject of project financing by foreign banks and international financial institutions.

Furthermore, the by-laws regarding foreign cash inflows do not fully allow the automation of international payment transactions. In order for a resident to realise foreign cash inflow, it must first provide the bank with information for statistical purposes regarding the basis for collection and in certain situations documentation for justification of the basis of collection. In its attempt at liberalisation, the NBS excluded the application of the aforementioned procedure for certain types of inflows on a single basis in the amount of up to EUR 1,000.

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

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

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

Also, a resident bank finances a non-resident abroad for which it is obliged to obtain adequate collateral under the Law. In accordance with the Decision on conditions under which and manner under which resident may grant financial loans to non-residents and grant guarantees and other collaterals under credit transactions with abroad and credit transactions between non-residents, resident/owner

of non-resident in this case is not entitled to provide any collateral, given that the Law enables collateralization by resident only in case that the matter is credit transaction between two non-residents, but not in case of crediting non-resident by resident bank. This way resident banks are put into disadvantaged position against non-resident banks financing the non-resident.

Moreover, under the Article 23 and relevant by-law of the NBS, only the conditions for granting financial loans to non-residents - debtors from the EU member states have been liberalised. However, the restriction on residents to approve a financial loan to a non-resident only if it is majority owned by a resident is still applicable to non-residents outside of the EU member states. It is unclear how this change will affect entities such as international financial organizations, whose formal registered seat is neither in the EU nor outside the EU. Additionally, the discretion of the NBS to restrict individual residents from providing guarantees and other types of security for foreign loans or from granting loans to non-residents creates significant legal uncertainty. The restriction procedure itself and the moment at which the NBS may render the decision on restriction are not further defined. Furthermore, the wide scope of this discretion of the NBS applies not only to foreign loans granted by a resident to a non-resident and guarantees/securities for foreign loans, but also to guarantees/securities provided by residents for foreign loans taken by residents (which tightens the legal regime for such loans). The improvements represent the position of NBS that even banks based in Great Britain have the status of banks from the EU until the transitional period of Great Britain's exit from the EU is formally completed, in any case until 2020. And after 2020, NBS will harmonise its position regarding banks based in Great Britain with the position of EU member states and with the eventual bilateral documents that will be in effect between Serbia and Great Britain.

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

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

FIC RECOMMENDATIONS

- Adapt the wording of the Law and interpretation in practice so that prohibited operations are explicitly prescribed as such, whereas all other activities are considered permitted. (3)
- Switch to ex-post reporting of the cross-border loan transactions. (3)
- Ensure better public availability of opinions of state authorities in charge of forex operations, in particular NBS, for the consistency in application of regulations by all participants (e.g., to introduce the publication of official opinions on the regulator's website, introduce a section of responses to questions on the website, publish on the website questions and answers from consultations with commercial banks in which representatives of regulators participate, etc.). (3)

- Reconsider the wide scope of NBS' discretion to restrict a resident from granting securities or guarantees in relation to foreign loans, especially in relation to regular foreign loans and further regulate the procedure thereof, as envisaged by the by-law of the NBS which was adopted last year in parallel with amendments to the Law under the amended Article 23. (2)

- Simplify the set-off rules from the Article 6 of the Law (and relevant by-laws) for all types of current and capital transactions and allow cash pooling between affiliated parties. (2)

- Reconsider Articles 7, 20 and 33 of the Law so that the transfer, payment and collection of receivables and debts are resolved adequately for all types of current and capital transactions. (3)

- Enable foreign inflows without prior notification to the bank, as currently envisaged by by-laws governing cash inflow and outflow with abroad, subject to condition (if necessary) for such notification to be made subsequently and electronically at certain time intervals, if possible directly from the companies and not threw commercial banks (e.g. monthly, quarterly, etc.) For natural persons, enable automatic distribution of all inflows from abroad, ie without exceptions regarding the notification of the Bank on certain bases of inflow. (3)

- Further liberalisation of foreign deposit transactions of residents, especially for companies subject to project financing by foreign banks and international financial institutions. (1)

- Further relaxation of administrative requirements (e.g. delivery of documentation via email instead in hard copy) due to obstacles caused by COVID-19 pandemic. (3)

PREVENTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM

CURRENT SITUATION

Near the end of 2019, changes have been made to the Law on the Prevention of Money Laundering and Financing of Terrorism (Off. Gazette of RS No. 91/2019, hereinafter: „New Law") foremost, in order to enable further implementation of International standards established by EU directive 2018/843 of the European parliament and Council from 30 May 2018 (the "Fifth directive"), but also keeping in mind that in June 2018, Serbia has been removed from the so called FATF "Gray list" of countries, therefore further harmonization with international standards in this area was necessary.

The New Law entered into force on 1 January 2020, however, certain provisions of Article 34 shall apply starting from 1 January 2021, and the provisions of Article 56, from 1 June 2020. The New Law stipulates that bylaws will be adopted within four months from the date of entry into force of the New Law, while obliged entities are required to harmonize internal rules by 1 May 2020, with the obligation to obtain a license for its authorized persons and their deputies from 1 January 2021.

The New Law does not set out too many novelties (at least not compared to the previous Law), but certain changes have been made, of which we draw attention to the following: change in the definition of money laundering (added element of foreignness), changes in definitions (transaction, correspondence, virtual currencies, games of chance, financial group, etc.); a new obliged entity has been added (a person dealing in postal traffic services) as well as extended situations in which public notaries are considered obliged entities; the provisions regarding electronic money transfer have been specified and lower limits for the application of the exception have been prescribed; the identification procedure with an electronic document as well as an electronic signature has been harmonized; it has been specified that the obliged entity is not released from the obligation to determine the beneficial owner if he has established the information on the owner by inspecting the Central Registry of beneficial owners; an obligation has been prescribed for obliged entities to apply actions and measures for prevention and detection of money laundering and funding of terrorism in all business units and subordinate companies of a legal entity, regardless of the place of business; the obligation to have a license for an authorized person and his deputy has been introduced; an obligation for the NBS to start keeping a single register of safes and a single register of users of cash licenses starting 1 June 2020. was prescribed etc.

The supervisory body for auditors has been changed - from now on the supervision will be carried out by the Securities Commission, instead of the Administration, while the NBS will have additional powers to impose measures and/or penalties on the authorized person and his deputy.

In accordance with their obligation to adopt bylaws, state bodies have already adopted certain acts, of which we single out the adoption of a new rulebook on the methodology for performing tasks in accordance with the New Law, a rulebook on the professional exam for issuing licenses, new/updated guidelines for risk assessment issued by the Securities Commission and the Gaming Authority, guidelines for risk assessment by and legal entities engaged in the provision of accounting services and factoring companies, as well as a decision on the conditions and manner of determining and verification of the identity of a natural person using the means of electronic communication issued by the NBS.

COVID-19

N/A

POSITIVE DEVELOPMENTS

The competent authorities were very active not just regarding the enactment of the New Law but also, the necessary regulations and bylaws, taking into account to some extent the comments made on the earlier draft of the Law by taxpayers and the interested public.

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

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

REMAINING ISSUES

Although the New Law was (again) adopted practically without a public debate, FIC emphasizes that it is necessary to achieve good cooperation between all competent state

bodies and investors, companies, professional associations and business organizations, in order for the New Law to be successful.

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

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

FIC RECOMMENDATIONS

- Develop a system that would enable better cooperation between the Administration, supervisory bodies and obliged entities, with the aim of better implementation of regulations with emphasis on prevention of money laundering and funding of terrorism and not burdening obliged entities with numerous formalities e.g. establishing a Task Force that would meet regularly to monitor the implementation of regulations with the participation of representatives of the competent authorities. (3)
- Create an analysis of new changes to the regulations in this area and recommend a meeting with the Government of RS in order to further improve the legal framework. (2)
- Accept and adopt initiatives of professional associations to exempt certain business relationships from obligations prescribed by law (e.g. risk insurance). (2)
- Continue organizing adequate seminars and workshops with the purpose of conducting certain training for the persons to whom the New Law with the purpose of increasing the efficiency of its applicability. (1)

LAW ON THE CENTRAL REGISTER OF BENEFICIAL OWNERS

CURRENT SITUATION

The Law on Central Register of Beneficial Owners ("Official Gazette of the Republic of Serbia", Nos. 41/2018 and 91/2019) (hereinafter: Law) came into force on 8 June 2018.

In accordance with this Law, two rulebooks have been adopted that regulate its matter in more detail: Rulebook on the Content of Central Register of Beneficial Owners for Purpose of Registration of Ultimate Beneficial Owners of Registered Entity and Rulebook on Manner and Conditions for Electronic Exchange of Data between Business Registers Agency (hereinafter referred to as: BRA), other State Authorities and the National Bank of Serbia in order to register Beneficial Owners. Both rulebooks began to apply on 15 December 2018.

Central Register is a public, unique, electronic and centralised database of natural persons who are beneficial owners of a legal entity or another entity registered in the Republic of Serbia (hereinafter referred to as: registered entity). Central Register was established on 31 December 2018.

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

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

With these amendments the deadline for the registration of beneficial owners of registered entities in Serbia was extended until 31 January 2020.

The Draft Law on Amendments to the Law, which is under preparation, intends to expand the concept of an authorized person in the sense that the founder in the process of establishing a registered entity electronically is considered an authorized person, in addition to the person who is a legal representative of a registered entity. The Draft Law defines the responsible person in the registered entity as an authorized person designated in the above manner.

Also, the Draft Law on Amendments to the Law envisages a new misdemeanour in case of establishing a registered entity electronically.

COVID-19

State of emergency in the Republic of Serbia caused by the COVID-19 pandemic was introduced on March 15, 2020 by the Decision on the introduction of the state of emergency ("Official Gazette of the Republic of Serbia", No. 29/2020).

Bearing in mind the obligation to personally take over the qualified electronic signature certificate (hereinafter: the Certificate) by the authorized representative, the state of emergency caused by the COVID-19 pandemic had a negative impact to those registered entities where the obligation to record or change the data on the beneficial owner arose during the state of emergency, and whose legal representatives are foreign citizens who found themselves outside the borders of our country during the pandemic.

POSITIVE DEVELOPMENTS

There was no improvement of the Law during the previous year.

REMAINING ISSUES

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

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

FIC RECOMMENDATIONS

- Significant changes should be made to the procedure of registration of the respective data in the Central Register using the certificate. (3)
- The sanctions prescribed by the Law should be reduced. (3)

LAW ON PERSONAL DATA PROTECTION

CURRENT SITUATION

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

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

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

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

The legal regime applying to the transfer of personal data is now more liberal. Personal data can be transferred to countries which have not ratified the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data and to countries which the European Union (EU) considers to provide an appropriate level of personal data protection (third countries) on the ground of contractual clauses approved by the Commissioner for Information of Public Importance and Personal Data Protection ("the Commissioner"). New legal grounds for the transfer of personal data to third countries are codes of conduct and certificates issued by certification bodies. In addition, personal data can be transferred to companies belonging to multinational companies and having registered seats on the territory of third countries, based on binding corporate rules. The new Law introduces the possibility of setting up certification bodies authorized to verify the level of compliance of companies with the new Law and to issue certificates of compliance.

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

The Commissioner has not yet issued guidance on legitimate interest. The application of the new Law will start soon, while, on the other hand, data controllers might take several months to evaluate the lawfulness of process-

ing based on legitimate interest. It shall be clarified by the Commissioner whether controllers, in the course of evaluating the lawfulness of processing based on legitimate interest shall rely on GDPR recitals, opinions of other European supervisory authorities and opinions of the European Data Protection Board or whether they should expect that the Commissioner shall issue guidance for data controllers in regard to legitimate interest. In addition, the Commissioner shall issue an explanation whether and to what extent it takes into account the practice of European legislators when interpreting the new Law, particularly bearing in mind that there has been no practice in Serbia so far.

COVID-19

There were no special reactions due to COVID-19 epidemic.

The competent ministries and the Commissioner have not issued any guidance in regard to application of the new Law in relation to remote work and measures implemented by companies to prevent spread of SARS-CoV-2 virus in working environment.

POSITIVE DEVELOPMENTS

In November 2019, in accordance with Law on Inspection Supervision, the Commissioner published control lists for controllers - public authorities and private entities. These lists are useful tools for controllers to evaluate level of compliance and prepare to undertake necessary steps and draft documents to comply their business with the Law. In addition, since the Commissioner is obliged to apply control lists in the course regular and mixed supervision over the compliance with the Law, these may be a useful guidance for controller to understand what they should expect in the course of supervision. On January 16, 2020, on the ground of Article 45 of the Law, the Commissioner adopted Decision on Determination the Standard Contractual Clauses ("Commissioner's Decision"). An integral part of the Commissioner's Decision is Standard Contractual Clauses ("Clauses"). Clauses must be used by controllers and processors when concluding agreement in writing defining their mutual obligation (transfer of data to processors located in Serbian or in countries which provide adequate level of protection of personal data. These can be used by controllers when transferring personal data to countries which do not provide adequate level of protection of personal data and avoid necessity of issuance the approval by the Commissioner for transfer of personal data.

The Commissioner has continued to participate in public explaining importance of privacy and data protection for citizens and controllers and processors . The Government rendered Decision on List of Countries, Parts of their Territories or One or More Sectors of Certain Activities in these States or of International Organisations for Which It Is Considered that Adequate Level of Protection Personal Data is Provided ("Official Herald RS" No. 55/2019), ("Governmental Decision"). Governmental Decision provides for solution that countries, parts of their territories or one or more sectors of certain activities in these states or of international organisations providing adequate level of protection of personal data are countries which ratified Convention of Council of Europe No.108 and countries, parts of their territories or one or more sectors of certain activities in these states or of international organisation for which the European Commission determined that provide adequate level of protection of personal data.

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

REMAINING ISSUES

A major issue is that the state does not allocate sufficient funds for the activities of the Commissioner, contrary to commitments outlined in the Action Plan for Chapter 23 (on Judiciary and Fundamental Rights) of the EU acquis, released by the Government of Serbia in September 2015, proclaiming the strengthening of the Commissioner's resources as its goal.

The other important issue is whether and to which extent the state has the intent to promote values proclaimed in the new Law. The state should put much more efforts in raising data subjects' awareness of the significance of the abovementioned values by organizing broadcast public debates or public conferences where data subjects can

learn more about their rights contained in the new Law. In addition, the state should exercise its authorities to implement the new Law at state bodies and to align the work of state bodies with measures imposed by the Commissioner.

The new Law does not regulate specific forms of personal data processing, such as video surveillance, processing employees' personal data, and processing for the purpose of scientific and historical research and for statistical purposes. The absence of regulations creates legal uncertainty for controllers that will significantly hamper their ability to conduct business. The provision stipulated in Article 100 of the Law – "provisions of other laws which are related to processing of personal data will be harmonised with provisions of this Law" probably will not be implemented. Except statement of the official of Ministry of Justice that working group has been formed with the task to work towards the harmonisation of other laws with this Law, there have been no public statements by state officials confirming that any further steps have been taken to implemented Article 100 of the Law.

Article 65, paragraph 2, item 2, governing the transfer of personal data to third countries with the application of appropriate safeguards without a specific authorization from the Commissioner prescribes that appropriate safeguards may be provided by standard contractual clauses drafted by the Commissioner, in accordance with Article 45 of the new Law, defining in whole the relationship between the controller and the processor. Reference to Article 45 is not appropriate because GDPR recitals 79 and 81 and Articles 26 and 28 of GDPR do not prescribe that personal data can be transferred to third countries on the ground of contracts whose content is defined by the said articles. Standard contractual clauses which serve as legal ground for transfer of personal data to countries which do not provide adequate level of protection of personal data without a specific authorization from the Commissioner should predominately provide contractual guarantees taken over by controllers and processors to ensure level of protection of personal data recognized by the new Law in the countries of data importers. Controllers and processors are not prevented to supplement standard contractual clauses with provisions stipulated in Article 45. However, the main focus of standard contractual clauses must be in ensuring adequate level of protection of personal data to citizens of the country of exporter. Moreover, Article 65, paragraph 2, item 2 does not prescribe possibility for controllers registered in Serbia to transfer personal data to controllers in third countries on the basis of standard contractual clauses drafted by the Commissioner and without requiring any specific authorization from the Commissioner. This condition is not in line with Article 46, paragraph 2, item c) of GDPR, which prescribes that the appropriate safeguards may be provided for, without requiring any specific authorization from a supervisory authority, with standard data protection clauses adopted by the Commission in accordance with the examination procedure referred to in Article 93 of GDPR. In addition, Article 77 of the new Law does not provide for the obligation of the Commissioner to draft standard contractual clauses enabling the transfer of personal data to third countries without authorization of the Commissioner, but only the obligation to draft standard contractual clauses by making reference to Article 45 of the new Law.

By the time this edition of the White Book was closed, the Commissioner had not yet consummated its authorisation to prescribe conditions for the issuance of licences to certification bodies.

On July 16, 2020, European Court of Justice ("ECJ") rendered judgement upon request for preliminary ruling from the High Court (Ireland) – Data Protection Commissioner v Facebook Ireland Limited, Maximillian Schrems ("Judgement"). By the Judgement, ECJ invalidated Decision 2016/1250 on the adequacy of the protection provided by the EU-US Privacy Shield and considered Commission Decision 2010/87 on Standard Contractual Clauses for the transfer of personal data to processors established in third countries valid. In the Judgement, it pointed out that monitoring programs of the authorities based on U.S law are not limited to the absolutely necessary extent provided in EU law and such restrictions on data protection are disproportionate under EU law. Furthermore, ECJ determined that US law does not provide efficient legal remedies to EU citizens i.e. "Ombudsperson mechanism does not provide data subjects with any cause of action before a body which offers guarantees substantially equivalent to those required by EU law, such as to ensure both the independence of the Ombudsperson provided for by that mechanism and the existence of rules empowering the Ombudsperson to adopt decisions that are binding on the US intelligence services." On the other side, as per Standard Contractual Clauses, ECJ stressed that controller and processors (exporters and importers), before personal data being transferred, must check "whether

that level of protection is respected in the third country concerned and that the decision requires the recipient to inform the data exporter of any inability to comply with the standard data protection clauses". In case the level protection in third country is not essential equivalent to EU law, controller is obliged to suspend the transfer or terminate the contract. Such reasoning is based on interpretation of Clauses 4 and 5 of Annex of Standard Contractual Clauses. At the end, ECJ concludes that "competent supervisory authorities are required to suspend or prohibit a transfer of personal data to a third country where they take the view, in the light of all the circumstances of that transfer, that the standard data protection clauses are not or cannot be complied with in that country and that the protection of the data transferred that is required by EU law cannot be ensured by other means, where the data exporter established in the EU has not itself suspended or put an end to such a transfer".

Having in mind the Judgment cited above, it is obvious that formulation in Article 65 paragraph 2 item 2 of the new Law "by standard contracting clauses drafted by the Commissioner in accordance with Article 45 of this Law by which in whole legal relationship between controller and processor in defined" does not understand the substance of transfer of personal data to country which does not provide adequate level of protection of personal data by means of standard contractual clauses – that both controller and controller/processor by providing contractual guarantees must ensure adequate level of protection of personal data of data subjects recognized by the law the country of exporter. For this reason FIC proposes amendment of Article 65 paragraph 2 item 2 of the new Law as follows: "by standard contracting clauses drafted by the Commissioner based on best European practice in regard to transfer of personal data from data controller to data controller/data processor in countries that do not provide adequate level of protection of personal data".

FIC expects that the Government of Republic of Serbia, in the context of the Judgment amends the Governmental Decision and deletes formulation: " United States (limited to Privacy Shield Framework) and that competent bodies provide guidance on impact of the Judgement on transfers of personal data to countries which do not provide adequate protection of personal data.

Article 55, paragraph 10 of the new Law has not been aligned with Article 36, paragraph 5 of GDPR. Concerning the obligation of a data controller to request an opinion of the supervisory authority regarding data privacy impact assessment, Article 36, paragraph 5 of GDPR prescribes that EU Member states may require controllers to consult with, and obtain prior authorisation from the supervisory authority in relation to processing by a controller for the performance of a task carried out in the public interest, including processing in relation to social protection and public health. On the other side, Article 55 paragraph, 10 of the new Law prescribes that the Commissioner may draft and publish on its website a list of processing activities for which its opinion must be requested. Based on authorities provided in Article 55, paragraph 10 of the new Law, the Commissioner has rendered the Decision on processing activities for which data privacy impact assessment must be performed and the opinion of the Commissioner requested (RS Official Gazette RS 45/2019).

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

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

FIC RECOMMENDATIONS

- Provide the Commissioner with better working conditions, equipment and staff to ensure an effective implementation of the new Law. (3)
- Render/amend laws governing specific forms of personal data processing, such as video surveillance, processing employees' personal data, and processing for the purpose of scientific and historical research and for statistical purposes. (3)
- Harmonize Article 55 paragraph 10 of the new Law with Article 36, paragraph 5 of GDPR. (3)
- Amend Article 65, paragraph 2 of the new Law in line with Article 46, paragraph 2, item c of GDPR and ECJ judgement (Case C-311/18) providing for the possibility to transfer personal data from a controller to a controller and a controller to a processor registered in third countries without authorization from the Commissioner on the basis of standard contractual clauses drafted by the Commissioner, based on best European practice. (3)
- Amend Article 77 of the new Law and provide for the obligation of the Commissioner to draft standard contractual clauses for the transfer of personal data from controllers in Serbia to controllers in third countries, applying best European practice. (3)
- Provide an official interpretation of the legislator as to what can be considered a legitimate interest and provide other interpretations for all other issues closely explained in the recitals of GDPR, including impact of ECJ judgement (Case C-311/18) on data transfer of personal data to countries which do not provide adequate level of protection of personal data. (3)
- Amend Decision on List of Countries, Parts of their Territories or One or More Sectors of Certain Activities in these States or of International Organisations for Which It Is Considered that Adequate Level of Protection Personal Data is Provided – deleting formulation "United States (limited to Privacy Shield Framework". (3)
- Issuance of guidance in regard to application of the new Law in relation to remote work and other measures implemented by companies to prevent spread of SARS-CoV-2 virus in working environment. (3)
- Enact conditions for the issuance of licenses to certification bodies by the Commissioner. (3)

LAW ON THE CENTRAL REGISTER OF TEMPORARY RESTRICTION OF RIGHTS

CURRENT SITUATION

Law on the Central Register of Temporary Restriction of Rights of Entities Registered in the Business Registers Agency ("Official Gazette of the Republic of Serbia", No. 112/2015) (hereinafter: the Law) came into force on 4 January 2016 and is applicable as of 1 June 2016.

The Law envisages the establishment of a Central Register of Temporary Restriction of Rights of Entities Registered in the Business Registers Agency (hereinafter: Central Register), i.e. an electronic database, that will contain information on business entities, their owners, directors, representatives, and members of their bodies, whose business has been subject to criminal, misdemeanour, or administrative sanctions.

Temporary measures of injunctions, restrictions or precautionary measures with respect to carrying on registered business activities or operations, injunctions preventing the disposal of money, injunctions or restrictions with respect to the disposal of shares and other measures in accordance with the law may be imposed on founders, management, directors, legal representatives, and other bodies of a company.

A temporary restriction of rights is imposed on the basis of and is the legal consequence of acts of the state or other relevant authority containing legal facts or actions required by law in the form of a legally binding or enforceable judgment, decision, or other formal act submitted to the Serbian Business Registers Agency (SBRA) for filing in the Central Register.

The intention to introduce stricter discipline in the operations of business entities in the Republic of Serbia and to minimize the possibility of malpractices and damages to third parties, that is, the introduction of sanctions for those who abuse their position in business entities – is a highly positive goal and is fully supported by the FIC, which has been advocating that same goal ever since its establishment.

The coordination of various authorities (such as, for example, the National Bank of Serbia and the Ministry of Interior) takes place ex officio, in the sense of a timely exchange of data on business entities and their shareholders and bodies, resulting in an increase in the number of entities registered in the Central Register.

There were only several dozens of these entities when the Central Register was established, but in time this number grew to several tens of thousands.

We remind that, according to Article 20 of the Law, the data from the central records pertaining to individuals to whom bans and security measures in judicial proceedings have been imposed may not be made public and may be disclosed only in accordance with the rules governing criminal records. The SBRA website has a special procedure for access to certain data, requesting users to submit a qualified digital certificate.

Registered data provide a complete overview of the business reliability of an individual business entity, including details of any restrictions imposed on the business entity and its shareholders, members of its governing bodies and authorized representatives, which should eliminate the possibility of any business entity acting in violation of the restrictions imposed on them, while at the same time increasing business transparency and security of legal transactions.

In accordance with Article 29 of the aforesaid Law, the SBRA cannot approve and register any requests for strike off or corporate changes before the Tax Administration has sent notification on the completion of the tax control procedure or the return of the Tax Identification Number to a company that was registered in the Central Register on any of the aforementioned grounds.

Since January 2017, the Central Register also contains information on enforced collection provided by the NBS.

According to the SBRA's data, there are registered 530,127 active measures against entities registered with the SBRA.

COVID-19

State of emergency in the Republic of Serbia caused by the COVID-19 pandemic was introduced on March 15, 2020 by the Decision on the introduction of the state of emergency ("Official Gazette of the Republic of Serbia", No. 29/2020).

The Law prescribes that the relevant authority that contains legal data or documents on entities with a temporary restriction of rights submits that data to the SBRA in electronic form, via electronic services, for entry in the Central Register.

Due to the state of emergency in the Republic of Serbia caused by the COVID-19 pandemic, the work of the relevant authorities, which are obliged to submit data on entities

with temporary restrictions, was slowed down and difficult, therefore the greatest impact COVID-19 on this matter is reflected in the update of data in the Central Register.

POSITIVE DEVELOPMENTS

There was no improvement in the previous year, as there were no relevant normative changes in this period.

REMAINING ISSUES

Article 3 of the Law prescribes grounds for temporary restriction, listing specified measures. Consequently, no other grounds for temporary restriction, except those listed, may be the ground for a temporary restriction.

The aforesaid grounds are not always necessarily a consequence of abuse of rights by the party/person whose rights would be restricted. In fact, there are numerous cases of business entities having their accounts blocked, or undergoing bankruptcy proceedings, where such account blockade or bankruptcy are not the consequence of any fraudulent activity; i.e. both members and bodies of business entities have acted bona fide. As an example, we point out the case of business entities that are in such a situation because the state or local authorities have failed to pay their debt to these entities, as well as the case of a supplier chain (notably in the construction industry) where account blockade or bankruptcy over one of the entities in the chain triggered a domino effect for other members in the chain below.

Some provisions of the Law are too general and imprecise and, as such, can produce a variety of negative consequences in practice.

In addition, we are of the view that the scope of persons encompassed by the Law is too wide, and that only persons who undertook actions or supported actions that led to abuse should be made subject to the restrictions imposed by the Law (members/shareholders and members of bodies).

It is necessary to additionally define legal consequences of temporary restriction due to the fact that Article 5 only prescribes that they last during the validation period in the manner prescribed in Article 3 of the Law.

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

One of the issues, which existed during the drafting and adoption of the Law, is a situation where an over-indebted business entity opens a new company to which the business is transferred, without discharging obligations of the previous company. The idea was to submit those companies to the Central Register as well, but it was withdrawn, so the topic of these fraudulent situations still remains open.

FIC RECOMMENDATIONS

- Significant changes should be made and certain provisions should be more precise (as elaborated in the Remaining Issues above) in order to minimize, to the extent possible, the possibility that the Law is applied to business entities and their members/bodies acting bona fide. (2)
- It is necessary to regulate liability for entering incorrect data into the Central Register. (3)

LAW ON WHISTLEBLOWERS

CURRENT SITUATION

The Law on the Protection of Whistleblowers (hereinafter: the Law) entered into force on 4 December 2014 and has been in application since 5 June 2015.

The Law regulates whistleblowing, the whistleblowing procedure, the rights of whistleblowers, the obligations of the state and other bodies and organizations, and legal entities and individuals in connection with whistleblowing, as well as other issues of importance for whistleblowing and the protection of whistleblowers.

The Law prohibits retaliation against whistleblowing and protects all persons in work engagement. Besides whistleblowers, under certain conditions, the Law also protects persons connected to the whistleblower, as well as any person wrongly labelled as a whistleblower, holders of public office, and persons seeking information regarding a specific whistleblowing case. The Law also envisages the protection of the whistleblowers' personal data. Abuse of whistleblowing is prohibited.

Whistleblowing can be internal (disclosure to the employer), external (disclosure to an authorized body) or public (disclosure of information to the media, through the Internet, at public meetings, or in any other manner in which information can be made available to the public). The employer and the authorized body are also obliged to act based on anonymous tips regarding the disclosed information, within their authority.

The Law requires employers to notify all employees in writing about their rights under the Law, and to appoint a person authorized to receive information from whistleblowers and conduct proceedings in connection with whistleblowing. On the other hand, employers with more than ten employees are required to regulate an internal whistleblowing procedure by means of a general act and to display it in a visible location, as well as on the employer's website, if technically possible.

The Law regulates the general procedure for internal whistleblowing initiated by disclosing the information to the employer. Employers are obliged to act upon the information without delay and no later than 15 days of the receipt of the information. They are obliged to inform the whistleblower about the outcome thereof, within 15 days after the completion of the procedure.

External whistleblowing starts with disclosing information to an authorized body, but the Law does not specify which body.

The Law envisages judicial protection of whistleblowers. A claim must be filed within six months of the date of learning of the undertaken adverse action (subjective term), and within three years from the date when the adverse action toward the whistleblower was taken (objective term).

The Ministry of Justice has adopted two by-laws in this field. The Rulebook on the Programme for the Acquisition of Specialized Knowledge Concerning the Protection of Whistleblowers to ensure that judges receive additional theoretical and practical knowledge in the area of whistleblowing and the protection of whistleblowers, and acquire the skills required for professional and efficient proceedings relating to the protection of whistleblowers. The other one is the Rulebook on the method of internal whistleblowing, the method of assigning the employer's authorized person, and on other issues of importance for internal whistleblowing in the workplace when the employer has more than ten employees.

COVID-19

During the epidemic of the infectious disease COVID-19 virus, as well as during the declared state of emergency, the state authorities of the Republic of Serbia did not issue guidelines and regulations in this area. However, given the numerous problems that many countries are struggling with due to the global epidemiological situation, one should certainly warn of the risk of corruption. The Council of Europe's anti-corruption body, GRECO, warned of the potential risks of corruption in the health sector due to the COVID-19 virus pandemic and called on states to maximize transparency, and that decisions made by central, regional and local authorities must be subject to scrutiny and accountability, and that whistleblowers in the health sector must be protected.

POSITIVE DEVELOPMENTS

There were no improvements compared to previous recommendations.

However, since the enactment of the Law, there has been an increase in the number of filed lawsuits and reports, while courts have been issuing interim measures significantly faster than the prescribed legal time limit. Also, the first final verdicts in this field have been delivered, and two verdicts of the Supreme Court of Cassation, as an extraordinary legal

remedy. One of the most significant verdicts is the verdict of the Court of Appeals in Novi Sad no. Gž Uz 7/2017 (2) from Jun 20th, 2017 and the judgment of the Supreme Court of Cassation no. Rev2 Uz 1/2018 from July 5th, 2018, who awarded the whistleblowers compensation for non-pecuniary damage for mental anguish for offended reputation and honour and for fear suffered. The foregoing shows that judges and other responsible persons understand the importance of enforcing the Law and of the urgency of action. It is obvious that progress has been made in the education of judges, attorneys, prosecutors and individuals subject to the Law and that they are familiar with their rights and obligations.

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

REMAINING ISSUES

While the adoption of this Law was an important step for Serbia, the assessment so far is that some of its provisions are contradictory or incomprehensible, so the Law should be more specific in some segments.

The Law does not specify in more detail the nature and function of the authorized body, and fails to define the relationship between internal and external whistleblowing. The Law remains powerless in cases of reprisals against whistleblowers by a third party who is not the employer. In addition, the Law does not envisage criminal offences in connection with whistleblowing, or specific offences in cases of serious violations of the rights of whistleblowers and other persons entitled to the same protection. Furthermore, the Criminal Code has not been amended, as an alternative to the aforementioned option, to include the prescription of such criminal offences. We believe that this can be extremely important, especially in whistleblowing related to corruption and threats to the environment and human health.

The Law does not provide any rules on the remuneration of or the explicit right of whistleblowers to claim fair compensation instead of the annulment of the act constituting adverse action. The right of whistleblowers to fair compensation, coupled with the already incriminated abuse of whistleblowing, would yield far better results in the implementation of this Law.

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

FIC RECOMMENDATIONS

- The concept of "authorized body" and the relationship between internal and external whistleblowing should be specified. (1)
- Criminal offences in connection with whistleblowing, as well as any special penal responsibility for the grave violations of the rights of whistleblowers should be appropriately envisaged. (2)
- Introduce rules on remuneration of whistleblowers to effectuate the purposes of this Law. (2)

LAW ON PUBLIC NOTARIES

CURRENT SITUATION

The Law on Public Notaries (RS Official Gazette No 31/2011, 85/2012, 19/2013, 55/2014 – as amended, 93/2014 – as amended, 121/2014, 6/2015 and 106/2015) (hereinafter: "the Law"), in application since 1 September 2014, introduced public notaries as a legal profession within the Serbian legal system.

Public notaries provide the following services:

- Drafting and notarization of documents important for legal transactions performed by natural persons and corporate clients, such as the notarization of various types of contracts in the area of corporate law, torts and obligations, inheritance and family law, lien mortgage statements and other statements establishing, changing or terminating a legal relationship. Depending on the type of document, the form varies from signature notarization to the strictest forms of notarial records. Since 1 March 2017, the notarization of signatures, transcripts and writs has become a part of the services provided by public notaries. This means that there are no more overlapping responsibilities in this area between courts, municipalities and public notaries, as these may only be performed by public notaries now.

- Transactions and procedures assigned to public notaries by courts. These are primarily probate proceedings, the assignment of which has significantly unburdened courts, out-of-court proceedings for determining boundaries, proceedings regulating the management and use of, or the division of a common asset or property.

- Deposit-related transactions. Parties may entrust a public notary not only with court deposits, but also with cash, securities, writs, documents, art objects, jewellery, and other valuables, except those prohibited by law. When receiving a valuable to be kept in a safe, a public notary is required to issue a notarial deposit certificate.

- Notaries are the so-called "reporting entities," meaning that they are obliged to send each relevant document which is the subject of the notarization to the relevant cadastre.

COVID-19

There is no impact of the COVID-19 epidemic to the work of public notaries

POSITIVE DEVELOPMENTS

With the adoption of the Law on the Procedure of Registration in Real Estate and Public Utility infrastructure Cadastres (RS Official Gazette No 41/18 and 31/19) and the Law on Electronic Documents, Electronic Identification and Confidential Services in Electronic Transactions (RS Official Gazette No 94/2017), public notaries have faced new challenges. In fact, from 1 July 2018, public notaries became the so-called "reporting entities", meaning that for the notarization of any document the content of which is subject to registration in the cadastre of real estate or cadastre of public utility infrastructure, public notaries are required to send a copy of that document to the cadastre within 24 hours of notarization, so that it can be registered, and to issue a confirmation thereof to the client. Should a document not be subject to registration, and is related to the transfer of title to a building under construction, a public notary is obliged to deliver such a contract to the cadastre as well, for the purpose of filing it in the records. Additionally, a public notary is also required to deliver copies of tax returns to the cadastre, for the purpose of determining the amount of tax on transfer of absolute titles, and taxes on inheritance and gifts and copies of tax returns, for the purpose of determining a property transfer tax, except in cases when a taxpayer does not agree to have the tax return sent through the public notary's office, in which case the public notary is required to deliver a record he/she drafted in this regard. Subsequently, the cadastre officially forwards the tax returns to the tax authorities and forwards the document which is the basis for change of ownership over real estate to the public utility bill collection company. Additionally, starting from 31 December 2020, interested persons may obtain an extract from the List of Immovable Property from a public notary. This will be a major step forward in establishing the legal security of real estate-related rights and aligning the factual situation with the situation in public real estate registers. A big step has also been made in the process of digitization and interconnection of the public administration and interconnection between the public administration and public notaries. Namely, the idea is, in the long term, after 31 December 2020, to send these documents to the cadastre in electronic form, through the so-called "electronic counter." Electronic documents will reduce the use of paper documents, electronic signature will be equivalent to a handwritten signature, and electronic delivery will be legally valid. Instead of having to go to a counter three-four times, the aforementioned laws stipulate that one visit to a public notary will suffice to

complete the notarization, the registration of a document in the cadastre, the submission of the tax returns and the notification of the public utilities company.

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

REMAINING ISSUES

The prices of public notary services remain an acute problem in this area. We note that the public notary fees are somewhat higher than those once paid for the same services at courts and municipalities, especially for the notarization of lien statements, whose price goes as high as several thousand euros. The fee for the notarization of a signature for legal entities is also higher than it used to be.

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

The software used by the public notaries for sending the documents which they notarize to the cadastre of real estate does not allow notaries to send all types of documents which they notarize to the cadastre, even though the content of such documents is subject to registration in the cadastre of real estate (e.g. notarized lease agreement for a building or a separate part of building).

In some cases the notaries have divergent practice, meaning that one notary public refuses to verify a particular document, while the other one accepts the verification of the same document. Although the Chamber of Notary Publics issues the opinions on acting of the notaries in certain situations, such opinions is not obligatory for the notaries.

FIC RECOMMENDATIONS

- Appointment of public notaries in eight underdeveloped cities in Serbia. Continue with the process of digitization and networking of the state administration with public notaries, in order to enable the implementation of all legal competencies of public notaries. (2)
- Enable the disposition of clients' requests toward the cadastre in situations when the delivery of the document is carried out by a public notary ex officio. (3)
- Further reducing charges for services provided by public notaries, and their harmonization with the purchasing power of companies and natural persons. (3)
- Further improvements in communication between the public notaries and the cadastre of real estate, including the possibility for notaries to initiate registration of leases on buildings (when applicable). (2)
- Unification of the practice of notary publics to obligatory implementation of the opinions of the Chamber of Notary Publics. (3)

TAX

The aggravated and altered conditions of doing business that have been caused by the COVID-19 pandemic have resulted in significant changes in the focus and priorities of both the Government of the Republic of Serbia and businesses, in the field of taxation as well as in other spheres of the economy and society. Following some changes to tax regulations in the second half of 2019, the focus in 2020 shifted primarily to measures for helping the economy.

The Government of the Republic of Serbia adopted a set of economic and fiscal measures during the state of emergency in order to mitigate the negative economic consequences of the COVID-19 pandemic. Fiscal measures encompassed the postponing of payments of taxes and contributions to salaries and advance payments of the corporate income tax, the delaying of the deadline for filing tax returns for corporate income tax, as well as deadlines for filing appeals against first-instance decisions of the tax and customs authorities.

The most significant positive change in tax regulations in the previous period is represented by the 1st January 2019 entry into force of tax incentives for investments in research and development activities, as well as for economic exploitation and the sale of intellectual property. Other positive changes include the entry into force of new rules on tax depreciation, the introducing of certain tax breaks for investment funds, as well as the introducing of tax credits and tax deductions for banks related to the conversion of mortgages indexed in Swiss francs.

On the other side, in several other new official opinions, the Ministry of Finance reiterated its position from last year with regard to the obligatory documenting of the costs of transporting employees to and from work, which causes great anxiety among companies due to the debatable basis for such an interpretation in existing regulations, due to confusion, difficulties and administrative costs related to the practical application of such a requirement. Moreover, amendments to the Law on Personal Income Tax prescribe the obligation to document such expenses, but what is considered a documented expense remains unclear and disputable. We maintain the stance that such an opinion should be repealed or amended immediately.

One of the remaining important issues has for years been the lack of transparency and public debate in the area of amending tax regulations. In the period prior to the outbreak of the pandemic, certain progress was achieved in terms of continuing the work of the Working Group for the implementation of recommendations from the FIC White Book and open discussions with the Ministry of Finance on some important tax issues and problems. We expect and hope for the resumption of a constructive dialogue with the Ministry of Finance in the second half of 2020, with a return to the issues of improving tax regulations and practises with greater transparency and the timely public presenting of all draft regulations.

The newly emerged situation and aggravated conditions of doing business have imposed a need for the Tax Administration – as well as businesses – to transition as quickly as possible to electronic communication and the use of new technologies, and have thus further stressed the necessity to quickly conclude the reform and modernisation of the Tax Administration.

A. CORPORATE INCOME TAX (CIT)

CURRENT SITUATION

The taxation of companies in Serbia is governed by the Law on Corporate Income Tax (hereinafter: the CIT Law) and ratified international agreements. The implementation of certain provisions of the CIT Law is regulated by several by-laws.

The CIT Law was last amended in late 2019 (RS Official Gazette No 86/2019). As for international treaties, in July 2020 Serbia signed a Double Taxation Agreement with Japan which will enter into force upon ratification of the Agreement by both countries.

A set of bylaws was also adopted in the course of 2019, regulating in more detail the new tax depreciation rules and tax incentives for research and development and intellectual property which were introduced in 2018 and which came into force in 2019. The bylaw regulating transfer pricing documentation requirements was also amended.

COVID-19

As a part of economic and fiscal measures adopted by the Government to relieve the adverse economic impact of COVID-19 pandemic, taxpayers (excluding financial sector and public sector beneficiaries) were entitled to apply for deferral of payment of monthly CIT advance payments for the period March-June 2020 until the final filing of CIT return for 2020 (end of June 2021). Payment of deferred amounts can be made in up to 24 monthly instalments with no interest charged.

POSITIVE DEVELOPMENTS

The latest amendments to the CIT introduced a tax deduction for banks for losses related to decrease of debt in accordance with the newly adopted Law on Conversion of Housing Loans denominated in Swiss Francs (hereinafter: The Law on Conversion). The banks are also entitled to a tax credit equal to 2% of remaining debt determined in accordance with the Law on Conversion. Tax credit can be used in two successive tax periods (50% each) while the unused tax credit can be carried forward for up to 10 years. However, detailed rules are still not prescribed, which creates some uncertainty for the banks.

Tax depreciation of right-of-use assets accounted for in accordance with newly applicable accounting standard IFRS 16 (Leases) was aligned with accounting depreciation of such assets. Also, some improvements were made to classification and definitions of depreciable assets (e.g. returnable packaging).

Other positive developments include introduction of certain tax exemptions related to investment funds, and country by country reporting for transfer pricing purposes (CbCR) for multinational groups with ultimate parent entity in Serbia and total revenue of EUR 750m and more.

REMAINING ISSUES

- In 2019, the Ministry of Finance issued a few opinions on the tax treatment and documentation of reimbursement of employees' commuting expenses that caused a negative backlash from the business community and legal uncertainty among taxpayers. The opinions introduce cumbersome requirements for documenting these expenses, which is contrary to labour and tax laws, to the stance taken by the Supreme Court of Cassation and some previous opinions of the Ministry of Finance. As such, these opinions should be immediately cancelled or amended.

- The lack of regulations or their vagueness with respect to certain situations and issues lead to different interpretations consequently causing problems for taxpayers in practice. Specifically, the provisions governing the taxation of a permanent establishment are still incomplete and insufficiently clear; the CIT Law does not contain provisions regulating the taxation of company restructuring and taxation of investment funds, or provisions governing the treatment of losses arising from the liquidation or bankruptcy estate surplus. Consistent interpretation and application of the domestic tax law to transactions with a foreign element and of double tax treaties is increasingly important considering the ratification of the Multilateral Convention.

- Occasionally, interpretations by the Ministry of Finance pertaining to withholding tax differ from provisions of the relevant double tax treaties and best international practices, especially in cases of proprietary software licensing. This leads to legal uncertainty and increases the tax burden for taxpayers, contrary to the rights provided in the relevant double tax treaties. Also, filing separate tax returns for withholding tax on services for each taxable payment of income subject to withholding tax is an administrative burden for businesses. Finally, the procedure for obtaining confirmation of paid withholding tax should be simplified and streamlined.

- New rules on tax depreciation were introduced for newly acquired non-current assets from 1 January 2019. However, tax depreciation rules applicable to non-current assets acquired before 2019 remained largely unchanged since 2004, and their application in the contemporary business environment causes many difficulties and problems. Also, properly regulating the classification and depreciation of specific assets (e.g. windmills, oil rigsetc.) is particularly important.

- Provisions of the law pertaining to the method for calculating tax depreciation for assets acquired before 2019 continuously create discrepancies and permanently unrecognized expenses in the tax balance sheet in cases where, at the moment of disposal of an asset, the current accounting value is lower than the current tax value of that asset, as well as in cases

where a fixed asset is being disposed of, where that asset was not previously depreciated for tax purposes, as its cost value at the moment of purchase was lower than the average salary in Serbia. The Ministry of Finance issued an opinion in 2017 which gave rise to additional dilemmas about the cessation of tax depreciation for written-off assets.

- Tax depreciation is not calculated on fixed assets purchased before changes to the CIT Law from the beginning of 2013, and whose individual value was below the average gross salary at that time.

- During 2015 and the first half of 2016, the Ministry of Finance published opinions regarding the method of calculation of the cost and recognition of tax depreciation for the first group of fixed assets on 31 December 2003, causing numerous dilemmas and controversial interpretations in practice.

- The Ministry of Finance issued an opinion in 2017 regarding the method of calculation of tax depreciation of assets in case of acquiring a bankruptcy debtor as a legal entity, and took the position that tax depreciation should be calculated in the same way as before the filing of a bankruptcy petition. We are of the view that this is a debatable interpretation and that it would be more appropriate to calculate tax depreciation on the basis of a proportionate share of the purchase price allocated to relevant assets.

- Accounting regulations, i.e. International Financial Reporting Standards (IFRS), provide for the possibility to either opt for the cost model or the fair value model for certain types of assets (investment property, biological assets, and financial assets). The CIT Law does not have clear rules regarding assets measured at fair value. Unrealized gains from the increase of fair value of assets are taxed before the asset is disposed of, i.e. before the gain is realized.

- The CIT Law does not clearly distinguish between impairment of assets and decrease of fair value of assets (e.g. investment property), for which the IFRS prescribes different rules and treatment. As a result, the decrease of fair value of assets is interpreted as an impairment expense which is non-deductible until such assets are sold. On the other hand, every increase of fair value of assets is immediately taxable. This results in an unfair increase of taxable income for taxpayers.

- Tax incentives can be introduced only through the tax laws. The Law on conversion of housing loans denominated in CHF (Official Gazette 31/19) introduced a tax credit for banks and supplementary evidence which should be filed along the CIT return. However, detailed rules for application of the tax credit will be regulated through the Corporate Income Tax. To this moment detailed rules were not introduced either in the CIT Law nor in the related bylaws, which creates uncertainty for the banks which have already filed 2019 CIT return.

FIC RECOMMENDATIONS

- Cancel or amend the controversial opinions of the Ministry of Finance on the tax treatment and documenting of reimbursement of employees' commuting expenses. (1)

- Supplement the CIT Law with provisions to regulate taxation of company restructuring, investment funds, treatment of liquidation or bankruptcy remainder that is below the threshold of invested capital, and through by-laws, provide guidelines on taxation of permanent establishments. Consistent interpretation and application of the domestic tax law and provisions of the international tax treaties on transactions with a foreign element should be ensured. (3)

- Aligning domestic practices with respect to withholding tax with the best international practices and definitions applied in the relevant international treaties, (especially with respect to the treatment of proprietary software licensing). Introduce monthly, quarterly or annual filing of tax returns for withholding tax on services, in accordance with customary international practices, instead of filing a tax return for each taxable transaction separately. Also, confirmation on paid withholding tax should be automatically generated in the Tax Administration's system and

obtained upon filing and payment of withholding tax, rather than through a separate procedure. (2)

- Revisit the currently applicable rule that only paid taxes are recognized as an expense in the tax balance sheet and align the above provision with the IFRS rules that do not impose the payment of taxes as a condition for their recognition as an expense in the Profit and Loss Account. (2)

- Introduce tax incentives for investments in fixed assets amounting to less than RSD 1 billion in the form of a tax credit or reduced corporate income tax rate over a certain period, and in proportion to the amount invested. (1)

- Introduce detailed tax depreciation rules which will allow for the proper classification and depreciation of specific assets such as windmills, oil rigs etc. in accordance with their economic and useful life. Revise the CIT Law and Rulebook governing regulations on the classification of fixed assets by groups and the manner of determining depreciation for tax purposes to resolve the following issues:

  - Tax depreciation expenses should be recognized for fixed assets acquired before 2013 (present in the accounting records on 1 January 2013) whose individual value at the time of purchase did not exceed the amount of the average gross salary of an employee in Serbia. We suggest that this change be implemented in the Rulebook governing regulations on the classification of fixed assets by groups and the manner of determining depreciation for tax purposes.

  - Further clarify the method of calculation and recognition of tax depreciation costs for the first group of fixed assets, as at 31 December 2003 that caused numerous dilemmas and controversial interpretations in practice.

  - In case of acquisition of a bankruptcy debtor as a legal entity, tax depreciation should be calculated based on a proportionate share of the purchase price allocated to relevant assets. (2)

- Prescribe that the historical cost model should apply for taxation purposes to assets for which the IFRS provides a free choice between historical cost and fair value accounting, irrespective of the chosen accounting method, to ensure the uniform and equitable tax treatment of taxpayers. However, if the intention is to allow application of the fair value model for taxation purposes, amend the rules relating to tax deductibility of impairment expenses, so that it is clear that decreases in the fair value of assets accounted for under the fair value model are not a non-deductible impairment, and so that fair value increases and decreases are treated equitably. (3)

- To regulate in proper way the tax credit for banks in relation to The Law on conversion of housing loans denominated in CHF. To avoid introduction of tax incentives in legislation other than tax laws. (1)

B. PERSONAL INCOME TAX

CURRENT SITUATION

Taxation of personal income in Serbia is based on the schedular income taxation system which has been abandoned by many advanced tax jurisdictions as unclear and unfair.

The Law on Personal Income Tax (the Law) as the main regulatory instrument recognizes several categories of taxable income. The personal income tax is, depending on individual case, paid: (i) as withholding tax, (ii) upon decision of competent tax authority or (iii) via self-assessment.

The most recent amendments to the Law came into force on 1 January 2020, and as the most important ones include the following: (i) the "independence test" for self-employed individuals was introduced (ii) certain incentive measures related to the employment of new employees were adopted (iii) the concept of a newly settled taxpayer was introduced and reliefs for this category of individuals were established, (iv) exemption for payment of taxes and salaries of founders employed in newly established company performing innovative activity was introduced, (v) procedures for calculation of flat tax were simplified and possibility for submitting applications in electronic form was enabled, (vi) request that transportation costs for arrival and departure from work must be documented was introduced in order for such compensation to be tax-free up to the prescribed amount.

The provisions of the Law relating to the independence test began to apply on March 1, 2020. The independence test is intended to analyse the relationship between the principal and the self-employed individual and envisage 9 criteria on the basis of which it should be determined whether the self-employed individual is independent or non-independent in relation to the principal (company) who hired him. If the self-employed individual meets 5 of the 9 criteria of the Test, it will be considered that it is not independent in relation to the principal and thus the income it earns will have a different tax treatment, i.e. the principal (company) will have to calculate and pay tax on other income as well as the corresponding social security contributions on the entire income paid to the self-employed person.

However, in order to mitigate the consequences that the application of the described rules may have on the economy, the legislator introduced certain reliefs for employment of qualified new employees, which significantly reduced the tax burden for employers who would employ a certain category of individuals (including self-employed individuals) for a period of three years.

In addition to the above, due to the existence of different interpretations of the Law and ambiguities regarding how the Test will be applied, the Instruction for the application of the independence test with a detailed description of criteria, answers to questions and guidelines to be applied in the tax audit procedure, was published.

COVID-19

As part of economic and fiscal measures adopted by the Government to mitigate the COVID-19 negative economic influence, taxpayers (excluding the financial sector and users of public funds) have been allowed to defer the payment of payroll taxes and compulsory social security contributions during the state of emergency, until January 1, 2021. Settlement of deferred liabilities can be made in 24 monthly instalments without interest.

Also, same category of taxpayers is entitled to receive non-refundable funds that can be used exclusively for the payment of salaries and wage compensations to its employees.

POSITIVE DEVELOPMENTS

Recent amendments to the Law and accompanying bylaws brought certain positive developments:

- The conditions for exercising the right to tax exemption on the basis of organizing recreation, sports events and activities for employees are more clearly defined. In the period before the amendment of the Law, the organization of recreational, sports and team building activities of employees had the character of salary. Given today's business conditions, there is a need to exempt this type of expenditure from the calculation of taxes and social security contributions and to fully recognize it as an operating expense of companies.

- Various employment incentives were introduced, which to a significant extent had aim to motivate employers that instead of hiring individuals through their entrepreneurial agencies, to employ the same individuals (incen-

tives for new employees) with temporary reduction of taxes and compulsory contributions for such persons. Also, incentives for employment of newly settled persons have been introduced. Finally, the Law also prescribed the exemption from the payment of the founder's salary tax for newly established companies that perform innovative activities.

- The Tax Administration has published the Instruction for the application of Article 85, paragraph 1, item 17 of the Law (Instruction for conducting the independence test). This represent a very detailed instruction based of which tax inspectors will conduct an independence test. Although the instruction itself is not a legally binding document, we believe it is useful to know how the audits in this regard will be carried out.

- The procedure for calculating the flat tax has been simplified and submission of request for flat taxation in electronic form is enabled.

REMAINING ISSUES

- The latest amendments to the Law stipulate that transportation costs for arrival and departure from work must be documented in order for such compensation to be tax-free up to a certain amount, but it is not specified what is considered as documented cost. This deepens the problem created by the issuance of the controversial opinion of the Ministry of Finance from 2019, which caused negative reactions of economy and which imposed unnecessarily complicated requirements on taxpayers regarding the documentation of such costs.

- There has been no progress in the area of reimbursement of expenses to employees for business trips abroad. This area has not yet been properly regulated, nor have there been any amendments to the Law that would help to resolve this problem. The same disputable provisions are in force, which indicate that the amount of per diem is determined in the manner and in line with the decision of the relevant authority, which leaves ambiguities regarding which acts of the authorities it refers to. Therefore, during the tax audits inspectors often lean on the provisions of the Regulation on the reimbursement of costs and severance pays of state officials and employees, despite the fact that it is only mandatory for the public sector.

- Furthermore, this year's amendments to the Law do not mention tax treatment of no-interest loans (i.e. loans with lower interest rates than market ones) granted by the employer to the employee. It remains unclear whether such a loan should be considered as a benefit or not.

- Compensation for unused annual leave paid to an employee who did not use paid leave in the course of employment is still treated as salary. Considering that the Labour Law stipulates that this payment represent compensation for damage and not salary, the reasons why the Ministry of Finance has opted for such tax treatment remain unclear. This further clearly implies that a satisfactory level of cooperation between these two competent ministries has not yet been achieved, at least in terms of the subject in question.

- The problems still exist with the social security registration of Serbian nationals employed with a foreign employer but working in Serbia. Namely, although the possibility of such engagement is provided by the Labour Law, the Law on Pension and Disability Insurance, as well as the Law on Health Insurance, which recognize Serbian citizens employed by foreign or international organizations, institutions or foreign legal entity or individuals as insured, these individuals cannot fully exercise their rights. This practice leads to a significant increase in legal uncertainty because on one hand there is an obligation for compulsory social security contributions, and on the other hand it is not possible to apply for insurance. Consequently, taxpayers cannot exercise any rights from social security, or pay contributions.

- Due to the manner in which the law defines taxable net income for the purposes of calculating annual personal income tax, taxpayers who have already paid taxes for income earned in a foreign country, are not able to use this tax as a tax credit in its entirety, and are subject to double taxation. This most directly endangers experts whose knowledge is needed abroad, who because of their desire to continue living and working in Serbia bear the burden of double taxation for the same type of income.

FIC RECOMMENDATIONS

- Repeal or amend the disputed opinion of the Ministry of Finance regarding tax treatment and documentation of compensation for transportation costs of employees for arrival and departure from work, and amend the Law so that the documentation requirement is revoked or harmonized with an earlier judgment of the Supreme Court of Cassation. (1)

- The application of schedular personal income taxation is still in force and this remains a problem of the Serbian system of taxation of individuals. Therefore, the Government of Serbia should consider the introduction of a synthetic taxation system, which is present in many advanced tax systems. (3)

- Recommendation refers to the timely adoption of an appropriate bylaw that will regulate in detail the issue of per diems for business trips and reimbursement of expenses. (2)

- Recommendation is that the Ministry of Finance take a clear position regarding the tax treatment of interest-free loans (i.e. loans with lower interest rates lower than market ones) and to publish such position through an official opinion that would lead to greater legal certainty in this respect. (1)

- It is necessary to establish cooperation between the Ministry of Finance and the Ministry of Labour, Employment, Veterans and Social Affairs in order to properly ensure the application of relevant regulations, i.e. to treat compensation for unused vacation as damage compensation (as it is recognized by the Labour Law) and not as salary. (2)

- Considering that social security rights are represent one of the basic social and economic rights of workers, we point out the importance of harmonizing certain provisions of regulations which would allow foreign nationals posted to Serbia (without entering employment) and Serbian nationals employed with foreign employers in Serbia to register for mandatory social security. Additionally, we note that Republic of Serbia needs to expand the network of international agreements that regulate the issue of social security, with the aim of avoiding double payment of contributions. (2)

- It is necessary to align annual personal income tax form with Article 12 of the Law (the right to use tax credit) and agreements on the avoidance of double taxation, i.e. the taxpayer should be allowed the right to use the tax credit. (1)

- Although some progress has been made in terms of electronic communication, we believe that there is significant room for increasing the functionality of the E-porezi platform, but also communication between taxpayers and the Tax Administration via e-mail. It is necessary to expand the number of actions that can be carried out through the E-porezi platform and to introduce digital profiles of taxpayers. (2)

C. VALUE ADDED TAX

CURRENT SITUATION

The value added tax is governed by the Law on Value Added Tax (RS Official Gazette No 84/2004, 86/04 – correction, 61/05, 61/07, 93/12 and 108/13, 142/2014, 83/2015, 108/2016, 7/2017, 113/2017, 13/2018, 30/2018, 4/2019, 72/2019 and 8/2020; hereinafter: the "VAT Law").

Apart from the harmonization of RSD amounts, the VAT Law was not subject to amendments in the last year. Certain VAT by-laws were amended in accordance with the VAT Law. Therefore, since October 2019, following were adopted/changed:

- the Rulebook on the Procedure of Exercising the Right to VAT Recovery and on the VAT Rebate and Refund Procedure – in the part that relates to request submitting deadline for VAT refund for 2019 is extended until September 30 2020

- the Rulebook on the Manner and Procedure of Obtaining VAT Exemptions with the Right to Input VAT Deduction – in the part that regulates tax exemption for goods that foreign travelers carry in their personal luggage for non-commercial use, new tax exemption of goods and services supply carried out within the implementation of infrastructure projects for the construction of highways for which a special law determines the public interest;

- new Rulebook on the Manner of Determining and Correcting the Proportional Tax Deduction - in order to harmonize with the previous amendments to the Law on VAT;

- the Rulebook on the Form, Content and Manner of Keeping VAT Records and on the Form and Content of the Review of VAT Calculations - in order to harmonize with previous amendments to the Law on VAT and particularly, regulate tax exemption on goods and services records within the implementation of infrastructure projects for the construction of highways for which a special law determines the public interest;

- the Rulebook on the Form and Content of the Registration Application of VAT Payers, Registration and Deletion Procedure from the Records and on the Form and Content of the VAT Tax Return Submission - in a way that provides applications submission and certificates in electronic form;

- the Rulebook on Determining Cases with No Obligation to Issue Invoices and on Invoices where Certain Data may be Omitted - in order to harmonize with previous amendments to the Law on VAT and especially more detailed regulation of invoicing in case of value vouchers transfer;

- New Rulebook on Determining Telecommunications Services and electronically provided services, in terms of Law on VAT, and on determining criteria and preconditions for determining the seat, permanent business unit, residence or domicile of telecommunications services recipients, radio and television broadcasting and electronically provided services - in order to comply with previous amendments to the Law on VAT

The respective amendments were made for the purpose of aligning the by-laws with previous changes of the VAT Law, except the Rulebook on the Procedure of Exercising the Right to VAT Recovery and on the VAT Rebate and Refund Procedure, for which the deadline extension for submitting requests was caused by COVID-19 pandemic .

COVID-19

In order to eliminate or mitigate the consequences caused by the COVID-19 pandemic, in addition to the previously mentioned deadline extension for submitting requests for VAT refund, the following measures have been introduced by special acts:

- VAT exemption with the right to deduct the previous tax for the sale of goods or services that the taxpayer performs without compensation to the Ministry of Health, the Republic Health Insurance Fund or a public ownership health institution. The exemption in question applied to all deliveries with the day of turnover in the period from the day of introduction (March 15, 2020) to the day of termination of the state of emergency (May 6, 2020).

- VAT exemption with the right to deduct the previous tax for the delivery of protective equipment (masks) that the Republic Health Insurance Fund (RHIF) performs to legal entities engaged in the distribution of protective equipment (masks). The exemption in question was ap-

plied from March 27, 2020 until the day of the termination of the state of emergency (May 6, 2020).

In principle, the COVID-19 pandemic had no significant effects on the VAT system and the measures introduced were of limited duration.

POSITIVE DEVELOPMENTS

The VAT by-laws were amended to align them with earlier amendments of the VAT Law and enable its adequate application. In addition, for a number of situations, it is possible to submit applications/documentation and receive tax assessments in electronic form, making it easier for taxpayers to exercise their rights.

REMAINING ISSUES

Instead of being integrated into a single piece of legislation, the relevant rules for applying the VAT Law are still dispersed throughout various by-laws (currently 29 rulebooks and 3 by-laws), frequently insufficiently detailed, and fail to provide adequate explanations for the application of specific provisions of the law. Although there were several announcements related to the adoption of an integrated rulebook and even consultations on its development are ongoing, it is still uncertain when it will be published.

VAT is accounted for by the recipient of goods and services performed by a foreign supplier (applying the so-called reverse charge mechanism) at the moment when the supply takes place or at the moment when advance payment is made, depending on which occurs earlier. In case there is no advance payment, VAT should be accounted for at the moment the service is rendered, something often unfeasible in practice, especially in the case of services for which the price in the contract was not specified as a fixed amount, but rather depends on a contractually specified calculation. At the moment of supply, or up to the deadline for filing a tax return, the VAT payer frequently does not have the supplier's invoice or information on the amount of the compensation, and so cannot know what the taxable amount is.

VAT legislation provides that in cases where taxable amount has changed after the supply of goods and services has taken place (e.g. subsequently approved discounts), the supplier should issue a document containing certain obligatory items. VAT legislation does not provide the possibility for the recipient of goods/services to issue this document, as is the business practice in other countries. Because of this, additional costs are imposed on companies since they have to change their business practices due to Serbian VAT rules.

In practice, there is an issue with VAT treatment of in-kind contribution of goods and services and status changes. Specifically, in such instances the VAT accounted for by the transferor of assets is income for the transferor and an expense for the transferee, and consequently in-kind contribution and status changes are not neutral from the perspective of the income statement, as they should be, essentially. For this reason, in such instances, the transferee should be the one to account for the VAT (applying the so-called reverse charge rule).

The VAT Law defines new rules regarding the assessment of VAT in the case of supplies in the field of construction. The rules relate to the classification of business activities, which results in numerous questions and uncertainties in practice, because, in substance, the classification was not drafted for tax purposes. Consequently, taxpayers have to deal with legal uncertainty due to the different interpretation of regulations by taxpayers and by tax authorities alike. Due to diverging interpretations, taxpayers face the risk that tax authorities will hold the supplier accountable for output VAT, although the recipient as the taxpayer accounted for the VAT, or that the recipient who accounted for the output VAT is denied his right to input VAT deduction because tax authorities deem that the obligation to assess VAT is on the side of the supplier, even though none of these two approaches is to the detriment of the state budget.

The Rulebook on the Form, Content, and Method of Keeping VAT Records and the Form and Content of the VAT Calculation Review (RS Official Gazette No 90/2017, 119/2017, 48/2018, 60/2018 and 75/2019) prescribes the method of keeping VAT records and preparation of VAT calculation review (POPDV Form). Since the harmonization of accounting programmes with new requirements is financially and time-demanding, a significant share of VAT payers is preparing VAT records and POPDV Forms manually. This considerably increases the VAT payers' costs. According to an internal survey conducted within the FIC, the introduction of this method, the VAT liability calculation and reporting take three to five times longer to complete. In addition, due to significant number of categories, the risk of error in categorizing invoices is high (even if VAT treatment is correctly

determined), giving rise to the question of the informative value of this data for the Tax Administration. Having in mind the limited value of data provided in particular fields of the POPDV form and the significant expenses of VAT payers related to preparation of the POPDV form, it is recommendable to reconsider simplifying the POPDV form and its filling procedure (presentation of certain types of transactions). The user manual published on the website of the Tax Administration succeeded in facilitating the application of the new rules by providing a number of examples and clarifications. On the other side, it introduced some additional requests that are difficult to implement in practice, e.g. displaying the final invoice issued after the advance payment invoice so that the final invoice state the full amount of the VAT base and the difference in VAT stated on the final and advance payment invoice. Generating data from the accounting records in this manner is extremely demanding so that, as a rule, even those VAT payers who have adjusted their accounting programs to the new method of keeping VAT records, generate/enter these data manually. In addition, the informative value of showing the full amount of the base and the difference of VAT for the Tax Administration is questionable since it is not possible to reconcile the advance payment invoice with the final invoice from the POPDV form.

The Law specifies that a VAT refund shall be made within 45 days of the deadline for filing the tax return, or within 15 days for predominant exporters. It has been noted that in practice the Tax Administration is late in making VAT refunds. Also, it has been noted that VAT is not refunded because a tax audit has been initiated. Neither does the VAT Law, nor the Law on Tax Procedure and Tax Administration specify that VAT shall not be refunded for the duration of the tax control. In addition, VAT refund audit is not prescribed as precondition for VAT refund, the Tax Administration has a right to audit VAT regardless on executed VAT refund until expiration of period of limitation. Moreover, the Law on Tax Procedure and Tax Administration specifies that if no refund is made to the VAT payer within the deadline specified by the VAT Law, interest shall be accrued as of the next day after the expiry of such a deadline. We emphasize that a VAT refund is not the result of error or oversight on the part of the taxpayer, but a key mechanism for the functioning of this form of taxation. All delays in VAT refunds directly impact the liquidity of companies that are required to make payments that include VAT to their suppliers by statutory deadlines, and on which depends the ability of their suppliers to regularly settle their tax liabilities.

Article 10a paragraph 6 of the Law on VAT stipulates that the tax representative of a foreign person in the name and on behalf of a foreign person registered for VAT performs all tasks related to fulfilling obligations and exercising the rights that a foreign person has as a VAT payer . We believe that the relevant wording of Article 10a paragraph 6 of the Law on VAT "invoicing" should be deleted, because the provision in question is not precise, it creates a bang in which customers receive two invoices (one commercial issued by a foreign person) and the other VAT invoice to submit a VAT proxy and create unnecessary additional administration and legal uncertainty. The VAT representative is certainly jointly and severally liable for the obligations of a foreign person who is registered as a VAT payer through him.

FIC RECOMMENDATIONS

- The Ministry of Finance should adopt a comprehensive rulebook on the application of the VAT Law to replace the large number of rulebooks treating only individual provisions of the Law. Such a comprehensive rulebook would detail the application of the entire Law, as has been done in other countries. This would allow for the majority of problems observed in practice to be resolved through amendments to the rulebook. It would increase the legal certainty of taxpayers and simplify the application of regulations not just for taxpayers, but also for tax inspectors. The Tax Administration should issue comprehensive guidelines for tax inspection procedures, to address various issues which have repeatedly been the source of problems in practice. Changes in regulations should not impose an additional administrative burden on taxpayers, such as the introduction of additional paperwork or the introduction of certain forms and records that are not common in business practice, etc. (2)

- With respect to the application of the reverse charge mechanism, it should be specified that for supplies by a

foreign entity, the obligation of the recipient of goods and services to account for the VAT due should occur either at the moment when: 1) an invoice is received for goods or services provided by the foreign entity; or 2) when an advance payment is made to the foreign entity, whichever of these two events occurs earlier. (3)

- VAT legislation should provide that a credit note may be issued either by the supplier or recipient of goods/services. This practice is in line with VAT rules in other countries and a common business practice. This cannot jeopardize VAT collection in any way. On the other hand, this would help companies decrease their administrative costs. Additionally, it is necessary to specify clearly that in the case of mistaken delivery of goods in a smaller quantity than was previously invoiced, the taxpayer may either issue a new invoice or credit note. This practice also corresponds to a customary business practice. Insisting on exclusively one approach imposes additional costs, whereas from the VAT collection point of view, there is no reason why both approaches cannot be applied. With respect to above, in case of return of goods, it is also necessary to define that irrespective of the expiration date, the supplier can issue a credit note or the buyer can issue an invoice/debit note in accordance with their mutual agreement. This approach can not jeopardize VAT collection since the same VAT rate is applied irrespective of who issues the credit note. (1)

- The Law should specify that the obligation to account for VAT lies with the transferee of goods and services in the following instances: 1) in the case of in-kind contributions, when the supply of goods and services as an in-kind contribution is subject to VAT; and 2) in the case of a change in status, when the supply of goods and services is subject to VAT. (2)

- It is necessary to specify that in the case of supplies in the field of construction, parties may choose taxation in line with the general principle – that is, VAT charged by supplier. Also, in the case when a supplier calculated and paid VAT, and the tax authority considers that the recipient should have calculated VAT, as the tax debtor, the recommendation is for the supplier's invoice to be considered the correct invoice, and that administrative proceedings should not be initiated against either the supplier or the recipient. Namely, in the Member States of the EU, for the supply in the field of construction, the recipient is the tax debtor because of the prevention of evasion and fraud relating to VAT assessment, where the subject, special rules apply when the supply is performed by a construction subcontractor, but not when the supply is performed by the main contractor to the investor. We emphasize that the biggest problem in practice occurs precisely with respect to supplies between main contractors and investors, given that in this case the investor can be an entity that purchases services of the current maintenance of facilities and similar services (i.e. the investor does not have to be active in construction). Bearing in mind this motive for designating the recipient as tax debtor, there is no reason to prevent the supplier from assessing and paying VAT, or to penalize any of them because the general rule on taxation is applied instead of the special rule according to which the recipient is the tax debtor. (3)

- With respect to VAT records and the preparation of VAT calculation reviews, we believe it is necessary that the adopted Rulebook and User manual be reconsidered, and especially the requirements with regard to the POPDV form contents and the method for presenting certain transactions, such as the final invoice and invoice for advance payment. (3)

- The processing of requests for refunds reported in VAT returns should be harmonized with the VAT Law and the Law on Tax Procedure and Tax Administration, meaning that the initiation of a tax audit cannot constitute grounds for delaying a VAT refund. The Ministry of Finance needs to issue a binding explanation in line with the VAT Law and the Law on Tax Procedure and Tax Administration, and the Tax Administration should comply with it. (3)

- We suggest that in Article 10a, paragraph 6 of the Law on Value Added Tax, the words: "issuance of invoices". (3)

D. PROPERTY TAX

CURRENT SITUATION

The amendment to the Law on Property Taxes (hereinafter: the Law) from January 1, 2020 did not resolve the important issues that we pointed out in the previous edition of the White Book.

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

The introduction of the concept of market value as the property tax base caused different interpretations over the years as to which taxpayers can apply this concept. Different interpretations were a consequence of the fact that this matter was not precisely regulated by the legislation but only by opinions of the Ministry of Finance that express the unequivocal stand of the Ministry regarding the possibility for small and medium-sized enterprises ("SMEs") to determine the property tax base using the fair value of immovable property recorded, in accordance with IFRS for SMEs, on the last day of the business year as a tax base. Instead of clarifying this issue, according to our experience from practice, these opinions increased the level of legal uncertainty in terms of whether these would be applied by the Tax Authorities and whether their application would be binding only for future property tax liabilities or retroactive.

The taxpayer that begins or ceases to report the value of real estate in its business books at fair value in accordance with Article 7 paragraph 1 of the Law, is obliged to determine its property tax base for that tax year by applying average market prices of real estate determined by local tax authorities.

The latest amendment to the Law prescribes which facilities are considered facilities for primary agricultural production on which property tax is not paid.

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

COVID-19

We consider that the COVID-19 epidemic as well as the set of tax measures adopted by the Government of the Republic of Serbia during the state of emergency did not have a special impact on computation of property taxes.

POSITIVE DEVELOPMENTS

Bearing in mind the recommendations from last year, we believe that in the meantime there have been no improvements as a result of the implemented recommendations.

REMAINING ISSUES

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

The new Law on Accounting prescribes that IFRS for small and medium-sized enterprises (hereinafter: IFRS for SMEs) can be applied by small and medium enterprises, while micro businesses may opt to apply IFRS for SMEs. Article 7 of the Law does not explicitly state whether it also applies to legal entities that apply IFRS for SMEs. Bearing in mind the aforementioned opinions of the Ministry of Finance, where a rigid stand was taken that there are no legal grounds for legal entities applying IFRS for SMEs to determine the property tax base based on the fair value method, the issue of inconsistent application of the concept of fair value in determining the tax base for property tax leads to legal uncertainty for taxpayers, not only for future but also for previous tax periods. Therefore, it would be advisable to additionally clarify provisions of Article 7 to reduce legal uncertainties for taxpayers raised after the Ministry of Finance issued its opinion interpreting Article 7.

When determining the property tax base by applying the average prices published by local municipalities, one of the basic parameters for the determination of the tax base is the property's zoning category, determined by local municipalities. The local administrations have discretionary zoning powers, applied predominantly on the basis how public areas are developed. However, the procedure of assessing a public area's development level is insufficiently transparent. It should also be noted that no criteria for value adjustments are envisaged regarding the quality/age and/or purpose and size of the property. In practice, this means that the tax base of a newly-built real estate and one that is significantly older, can be the same.

As a result, market values of properties assessed by certified appraisers significantly differ from their market values calculated by using the average prices published by local tax authorities. Therefore, taxpayers who evaluate real estate in their business records at fair value and those who use some other method of evaluation are in an unequal position.

Particular administrative difficulties and related costs are caused by the Rulebook on property tax return forms. In line with the Rulebook, taxpayers are obliged to file data to the Tax Authorities Integrated Information System Portal (hereinafter: the Portal) every year, even when no changes were made in comparison to the previous year. The taxpayer fills a tax return PPI – 1 form for each municipality where it has property subject to tax, and annexes for each cadastral parcel and sub-annexes for each building on a parcel, as well as one sub-annex for the land itself. With regard to the method of completing the electronic tax return, FIC concluded that implementation of electronic tax returns has failed to provide technical improvement of efficiency in the filing of tax returns, especially for the taxpayers owning properties in different local municipalities, which can lead to filing hundreds of tax returns in electronic form.

Also, we would draw attention to an issue that arises in the case of properties leased for a period exceeding 183 days over a 12-month period. In this case, Article 12 of the Law on Property Tax does not grant the lessor the right to tax exemption for the land plot under a building subject to property tax, consequently, the land plot under a leased building may be double taxed.

The tax authorities have been given exclusive rights to determine the property transfer tax base. In practice, the tax base is determined in accordance with internally determined market prices on territories of specific unit of local municipality (so called parities), unknown to taxpayers, so in most cases, it remains unclear whether or not the contractual price is equal to the market price.

We would also like to briefly comment on the provision of the Law which defines exemptions from the absolute rights transfer tax, which states that the absolute rights transfers on which VAT is paid are exempt from the payment of the transfer tax. The term ''paid'' is not appropriate in this case because VAT is calculated and reported in the VAT return. Moreover, certain transactions subject to VAT under the VAT Law may be exempted from VAT for reasons prescribed by this Law.

FIC RECOMMENDATIONS

- It is recommended that the provisions of Article 7 of the Law should specify that the fair value is the property tax base for entities applying the fair value measurement according to the IAS/IFRS for SMEs and accounting policies. (3)
- To ensure the adequate calculation of the market value of immovable property, it is necessary to harmonize the zoning criteria of local municipalities; prescribe corrective factors to differentiate between immovable properties in terms of quality, year of construction, purpose and characteristics; consider the adequacy of the methodology used for calculating the average prices of immovable property. (1)
- It is advisable that the property tax return form and supporting documents be simplified by linking the Portal with the Cadastre and storing of such data enabled. Also, it should be possible to list more than one cadastral parcel in a single municipality in Annex 1 on the territory of a specific local municipality and to summarize all

facilities of the same type in a single sub-annex (e.g. all taxpayer's warehouses in the territory of a particular local municipality). In line with the above, make appropriate improvements within the Portal, and make technical adjustments after which, it would be possible, based on the data saved from the Cadastre, to automatically fill in the appropriate forms (PPI-1, Annex 1, sub-annex), for the purpose of filing property tax returns for each year. (2)

- Rephrasing provisions regulating: a) exemptions from the absolute rights transfer tax, so that it is understood that the exemption applies to the transfer and acquisition of absolute rights that are subject to VAT, not to those for which VAT is paid; b) double taxation of land beneath the leased building. (2)
- Enable public access to data used by the tax authorities to determine whether the contractual price of an absolute rights transfer is in line with the market price. (2)
- In the event of an emergency caused by force majeure, we propose that taxpayers are allowed to file an annual return by the end of the fiscal year, and to continue paying the installment based on the previously filed tax return. (1)

E. TAX PROCEDURE

CURRENT SITUATION

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

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

The tax procedure is a special type of administrative procedure governed primarily by the PTA Law (lex specialis), which regulates in detail the organization and functioning of the Tax Administration, as well as the procedures for the assessment, control, and collection of taxes. The PTA Law comprehensively regulates all tax misdemeanours. The general rules of the GAP Law apply to the tax procedure where a certain issue is not regulated by the PTA Law, while the rules of the LIO Law further specify the activities of the Tax Administration regarding inspections. The AD Law regulates the judicial review of administrative decisions issued by the Tax Administration as an additional taxpayer protection system (e.g. deciding on actions against second-instance decisions of the Ministry of Finance).

In 2019 PTA Law was amended. The most important amendments relate to:

- the manner of settling the tax receivable and the measures for the realization of the reorganization plan, i.e. pre-pack reorganization plan, cannot be envisaged contrary to the provisions of this Law and other tax regulations,
- mandatory reporting of data on all business premises in which the taxpayer stores goods and performs the activity to the Tax Administration,
- the possibility for the Tax Administration to issue a decision by which it imposes a temporary measure prohibiting the registration of acquisitions of shares or stocks in legal entities and the establishment of new legal entities, for founders with a share of more than 5% in legal entities whose tax identification number (TIN) has been temporarily withdrawn, in which case the decision

is submitted to the Serbian Business Registers Agency (SBRA) and the Central Registry, Depot and Securities Clearing,

- the possibility of delivery tax acts through the Tax Administration portal, i.e. through a single electronic mailbox, the tax offense of reporting inaccurate data is extended to the presentation of inaccurate data in the tax balance.

COVID-19

The Government of the Republic of Serbia has enacted several Decrees introducing tax measures during the state of emergency in order to mitigate the economic consequences caused by the COVID-19 pandemic with the aim to increase the liquidity of taxpayers. Among other, it is envisaged that for taxpayers who previously applied for the regime of deferred payment and who do not timely settle due instalments during the state of emergency, their deferred payment agreements will not be annulled, decisions on deferred payment of tax due will not be revoked and no forced collection procedure in this case will be carried out, whereby no interest would be calculated in the specified period.

Also, it is envisaged that for taxpayers - legal entities, self-employed persons, farmers and individuals during the state of emergency interest calculated and paid on the amount of overpaid or underpaid taxes and secondary duties, would be at a rate equal to the annual reference rate of the National Bank of Serbia (interest rate reduction effect).

In addition, delivery of written acts in administrative proceedings and notification actions which were performed during the state of emergency and from which deadlines, that cannot be extended, begin to run, shall be considered, in terms of application of prescribed deadlines, executed upon 15 days from the day of termination of state of emergency in accordance with the Decree. The deadlines for initiating an administrative dispute have also been postponed, so that the parties would not suffer harmful consequences due to failure to act during the state of emergency within the legally prescribed deadlines.

Numerous problems have arisen in the implementation of the adopted measures, which have not yet been fully resolved, and which indicate that improvements are needed in the functioning of the Tax Administration.

POSITIVE DEVELOPMENTS

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

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

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

However, no significant progress has been made in the previous year in regard to the recommendations made earlier. There is a need to strengthen the capacity of the Tax Administration in providing tax services and to affirm the client relationship. On the contrary, some of the new amendments impose new requirements and restrictions to taxpayers. Additional efforts are needed to limit discretionary authorization and arbitrariness in the actions of Tax Authorities.

REMAINING ISSUES

- The existing regulatory framework governing the tax procedure still does not provide sufficient protection for taxpayers against discretionary decisions of tax authorities. Additionally, the lack of capacity and competences jeopardizes the protection of legality in the control procedure, as well as in the appellate and court proceedings.

- Rules on tax-related criminal offences still do not take into consideration the size and volume of taxable activities of taxpayers and apply the same threshold to both small businesses and large corporations in Serbia.

- More often than not, tax inspectors do not apply the "substance over form" principle in good faith. This reg-

ularly leads to highly unfavourable decisions for taxpayers, which are practically impossible to change.

- Tax authorities routinely fail to comply with the deadlines for the issuance of decisions based on submitted appeals.

- The existing rules regarding delayed execution of tax administrative acts via requests submitted to the second-instance authority do not provide for clear conditions for delaying execution, providing the second-instance authority with a very broad-set discretionary right.

- Rules that relate to the possibility of a tax refund in the event of the existence of matured tax liabilities in another respect are unclear and restrictive and do not take into account whether such tax liabilities are deferred or disputed (e.g. an appeal against a tax assessment issued by the Tax Administration). As a result of the foregoing, taxpayers are in a situation wherein uncollectible tax liabilities result in a complete discontinuation of the tax refund.

- The statutory 30-day deadline for issuing and publishing binding opinions upon request of taxpayers is not observed, so, in practice, taxpayers wait for opinions for more than a year. Such uncertainties are additionally aggravated by binding opinions that the Tax Administration applies but fails to publicly disclose despite its legal obligation to publish them on its own website and the website of the Ministry of Finance. Therefore, these opinions are unavailable to taxpayers, i.e. to all parties in a public-legal relationship.

- Limiting the filing of amended tax returns to two times is not justified. In fact, in most cases mistakes are made unintentionally, or are technical, especially in the case of large taxpayers who have large-scale and complex internal organization systems. Given that a taxpayer cannot amend a tax return in the event of a tax audit for a specific period, abolishing this restriction would not create an additional burden for the Tax Administration. Quite the contrary, it would help increase the efficiency of tax collection and encourage taxpayers' co-operation, consequently reducing the scope of tax audits.

- During a tax audit, as well as during the period in which a taxpayer's TIN is temporarily withdrawn, and until it is reinstated, the SBRA cannot erase a taxpayer from the register, register status changes, or change any of the registered data. In addition, tax liabilities become due regardless of whether or not a company is actually doing business (e.g. mandatory social security contributions, municipal taxes). Due to the vagueness and restrictiveness of this provision, the initiation of a tax audit may preclude the company from closing down business, which will lead to additional tax liabilities for the company, regardless of the outcome of the audit, thus de facto arbitrarily punishing the taxpayer for no reason. Additionally, taxpayers are unable to register changes that may even enable tax payment (capital increase, registration of a change of legal representative, etc.).

- The PTA amendments introduced the possibility for the Tax Administration to secure the collection of a tax liability that is not due, but for which an audit procedure has been initiated, even though criteria or conditions for the implementation of this measure have not been prescribed, which is not in line with the legality principle. As a consequence, tax resolutions that impose the measure do not contain valid reasons why the Tax Administration considers that there is risk in tax collection.

- Amendments to the PTA Law abolished the function of administrative supervision within the Tax Administration. According to the amended text of the PTA Law, the Tax Administration has exclusive competencies to perform the function of internal control. The Ministry of Finance has not established supervision as a separate function, from the moment of the abolition of the function of administrative supervision within the Tax Administration.

- The Serbian Administrative Court, as the final instance for tax disputes, does not have a sufficient level of specialization and expertise to adjudicate on tax matters. A court decision will typically take more than one year. Considering that the procedure before the court does not postpone a tax liability, i.e. the taxpayer still has to settle the previously disputed tax, even if he eventually does win the case, incurred costs for the taxpayer usually result in taxpayers receiving refunds of lower value in real terms. In addition, courts almost never decide on the merits of a case.

FIC RECOMMENDATIONS

- The electronic services of the Tax Administration should be further improved and developed in a way to enable the taxpayer to download all tax returns in a form customized to user, as well as to enable all taxpayers to electronically obtain TIN and all tax certificates. (1)
- Regulating the provisions of the Criminal Code concerning tax crimes in more detail and taking into account the size of the legal entity and the volume of taxable activities. (2)
- The introduction of a statutory deadline for tax audit duration, and a tacit acceptance procedure in the case of a failure by the Tax Administration to issue its decision within the deadline, both for the Tax Administration and the Ministry of Finance. (2)
- Establishing the function of administrative supervision within the Ministry of Finance that will provide an effective mechanism for controlling legal compliance of the work of the Tax Administration's organizational units. The PTA Law should envisage offenses of employees in the Tax Administration who do not act in accordance with regulations (or decisions of immediate higher instances) during their work, especially in cases when they do not act within the deadlines prescribed by the PTA Law and in case of non-execution of the second instance body's decision in line with guidelines and understandings set forth therein. The PTA Law should be further aligned with provisions of the LIO. The LIO provides that inspectors are required to act not only to detect illegal activities and penalize entities violating the law, but also to prevent irregularities and provide advice to controlled entities to minimize risks from illegal acts. (2)
- Amending Article 147(1) of the PTA Law, so as to read that an appeal suspends the enforcement of the decision. (1)
- Eliminate legal uncertainty in the process of issuing of opinions of the Ministry of Finance by amending Article 80 of the Law on State Administration with regard to whether the ministry's opinions are legally binding if so prescribed by a separate law; amending the PTA Law to prescribe that the ministry's opinions are binding only if they are published or available to all parties in a public-legal relationship; defining a 30-day deadline for issuing an opinion defining the consequences in a situation where previously issued opinions are changed or disregarded; amending the PTA Law to prescribe that opinions of the Tax Administration sent by email are binding for the Tax Administration, and introducing provisions to the PTA Law to govern the liability of authorized officers and adequate penalties for failure to issue a binding opinion within the 30-day deadline. (3)
- Abolishing the provision of the PTA Law which prohibits the SBRA from erasing a taxpayer from the register, registering status changes, or amending information for the duration of a tax audit or procedures undertaken by the Tax Police. (2)
- Strengthen the capacity of the Administrative Court in terms of expertise, specialization and speed in resolving tax disputes. (3)

F. LATEST DEVELOPMENTS IN THE SERBIAN TAX SYSTEM (PARAFISCAL CHARGES)

CURRENT SITUATION

The World Bank's Doing Business 2020 report ranks Serbia 44th out of 190 economies. In the area of tax payment Serbia's position slightly worsend compared to the 2019 report, and the country is now ranked 85th. Tax payment, together with obtaining electricity access and starting business, is still within the three worst-ranked areas.

The FIC is of the view that Serbia's tax system is getting significant negative reviews, inter alia, because of the many parafiscal charges that exist in parallel with taxes, increasing the effective burden on the economy under conditions that are often non-transparent and unfair. As a kind of public levy, parafiscal charges actually impose an obligation that does not provide (at all or in an adequate proportion) a specific service, right, or good in return.

The authorities recognize this fact, which is why a parafiscal reform was carried out in late 2012, abolishing 138 parafiscal levies. The reform continued in 2013, with a first draft of the Law on Fees for the Use of Public Resources and the adoption of the final version of the Law at the end of 2018, but also by imposing new parafiscal levies such as a mandatory membership fee for the Serbian Chamber of Commerce in 2018. The reform process is still ongoing, which is especially reflected in the large number of changes that have been made to the regulations governing the manner of determining and reporting compensation for the protection and improvement of the environment.

COVID-19

The by the Government Decrees measures were determined in order to mitigate the economic consequences caused by the COVID-19 pandemic during the state of emergency, which had no impact on parafiscal charges.

POSITIVE DEVELOPMENTS

The Law on Fees for the Use of Public Goods was adopted at the end of 2018, and applied as of 1 January 2019, the main improvements being: a) a single law regulates all charges, instead of 18 laws previously and b) the amounts of all but one charge are regulated by the Law, instead of being predominantly regulated by by-laws, as was the case before. The one charge whose level remains regulated by a by-law, that is Government Decree is the local environmental charge. However, the manner of determining the fee in question was changed during 2019 on two occasions. Hence, the adoption of the Law increased both the transparency and predictability of the non-tax revenue system.

The unique information system of the local tax administration has been significantly improved in the previous period. In addition to the fact that at the beginning of 2019 it was enabled to electronically submit a property tax return by taxpayers who keep business books and applications for the utility tax for highlighting the company, during 2020 it has also been enabled to electronically submit a compensation environment request, which is a significant improvement along with greater efficiency for legal entities and entrepreneurs.

REMAINING ISSUES

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

A particular problem that we deem should be highlighted concerns the local utility tax for displaying business signs (business signage tax). Business signage tax costs for remaining taxpayers has significantly increased since the regime for the payment of the business signage tax was changed. The overall liability of a business entity for business signage has reached significant amounts, inter alia, due to diverse practices amongst local governments.

To additionally point out, during 2019, the determining the fee method for the environment protection and improve-

ment was changed on two occasions. The methodology initially established by the Law on Fees for the Use of Public Goods and accompanied by provided bylaws, inter alia, defined the fee to be paid according to the amount of pollutants emitted and the hazardous waste produced and disposed of. However, although the method of determining the fee was intended to be paid by legal entities and entrepreneurs who perform activities that negatively affect the environment, the calculating fee methodology was too complicated, which resulted in a very small number of applications fees for environment protection and improvement by taxpayers.

At the end of December 2019, the manner of determining the compensation for the environment protection and improvement was changed again by the bylaws amendments. The new methodology simplifies the calculating fee method and it envisages that the fee is paid in a fixed annual amount depending on the size of the legal entity in accordance with accounting regulations and the degree of environmental impact of the predominant activity performed in accordance with the prescribed classification. However, in this way, the obligation to pay compensation was imposed on almost all legal entities and entrepreneurs in Serbia, regardless of whether their predominant activities really have a negative impact on the environment. The current methodology for determining the amount of compensation is contrary to the provisions of the Law on Fees for the Use of Public Goods, which, among other things, stipulates that the basis of compensation for environmental protection and improvement is the amount of pollution, ie the degree of negative impact on the environment.

The FIC reiterates that the introduction of new taxes and duties, or increasing existing ones, during the fiscal year, without prior notice to taxpayers that would enable them to adapt their business to the new fiscal burden, adversely affects the predictability of the business environment and the operating results of companies.

The judicial protection of taxpayers' rights is ineffective. The proceedings before the Administrative Court are very lengthy and the Court usually simply confirms the decision of the Tax Administration, without providing an adequate statement of reasons for such a ruling. Alternatively, in exceptional cases, the disputed decision is annulled and the case remanded back to the second-instance Tax Authority, without going into the merits of the case, which further protracts the entire process of the protection of taxpayers' rights. The Court almost never schedules any hearing where a taxpayer could explain its arguments before the Court, or present its objections to the findings of the Tax Administration.

FIC RECOMMENDATIONS

- Continuation of the reform of the non-tax revenue system, by eliminating all parafiscal charges that do not provide corresponding benefits in return, in terms of specific rights, services, or resources, while at the same time ensuring a consistent application of the Law on the Budget System, which regulates the basic principles of introducing and collecting non-tax public revenues. (3)
- Adoption of the Law on Fees that should regulate all fees paid for a public service, while setting their level in line with Methodology and a new Law on the Financing of Local Governments, preceded by a comprehensive analysis of and alignment with solutions and tendencies of sectoral laws. (2)
- Any new tax burden, or increase to an existing one, should be pre-announced to taxpayers and introduced through tax laws drafted by the Ministry of Finance, not by funds, agencies, or other ministries. (2)
- Apply the business signage tax ceiling to the obligation of a single taxpayer, regardless of the number of facilities with displayed business signs that they have in the territory of any one municipality or whether they have more business facilities in other municipalities in Serbia (banks, insurance companies, telecom companies, etc.) (1)

- Judicial protection of taxpayers' rights should be significantly improved through a reform of the Administrative Court, specialization of judges in tax matters, or the establishment of a special department within the Administrative Court with the sole jurisdiction to handle tax disputes. (2)

- Change the methodology and manner of determining the fee for the environment protection and improvement so that the fee is paid exclusively by taxpayers whose activities affect environmental pollution, and use the funds to mitigate the negative consequences of these activities. (1)

ENVIRONMENTAL REGULATIONS

CURRENT SITUATION

In late 2019 few regulations governing waste treatment and ionizing radiation were adopted, but main issues identified in this area remain open.

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

In late 2019, a so-called ecological tax has been introduced by which all industries and professions are classified in few categories depending on level of pollution they create and subject to payment of ecological tax whose amount depends on level of pollution. This was seen as rather controversial measure as the companies are categorized based on accounting standards and the actual level of pollution that is being created by the companies is not taken into account.

Packaging waste is collected pursuant to the Waste Management Law and the Law on Packaging and Packaging Waste. However, there is no system-wide solution for the disposal of pesticide packaging waste in Serbia. By introducing the payment system for plastic bags, significant improvement has been made and consumption was reduced by 80% until COVID-19 brought in the plastic bags again.

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

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

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

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

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

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

In terms of climate change, Serbia has achieved a certain level of preparedness, but implementation is at an early stage and a national strategy for climate change is currently under development. Work has begun to solve the problem of greenhouse gas emissions in land use, land rezoning,

and forestry. More active measures should be elaborated in implementing the Paris Agreement on the protection of the environment and the natural resources, focusing on preparing the country for aligning with the EU 2030 framework for climate and energy policies.

COVID-19

Beginning of 2020 the world faced one of the biggest crisis due to pandemic caused by new corona virus. The end of the pandemic is not even near but the interesting part is that the most likely cause for the creation of the new virus is uncontrolled and unplanned abuse of natural resources due to which the bats (the most likely to blame for the new disease) came into contact with other species through which they transmitted virus to humans. That warns us that the environmental problems are burning topic in the whole world not just in Serbia.

Due to current COVID-19 crisis, the situation deteriorated in a sense that excessive quantities of medical waste are created for which no adequate solution is found. In addition, due to epidemiological reasons and recommendations that all plastic and paper goods are used only ones, plastic bags and plastic caps are again popularized.

In addition, the budget is over-stretched in attempt to cover economical losses due to COVID-19 thus its unrealistic that any of the funds will be allocated for environmental purposes.

POSITIVE DEVELOPMENTS

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

Initiatives have been launched to prohibit the import of used cars with a Euro 3 engine and conditions and exemptions are created to increase the use of electric and hybrid cars, where Serbia significantly lags behind compared to other European countries. However, these incentives are still modest compared to amounts offered in other European countries.

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

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

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

REMAINING ISSUES

The monitoring and reporting system is not sufficiently developed to enable the completion of the national and local register of pollution sources although certain improvement has been done with new legislation in late 2019.

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

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

A large number of illegal waste dumps in Serbia still exist, and investment in waste sorting and recycling is still not at

a satisfactory level, which could be considerably improved through an active role of the Green Fund. Funding based on the "polluter pays" principle is needed to increase investment in this sector and initiate the financing of these projects by the Green Fund.

The problem of the level of air pollution in some of the largest cities in Serbia is permanently present, and currently there are only three air quality plans: in Bor, Belgrade and Pancevo. However, the air pollution problem is present in smaller communities also, particularly in winter heating season due to use of fossil fuels and coal for heating. The most urgent situation when it comes to air quality is in Belgrade, Pancevo, Smederevo, Kosjeric and Bor, mainly due to lack of proper filtering systems on industrial facilities in these cities.

FIC RECOMMENDATIONS

- Introduce stronger rules and monitoring of air quality, in particular in large industrial environments and strengthen polluters sanctioning; (3)
- Introduce new funding for energy efficient and clean heating and strengthen local capacities in that area with the aim of fossil fuel use reduction in heating season; (2)
- Increase incentives for use of hybrid and electric cars; (2)
- Re-examine the idea of introducing producers' responsibility for collective take-back schemes for the recycling of all special waste streams (packaging, WEEE, ELV's, tyres, etc.); (2)
- Stimulate investments into the treatment of animal waste and ensure adequate solutions for such waste; (3)
- Solving the problems of waste management and wastewater treatment, strengthening the financial and personnel capacities of local governments, which are responsible for carrying out the abovementioned tasks; (3)
- Improving the regulations in the field of electronic communications and implementing the regulations in the field of environmental protection and protection against non-ionizing radiation in order to ensure a smooth implementation of 4G technology and create preconditions for the implementation of 5G technology; (1)
- Improving the medical waste treatment particularly in light of COVID-19 which caused excessive quantities of medical waste; (1)
- Speed up the process of adopting laws and by-laws in order to ensure a proper implementation of regulations related to environmental protection. (3)

SECTOR SPECIFIC

top

FOOD AND AGRICULTURE

This year, the food industry, like all other industries, faced a great challenge due to the declaration of a state of emergency because of epidemiological crisis. Although at the very beginning of the epidemic there was a lot of uncertainty in the functioning of the food sector, the transport and crossing of food shipments with the establishment of "Green Corridors" was very quickly and efficiently resolved. The food industry has not suffered major losses, the existing food safety system has not been disrupted, while the introduction of curfew has posed major logistical challenges for producers to provide both transportation and movement permits for their employees.

What has proven to be a major obstacle to efficient functioning in these circumstances is the exchange of documentation with the competent authorities, which is done physically. Also, a transparent and comprehensive risk analysis system would make the flow of goods even more efficient, because focusing on high-risk products, manufacturers and importers, would ensure stronger control of those who are high-risk, which is of multiple importance in such circumstances.

Alignment of regulations with EU regulations is not going as expected, and implementation in practice is becoming an increasing challenge. Part of the regulations is harmonized, but most of them are national regulations for which there are no "duplicates" in the EU and neighbouring countries, and as such, they can be an obstacle to free trade and certain restrictions on domestic producers regarding the application of innovative processes and products. The tendency is to modernize obsolete regulations, in order to alleviate the restrictions, and on the other hand, the harmonization of certain regulations is further hindered due to the existence of administrative and methodological obstacles to their application in the same way.

The report on the work of the Expert Council for Risk Assessment, established in June 2017, as well as the activities of the Council are still not known to the interested public.

There is still lot of space for improvement. Both in improving the regulatory framework, which would ensure high standards in food quality control, and by applying a uniform approach to control for all participants, both importers and domestic producers. Equally important is the strengthening of the capacity of the Veterinary and Phytosanitary Control Directorates and the national reference laboratories, as well as the consistent application and improvement of the risk-based approach. Of great importance for the food business operators, it would certainly be enabling the electronically exchange of data and documentation between state institutions and the economy.

A. FOOD SAFETY

1. FOOD SAFETY LAW

CURRENT SITUATION

The Law on Food Safety (hereinafter: the Law) adopted in 2009 has not been fully implemented so far, nor have all the envisaged bylaws been adopted. Amendments to the Law were published in the "Official Gazette of RS", no. 17/2019 and apply from 1.4.2019. and new changes to this law within the competence of the Veterinary Administration are announced.

Amendments to the Law reorganized the division of inspection responsibilities between the competent inspections of the Ministry of Agriculture and the Ministry of Health, which is more closely prescribed for the competent inspections of the Ministry of Agriculture by adopting the Regulation on the type of food and official control, as well as the list of mixed foods, in April 2019.

The National Reference Laboratory was opened in 2015. New amendments to the Law define its competence and introduce the term Reference Laboratories, which should entrusts part of the work performed by the National Reference Laboratory. It is envisaged that the Ministries will select reference laboratories through a competition, and that the list of reference laboratories will be published in the "Official Gazette of the Republic of Serbia" and submitted to the ministry responsible for technical regulations, for entry in the register of authorized conformity assessment bodies.

A working group for milk was formed within the Ministry of Agriculture in 2015, but by the middle of 2020, there was no harmonization of the current legislation in the part related to milk safety. The latest amendment to the legislation from October 2019 extended the application of the maximum permitted content of aflatoxin M1 in raw milk of 0.25 μg / kg, until 30.11.2020. Extending the validity of the provision is helpful for milk producers in the territory of the Republic of Serbia, since they would still be able to produce and distribute milk with a slightly higher content of aflatoxin M1, but on the other hand are limited to export it because at EU level, as well as in the surrounding countries, the maximum permitted content of aflatoxin M1 in raw milk is 0.05 μg / kg. On the other hand, current measures allow the import of milk from neighboring countries and the EU whose aflatoxin content exceeds the limit of 0.05 μg / kg. Due to all the above, and primarily due to food safety, it is necessary to focus activities on the application of measures to reduce the presence of aflatoxins in animal feed.

The Expert Council for Risk Assessment was officially formed in April 2017.

The new Regulation on maximum concentrations of certain contaminants in food (SG 81/2019) from November 2019 defines the maximum permitted amounts of contaminants in certain types of food (Annex I), which brings Annex I fully harmonized with EU regulations (1881/2006 / EC). This Regulation also transposes the provisions of EU Regulation 2017/2158, which prescribes mitigation measures to reduce the presence of acrylamide in certain food categories.

Amendments to the Law Article 71 is amended so that the payment of fees for laboratory tests is no longer prescribed by this Law, but prescribes the obligation to pay fees for official controls. In December 2019, amendments to the Law on Republic Taxes were adopted, which prescribe a fee that refers to the inspection itself and additional costs that are prescribed by product groups, but relate exclusively to shipments that are subject to veterinary and phytosanitary control, not and for consignments under the jurisdiction of the sanitary inspection of the Ministry of Health.

COVID-19

Although at the beginning of the epidemic there was a lot of uncertainty in the functioning of the food sector, control was quickly established and the usual dynamics of trade was established by establishing "Green Corridors", so that the food industry did not suffer great losses or consequences for the existing food safety system, because the official controls took place with the same dynamics. The application of an adequate risk analysis system during official controls, in such conditions, would prove very useful, because it would speed up the exchange of goods, and free up the capacity of inspections to overcome the existing challenges arising from the COVID-19 crisis. The introduction of curfew made it difficult for production facilities operating in 2 or 3 shifts, which are mostly located outside urban areas, to function normally, so the producers faced great logistical challenges. Also, the exchange of documentation with the competent bodies, which is done physically, was a special difficulty during the epidemiological crisis.

POSITIVE DEVELOPMENTS

Full harmonization of Annex I of the Regulation on Contaminants with EU regulations (1881/2006 / EC) has facilitated the operations of domestic companies that are import-export oriented, because they have established uniform standards in Serbia with countries in the region and the EU on maximum concentrations of mycotoxins, heavy metals and other contaminants.

REMAINING ISSUES

Inconsistency of the Law on Food Safety and certain bylaws with EU Regulations.

a. A recent example is the adoption of the requirements of EU Regulation 2017/2158, which in EU legislation is under the Hygiene Package, while in our legislation, these requirements are incorporated into the Regulation on Contaminants, which opens space for different interpretations by inspections in relation to prescribed reference values.

b. Slow transposition of the latest amendments to the regulations in the field of food additives into national legislation.

Lack of a comprehensive risk assessment system by inspection services. No improvement and coordination in the application of risk analysis and assessment methods was observed:

a. With the formation of the Expert Council for Risk Assessment, a progress was expected in performing the risk analysis provided by the Law, but this did not happen.

The activities of the council are not known to the interested public even after 3 years from its establishment.

b. Risk analysis would enable the classification of food business entities into low-risk and high-risk, which would speed up the process of customs clearance and release of low-risk goods. Importers assessed as low-risk could realize savings in money and time by faster receipt of documents and reduced number of sampling at import.

c. Risk analysis would reduce the scope of inspections and relieve them of limited resources as resources would be focused on testing high-risk products.

d. The publication of the Rulebook on special elements of risk assessment within the scope of sanitary inspection and within the scope of agricultural inspection at the end of 2018, created a framework for starting the risk assessment process, but there is still no uniformity in terms of application between different inspections.

Unpredictable business conditions during the procurement of raw materials for food production and marketing:

a. Uniform rules do not apply in the procedures of inspection services in terms of costs, deadlines, field work mechanisms, number of samples, determination of type and number of analyzes in laboratory processes,

b. Application of different criteria by laboratories in control analyzes, and vaguely defined responsibility of laboratories in terms of interpretation of regulations.

Unclear procedure for placing novel food on the market:

a. Irrespective of the fact that the Regulation on Novel Foods (SG 88-2018) takes over the list of novel foods that are freely placed on the EU market, the Regulation prescribes an additional procedure by which the Ministry of Health issues permits for placing novel foods on the market for the first time.

b. The Rulebook stipulates that the Ministry gives approval based on the Opinion of the Expert Council. It is still not clear why the Expert Council gives each operator an opinion on food for which there is already a relevant scientific opinion from an internationally recognized institution (EFSA), and which has already been taken over from the list in Annex 1 to this Regulation.

c. Food business operators were obliged to harmonize their business with the provisions of the regulations by December 31, 2019 at the latest, however, the issuance of licenses is still operational.

The exchange of documentation with the competent authorities is still mostly done physically, which complicates the work of companies and significantly slows down the flow of goods.

FIC RECOMMENDATIONS

- Align the Law on Food Safety and all accompanying bylaws with EU regulations (178/2002 / EC and accompanying bylaws). (2)
- Establish a transparent and comprehensive risk analysis system (combination of product, country of origin, manufacturer, destination and importer risk) by all inspection services, with the establishment of a functional IT system and digitization of supervision. (3)
- By adopting the rulebook, establish uniform rules in the procedures of inspection services in terms of costs, deadlines, field work mechanisms, taking the number of samples, determining the type and number of analyzes during official controls. (3)
- To harmonize the criteria of the laboratory during control analyzes, with a clearly defined responsibility of the laboratory regarding the interpretation of regulations. (2)

- Establish a national Food Safety Agency following the example of EU member states and neighboring countries and create conditions for the National Reference Laboratory to perform all tasks provided by law, in order to strengthen the capacity of the food safety system. (1)
- Create legal conditions for food business operators to place new foods on the market from the list, according to a simplified procedure, and keep the approval procedure for novel foods that are not on the list in Annex 1, according to the EU model. (3)
- Enable electronic exchange of data between state institutions and the economy. (3)

2. SANITARY AND PHYTOSANITARY INSPECTIONS

CURRENT SITUATION

With the division of responsibilities after the adoption of the Amendments to the Law on Food Safety, the phytosanitary inspection of the Ministry of Agriculture, Forestry and Water Management retained the existing competencies for food of plant origin. In the import and export phase, the border phytosanitary is responsible for the control of food of plant and mixed origin, together with the border veterinary inspection. The Sanitary Inspection of the Ministry of Health is responsible for the control of novel foods, foods for specific population groups, food supplements, foods with altered nutritional composition, salts for human consumption, additives, flavours, enzyme preparations of non-animal origin and non-animal auxiliaries and all types of drinking water.

The work of inspections is also regulated by the Law on Inspection Supervision, which has been in force since April 2016. Some inspections are developing models for the application of the Law on Inspection Supervision, but the full harmonization of sectoral regulations with this Law has not yet been completed.

Since 2016, the Ministry of Health has been in the process of passing the Law on Sanitary Supervision, which would regulate the affairs of sanitary supervision in more detail.

The adoption of the Law on Official Controls has been announced.

COVID-19

Although at the beginning of the epidemic there was a lot of uncertainty regarding the functioning of inspection supervision, the usual dynamics in the work of all inspection services in charge of import and export control was quickly established. The Sanitary Inspection is additionally engaged in the control of measures for the implementation of epidemiological measures against the spread of COVID-19. The exchange of documentation with the competent bodies, which is done physically, was a special challenge during the epidemiological crisis.

POSITIVE DEVELOPMENTS

Law on Amendments to the Law on Republic Administrative Fees ("SG RS", No. 86/2019) of December 6, 2019, prescribed the amount of the fee for the inspection of shipments and additional costs that are determined according to the categories of food, which creates a legal basis for equalization of costs for certain categories of food under the jurisdiction of the phytosanitary inspection.

REMAINING ISSUES

The Law on Sanitary Supervision and executive regulations on the work of sanitary and phytosanitary inspection in accordance with the Law on Inspection Supervision and EU regulations have not been adopted yet.

There are no deadlines for the adoption of some extremely important executive regulations, such as e.g. Regulation on the manner and methods of conducting official controls, the

system of approval and certification, the manner of cooperation with the customs authority and competent authorities of EU Member States and third countries, the manner of inspection, sampling, criteria for determining deadlines for official controls, as well as reporting on implemented official controls and the Regulation on methods of sampling and testing of food in the procedure of official control, etc.

The Law on Republic Administrative Fees, despite the changes adopted at the end of 2019, does not prescribe the amount of the fee for the inspection of shipments and additional costs for shipments that are under the jurisdiction of the sanitary inspection of the Ministry of Health.

The competent inspections do not allow the use of raw materials in production before obtaining the Decision on release for placing on the market, which leads to a loss of time and money.

The time period required for food import procedures is not clearly defined

The exchange of documentation with the competent bodies is still mostly done physically, which complicates the work of companies and significantly slows down the flow of goods.

FIC RECOMMENDATIONS

- Adopt the new Law on Sanitary Supervision and executive regulations on the work of sanitary and phytosanitary inspection harmonized with the Law on Inspection Supervision and EU regulations. (3)
- Adopt the Law on Official Controls and executive regulations on the manner of conducting official controls which would ensure consistent application of uniform rules in the procedures of inspection services in terms of costs, deadlines, field work mechanisms, sampling, type and number of analyses in laboratory processes. (3)
- Prescribe the Law on Republic Administrative Fees to prescribe the costs for the inspection of consignments and additional costs for categories of food that are under the jurisdiction of the sanitary inspection. (2)
- Modify the Decisions of the competent inspections so as to allow the use of raw materials in production, without the right to release the finished product until obtaining a decision on the release of raw materials. (3)
- Clearly define the time period required for import procedures for all types of food. (2)
- Enable electronic data exchange between state institutions and the economy. (3)

3. QUALITY ASSURANCE, DECLARATIONS ON FOOD PRODUCTS, NUTRITION AND HEALTH CLAIMS

CURRENT SITUATION

From 15.6.2018. The Regulation on declaring, labelling and advertising of food (Official Gazette of the RS, No. 19/2017; 16/2018; 17/2020) (hereinafter: the Regulation), which is largely in line with the relevant EU regulations, is in force. In February 2020, amendments were made to the Regulation, which obliges producers of small quantities of food of plant origin to label the statement "Domestic product from my farm" or "Domestic product from my region" next to the name of food, in connection with the newly published Regulation on production and trade of small quantities food of plant origin, the area for performing these activities, as well

as the exclusion, adjustment or deviation from the requirements of food hygiene (Official Gazette No. 13/20). It is not clear how small producers adjusted to this obligation, because the deadline for adjustment was 15 days from the day the Regulation was published, and it is important to note that there is no such obligation in the EU regulations for labelling. In the middle of this year, amendments to the Regulation were initiated, which refer to the labelling of the country of origin of the main ingredient, as well as information on the absence or reduced amount of gluten in food (harmonization with EU regulations 2018/775 and (EU) 1155/2013), with an estimated period of 18 months for adjustment. Also, the development of a guide has been announced, which should facilitate the application of the new rules.

A number of regulations prescribing the quality of certain food categories are not fully harmonized with the EU, are outdated or there are no regulations in the EU that define the quality of these food categories. Such vertical legislation puts food business operators at a disadvantage compared to producers in the countries of the region and the European Union. The choice of raw materials for production is narrowed and often raw materials that are freely used in the mentioned countries cannot be placed on the market in Serbia without special approvals from the ministry, because they do not comply with quality regulations even though they are food safe. Due to the obsolescence of regulations, the appropriate raw material is often difficult to find and has a higher price. The situation is similar with finished products that do not fit into the categorization of the mentioned regulations.

The Law on Trade, published in the middle of 2019, prescribed the obligation to obligatorily mark the country of production on the labelling of goods in retail trade. Although it was considered that this requirement does not apply to the labelling of food for which the Regulation on Declaration, Labelling and Advertising of Food is in force and which Article 26 prescribes mandatory indication of the country of origin only for certain categories of food, due to uneven interpretation by inspection and business entities with food in practice this has made business more difficult.

COVID-19

The emerging epidemiological crisis has slowed down work on enacting new regulations. Currently, work on certain regulations under the jurisdiction of the Ministry of Health has been stopped (Regulation on food for specific population groups ...), while work on drafting regulations within the competence of the Ministry of Agriculture continued after a short break, and sending comments on draft regulations was successfully implemented electronically (Amendments to the Regulation on Declaration, Draft Regulation on Coffee and Coffee Products, Draft Regulation on Fruit and Vegetable Products ...)

POSITIVE DEVELOPMENTS

On July 1, the Regulation on cocoa and chocolate products entered into force, which is fully in line with EU Directive 2000/36/EC. This will make it easier for food business operators, who are import-export oriented, to exchange this type of product with the EU and countries in the region.

REMAINING ISSUES

The current legal framework does not define the competence and responsibility for the interpretation of regulations in the field of food safety, and over time the practice has been created on the market for laboratories to interpret regulations:

a. Regardless of the fact that the legal assessment, ie. Determining certain illegalities in business in the exclusive competence of the inspector in accordance with Article 37 of the Law on Inspection Supervision, the inspector, as the competent body, is exclusively guided by the conclusion made by the laboratory, which is often not in line with the official position of the Ministry. This is especially reflected in the interpretation of regulations in the field of labelling, where, despite the existence of the Guide, there are different approaches and interpretations of its provisions.

b. The official position of the competent Ministry is not a binding act for inspection services.

c. This practice contributes to the difficult functioning of food business operators, and to the great limitations of long-term planning.

Nonharmonised regulations prescribing product quality with EU regulations:

a. the Regulation on products similar to chocolate, cream products and candy products came into force

as national regulation, and intensive work is being done on amending the Ordinance on fruit and vegetable products, whereby the Quality Group of the Ministry of Agriculture shows a sense of the needs of domestic producers, to define quality parameters for certain product categories. On one hand, this should harmonizes the way of doing business in the internal market in the case of products that are subject to such regulations, at the same time will limit food business entities because it further complicates the way of working in the case of products that cannot be classified in any of the categories of existing quality regulations.

b. The Regulation on fruit juices, although harmonized with EC Regulation 2012/12, still has additional requirements regarding the quality of fruit juices, taken from the standards of the European Association of Fruit Juice Producers, which as such in the EU countries have voluntary and not legally binding application, which puts domestic entities in the food business in a less favourable position in relation to entities that operate outside the borders of Serbia.

c. The adoption of the Law on Quality Schemes, as well as the Regulation on the Quality of Fruit and Vegetable Products and the Regulation on Coffee and Coffee Products, which are entirely or mostly of a national character and therefore not subject to harmonization with EU legislation, is planned.

The Law on Amendments to the Laws on Food Safety defines a period of one year for the adoption of bylaws in the field of food quality. A bylaw has not yet been adopted by which the Minister, ie the Minister responsible for health affairs, in accordance with the division of competencies referred to in Article 12 of this Law, prescribes in more detail the conditions and manner of production and marketing of food for which quality requirements are not prescribed, as stated in Article 55 of the Law.

Inconsistency of the requirements of the Law on Trade and the Regulation on Labelling, along with the announced amendments to the Regulation which, in case of stating the country of origin on the product declaration, prescribe the obligation to state the country of origin of the main ingredient, create a framework for additional problems in practice.

FIC RECOMMENDATIONS

- Define the competence of institutions regarding the interpretation of regulations in the field of food safety and ensure the obligation to apply the official positions of the Ministry to all participants in the chain; ensure uniform interpretation and application of the Regulation and Guidelines on food declaration, labelling and advertising. (3)
- Adopt executive regulations arising from the Law on Food Safety and harmonize them with EU regulations, such as the Regulation on food with a changed nutritional composition. (2)
- Adopt the Regulation on conditions and manner of production and marketing of food for which quality conditions are not prescribed. (1)
- Adopt Amendments to Article 34 of the Law on Trade in terms of clearly defining that the provisions of this Article do not apply to products to which the provisions of the Law on Food Safety apply, and bylaws prescribing the declaration and labelling of food. (3)

B. LIVESTOCK PRODUCTION

CURRENT CONDITION

In 2019, the value of realized livestock production in Serbia is estimated at 1,878 million USD, which is a very modest growth of 1.08% compared to 2018.

COVID-19

COVID-19 did not have a special impact on agriculture and livestock production of the Republic of Serbia, because the activities in agriculture and livestock production took place normally.

The production of milk and meat and their purchase, during the state of emergency, took place without delay.

Agricultural companies and agricultural farms have harmonized their work with the prescribed health measures recommended by the Ministry of Health of the Republic of Serbia - keeping a distance, using protective masks and intensified disinfection in every segment of daily activities.

In order to mitigate the consequences of the COVID-19 virus pandemic, the Republic of Serbia passed the Decree on financial assistance to agricultural farms in order to mitigate the consequences caused by the COVID-19 disease. Based on this Decree, 2.6 billion RSD are available to farmers in Serbia. These funds are paid through the Directorate for Agrarian Payments to all holders of commercial family farms, who are registered in the Register of Agricultural Farms and are in active status.

During the state of emergency, the Ministry of Agriculture, Forestry and Water Management enabled farmers to submit for movement permits application electronically.

POSITIVE DEVELOPMENTS

A budget of a total of 58.15 billion RSD is planned for Serbian agriculture in 2020, which is compared to last year more by almost 13%. Within this budget, for subsidies 33.4 billion dinars are planned for farmers, i.e. 800 million dinars more.

At the beginning of 2020, the Government of the Republic of Serbia passed an umbrella decree which distributes incentives in agriculture and rural development. Under the new decree and this year for the payment of the premium for milk per liter will be paid 7 RSD.

As an incentive for livestock development, an increase in the amount of subsidies is introduced for cows for production of calves from 25,000.00 to 40,000.00 RSD, and a subsidized loan is being prepared with aim to improve the genetic potential and increase the number of calves.

While the incentives will be intended for cattle breeders who are engaged in keeping cows for raising calves for fattening this year remain the same, 20,000.00 RSD per head.

REMAINING ISSUES

The disappearance of small farms or the difficult survival of smaller farms.

The survival of these groups in the stock market has been called into question due to non-competitiveness on the market, not enough information for proper business, poor material situation due to low purchase prices and limited quantities of raw materials produced by small agricultural holdings.

Unprocessed requests submitted to the Ministry of Agriculture (Directorate for agrarian payments) - outstanding liabilities from previous years account for about 35 percent of planned funds in the current year.

Uncertainty in payments makes the process of granting subsidies itself take a very long time so that the manufacturers themselves do not know whether the given funds will be available for new agrarian cycle.

Frequent changes in regulations and laws (e.g. Decree on the distribution of incentives in agriculture and rural development in 2020 was adopted on 10/01/2020 and has had three changes so far 14/02/2020; 07.04.2020; and 15.05.2020).

FIC RECOMMENDATIONS

- The proposal is an association (cooperative) - by law, three or more farms must be associated in order to operate or to establish large systems cooperatives where small farms would be members of the cooperative and receive raw materials at preferential prices and to have a secure placement of manufactured goods. In this way farms would be able to receive timely information, education, properly planning and increasing profits. (1)
- The Directorate for Agrarian Payments, the decision on the requests for incentives in animal husbandry should adopted within 30 or 60 days, this deadline is defined by the Law on General administrative procedure. (3)
- Organize open "training centers" in large systems that have a regular and modernized production, in which farmers from small agricultural holdings would be trained. (2)

INSURANCE SECTOR

OVERVIEW OF THE INSURANCE MARKET

CURRENT SITUATION

There are 20 insurance companies in Serbia, 16 of which are engaged exclusively in insurance activities, while four companies are engaged in reinsurance activities. As far as insurance companies are concerned, four of them are life insurance companies, while six companies deal exclusively in non-life insurance and six in both life and non-life insurance.

The market is still very concentrated: i) the market leader, Dunav, holds a 27.2% share by GWP criteria; ii) the three largest insurers together hold 61.1% of the market; and iii) the five leading insurance companies control 79.6% of the market.

Majority foreign-owned companies (15 out of 20) undoubtedly dominate the market, accounting for 75.8% of total assets (63.4% in non-life insurance premiums and 89.7% in life insurance premiums).

The insurance market recorded a premium of RSD 26.9 billion (EUR 229 million), an increase of 8.5%.

The following changes were observed in 2020 relative to the previous year:

- the insurance sector's revenues increased by 4.8% to RSD 300.2 billion;
- capital increased by 17.5% to RSD 72.1 billion;
- technical reserves decreased by 0.3% to RSD 197.6 billion. Compared to the previous year, the structure of investing of these assets changed to a certain extent in 2020. State securities increased in share, while technical reserves at the expense of the co-insurers, reinsurers and retro-assignors decreased in share, as well as cash and deposits.
- the total premium reached the level of RSD 26.9 billion, with a growth rate of 8.5%;
- the share of non-life insurance in total premium was still dominant, at 76.8%; the non-life insurance premium recorded a 7.9% growth, within which property insurance, casco and voluntary healh insurance recorded a growth, while there was a decline in MTPL due to corona virus pandemic.
- the share of life insurance in the total premium decreased from 22.7% to 23.2%;
- the number of insurance companies in Republic of Serbia remained 20, while the number of employees, of 11,151, increased by 4.3%.

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

Other significant legal sources are the Law on Compulsory Traffic Insurance, the Law on Health Insurance, the Law on the Protection of Financial Service Consumers in Distance Contracts, and the Law on Contracts and Torts. The lateral relevant legal source is the Law on Traffic Safety.

A good part of insurance companies, as well as other participants in the insurance market, strive to adapt their services to the digital world. However, in addition to technical, cultural and other barriers, regulation is also an important limiting factor. Although a huge step has been taken in recent years towards creating a regulatory framework for digital business, there is still room for improvement. First of all, in the car liability market, where policies are still required by law to be issued on pre-defined forms printed by the Institute for the Production of Banknotes and Coins – Topčider, which practically disables business in a digital way. Also, regulations in the field of prevention of money laundering and terrorist financing is an important limiting factor in the sense that it does not recognize the exceptions that were previously proposed, which would contribute to the sale of digital life insurance on the Serbian market.

COVID-19

The COVID-19 corona virus pandemic has and will have a great impact on the economy of all countries, and thus on the Republic of Serbia. The insurance market is no exception in this regard. However, the insurance market will be affected more indirectly than directly. Namely, the expected decline in economic activity, household income and consumption will certainly affect smaller allocations

for insurance services, both in terms of investment and protection. In that sense, insurance companies can expect a decrease in premium income in the coming period. The pandemic has also directly affected the insurance market as the majority of insurance contracts continue to be concluded through physical contact with insurance company vendors and insurance agents, making sales conditions more difficult.

Insurance companies, as well as other financial institutions, were not included in the Program of Economic Measures for Reducing the Negative Effects caused by the COVID-19 Infectious Disease Pandemic and Supporting the Economy of the Republic of Serbia adopted by the Government. Insurance intermediaries and agents (other than banks and leasing companies), on the other hand, were covered by the measures of the Government of the Republic of Serbia.

INSURANCE COVERAGE FOR NATURAL DISASTERS AND OTHER ACTS OF NATURE

CURRENT SITUATION

Due to its geographical complexity, Serbia is prone to natural disasters and other extreme events, which are relatively frequent (2005, 2006, 2010, 2014 and 2015 in this century alone). The number of sold insurance policies against natural disasters and other disasters did not drastically increase after the catastrophic floods in 2014, which resulted in damages exceeding EUR 1.5 billion, despite the fact that Serbia was impacted by floods in following years as well.

POSITIVE DEVELOPMENTS

None

REMAINING ISSUES

In Serbia, insurance in general, but particularly insurance coverage against natural disasters and other "acts of nature," is regarded as an expense or a charge, not as a means of transferring risks, and for this reason its growth rate is the lowest in Europe.

FIC RECOMMENDATIONS

- We believe it would be necessary to establish a strategy for insurance against natural disasters and other acts of nature to ensure that in the event of a major adverse event, a significant share of claims would be transferred to the insurance company. Avoiding new charges on existing contracts is important, as these would result in additional expenditures for a small number of the insured who now have insurance coverage, a measure already proposed by the Ministry of Finance. (1)
  The implementation could be carried out gradually, through the introduction of mandatory:
  (i) insurance for all state-owned and public property and infrastructure;
  (ii) coverage for all property designated as collateral for financing;
  (iii) coverage against natural disasters and other "acts of nature," including fire insurance, for all property, based on the French model.

- A natural catastrophe (Nat Cat) insurance pool mechanism with obligatory or semi-obligatory coverage should be considered. There are examples, which are far from perfect but show that these mechanisms are conducive to increasing national coverage and risk management (Romania and Turkey). Tax cuts for insurance should also be evaluated to promote Nat Cat insurance in the corporate sector. (1)

THE LAW ON PERSONAL INCOME

CURRENT SITUATION

Taxation of natural persons is regulated by the Law on Personal Income Tax. When it comes to life insurance, the Law does not contain sufficient grounds for exempting life insurance premiums from taxation.

POSITIVE DEVELOPMENTS

None.

FIC RECOMMENDATIONS

- Amendments to the Law to create conditions for the introduction of tax relief for all types of life insurance premiums, which would not only stimulate the development of the insurance sector, but also create the conditions for improving the social function of these types of insurance, which at the same time diminishes the state's obligation to care for these persons. (2)

AUTO INSURANCE MARKET

CURRENT SITUATION

Auto Insurance (AI) is by far the most important segment of the insurance market in Serbia (32.9% of the total premium in 2019 refers to AI) and the technical inspection facilities performing the compulsory annual inspection of all motor vehicles are definitely the most important distribution channels for these insurance policies. Article 44 and 45 of the Law on Compulsory Traffic Insurance prohibits the payment of any commission to these technical inspection facilities – whether directly and/or through related parties – which exceeds 5% of the gross insurance premium.

POSITIVE DEVELOPMENTS

Increased market surveillance by the National Bank of Serbia, which in 2019 led to the fact that insurance companies have largely adjusted their operations to the legal and sub-legal framework in this area.

FIC RECOMMENDATIONS

- Insurance companies should be allowed to register cars at their own premises. (2)
- Allow the issuance of compulsory insurance motor liability policies in electronic form as electronic document. (3)

INSURANCE LAW

REMAINING ISSUES

I. Article 62, paragraphs 5 and 6 of the Law, require at least one member of the supervisory board, and/or one member of the executive board to have active knowledge of the Serbian language and permanent residence in the Republic of Serbia, while other members of the executive board must have permanent residence in the Republic of Serbia, and all members of the executive board must be full-time employees at an insurance company.

Upon analyzing the aforementioned provisions of the Law, through the prism of split companies, it has been concluded that the latter will have to duplicate the aforementioned functions and thus be directly punished for complying with the law. Furthermore, Article 62(3)(1) stipulates that a member of a management body may not be a person who is a member of the management or supervisory body or a procurator in another insurance, reinsurance company or any other financial sector entity. This will result in an unequal market position, which is contrary to Article 84 of the Constitution.

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

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

- a bank headquartered in the Republic of Serbia, incorporated in accordance with the law governing banks;
- a financial leasing provider headquartered in the Republic of Serbia, incorporated in accordance with the law governing financial leasing;
- a public postal operator headquartered in the Republic of Serbia, incorporated in accordance with the law governing postal services.

In addition, insurance brokerage/insurance agency activities may also be performed by persons who are not subject to the Insurance Law, provided that the amount of the annual insurance premium per insurance contract does not exceed the amount of EUR 100, that the contract period does not exceed five years, and that it does not relate to compulsory or life insurance.

The Insurance Law should be amended to ensure that utility companies registered in Serbia in accordance with the Law on Public Utility Activities, in the same way as the public postal operator, may perform insurance brokerage activities with the prior approval of the NBS. The current solution of the Law on Insurance does not allow public utility companies to carry out these activities, although there is a long tradition in Serbia of stipulating insurance contracts and paying insurance premiums through public utility companies' bills. This tradition was interrupted at the beginning of 2016, when the NBS banned the introduction of new policyholders into insurance policies through public utility companies' bills. Bearing in mind a large number of insured persons paying the insurance premium in this way and the need of the market to continue this practice of expanding insurance coverage that has a wider social significance for easier accessibility of insurance to the average user, it seems that amendments to the Law on Insurance should enable interested public utility companies to engage in these activities.

III. Equal treatment must be guaranteed to all participants in the insurance market. In that sense, amendments to the law should enable a merger between companies that conduct life and non-life insurance business separately, if the companies have the same shareholders, or if those shareholders have a controlling share in both companies.

IV. To establish a more precise and systematic structure, the insurance business should be regulated by three different laws, modelled on the laws of some European countries, in accordance with EU guidelines and directives: the Insurance Supervisory Law (ISL), the Insurance Contract Law (ICL) and the Law on Insurance Brokers and Agents. While the ISL deals primarily with the relationship between the supervisory authority and the insurance company, as well as with status issues, the ICL defines the relationship between the insured and the insurer, i.e. their mutual contractual obligations, and the Law on Insurance Brokers and Agents regulates the sale of insurance through other licensed persons or alternatively a tripartite law.

It is especially important to adopt the Insurance Contract Law because the relationships arising under insurance contracts are not fully regulated. First, a number of provisions governing insurance contracts are found in other laws and by-laws while there are various other laws which do not regulate the specific substance of the contractual relationship in insurance, but have an impact on the relationships arising from insurance contracts (e.g. the Consumer Protection Law etc.). Second, certain matters directly related to insurance contract relationships are not regulated by the LCT (or not regulated at all). In this sense, there are no provisions in the law of the Republic of Serbia which specifically regulate insurance brokerage agreements and insurance agency agreements, as well as co-insurance contracts or reinsurance contracts. Also, the LCT provisions that govern the insurance contract have certain deficiencies that have emerged through practice in the application of the Law in these 39 years. Primarily in relation to liability insurance that is regulated by only one article. Also, changed social circumstances, technological changes and modern supranational regulations (EU) necessitate the implementation of certain amendments to LCT provisions.

FIC RECOMMENDATIONS

- Adoption of a new set of insurance laws: the Insurance Supervisory Law (ISL), the Insurance Contract Law (ICL) and the Law on Insurance Brokers and Agents. (3)
- Amend Article 98, Paragraph 2 of the Law on Insurance, to enable public utility companies registered in the Republic of Serbia in accordance with the Law on Public Utility Services, to perform insurance brokerage/agency activities with the prior consent of the National Bank of Serbia. (1)

NEW LAW ON PREVENTION OF MONEY LAUNDERING AND FINANCING OF TERRORISM

CURRENT SITUATION

Law on Prevention of Money Laundering and Terrorist Financing began to apply on 1 April 2018, and has serious implications for the operations of insurance companies selling life insurance.

Article 8 of the Law does not recognize life insurance contracts (the so-called "risk insurance") as exceptions from the obligation to conduct actions and measures of customer due diligence, as defined in the previous Law.

Article 18 stipulates that the identity of a party can be determined and verified through a qualified electronic certificate, but the technical conditions prescribed by this article for this type of identification of parties cannot be implemented in practice and no taxpayer applies it.

REMAINING ISSUES

As regards Article 8, bearing in mind the legal nature of such contracts which provide coverage for biometric risks (death and disability) only, and envisage no option of payment of surrender value, policy loan or advance or pure endowment policy, and in view of the existing modalities of payment, it is clear that the potential money laundering and terrorism financing risk as such is unfeasible and that it requires special treatment. Classification in the low-risk category and the application of simplified procedures is not a mitigating circumstance, considering that significant resources are spent on the identification of the legal entity and beneficial owner.

FIC RECOMMENDATIONS

- Adopt the initiative of insurance companies for amending Article 8 of the Law, to exclude taxpayers from the implementation of actions and measures prescribed by the Law when it comes to a contract on life insurance in the event of death (the so-called "risk insurance"). (3)
- Article 18 stipulates that the identity of a party can be determined and verified through a qualified electronic certificate, but the technical conditions prescribed by this article for this type of identification of parties cannot be implemented in practice and no taxpayer applies it. (3)

LEASING

CURRENT SITUATION

The development of leasing in Serbia is linked to the beginning of 2003 when the Law on Financial Leasing was adopted. Today, 17 leasing companies operate in Serbia, which are mainly affiliates of renowned financial institutions, leaders in the field of banking and financial operations in the markets of Central and Southeast Europe. These groups have implemented their knowledge and high corporate business standards in the Serbian market. As a result of market competition, the number of active leasing companies is expected to adjust to market needs and decrease in the following period. This will only bring the quality of the offer because the standard of leasing services that market leaders have implemented so far will be further confirmed.

COVID-19

In the spirit of the measures and the Decision of the NBS to mitigate the consequences of the COVID-19 pandemic and preserve the stability of the financial system, leasing companies implemented a moratorium in settling obligations for all their clients. In addition, they granted additional benefits to help their clients, legal entities, entrepreneurs, and individuals, overcome the consequences of the new situation, as part of socially responsible business and care for their partners. This has brought new liquidity management challenges due to lower inflows, technical difficulties in adapting the system to the implementation of measures, and additional costs in adapting to new working conditions. However, leasing companies have successfully overcome new circumstances, trying to always be at the service of their clients.

POSITIVE DEVELOPMENTS

In the previous period, during 2019, there were no significant improvements. The National Bank of Serbia did not initiate the adoption of amendments to the Law on Financial Leasing, yet in the meantime, certain analyzes of initiatives by the NBS and the Ministry of Finance have begun.

Regarding the recommendation related to the issuance of the Registration Authorization to Leasing Users, a series of working meetings were held between representatives of the Ministry of the Interior, BRA, and leasing companies and, according to the plan, by the end of 2020, delivery via web service will be provided which is a good improvement by applying digitalization in business.

REMAINING ISSUES

1. Interest in financial leasing is still taxable

Law on Value Added Tax ("Official Gazette of RS", No. 84/2004, 86/2004 - amended, 61/2005, 61/2007, 93/2012, 108/2013, 6/2014 – coordinated RSD am., 68/2014 - other law, 142/2014, 5/2015 - coordinated RSD am., 83/2015, 5/2016 – coordinated RSD am., 108/2016 and 7/2017 - coordinated RSD am.), treats the products and services of financial institutions in different ways when defining the subject of VAT taxation.

Namely, in Article 4, item 2a) the Law clearly states that the supply of goods on the basis of a leasing contract is subject to VAT. According to the said Law, the basis for VAT is the value of the subject of leasing and interest.

On the other hand, the legislator provided in Article 25 of the same Law that credit operations and insurance services are exempt from VAT.

Different tax treatment of products and services of financial institutions has conditioned that financing through leasing in relation to other types of financing is more expensive, and therefore less favorable for certain segments of clients, given that VAT on interest is an additional cost, due to which financial leasing companies are put at a disadvantage. The best example of this effect was again observed by the NBS during the implementation of the measures prescribed by the NBS Decision on the Moratorium on Payment of Liabilities based on numerous customer complaints. Namely, the Decisions were made for both banks and leasing companies, and with their implementation, the clients of leasing companies who are not entitled to the previous VAT had an additional cost. It should not be forgotten that these are entrepreneurs, registered agricultural farms, and companies that are not in the VAT system.

2. Leasing companies are still charged for the cost of additional tickets, even though the users of the vehicle or lessees used the so-called services of public companies for parking service

Decisions on public parking lots of cities and municipalities in Serbia generally designate drivers or owners as users of public parking lots, if the drivers are not identified. These decisions further stipulate that if the users of the public parking lot violate the provisions of these decisions regard-

ing the non-payment of the parking ticket, they are obliged to pay the additional ticket. In cases when the vehicle is given in financial leasing, decisions on public parking lots do not take into account the business of financial leasing at all and consequently, additional tickets arrive for payment to leasing companies, although the users of these vehicles are recipients of financial leasing.

3. Operating leases are not regulated by law and financial leasing companies cannot deal with the provision of operating leases

The area of operating leasing is not regulated by special regulations, but exclusively by the Law on Obligations ("Official Gazette of SFRY", No. 29/78, 39/85, 45/89 - a decision of the CCY and 57/89, "Official Gazette of FRY", No. 31/93 and "Official Gazette of Serbia and Montenegro", No. 1/2003 - Constitutional Charter) in Chapter XI Lease, by the Ordinance on the criteria on the basis of which it is determined when the transfer of goods on the basis of a leasing contract or lease is considered ("Official Gazette of RS", No. 122/12) and a number of other legal acts that regulate in more detail the exploitation of rights and obligations in the field of the leased object (the subject of operating leasing). Operating leasing is by its nature (clients, suppliers, way of financing fixed assets, marketing strategy, etc.) much closer to financial leasing than the classic short-term lease. A concrete legal solution is needed for operating leasing in Serbia, above all supplements to the Law on Financial Leasing in the sense of enabling financial leasing companies to perform long-term lease activities within their activities, not only for items returned in the financial leasing business but also for newly acquired ones, which would be a sufficient reason for even more financial leasing companies to start with the provision of this type of service, i.e. products under the supervision of institutions responsible for financial leasing companies.

4. The high level of required capital for leasing companies for real estate leasing in the amount of EUR 5 million slows down the expected development of the leasing industry

The high level of required capital with other financial institutions (banks, insurance companies, or pension funds) is in line with the intention to provide security when managing clients' funds, while, unlike the mentioned ones, leasing companies manage their own funds and are not depository institutions, i.e. they invest their own capital and the entire business risk is borne by the founder of the leasing company.

5. The guarantee fund may have a recourse claim from the leasing company for the damage caused using the item by the lessee

The Law on Compulsory Traffic Insurance stipulates that the Guarantee Fund of the Association of Insurers of Serbia has the right of recourse, upon payment of compensation from the owner of the means of transport, for the amount of damage, interest, and costs paid.

The Law on Compulsory Traffic Insurance is not harmonized with the Law on Financial Leasing, which introduced a legal deal into the legal system of the Republic of Serbia that, by definition and rules on liability for the use of leasing objects, conflicts with the existing rule on the recourse of the Guarantee Fund. The fact that the lessor is not able to influence the behavior of the lessee or other persons using the leased object and prevent the use of the vehicle in traffic without a compulsory insurance contract, as long as the leased object is located in the lessee's country, is completely ignored.

In the current situation, leasing companies face recourse claims from the Guarantee Fund of the Association of Insurers of Serbia, which they reject referring to the Law on Financial Leasing, while on the other hand the Guarantee Fund, despite understanding the essence of the dispute, has no legal possibility to apply for recourse to the paid amount of damage to any person other than the owner of the means of transport and possibly their driver, according to the system of subjective liability of the inflictor for damages.

6. Financial leasing is not included as a form of financing in some of the programs of state incentives in the economy

Financial leasing, as a type of financing, is not provided for in the Law on Incentives in Agricultural Production ("Official Gazette of RS", No. 10/2013, 142/2014 and 103/2015). Namely, Article 3, which regulates the types of incentives, provides for credit support, but not financial leasing, which prevents leasing companies from joining these programs along with banks. One of the conditions is that the fixed asset procured for the purpose of performing activities in agriculture must be exclusively owned by the recipient of the incentive, which by unilateral interpretation excludes

the purchase of that asset through a financial lease in which the financial leasing company would be the legal owner and the recipient of the incentive (the lessee) would be the economic owner. One of the conditions for obtaining an incentive is that the farmer must not alienate the fixed asset The control of this condition is extremely complex and in reality difficult to apply by the authorities body, which would be prevented if the procurement of fixed assets with the help of incentives was carried out through financial leasing because special acts would stipulate that the recipient of the subsidy cannot repay and/or alienate fixed assets before the incentive, so the financial leasing company would receive the additional role of the controller on behalf of the competent authority.

A positive example is the Decrees of the Government of the Republic of Serbia on determining support to small enterprises for the procurement of equipment, which determines the Program of Support to Small and Medium Enterprises for the procurement of equipment. In addition to banks, this program also includes leasing companies and has been very successfully implemented.

7. Leasing companies and insurance companies are obliged to pay personal income tax in case of a write-off of receivables from natural persons

When a leasing company or insurance company makes a decision to write off claims from individuals who were previously sued, after an unsuccessful court procedure (due to poverty, inability to collect, etc.), they are obliged to calculate and pay personal income tax in the amount of 20%. Write-off receivables have the status of other income. This is defined by Article 85 of the Law on Personal Income Tax. Thus, a leasing company or an insurance company, in addition to having suffered a loss due to non-payment of obligations, has an additional obligation to pay personal income tax.

To make the paradox even bigger, this becomes the basis for the annual income tax of that natural person, so that a person who is unable to settle a debt to a leasing company or insurance due to poverty, can become a taxpayer if the value of the write-off together with other income exceeds the amount of 2.4 million dinars. This tax "illogicality" was noticed by the Ministry of Finance, and with the amendments to the Law on Personal Income Tax in 2013, an exception was made for banks as creditors. Other financial institutions that are also under the control of the NBS were then "forgotten".

8. The problem of the non-existence of criminal-legal protection of property of leasing companies.

As a precondition for the functioning of financial leasing as a financing model (in which leasing companies retain the right of ownership over financed objects), there is adequate and complete protection of financed leasing objects as assets of leasing companies. However, in addition to other obstacles facing the leasing industry in Serbia, a new obstacle has recently emerged that threatens to stifle leasing in Serbia. It is about the lack or complete absence of criminal legal protection of the property of the Financial Leasing Providers. Namely, the Supreme Court of Cassation in Judgment CA No. 42/16 dated 26 January 2016, took the position that in the case of evasion of the subject of financial leasing, there is no objective element of the criminal offense of evasion under Article 207 of the Criminal Code of RS, considering that the leasing contract by its nature leads to the acquisition of property rights, due to which non-compliance with contractual obligations falls within the domain of civil law and does not contain the essential elements of the said criminal offense. The Supreme Court of Cassation did not take into account that the civil law relationship has already been resolved by a court decision and that a contract that has been terminated can never lead to the acquisition of property rights. In the stated manner, the lessors of financial leasing in Serbia were deprived of the right to criminal-legal protection of their property contrary to the principles defined by the Constitution. If such a wrong position of the Supreme Court of Cassation continued to be applied by the competent public prosecutor's offices, rejecting criminal charges for the criminal offense of evasion of leasing objects, the result would certainly be a very rapid withdrawal of all leasing companies from the market of the Republic of Serbia. Also, the reaction to the mentioned Decision of the Supreme Court of Cassation can be a huge increase in the number of mentioned criminal acts, appropriation or alienation of other people's property in order to obtain illegal property gain, considering the absence of criminal sanction according to the practice taken by the Supreme Court of Cassation with the Judgment CA No. 42/16 dated 26 January 2016.

9. Within the term of the leasing contract, during the registration of the vehicle, the lessee must obtain special authorization from the leasing company every year to hold and use the leased object.

This document is a precondition without which the lessee cannot register the vehicle with the Ministry of the Interior. When obtaining this document, both the lessee and the leasing company are exposed to additional costs, as well as spending resources and time. Also, in practice, there was abuse and falsification of the said authority.

10. The current practice shows that vehicles that are on the warrant of the Ministry of the Interior, or whose registration has expired, are driven unhindered without authorization, until the moment when the police would stop them and do a detailed check.

Only then they would react to the search and seize the vehicle from the debtor, which is not a common case. Solving this problem would contribute to the protection of property, increase safety and legal security in the country, which, in addition to the general social significance, is also important for the business of leasing companies and insurance companies.

We believe that the connecting of the Parking Service system and the Ministry of the Interior would significantly help legal security, because parking service workers while performing their activities (issuing an additional ticket or parking ticket), could see that the vehicle is on-demand or registration has expired, and the vehicle is being driven, after which they could call the representatives of the Ministry of the Interior and leave the towed vehicle in the police station until the dispute is resolved.

At the same time, the communal police, with a new method of recording traffic violations and illegal parking, can significantly contribute to a faster and more efficient finding of disputable leasing objects. Vehicle records through toll ways could help solve this problem.

FIC RECOMMENDATIONS

- Initiation of amendments to the Law on Value Added Tax, in the part related to interest taxation, and in terms of revoking VAT on the part of leasing fee related to interest. (2)
- Amendment to the Law on Financial Leasing, which would explicitly transfer the obligation to pay for unpaid parking services to the lessee, and that this service legitimizes parking services to collect directly from lessees registered in the register of motor vehicles kept by the RS Ministry of Interior. Operating leasing should be regulated by the Law, i.e. financial leasing providers should be enabled to provide operating leasing services. (3)
- The Law on Compulsory Insurance in Traffic should be harmonized with the Law on Financial Leasing, in terms of the provisions on the right of recourse of the Guarantee Fund upon payment of damage caused by a vehicle for which a contract on compulsory insurance has not been concluded, by the owner or registered user of the vehicle, so that the insurance company can claim the recourse right from the lessee instead of from the leasing company. (1)
- When forming incentive programs in the economy (industry, agriculture, etc.) and drafting laws and bylaws that regulate this matter, it should be determined that incentives can be implemented with the support of financing, which, in addition to bank loans, also includes other types of financing, such as financial leasing. Given that financial leasing is also a suitable way of financing, it should be included in subsidized programs of the Government of the Republic of Serbia, which would improve competitiveness in the financial market and offer a more favorable type of financing. (2)
- Leasing and insurance companies should be in the same position as banks pursuant to Article 85 of the Law on Personal Income Tax, i.e. that in the case of a write-off of receivables they are not obliged to pay additional personal income tax if the conditions prescribed by law are previously met. The change would be to simply add "insurance company or lessor" next to the word "bank client". (2)

- The capital threshold for performing leasing, the subject of which is real estate, should be reduced in order to make real estate leasing more attractive on the Serbian market. We suggest that for performing financial leasing operations, the monetary part of the lessor's founding capital cannot be below EUR 500,000 in dinars (RSD) for both financial leasing of movable and immovable property (3)

- Urgent solution to the problem of criminal-legal protection of financed leasing objects. Consistent application of the Law in court proceedings conducted in this legal matter and acting in accordance with the Law and the Constitution of the RS. (2)

- It is necessary to enable leasing companies to submit the necessary data to the Ministry of the Interior through BRA (e.g. web service) and in that way, the lessee would be relieved of the obligation to obtain a vehicle registration authorization in writing once a year for delivery to the Ministry of the Interior during vehicle registration. In addition to the above, the proposed solution would put an end to the abuses that occur in practice with the submission of forgeries of these certificates. (1)

- Importing data from the Ministry of the Interior and the Parking Service in order to increase legal security in the country. (2)

OIL AND GAS SECTOR

CURRENT SITUATION

The price of Brent crude oil rose in the first half of 2019 and reached its highest annual level in the middle of May 74.69 USD/bbl. However, prices fell in the second half of 2019, both due to the weakening of the global economy and the oil demand decrease as an outcome of the trade tensions between the USA and China. Due to the decision of OPEC and non-OPEC countries to balance the global market by adjusting production, oil prices continued to rise in December. Following the interim trade agreement between the US and China, prices rose further in the second half of December 2019. The average price of crude oil compared to the annual average fell in 2019, so Brent oil ended the year with an average price of 64.20 USD/bbl, which is 7.10 USD lower compared to 2018.

According to the data of the Energy Agency of the Republic of Serbia, the total consumption of crude oil and semi-finished products from domestic production, imports and stocks in 2019 was about 3.373 million tons, which is about 12% less than in 2018. In 2019, about 0.859 million tons of crude oil was produced (25.47% of total consumption), and about 2.514 million tons (74.53%) was provided from imports.

The total consumption of motor fuels in 2019 was about 2.46 million tons, which is 4.6% more than in the previous 2018. In the structure of motor fuel consumption, gasoline participated with 17.4%, gas oils with 75.6%, and LPG - with 7.0%. Total gasoline consumption was increased by 2%, compared to 2018, consumption of gas oils - Euro diesel and gas oil 0.1 is higher by 6.5%, consumption of extra light Euro L gas oil is higher by 2.2%, while LPG consumption, including autogas, decreased by as much as 6.6%.

The increase in the consumption of motor fuels was also influenced by the decline in the unintended import of base oils and its illegal blending with diesel fuel, which was practically eliminated in 2019.

It should be noted that LPG is still under pressure from fiscal duties, which are among the highest in the region - with the exception of Austria and Hungary.

In 2018, the construction of a deep processing plant with delayed coking technology began at the Oil Refinery in Pancevo, which continued in 2019 as well. After the completion of the construction and commissioning of this plant, the share of oil derivatives that are better valorized on the market will be higher, reaching the quality of all produced motor and energy fuels in accordance with Directive (EU) 2016/802 on reduction in the Sulphur content of certain liquid fuels.

The total annual production of natural gas, delivered to the country's transport distribution system in 2019 was 293 million m^3, which is 12.5% less than the production in the previous year. In 2019, a total of 2,609 million m^3 was available from import, domestic production and underground storage, and 2,325 million m^3 of natural gas was consumed, 8% less than in 2018. Most of the natural gas was provided by imports from the Russian Federation in the amount of 2,197 million m^3, while domestic production of 293 million m^3 could meet only 12.6% of needs.

The Ministry of Trade, Tourism and Telecommunications announced that in 2019, the Market Inspection performed 4,059 controls at energy entities and 10,547 samples were taken, of which 6,872 for marking and 3,675 samples for monitoring the quality of oil products. 132 samples with reduced marker concentration and 51 samples deviating in quality parameters were identified. Trade of 43,701 liters of Euro diesel, 6,218 liters of BMB 95 and 6,258 liters of LPG with a total value of 8,943,876.00 dinars was prohibited.

By April 30, 2020, the Market Inspection also performed 464 controls at energy companies and took 1,796 samples (of which 1,054 for marking and 742 samples for monitoring) of the quality of oil products. There were 18 samples with reduced marker concentration, while 20 samples deviated in quality parameters. Trade of 27,253 liters of Euro diesel in the value of 4,451,978.00 dinars was prohibited.

COVID-19

The outbreak and spread of the COVID-19 pandemic, as well as the restrictions on movement that followed, contributed to a sharp drop in oil demand. Total demand fell by almost 5 percent in the first quarter of 2020, and the decline in the second quarter of 2020 is projected to be about 20 percent. The International Energy Agency has estimated global demand in 2020 at 91.7 million barrels per day (MMb/d), but this estimate is subject to further change due to market uncertainty and the possible economic consequences of the COVID-19 pandemic. Restrictive measures by the states affected the flow of both people and goods, which resulted in a reduction in all modes of transport (which accounts for

about two-thirds of the demand for oil), and thus the need for all types of oil products.

The unsuccessful meeting between OPEC and Russia in early March 2020 on the topic of reducing crude oil production is also one of the causes of the drop in the prices, due to a following sharp increase in production in some OPEC countries. With oil demand drop, world oil stocks rose sharply and storage capacities were insufficient. In March, oil prices recorded the biggest one-month drop. The price of European Brent oil fell by 79% between January 22, when the first human-to-human transmission of the COVID-19 virus was registered, and its lowest threshold on April 21 - 13.24 USD/bbl. Since then, the price of Brent oil has gradually risen, but for now not exceeding the price of about $ 45 per barrel. The economic consequences of the pandemic could be long-lasting, which would be a particular problem for energy exporters, but initiatives in the form of OPEC + agreement have made a major contribution to restoring stability to the market. In order to further accelerate the balancing of the market, OPEC+ decided in early June to extend the production reduction of almost 10 MMb/d until the end of July. If trends in production continue and demand recovers, the market will have a much more stable basis.

Global developments have inevitably affected the domestic oil market. The big drop in oil prices, as well as the drastic reduction in consumption, and thus the drop in income, had a big impact on oil companies. Energy entities have been brought into an unenviable situation and faced a number of challenges, and among them the greatest was redistribution of funds and focus on activities that are crucial for business - maintaining stable production, processing and distribution of oil products, while preserving the interests of all stakeholders.

According to available data, consumption of motor fuels in Republic of Serbia decreased in the first half of 2020 by -9.7% when compared with the same time period of previous year, being 111,239 tons lower. Partial decrease in consumption of -0.9% was registered in the first quarter, while it further declined by -17.3% in the second quarter due to the imposed restrictions on movement. Main decrease in absolute quantities was registered in the consumption of diesel fuels – during the first half of 2020 it was 67,610 tons lower, while the consumption of gasoline fell by 23,367 tons. Since the restrictive measures on movement were lifted in the second quarter, a gradual recovery of the market is expected in the upcoming period.

POSITIVE DEVELOPMENTS

During 2019, the Government of the Republic of Serbia adopted a new Action Plan for the implementation of the National Program for the Suppression of the Gray Economy for the period 2019-2020, which confirmed the interest of state authorities in continuing to improve the control of the system of illegal trade, which is of importance for business in the Oil and gas sector. In addition, the state authorities continued to effectively control the non-purpose import and blending of base oils with diesel fuel in accordance with the adopted Flowchart for inspection control of this area, and in this way continuously controlling this market segment.

In addition, the Directorate for Administration of Seized Assets has actively started to resolve the status of confiscated oil products stored with energy entities.

REMAINING ISSUES

Even if the control of illegal trade in oil products in the country is maintained at a satisfactory level, it is necessary to keep in mind that the relaxation of control measures can increase the scope of illegal activities in a relatively short time.

Systematic control of oil products imported for re-export has not been established, even though the state authorities have considered this issue in the past period.

Systematic resolution of the issue of storage of temporarily seized derivatives is necessary in order to free up the resources of inspection bodies in order to increase the scope and efficiency of market control.

The process of forming operational reserves of oil products has also not started, due to the lack of by-laws.

Obtaining energy licenses for legalized energy facilities is still a complex procedure due to non-harmonized Law on Legalization of Facilities and the Energy Law.

New regulations on the production and trade of explosives and other hazardous substances have also not been adopted in the past period.

It is possible to accelerate the process of modernization of business activities in the sector by more agile adoption of solutions in the field of digitalization.

FIC RECOMMENDATIONS

- DIGITALIZATION - prescribe the possibility of digitalization of fiscal receipts and their electronic delivery to customers buying goods and services, which would abolish the obligation of physical printing and delivery, and subsequent storage of fiscal receipts for control. (3)
- Timely conclude agreements between the Directorate for Administration of Seized Assets and energy entities on storage of confiscated oil products, by establishing and implementing an adequate procedure in the short term. (3)
- Enact by-laws necessary for the creation of operational reserves, in accordance with the Energy Law. (2)
- It is necessary to introduce control of oil products imported into the country for re-export through coordinated activities of relevant authorities, in view of abuses to which such goods declared for this purpose are subject. (1)
- Resolve the discrepancies in the Law on Legalization of Facilities and the Energy Law related to the documentation needed for the acquisition of energy licenses for legalized energy facilities. (1)
- Enact the Law on Explosive Substances, supported by related by-laws, all of which would define activities in the area of the manufacturing and trade of explosives and other hazardous substances. (1)

PHARMACEUTICAL INDUSTRY

CURRENT SITUATION

The health of the nation is one of the key factors, if not the most important factor, of productivity and economic growth in society, directly related to investments into the healthcare system. At the same time, ensuring the supply of medicines and the availability of the latest therapies are among the key preconditions for positive results of the healthcare system of any country. In addition to the unhampered supply of medicines and availability of the latest therapies, the normal functioning of a healthcare system requires a systematically regulated and functionally efficient link between the three pillars supporting the medical treatment of the population: manufacturers, pharmaceutical wholesalers and healthcare institutions (private and state-owned).

The share of healthcare in the distribution of the gross national product in Serbia stands at approximately 10%. It is important to note that state/public resources account for only 62% of this amount (the National Health Insurance Fund (NHIF), the Ministry of Health and local governments), while the remaining 38% are private payments by citizens (the so-called out-of-pocket payments). This means that a significant burden of financing healthcare has been shifted to the patients. This is certainly not a positive attribute, having in mind the importance of the social role of the state in the provision of healthcare services. By comparison, in the European Union (EU), Member States finance between 70 and 80% of the total healthcare needs of the population from public sources.

Of the total public healthcare budget, 20% is allocated for medicines. Despite considerable steps forward in improving the availability of advanced therapies compared to the preceding period, this progress is not sufficient. Further strategic thinking and actions regarding the management of funds in the healthcare budget are important, having in mind the degree and character of the vulnerability of the health of the population, i.e. the need for modern therapies for all, even the most severe diseases. The average life expectancy in Serbia is considerably below the EU average (74.7 compared to 80.2). The greatest risks for the health and life of the population of Serbia are caused by coronary and vascular system diseases, malignant diseases, diabetes and chronic obstructive pulmonary diseases. For example, the gravity and complexity of this problem is best illustrated by the discrepancy between the cancer incidence rate, where Serbia is 18th in Europe, and cancer mortality rate, where it holds 2nd place. Bearing in mind the discrepancy in the cancer incidence rate and mortality rate in Serbia and the EU, the availability of oncological, as well as innovative medicines from other fields of therapy is clearly insufficient, while at the same time being crucial for reducing the high mortality rate of the population.

It is completely clear that the NHIF, even with the assumption of the best resource management, is not able to adequately respond to all patients' needs for drug therapies from its own income. For that reason, purposeful and continuous intervention from the central budget is necessary, in addition to the existing allocations of the NHIF for medicines.

It is very important for stable pharmaceutical market functioning to continue the harmonization of the domestic legal framework with EU acquis, primarily through the Law on Medicines, which should be adopted. That way the practice inapplicability in some of its provisions and non-transparency in certain procedures should be eliminated. Another problem is that time frames for important decisions are often too long and, even so, typically not observed The participation of representatives of the pharmaceutical sector in the drafting of all relevant acts is necessary, and significant progress can already be seen in this field.

COVID-19

The COVID-19 epidemic affected the pharmaceutical industry as follows:

- The health care system, by the nature of things, was the most exposed in the state's fight against the pandemic. In such a situation, the relevant ministry was forced to make numerous personnel and organizational adjustments within health care institutions. On the one hand, it was necessary to provide appropriate treatment to patients with COVID-19, related to which there are no reliable guidelines anywhere in the world. On the other hand, all other patients needs should not have been neglected. Although both goals were to be achieved in parallel, it was inevitable that due to limited human and spatial resources, there would be some interruptions / slowdowns in starting / continuing therapy. For example, therapies with drugs from List C, treatment drugs of rare diseases, as well as slowing down in regular vaccination process. However, we emphasize that even in the most critical periods during the state of emergency, the supply of all medicines was extremely stable and without significant shortages. This was achieved through constant and joint activities of the state and manufacturer representatives, wholesalers and all drug licenses holders.

When it comes to the state reaction to the new situation, the following is to be pointed out:

- Regarding the medicine availability in health care institutions, including pharmacies, it can be said that the competent institutions (primarily the NHIF) have fully managed to maintain the stability of market supply. Through the continuous information exchange with drug license holders, as well as the introduction of new platforms through which the condition of all drug stocks in the country was monitored, the basic and common goal of NHIF and license holders was achieved - that domestic health institutions have all drugs used for treatment COVID-19 in the world, as well as drugs needed to treat all other chronic and acute diseases.

- We would also like to commend the significant step towards Medicines and Medical Devices Agency of Serbia (ALIMS) digitalization, which has enabled the electronic applications submission for most of its services through the e-government portal and / or e-mail, while still requiring original applications and paper documentation submission by regular mail. In contrast, we believe that even in difficult circumstances, an interruption in the adoption of the Decision on the drugs highest prices for human use whose prescription regime (Decision) by the Ministry of Health, could have been avoided, which leads to the impossibility of submitting new requirements for listing NHIF drugs. We would like to emphasize, therefore, even during the pandemic, which could be measured in months and even years, the regular dynamics of publishing drug prices must not be questioned, because that automatically leads to further market disruptions.

POSITIVE DEVELOPMENTS

1. The positive trend of negotiations and the signing of special agreements between the NHIF and pharmaceutical companies has continued in 2018 and the first half of 2019. However, the budget allocated for these purposes is significantly lower compared to 2016 (13 new innovative medicines have been placed on the Reimbursement List through the above process).

2. Negotiation and concluding special contracts process has been further intensified in second half of 2019, and the director of the NHIF announced that the Ministry of Finance will provide as much as 5 billion RSD for innovative medicines in 2020. In March 2020, just before the outbreak of the COVID-19 pandemic, 16 innovative drugs (MS, Oncology and Hepatitis C) were put on the Drug List, but implementation was delayed due to COVID-19 until June 2020.

3. A new model of a special contract was introduced at the end of 2019, which enabled the drug license holders to commit to lowering the price of the drug exclusively in the public procurement procedure, and not by lowering the "visible" price on the Reimbursement List (additional contract flexibility)..

4. An important step forward was made regarding the quantification of funds required to place new medicines on the Reimbursement List. Namely, a common list of priorities was produced, covering all areas of therapy by the Central Medicines Commission, and/or competent national expert commissions. Based on this, the NHIF has produced an assessment of the funds required for this purpose, amounting to approximately EUR 80 million, with the calculation including significant concessions that pharmaceutical companies with prioritized medicines would commit to. The entire process unfolded with the support of the Ministry of Health and the Ministry of Finance, whose representatives in multiple meetings clearly expressed the position that the availability of medicines is one of the key priorities for both ministries, emphasizing that they will invest maximum effort to continuously allocate significant funds for this purpose.

5. Considerable improvements have been made in the communication and joint work of industry representatives (SCCI, Inovia and Genezis) and the Ministry of Health in drafting regulations of importance for doing business. The procedure for issuing licences under the remit of the Ministry of Health has also been accelerated.

6. During 2020 direct payment for medicines to suppliers as per the CPP by the NHIF continued, along with technical system improving.

7. The Law on Medical Devices was adopted in December 2018, followed by the adoption of by-laws. The system for the electronic submission of documentation for medical devices has also been introduced by the Medicines and Medical Devices Agency of Serbia (ALIMS). In June 2020, Medicines and Medical Devices Agency of Serbia started implementing an electronic portal for the medicine documentation submission, with a lim-

ited number of procedures that can be initiated / conducted through the portal.

8. Amendments were adopted to the Rulebook on registration, in order to implement the provision of the applicable Law on Medicines introducing the issuance of permanent licences for medicines.

9. The procedure of determining the maximum price of medicines was made significantly shorter, with the option of continuous communication with representatives of the Ministry of Health and the Ministry of Trade throughout the process.

REMAINING ISSUES

1. A lack of a systemic solution for financing the introduction of new drugs on the Reimbursement List.

It is necessary to provide assigned funds transfer from the central budget to the NHIF every year, to maintain the continuity of the new drug introduction on the Reimbursement List. This should be preceded by a statement of all competent medical commissions within the MoH / NHIF, after which evaluating all submitted requests for placing drugs on the Reimbursement List would determine the exact amount that has to be transferred to meet the needs of patients in all therapeutic areas.

2. Shortcomings in the process of including medicines on the NHIF Reimbursement List

The Rulebook on criteria for including/removing medicines from the Reimbursement List, as a key by-law in this area, needs to be amended to include clearer and more detailed criteria for the selection of medicines covered by the mandatory health insurance system. Although certain progress is already visible, each individual procedure for the placement of a medicine on the Reimbursement List should be even more transparent and with a mandatory explanation of the final decision, and the right to appeal.

3. The "duality" of medicine prices

The pricing of medicines is subject to strict administrative control, and involves a two-tier pricing procedure, by the Ministry of Health and by the NHIF.

Article 30 of the Rulebook on criteria for the inclusion of medicines on the Reimbursement List from April 2014 envisages that the difference in price between the original and generic A-list medicine with the same or similar pharmaceutical properties and in the same dosage may not exceed 30%, which is co-paid by patients. This limits the availability of medicines, primarily of original and branded generic medicines, as they often cannot fit into such a limited price range, and thus cannot be found on the Reimbursement List. Given that this difference in price does not represent a financial burden for the NHIF, an option allowing a price difference up to the maximum approved price would ensure a better availability of original and branded generic medicines.

4. Illiquidity of state healthcare institutions

Nonliquid state-owned healthcare institutions (hospitals, community health centres, drugstores), severely threaten wholesale liquidity and continuous supply, by maintaining long-term large debt to suppliers, after public procurement conducted, for delivered drugs and medical devices. The total debt of state health institutions is amounted to over 11 billion RSD at the beginning of this year.

At the same time, the old debt of hospitals (before the introduction of direct payment) was not settled in March 2020, despite the official state announcement and the formation of a special Government commission.

In addition, although the NHIF introduced direct payments to suppliers in 2019, in order to have better control, assigned spending and prevent the new debts of health care institutions, a delay by the NHIF payment, therefore growing debt to suppliers, already can be stated in 2020.

The burden sustained by pharmaceutical wholesalers and other drug suppliers in financing the state healthcare system debts is enormous, limiting their ability to regularly supply pharmacies and hospitals in the future. This situation is not sustainable, and if the liquidity of pharmaceutical wholesalers is endangered, there will be consequences for all other participants in the pharmaceutical sector - medicine manufacturers, importers, and, ultimately, healthcare institutions and the healthcare system.

5. Administrative procedures and the issuing of licences for medicines

ALIMS had an extremely large number of delays in 2018 in issuing renewed licences for medicines, leading to an interruption in the continuity of the market supply for a

large number of medicines. Average delays were around 6 months after the expiry of the licence for a medicine, with the situation only stabilizing in October 2018 after the adoption of an amendment to the Rulebook on issuing a licence for a medicine which extended the validity of a licence for a 6-month period. The time frames for issuing renewals were reduced during Q1 2019, although the time frames prescribed by the law are still not being adhered to.

In addition to new registrations and licence renewals, ALIMS is still considerably tardy when it comes to approving amendments to licences (variations). Such delays regarding new indications and variations in medicine safety have a considerable impact on the availability of the latest information on the use of medicines both for doctors and for patients.

The Agency is applying new, significantly higher fees for its services as of 1 January 2018, thus the costs of acquiring new licences, their renewal and amendments (variations), and the newly introduced pharmacovigilance fees, have led to a doubling in the regulatory expenses, creating a further burden on the pharmaceutical industry. However, this has not led to increased efficiency in the work of the Agency regarding adherence to time frames, since no additional staff has been hired for the relevant jobs.

6. New regulations that make business more difficult

When the Law on Fees Use of Public Goods was prepared and adopted, harmful consequences of this regulation on manufacturers, drug holders and wholesalers have not been properly considered. Basis of special waste compensation-medicines that remain in possession after the date expiration and are collected from citizens are initially estimated as an additional burden of as much as EUR 37 million EUR. The Law determines the compensation basis as the "total drugs quantity produced in the Republic of Serbia and drugs imported into the Republic of Serbia" which indicates that all produced and imported drugs will not be used for the citizens treatment, but considered as pharmaceutical waste.

The Rulebook for acquiring basic knowledge about personal hygiene training program introduced an obligation for employees in the medicines production, trade and dispensing to undergo training organized and conducted by the Ministry of Health, with the prescribed fee payment. Ministry of Health did not take into account that the obligations and responsibilities of drug manufacturers, wholesalers and pharmacies in the part of hygiene training are already regulated by special regulations as well as strict requirements of the Guidelines for Good Manufacturing Practice (GMP) and Guidelines for Good Distribution Practice (GDP). Therefore applying the provisions of the Rulebook, everyone in the supply chain is additionally exposed to unnecessary costs and significant process delays.

FIC RECOMMENDATIONS

ALIMS should:

- Adhere to the existing time frames established by the Law on Medicines regarding new registrations, renewals and variations of licences. (2)
- Provide for electronic submissions of all requests for medicines (new registrations, renewals and variations). (2)
- Revise and harmonize the amount of certain tariffs; PV tariffs based on the INN; reduce the amount of tariff for the documentation control for each imported series of a medicine. (2)

The Government should:

- Provide steady funding for innovative medicines and generic medicines while expanding the indications through a special-purpose transfer of budget funds to NHIF, thus compensating for the clear lack thereof in the financial plan of NHIF. (3)

- Take a position regarding the future of its healthcare institutions, primarily pharmacies. If state pharmacies have a future as such, a strong recommendation is to entrust them to a private partner in accordance with the law, with the key law being that on public-private partnership, and in accordance with the model respecting the specifics originating from the status and business operations of publicly-owned pharmacies undergoing PPPs. This guarantees the legality of the procedure, transparency and the maximization of benefit for everyone involved. (2)

- Urgently start resolving the issue of settling old debts of state healthcare institutions towards pharmaceutical wholesalers for delivered medicines and medical devices, to ensure further continued supply for the institutions. (2)

- Ensure criteria and requirements in electronic business standardization, in order to harmonize the electronic business systems of state entities that are involved in the health system

    1. Technical (document size limit that can be inserted into the system, which are part of the standard procedures requirements)

    2. Administrative (defining the validity / acceptability of electronic documents vs. paper documents; acceptance or non-acceptance of electronic mail as a valid way of communication with records on the sending and receiving date; acceptance of electronic signature, etc.). (2)

NHIF should:

- Ensure the acquisition of the funds required from the central budget for introducing new medicines on the Reimbursement List. (3)

- Continue the positive trend of ensuring the predictability of the decision-making process, with clear time frames and a transparent consultation process with industry representatives. (2)

- Ensure greater flexibility regarding models for specific agreements, since every medicine has its own specific details that need to be incorporated into the agreement. (2)

- Enable the electronic submission of introducing new medicines on the Reimbursement List, without submitting paper documentation. (2)

- Ensure timely obligations settlement to suppliers for delivered drugs upon direct payment. (2)

The Ministry of Health should:

- Work continuously, together with the Ministry of Finance and the NHIF, on securing additional funds from the budget of the Republic of Serbia with the aim of including new therapies on the NHIF Reimbursement List. (3)

- With the aim of accelerating patients' access to medicines, allow the submission of documentation for obtaining the highest price of medicines for use in human medicine to competent ministries as of the moment the holder of the licence for the medicine receives a Report from ALIMS following a session of the Commission for the Placement of Human Medicines on the Market. Enabling parallel processes for finalizing the licensing procedure for a medicine and for obtaining its maximum price would considerably reduce the time frame for placing each individual medicine on the market. Therefore, the proposal is to enable two processes to take place in parallel: the final part of the process of obtaining a licence for placing a medicine on the market from ALIMS, and the

process of publishing the maximum price of the medicine in a Decision on the highest prices of medicines for use in human medicine by the Ministry of Health. (2)

- Urgently draft a new Law on Medicines in cooperation with industry representatives. (2)
- Eliminate from the new Law on Medicines the issuing of approvals by ALIMS for the use of promotional materials and other documentation regarding the advertising of prescription medicines and/or promotional materials and other documentation intended for the professional public. (2)
- Amend the Rulebook for acquiring basic knowledge about personal hygiene training program so that employers can conduct training for employees in the medicines production, trade and dispensing, as it is already regulated by other regulations. (2)

The Ministry of Finance should:

- Make a positive decision on a reasoned request by the Ministry of Health for a special-purpose transfer of NHIF funds for new medicines. (3)
- Ensure an equal tax and customs treatment of raw materials and finished medicines. (2)
- Abolish VAT on donations of medicines and medical devices to health care institutions. (2)
- Amend the Law on Fees for the Use of Public Goods in the part of fees for medicines that remain in possession after the expiration date and are collected from citizens, so that compensation basis is determined by the amount of medicines collected from citizens, which needs to be disposed of as pharmaceutical waste and precisely determine the taxpayer. (2)

PRIVATE SECURITY INDUSTRY

CURRENT SITUATION

In 2017 Private Security industry got a legal frame with adoption of Law on private security which was a subject of various discussions and amendments of the Law, eventually adopted in November 2018. New legislation of 2017 standardized and regulated market, which furthermore brought substantial value to society by providing minimum requirements and obligations on security providers. Despite positive developments in the field of legal framework, security industry is still affected by multiple challenges related to fair competition and legal compliance. Licensing process is a source of revenues for the state. However, the security market faces big challenges of noncompliance and not sufficient control measures, resulting in high number of security companies operating in the grey zone putting government in a position to strengthen the focus on facilitating level playing field for both local and foreign service providers. This will have a direct impact on improving tax collections but also providing more stable and safer business environment to the general population.

COVID-19

Due to the COVID-19 situation, some of the challenges are even harder to overcome such as those with manpower. Process of training and obtaining licences for private security jobs lasts from 2 to 3 months, and given the current COVID-19 situation it is being prolonged due to H&S measurements since it is difficult to organize training, Ministry of Interior too has less exam terms. As an effect of increase in unemployment will grow. Having new security guards licensing process responding to market requirements will positively stimulate employment by security sector.

IMPROVEMENTS

The Ministry of Interior has opened channels of communication with the industry which is of the utmost importance. State authorities promote bilateral communication in addition to forming an Expert Council for the improvement of private security, private investigator activities and public-private partnerships in the security sector. Also, new opportunities have emerged for the engagement of persons performing these tasks: In addition to the Employment Contract, the Law recognizes the Temporary Occasional Employment Contract. Amendments to the Law have also made it easier to obtain a license for certain categories of persons with appropriate qualifications, but the deadlines for obtaining a license are slightly shortened, which continues to be an insurmountable challenge in practice. By adopting by-laws this year, the authorities of the security officers are more clearly defined, which is a significant improvement in practice.

REMAINING ISSUES

Certain problems that were evident even before the adoption of the aforementioned Law were confirmed in practice following its application. These become the key topic of the initiative by the members of the Association for Private Security of the Serbian Chamber of Commerce for amending some of the articles of the said Law. So far, the following issues have been identified as the most important:

- Lack of strong obligatory provisions for users of private security services to have Risk Assessment;
- Insufficiently clearly regulated supervision and control of the private security sector, as well as the terminological non-compliance of laws with international standards in the field of private security;
- Partial non-conformity with other legal and secondary legislation related to work and employment relations; administrative procedure for issuing private security licenses; providing security to public gatherings (i.e. sports events); handling firearms, etc.;
- The process of training and obtaining licenses for individuals is too lengthy, three months, on average, too rigid and lacking modern practice. During this time, such persons cannot perform private security operations, while companies providing security services have difficulties in engaging licensed employees;
- Service of transportation of money must be subject of more precise regulations through special bylaws;
- The Ministry of Interior is under no obligation to inform companies, as employers, whether their employees have obtained the license, or whether their licenses have been withdrawn due to failure to meet some of the requirements;
- COVID-19 situation gave the companies more challenges in terms of employing people with licences.

Apart from general application of security Law regulations, there are three major challenges are in front of the private security companies:

- Risk Assessment requirements- According to the Law, risk assessment is the first step that needs to be completed to use services of private security companies for most of the Clients. It represents the basis for concluding a contract and defines the elements especially regarding the scope and type of service. If the Risk Assessment has not been done, according to the Law, the sanction for the same is borne by the Private Security although without Client's consent and engagement it is impossible to provide such an assessment.

- Manpower - procedures for obtaining a license in accordance with the Law takes 3 months on average, together with dramatic lack of workforce in the service sector, private security companies are in an unenviable situation. Positive practice examples from the region (Bosnia and Herzegovina, Croatia, and Slovenia) showed that the restrictions in terms of the required qualifications did not lead to positive trends in the security industry, on the contrary, they made it difficult to work in the private security industry for all of its stakeholders. Recognizing the benefits (increased employment rate, all private security companies doing business in accordance with the Law), the countries of the region decided to do away with the secondary education requirement as one of the criteria for obtaining a license.

- Transport of cash and valuables – transport of cash and other valuables due to its nature is amongst most exposed security operations. However local legislation is very high level, which leaves room for different interpretations and these results in lower security standards in Serbia than corresponding standards in the EU. It is very important to mention that exposures in this industry have a direct impact on stability of economy, impact on the banking sector stability and general safety of the public. Amongst others most common legal challenge is lack of precise regulations and standards towards the electrochemical and electronic protection of means of transport. To the contrary current legislation replaces above standards with more security crew members instead. This effectively makes this process more risky and less cost effective for the ultimate customer. It is in the interest of the economy to make cost of the cash logistics low, so that Serbia can benefit from the higher competitive economy and drive faster growth. Transport of money is an operation that needs to have obligatory insurance with precise types of policies that would be a general requirement for all the security companies. This issue needs strong regulations to protect general public and private business from unexpected and uninsured losses.

FIC RECOMMENDATIONS

- Continued monitoring of the Law on Private Security application , while continuously insisting that its implementing by-laws be harmonized with EU models of legislation to the extent possible, while at the same time taking into account local specificities. By-laws are specially needed for transportation of money services regarding insurance and special treatment in traffic regulation. (1)

- Make a clear obligation for the user of private security services to have Risk Assessment act in accordance with the law under the threat of the same sanctions as for private security companies. (1)

- Support the Ministry of Interior (MoI) in its commitment to inspect all entities that are in the grey area to ensure that they comply with the adopted law to the fullest extent. (2)

- Determine the legal employment status of all persons engaging in private security activities, or employed in this industry in such a way that all forms of employment engagement that are permitted by the Labor Law will be treated equally as employer opportunities unless they are in conflict with the nature of the institute provided for by the Labor Law . In the conditions for attending training and obtaining a license, the professional qualification

requirement should be amended to allow persons with primary school to obtain a security officer license. Security clearance is another precondition for obtaining the license, prior to the commencement of the training programme, to avoid unnecessary administrative problems and unreasonable expenses related to persons who do not pass the security clearance. Prescribe the explicit obligation of the MoI to inform the employer about any changes in the status of the license of individuals, especially bearing in mind the fact that a security officers' IDs areissued upon request of the employer's company and returned to the MoI in case of the employment termination. (1)

- Due to the COVID-19 situation allow candidates who completed the training to work with supervision of licenced officers until they do not obtain licence. (2)

- Implement new regulations concerning service of transport of cash and valuables and increasing protection of people and assets such as Change of traffic law giving CIT vehicles access to pedestrian areas and yellow lines, mandatory electrochemical protection in CIT vehicles especially during payment transfer , introduce body worn cameras and make the number of CIT crew member subject to electrochemical protection specification. (3)

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