The Implementation of the National Anti-Corruption Strategy and the Action Plan (for 2015) – Introduction and General Part

Report on the Implementation of the National Anti-Corruption Strategy in the Republic of Serbia 2013-2018 and the Action Plan for the Implementation of the National Anti-Corruption Strategy

REPUBLIC OF SERBIA
ANTI-CORRUPTION AGENCY

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Belgrade, March 2016

PRELIMINARY NOTES

The National Anti-Corruption Strategy of the Republic of Serbia 2013-2018 (hereinafter referred to as: the Strategy) was adopted by the National Assembly on 1 July 2013.[1] It states that the Republic of Serbia possesses strong awareness and political will to achieve substantial progress in the fight against corruption, while simultaneously respecting the democratic values, the rule of law and the protection of fundamental human rights and freedoms, as well as a notion that these elements were used as a basis for enacting the Strategy, whereas specific measures and activities for its implementation are to be provided in the Action Plan. The general objective of the Strategy is to eliminate corruption to the greatest extent possible, as it is an obstacle to the economic, social and democratic development of the Republic of Serbia. In the implementation of the Strategy, authorities and holders of public powers involved in the prevention of and fight against corruption are obliged to perform their duties in accordance with the following general principles: (1) the principle of the rule of law; (2) the principle of "zero tolerance" for corruption; (3) the principle of accountability; (4) the principle of universality of implementation of measures and cooperation of entities; (5) the principle of efficiency; and (6) the principle of transparency. The Strategy lists the fields that require priority action, which were identified on the basis of qualitative and quantitative analysis of indicators related to trends, scope, forms and other issues in reference to corruption in the Republic of Serbia, obtained from different sources. The chapter of the Strategy entitled "Prevention of Corruption" contains the objectives from the fields that require priority action, as well as other fields in which corruption might be identified.

The Action Plan for the Implementation of the National Anti-Corruption Strategy in the Republic of Serbia 2013-2018 (hereinafter referred to as: the Action Plan) was adopted by the Government's Conclusion of 25 August 2013.[2] The Action Plan envisages specific measures and activities necessary for the achievement of strategic objectives, time frames, responsible entities and resources required for implementation. It also defines the activity performance indicators that will be used to monitor the levels of implementation, as well as efficiency assessment indicators related to set objectives. The Action Plan emphasises that the Anti-Corruption Agency shall exclusively use activity performance indicators in the process of monitoring the implementation of the Strategy, and that documents and other materials referred to

1 "Official Gazette of the RS", No. 57/13.
2 "Official Gazette of the RS", No. 79/13.

in these indicators shall be submitted to the Anti-Corruption Agency as evidence of the activities' implementation. In addition to a large number of activities, this document also contains remarks related to the execution of specific activities, listing eight general remarks at the beginning of the Action Plan. It also states that implementation of the Action Plan does not require additional funds from the budget of the Republic of Serbia.

The Anti-Corruption Agency (hereinafter referred to as: the Agency) was established as an autonomous and independent state authority, pursuant to the Law on the Anti-Corruption Agency[3] which came into force on 1 January 2010. Article 5 of the Law on the Anti-Corruption Agency lists the Agency's competences, including, inter alia, oversight of implementation of the Strategy, the Action Plan and the sector action plans, along with the issuance of opinions related to their implementation.

This is the sixth Report on the implementation of the strategic anti-corruption documents, submitted by the Agency to the National Assembly of the Republic of Serbia pursuant to Article 26(2) of the Law on the Anti-Corruption Agency, and the third related to the new Strategy and Action Plan.

The report on the implementation of the new Strategy and Action Plan for 2014 was submitted to the National Assembly in March 2015 as part of the Annual Report of the Agency for 2014.[4] The Committee on the Judiciary, State Administration and Local Self-Government of the National Assembly debated on these two reports on 14 May 2015, but the National Assembly never discussed them at a plenary session.

The objective of this report is to systematise in one place as many available data as possible concerning the measures and activities undertaken in 2015 in line with the new Strategy and Action Plan, present an assessment on the activities' compliance based on said data, draw attention to the issues that emerged during the reporting period, and provide recommendations for overcoming obstacles.

This report is intended for the responsible entities listed in the Strategy and Action Plan, the expert public, and the citizens in general.

Structure of the Report

The Report is divided into three chapters: Introduction, General Part and Separate Part - Appendix.

The **Introduction** describes the methodology used in the preparation of the Report, improvements of monitoring mechanisms and monitoring-related challenges.

3 "Official Gazette of the RS", No. 97/08, 53/10, 66/11 – decision of the Constitutional Court, 67/13 – decision of the Constitutional Court, 112/13 – authentic interpretation and 8/15 - decision of the Constitutional Court.

4 Anti-Corruption Agency, "Report on the Implementation of the National Anti-Corruption Strategy in the Republic of Serbia 2013-2018 and the Action Plan for its Implementation" March 2015, available at: http://www.acas.rs/wp-content/uploads/2011/03/Izvestaj-o-sprovodjenju-nacionalne-strategije-i-akcionog-plana-20141.pdf.

The chapter titled **General Part** contains a general assessment of the fulfilment of the Strategy for 2015 and a summary of the most significant findings, conclusions and information concerning the implementation of the Strategy for 2015, for each individual area covered by the Strategy.

The chapter titled **Separate Part - Appendix** contains an assessment of the fulfilment of all the measures and activities envisaged by the Action Plan, as well as the Agency's opinion and recommendations, wherever necessary. As in the case of five previous reports, the findings are complemented with data obtained from various available reports, research and analyses of international organisations, local non-governmental organisations and professional associations; for the second time, the Report also contains findings from the alternative reports on the implementation of the Strategy and Action Plan.

LIST OF ABBREVIATIONS

- Action Plan – Action Plan for the Implementation of the National Anti-Corruption Strategy in the Republic of Serbia 2013-2018
- AFCOS – Anti-fraud Coordination Service
- Agency – Anti-Corruption Agency
- AJSRB – Administration for Joint Services of the Republic Bodies
- BCSP, APP and BIRN Alternative Report – Belgrade Centre for Security Policy, Association of Public Prosecutors and Deputy Public Prosecutors of Serbia and the Balkan Investigative Reporting Network Serbia, "Alternative Report on the Implementation of the National Anti-Corruption Strategy", January 2016
- BRA - Serbian Business Registers Agency
- CAQA - Commission for Accreditation and Quality Control
- CHU – Central Harmonisation Unit
- Commissioner – Commissioner for Information of Public Importance and Personal Data Protection
- Council – The Anti-Corruption Council
- CPA – Criminal Police Administration
- CPAS – The Academy of Criminalistic and Police Studies
- CPC – Commission for Protection of Competition
- CSOs – Civil society organisations
- EC – European Commission
- EU – European Union
- FMC – Financial Management and Control
- GIZ – German Agency for International Cooperation
- GRECO – Council of Europe's Group of States against Corruption
- HJC – High Judicial Council
- HRMS – Human Resource Management Service
- IPA – Instrument for Pre-Accession Assistance
- Law on the Agency – Law on the Anti-Corruption Agency
- LFPA – Law on the Financing Political Activities
- LPIM – Law on Public Information and Media
- LPP – Law on Public Procurement
- LPSB – Law on Public Service Broadcasting

- LS and TP Alternative Report – Law Scanner and Three Points, "Alternative Report on the Implementation of the National Anti-Corruption Strategy 2013–2018 and the Action Plan", January 2016
- LSGU – Local Self-Government Unit
- MCTI – Ministry of Construction, Transport and Infrastructure
- MoES - Ministry of Education, Science and Technological Development
- MoI – Ministry of Internal Affairs
- MoF – Ministry of Finance
- MPALSG – Ministry of Public Administration and Local Self-Government
- OLAF – Office Européen de Lutte Antifraude (European Anti-Fraud Office)
- OSCE – Organization for Security and Co-Operation in Europe
- PIFC – Public Internal Financial Control
- POC – Prosecutor's Office for Organised Crime
- PPO – Public Procurement Office
- PPP – Public-Private Partnership
- PPP Commission – Commission for Public-Private Partnerships
- RCPP – Republic Commission for the Protection of Rights in Public Procurement Procedures
- Report on the Implementation of the Strategy 2013 – Anti Corruption Agency, "Report on the Implementation of the National Anti-Corruption Strategy in the Republic of Serbia 2013-2018 and the Action Plan for its Implementation", March 2014
- Report on the Implementation of the Strategy 2014 – Anti Corruption Agency, "Report on the Implementation of the National Anti-Corruption Strategy in the Republic of Serbia 2013-2018 and the Action Plan for its Implementation", March 2015
- RGA – Republic Geodetic Authority
- RPD – Republic Property Directorate of the Republic of Serbia
- RPPO – Republic Public Prosecutor's Office
- SAI – State Audit Institution
- SCCI – Serbian Chamber of Commerce and Industry
- SCC – Supreme Court of Cassation
- SCTM – Standing Conference of Towns and Municipalities
- SPC – State Prosecutorial Council
- The Strategy – National Anti-Corruption Strategy of the Republic of Serbia 2013-2018
- TS – Transparency Serbia

- TS Alternative Report – Transparency Serbia, "Report on the Implementation of the National Anti-Corruption Strategy in the Republic of Serbia 2013-2018 and the Action Plan for its implementation in the areas: 3.1. Political Activities; 3.2. Public Finance; 3.3. Privatisation and Public-Private Partnerships; and IV: Prevention of Corruption", January 2016
- UNDP – The United Nations Development Programme
- UNICEF – The United Nations Children's Emergency Fund
- USAID – The United States Agency for International Development

INTRODUCTION

Methodology of the Report

One of the objectives of the Report is to consolidate, in one place, the majority of the available information concerning the fulfilment of objectives formulated in the Strategy, as well as those relating to the measures and activities envisaged by the Action Plan. The strategic anti-corruption documents include fundamentals for monitoring of the implementation of the Strategy and Action Plan and the assessment of the fulfilment of activities to be performed by the Agency, coordination of the implementation of the Strategy to be performed by the Ministry in charge of judicial affairs, as well as monitoring of results on implementation of the Strategy and Action Plan to be performed by the Anti-Corruption Council (hereinafter referred as to: the Council).

Data collection methodology – Bearing in mind the inadequate quality of reports of responsible entities, the Agency has drawn up a list of specific questions on the implementation of the Action Plan and forwarded it in December 2015 to the addresses of national and provincial responsible entities to which most of the obligations from the Action Plan refer. Questions have been prepared concerning the activities that are due in 2015, those that have been assessed in 2014 as either unfulfilled or unfulfilled in the manner envisaged by the Action Plan, as well as those whose fulfilment the Agency was not able to assess in the last year's report due to insufficient data. It was expected that this methodology – provision of responses to specific questions – would make it easier for the responsible entities to prepare their reports, and for the Agency to produce a better analysis and assess the fulfilment of the Action Plan based on focused responses received.

Methodology for Assessing the Fulfilment of Activities – The job of the Agency was to assess whether an activity has been fulfilled in line with the indicator or not. The above technical assessment is, however, supplemented with the qualitative assessment on the fulfilment of activity, i.e. the Agency's opinion, based on available data, on whether the activity was implemented in a manner and within the timeframe envisaged by the Action Plan. A properly implemented activity implies fulfilment of instructions provided in the measure, in the activity, and in the remark provided together with the activity, while instructions in some cases also relate to the column "Required Resources". Aside from the technical and qualitative assessment, whenever necessary, the Agency has also provided opinions and recommendations with the aim

of improving the implementation of certain activities contained in the Action Plan. Alongside the Agency's recommendations, the responsible entity's recommendation was listed as well, if such recommendation has been provided in the entity's report.

The Report includes the following activities: (1) those due for implementation by the end of 2015 (other than those assessed in the previous year's reports as fulfilled); and (2) those for which the Action Plan provides a "permanent" time frame and which are thus, with certain exceptions, considered due each year. If the responsible entity's report stated that implementation of an activity is under way, without listing the measures taken, or if it was evident that listed measures were not implemented with the aim of fulfilling the activity from the Action Plan, the Agency did not provide data concerning those activities, believing that they would unnecessarily encumber the text while adding no usable value to the Report. Moreover, in certain parts the Action Plan stipulates that a single activity ought to be implemented by two or more responsible entities, each within its own area of expertise. If it was evident that activities were completely separate, i.e. that each responsible entity was to implement them separately, in a manner implying complete absence of participation of one entity in the activity of another, the Agency treated those activities as separate, that is, as two or more activities, depending on the number of responsible entities.

In the course of preparation of this Report, the Agency has implemented the same methodology as during the preparation of Reports for 2013 and 2014. A detailed overview of the methodology is provided in the Separate Part – Appendix. Given the fact that most of the responsible entities in charge of implementation of specific training never submitted to the Agency the data from the indicators provided in the Action Plan for such training (the training plan, implemented by individual year of effect of the Strategy; reports on the implementation of the training plan, training programmes and lists of participants and reports on the training evaluation), and considering that it was evident from the reports of some of the responsible entities that the training was actually being carried out, in such cases – despite the lack of data from the proper indicators – the Agency based its assessment on the contents of the reports, that is, on the quantity and quality of data offered therein.

Enhancing the Monitoring Mechanisms

There are still some challenges in the process of monitoring of the implementation of the Strategy, dating back from the time of drafting the first report on the implementation of the Strategy, although the situation is significantly better in comparison with the initial period. For this reason, the Agency has obtained support for two monitoring process innovations, within the project "Support to the Strengthening of Corruption Prevention Mechanisms and Institutional Development of the Anti-Corruption Agency" financed by the Ministry of Foreign Affairs of the Kingdom of Norway.

The first innovation was the testing of the programme of alternative reporting on the implementation of the Strategy by civil society organisations, used to improve the monitoring process, as: 1) an alternative and supplementary source for the verification of data and conclusions contained in the reports of responsible entities; 2) material for harmonising the quality of monitoring and reporting on all parts of the Strategy and Action Plan; 3) a component that provides insight into how the implementation of the Strategy and Action Plan looks like when viewed from the perspective of the civil society; 4) encouragement to responsible entities to improve the quality of their reports. This significantly reduces the problem of varying quality of the reports of responsible entities, who are still failing to report on certain commitments, or are reporting on actions that are obviously not aimed towards the implementation of obligations from the Action Plan but are, rather, their regular activities which may somehow be associated with a measure which is the subject of the report.

The second competition for civil society organisations that participated in the second round of the pilot programme of alternative reporting on the implementation of the Strategy and Action Plan was organised in May and June of 2015, and three projects have been selected. Within them, implementation of certain areas of the Strategy and Action Plan was monitored, and the alternative reports for the year 2015 were submitted to the Agency in January 2016:

- Transparency Serbia, "Report on the Implementation of the National Anti-Corruption Strategy in the Republic of Serbia 2013-2018 and the Action Plan for its Implementation in the Areas of: 3.1. Political Activities; 3.2. Public Finances; 3.3. Privatisation and Public-Private Partnerships, and IV Prevention of Corruption" (hereinafter: Alternative Report of TS);[5]
- Belgrade Centre for Security Policy, the Association of Public Prosecutors and Deputy Public Prosecutors of Serbia and the Balkan Investigative Reporting Network Serbia, "Alternative Report on the Implementation of the National Anti-Corruption Strategy". The alternative report was prepared on the following areas: Judiciary, Police, Prevention of Corruption, Implementation and Monitoring of the Implementation of the Strategy (hereinafter: Alternative Report of BCSP, APP and BIRN);[6]
- Law Scanner and Three Points, "Alternative Report on the Implementation of the National Anti-Corruption Strategy 2013-2018 and the Action Plan". An alternative report was prepared on the areas of: Political Activities,

5 Transparency Serbia, "Report on the Implementation of the National Anti-Corruption Strategy in the Republic of Serbia 2013-2018 and the Action Plan for its implementation in the areas: 3.1 Political Activities; 3.2 Public Finance; 3.3 Privatisation and Public-Private Partnerships; and IV: Prevention of Corruption", January 2016, available at: www.acas.rs/wp-content/uploads/2016/02/Izve%C5%A1taj-o-sprovodjenju-Strategije-za-borbu-protiv-korupcije-oblasti-Politicke-aktivnosti-Javne-finansije-Privatizacija-i-JPP-i-Prevencija-Transparentnost-2015.pdf .

6 Belgrade Centre for Security Policy, Association of Public Prosecutors and Deputy Public Prosecutors of Serbia and the Balkan Investigative Reporting Network Serbia, "Alternative Report on the Implementation of the National Anti-Corruption Strategy", January 2016, available at: www.acas.rs/wp-content/uploads/2016/02/Drugi-alternativni-izve%C5%A1taj-o-sprovodjenju-antikorupcijske-strategije-BCBP-2015.pdf .

Judiciary, Spatial Planning and Construction, Health, Education and Sports, and Media (hereinafter: Alternative Report of LS and TP).[7]

The Alternative Reports were prepared in line with the uniform methodology developed by the Agency in cooperation with the civil society organisations–authors of alternative reports. The Report on the Implementation of the National Anti-Corruption Strategy for 2014 is the first report that incorporates their conclusions and recommendations. The alternative reports have made a significant contribution to the informative nature of this report and have significantly added to the quality of the analysis by providing an expert overview of the implementation of the majority of measures. Lessons learned in this process, concerning which a meeting with the authors of alternative reports from the first cycle was organised at the beginning of 2015, were used in drafting the guidelines for the second cycle. The following novelties were thus introduced into the second cycle: 1) groups of areas were formed so that three large areas of the Strategy (Political Activities, Judiciary, and Prevention of Corruption) are repeated in two groups each, to test the process of multiple source alternative reporting on the same areas; 2) project proposals submitted in partnership with other citizens' associations were given priority; 3) one of the selection criteria was related to the proposals for the improvement of alternative reports' preparation methodology, to provide the alternative reporting process with a new value in comparison to the previous cycle. The innovation proposals had to involve new subjects and information gathering methods, new parts of the report, or other improvements. The number of the proposals as well as their clarity, originality, innovativeness, feasibility and contribution to the above improvements were taken into account during the assessment. The Agency believes that the alternative reporting process has enhanced the quality of monitoring of the implementation of the anti-corruption strategic documents, and it expects it to improve the capacities of the civil society in performing monitoring of operations and fulfilment of public sector obligations in the fight against corruption.

Another innovation in the process of monitoring the implementation of the Strategy refers to the introduction of application software for the responsible entities electronic reporting on the implementation of the Strategy. It is expected that the use of this software will contribute to solving two challenges. The delay in the responsible entities' submission of reports is likely to be significantly reduced, as the software will cease to function after the expiry of the time frame set for the submission of reports. It is also expected that the problem with the inconsistent quality of the reports will be at least partially solved, since the software will serve to guide the responsible entities during the preparation of their reports and will not allow submission without the provision of activity data concerning all the existing obligations. Aside from this, the software will also allow for easier systematisation and quantitative data processing on

7 Law Scanner and Three Points, "Alternative Report on the Implementation of the National Anti-Corruption Strategy 2013–2018 and the Action Plan", January 2016, available at: http://www.acas.rs/wp-content/uploads/2016/02/Pravni-skener.pdf.

the fulfilled or unfulfilled obligations, as well as statistical-analytical data processing, which will result in simplified conclusion-making on the least or the most fulfilled activities, by areas of activities, public authorities involved, etc.

Monitoring Challenges

By end of February 2016, from a total of 277 responsible entities, excluding those from the territory of Kosovo and Metohija, the Agency received a total of 82 reports. This represents an almost 60% reduction compared to the 2014 reporting period, when 204 responsible entities had submitted their reports. While working on the last year's report, the Agency had sent to all the responsible entities a reminder about their obligation to submit a report, while this year it did not forward the questionnaires on the implementation of the Strategy to the courts and local self-government units, but only to the institutions to which the highest percentage of obligations from the Action Plan pertained. It is quite possible that this was the reason for such a drastic fall in the fulfilment of the reporting obligation, indicating that responsible entities are still not ready to carry out this responsibility on their own initiative. In the current reporting cycle, viewed by the type of public authority, the following have submitted their reports: 36 national and provincial public authorities which have been pre-defined in the Action Plan (compared to 39 in 2014); this category also contains five new bodies that were not initially listed in the Action Plan, but were included at a later date;[8] 16 courts[9] (compared to 64 in 2014, representing a 75% decrease) and 25 local self-government units[10] (compared to 101 in 2014, which also represents a decrease of 75%).

8 Reports, i.e. replies to the questionnaires were submitted to the Agency by the following: the National Assembly, the Protector of Citizens, the Commissioner for Information of Public Importance and Personal Data Protection, the State Audit Institution, the Government, Ministry of Justice, Ministry of Interior Affairs, Ministry of Finance, Ministry of Economy, Ministry of Trade, Tourism and Telecommunications, Ministry of Construction, Transport and Infrastructure, Ministry of Public Administration and Local Self-Government, Ministry of Education, Science and Technological Development, Ministry of Health, Ministry of Culture and Information, Ministry of Youth and Sports, the Tax Administration, the Customs Administration, Republic Property Directorate of the Republic of Serbia, the Public Procurement Office, Republic Commission for the Protection of Rights in Public Procurement Procedures, the Judicial Academy, the Agency for Privatisation, the High Judicial Council, the State Prosecutorial Council, the Supreme Court of Cassation, the Republic Public Prosecutor's Office, the Prosecutor's Office for Organized Crime, the Academy of Criminalistic and Police Studies, the Republic Geodetic Authority, the Statistical Office of the Republic of Serbia, the Provincial Secretariat for Sports, the Central Registry of Compulsory Social Insurance, the Serbian Chamber of Commerce, the Health Council and the Commission for Accreditation and Quality Assurance. The following authorities have not submitted reports: the Ministry of Labour, Employment, Veteran and Social Affairs and the Government of APV, to which the questionnaires were not sent because their obligations under the Action Plan have not yet become due. The replies to the questionnaire were also submitted by responsible entities that were not initially included in the Action Plan, but were added to it subsequently: the Commission for Protection of Competition, the Business Registers Agency, the Administration for Joint Services for the Republic Bodies, the Administrative Court and the Commission for Public-Private Partnership.

9 The reports have been submitted by: the Higher Courts in Kraljevo, Pirot, Sombor, Šabac and Užice; the Basic Courts in Bor, Zrenjanin, Jagodina, Kikinda, Kraljevo, Petrovac na Mlavi, Valjevo, Pirot, Prijepolje, Požega, Subotica and Užice.

10 The reports have been submitted by the cities of Kraljevo, Požarevac and Smederevo, and by the municipalities of Apatin, Babušnica, Bačka Topola, Bela Palanka, Beočin, Bosilegrad, Vrbas, Vršac, Žabalj, Žabari, Kanjiža, Krupanj, Medveđa, Novi Bečej, Opovo, Ražanj, Sokobanja, Stara Pazova, Surdulica, Ćićevac, Čajetina and Šid.

In addition to the previously described trend, the year 2015 was marked by a lack of compliance with deadlines set for the submission of reports, just like in previous reporting cycles. Specifically, out of the total number of submitted reports, 32% (26) were submitted after the expiry of the deadline, while some of the responsible entities, again just like in the two previous reporting cycles, had to be contacted on a number of occasions in order to finally fulfil this obligation. Such behaviour of the entities represents a challenge to the Agency, as it is obliged to submit its own report to the National Assembly within a deadline from which it is not allowed to deviate.

The reports of responsible entities represent the baseline for monitoring and provision of opinions on the implementation of the Strategy and Action Plan. The quality of the responsible entities' reports is continuously improving, but they are still not at a satisfactory level and the quality considerably varies from one report to another. Unfortunately, not even the questionnaires, sent by the Agency in the course of this reporting cycle, have influenced significantly the content of the reports. Some of them are still reduced to simple statements that implementation of specific activities is under way, or that they have been implemented as envisaged in the Action Plan with no overview of implemented measures, or to a list of activities that were obviously not performed with the Strategy and Action Plan implementation in mind, but are referring more to the regular activities of the responsible entities which can to some extent be connected to the reported measure. The reasons for such behaviour of responsible entities can most likely be found in lack of understanding of the monitoring purpose, which is not exhausted by the notion of pointing out that certain public authority had failed to fulfil some of its obligations. In the opinion of the Agency, the main and predominate purpose of monitoring is to improve the quality of implementation of the Strategy and the Action Plan by performing monitoring, by enabling early notice for the purpose of easier resolving of issues in the future, by recording and promoting examples of good practice in the work of the public authorities, and by providing recommendations for more efficient implementation of strategic documents. Unfortunately, the content of a certain number of responsible entities' reports illustrates lack of effort to report in this manner, as they fail to demonstrate the need to share examples of well-performed tasks or challenges with others, but rather tend to present their regular activities as the implementation of the Strategy and the Action Plan. The uneven quality of the responsible entities' reports also creates difficulties in the process of assessing the fulfilment of activities, in terms of maintaining methodological consistency.

Although, according to the Action Plan, the adoption of amendments to the Law on the Anti-Corruption Agency to enable improvements of the Strategy implementation monitoring mechanism were envisaged for March 2014, today – almost two years later – they do not exist even in the form of a draft. The delay was not prevented even by the Conclusion of the National Assembly from June 2014 adopting the Annual Report of the Agency and the Report on the Implementation of the Strategy and the Action Plan 2013 stating that the National Assembly expected

that the Government will submit, as soon as possible, amendments to the Law on the Anti-Corruption Agency so that the legal framework for the Agency's operations could be harmonised with its operational needs noted to date and the monitoring role that it should play in the implementation of the Strategy and the Action Plan. The adoption of the amendments to the Law on the Anti-Corruption Agency was not speeded up even by the adoption of the Action Plan for Chapter 23 (AP 23), which envisaged the fulfilment of this obligation in the fourth quarter of 2015.[11]

Namely, the significant improvement introduced by the Strategy from 2013, in relation to the Strategy from 2005, refers to the monitoring mechanism and the establishment of a basis for some sort of accountability system regarding non-compliance with strategic documents. The Strategy, among other things, provides the following:

- Introduction of misdemeanour liability for responsible entities if they fail to submit a report on the implementation of the Strategy and evidence that the activities listed in the report have actually been implemented, or if they fail to appear at a public meeting to which the Agency may invite them because of its concerns about the fulfilment of the obligations;
- Introduction of the obligation of the responsible entity to organise, within 60 days, a debate on the opinion of the Agency concerning the implementation of certain activities, and the obligation to inform the Agency and the public of the conclusions reached at said debate; the Agency is to submit its opinion to the public authority which had elected, nominated and appointed the Head of the entity to whom the report refers, and may make said opinion available to the public;
- The submission of the report on the Strategy to the National Assembly and its discussion separately from the Agency's Annual Report.

Another important process related to this competence of the Agency is the process of adoption of AP 23, the text of which the Government of the Republic of Serbia has adopted in a Conclusion of 23 October 2015. A certain number of activities from the Action Plan for the Implementation of the Strategy have been transferred in identical or similar form to AP 23; the deadlines for a significant number of activities have been extended, however, in some cases even by more than a year. According to the Agency's estimate, 60 measures (27%) have been fully or partially transferred to this document. Consequently, a number of responsible entities had concerns as to whether to implement the activities over longer or shorter periods of time, while the Agency was unclear as to what position to take in the analysis and assessment of compliance in the event a responsible entity should refer to this fact in its explanation, stating it as the reason why an activity has not been implemented within the set time frame. This uncertainty had lasted more than a year, during the entire process of drafting the AP 23. In its last report on its operations, the Agency recommended that the

11 Activity 2.1.4.2.

relationship between this document and the Action Plan for the Implementation of the Strategy should be clearly defined during the process of adoption of the document itself, and that the mechanisms of supervision over the implementation of the two documents should be harmonised. Unfortunately, this recommendation has not been implemented.

It is expected that this situation will be remedied after the adoption of the revised Action Plan for the Implementation of the Strategy. The process of revision of this document, in which the Agency participated at the invitation of the Ministry of Justice, began in September 2015. The revision was envisaged in the Action Plan as one of the obligations; it was performed in accordance with the assessment of implementation of the Strategy presented in the previous reports of the Agency, with perceived difficulties in the implementation and monitoring of the implementation of the Strategy, and in line with the same or substantially similar obligations under the AP 23 – mostly by deleting the above from the revised document. The adoption of the revised Action Plan will also eliminate the situations where the same or essentially similar obligations exist in different documents that are in force, with different time frames set for their implementation.

The Action Plan also contains a number of issues that may be interpreted in various ways, which may cause some doubts during the implementation as well as during the process of monitoring (e.g. the commencement of certain time frames). At the beginning of February 2014, the Agency submitted these questions, along with the request for interpretation, to the Ministry of Justice and Public Administration. The responses were received by the Agency at the beginning of March 2014.[12] Although some of the issues have indeed been resolved, the received responses, unfortunately, left room for ambiguities regarding the interpretation of certain issues, which undoubtedly impedes both the implementation of the Action Plan and the efforts to oversee its implementation.

12 Responses of the Ministry of Justice and Public Administration to the questions of the Anti-Corruption Agency, March 2014, available at: http://www.acas.rs/pracenje-strategije/.

GENERAL PART

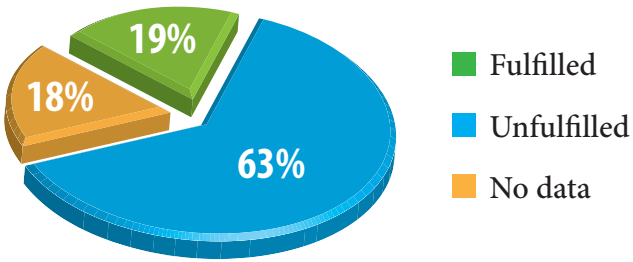
Assessment of the Fulfilment of the Strategy for 2015

The Strategy defines a total of 53 objectives. The Action Plan envisages 224 measures and 640 activities required for their achievement; 422 activities have been examined.

Out of the 422 examined activities, as per the Agency's assessment:

1. A total of 82 activities have been fulfilled in line with the indicator, out of which only 29 have been fulfilled in the manner and within the time frame set forth in the Action Plan (24 of these are activities of permanent type, i.e. activities assessed in each reporting period).
2. A total of 265 activities have not been fulfilled in line with the indicator (this number includes both one-off and permanent type activities), 69 of which have not been fulfilled because they required previous fulfilment of a conditioning activity.
3. The Agency was unable to assess the fulfilment of 75 activities.

Assessment of the Implementation of the Action Plan



As the above pie chart shows, only one fifth of the activities have been fulfilled in line with the indicator (19%), while 63% of the activities were assessed as not having been implemented. Therefore, the extremely negative trend of non-fulfilment of the activities stipulated in the Action Plan remains persistent in this year as well (in the last year 49% of activities have not been fulfilled). Of particular concern remains

the fact that the Agency was unable to assess the fulfilment of close to one fifth of the activities (18%), mainly due to the fact that responsible entities have failed to report on certain activities, or because information was provided in a manner that did not make it possible to draw a reliable conclusion on whether the activity has been implemented or not. The same situation keeps occurring year after year.

Out of the 82 fulfilled activities, only 35% were assessed to have been implemented in a manner and within the time frame envisaged by the Action Plan. Most of these activities are permanent, which means that they are evaluated in each reporting period and that their implementation does not mean that the relevant obligation has been fully fulfilled, without any need for further work. Also, slightly more than a quarter of unfulfilled activities have not been implemented due to the lack of fulfilment of a previous conditional activity, which was most often the case with activities that involved adoption of new or amendments and supplements to the existing laws. The lack of data represents a significant challenge in this reporting cycle as well, both in terms of whether an activity was fulfilled at all and whether it was fulfilled in the manner and within the time frame provided for in the Action Plan.

Although these conclusions undoubtedly help create a general image of the fulfilment of the Strategy, it is important to mention that they are a result of numerical indicators that assign equal values to all the activities, which do not necessarily correspond with the importance of each individual activity and measure related to the implementation of the objectives listed in the Strategy.

In 2015, for the second year in a row, Serbia has recorded a slight decline in the *Transparency International's* Corruption Perceptions Index. On a scale of 0 to 100, with the score of 40 (compared to 41 in 2014), Serbia is now ranked 71st (compared to being 78th in 2014). In contrast to the previously published Index, when 175 countries were reviewed, the number of countries and territories ranked in 2015 was reduced to 168. The Index is created based on the assessments of experts, representatives of institutions and business people, as well as on the basis of research carried out by international organisations. As stated in the report, such a result, together with those from the past 15 years, places Serbia among the countries plagued by widespread corruption. This trend speaks in favour of the view that progress in the Index's ranking achieved in 2013 was not the consequence of real changes in the social environment, but, quite possibly, "a reflection of the perception based on promises and expectations."

On the occasion of the publication of the Corruption Perception Index for 2015, the organisation Transparency Serbia listed several possible levels of problems that have affected the above assessment of the situation in Serbia. It first pointed to the inconsistent implementation of the National Anti-Corruption Strategy and Action Plan and the absence of the accountability mechanisms for non-compliance with the obligations and time frames set forth in these strategic documents. There was also a significant imbalance between the number of announced repressive activities in the

fight against corruption, "hyper-produced" by the media, and the "atrophied" judicial outcomes in such cases. At the same time, preventive activities in this area are either completely absent or tardy. Among others, the following occurrences also played a part in the perception of existence of corruption: lack of transparency in decision making and resistance of the highest state authorities when it comes to releasing certain documents; the fact that certain individual actors and/or projects were given special status with respect to the application of the competition rules, or that application of national legislation was in their case excluded by way of conclusion of international agreements; non-institutional power of political entities and individuals spreading through all the segments of the public sector, etc.[13]

The assessment from the TS Alternative Report from last year – that the Strategy and Action Plan are not the real drivers of change in the fight against corruption – remains relevant in this reporting cycle as well. There are numerous indications for such a conclusion. Namely, some of the included measures were planned by the state authorities even before the Strategy itself was adopted; some are part of broader legislative reforms and capacity building, some are already included in other strategic documents or even represent fulfilment of already existing obligations. The reforms took place in areas where they were part of other plans, and they took place when the dynamics of occurrences in these specific areas, including political will, resources available, impact of international factors, etc. allowed them. On the other hand, in some of the most important segments of the reforms that were based solely on the Strategy, events are folding "at their own pace". The fact that plans for "back door" changes were under way not even a full year of the implementation of the Strategy – through AP 23, whose text encompassed some of the measures from the Action Plan, but often with significantly longer time frames[14] – speaks volumes about the ill treatment of the Strategy and the Action Plan. This assessment has been reaffirmed by the contents of the reports of many responsible entities, in which they continue to present their regular activities, which are clearly not aimed at the fulfilment of obligations from the Action Plan and which would be implemented even if the Action Plan did not exist at all, as acting in compliance with this document. Responsible entities absolutely refuse to state in their reports that they simply had not fulfilled a certain task, even though such failure will not cause any sanctions. For these reasons, monitoring of the implementation of the Strategy has been transformed, from observing and analysis of the extent and manner of implementation of measures, into control of whether said measures are being implemented at all. Therefore, the Agency did not attempt to assess measures that have not been implemented in the manner envisaged by the Action Plan in two consecutive reporting cycles; it instead considers them not implemented in line with the objective in connection to which they have been included in the document.

13 Transparency Serbia, "Corruption Perception Index (CPI) 2015: No progress in the fight against corruption", available at: http://transparentnost.org.rs/index.php/sr/59-srpski/naslovna/8180-cpi-2015-bez-napretka-u-borbi-protiv-korupcije.

14 TS Alternative Report, January 2016, p. 12.

This situation could be mitigated to a certain extent by a clear obligation of the responsible entities, where possible (for example, when drafting regulations or other enactments), to specify which obligation from the Action Plan they have implemented in a goal-oriented way and explain how this was done, i.e. to provide an explanation as to why a certain element envisaged by the Action Plan was not included in the fulfilled obligation. It would also be useful to have the Action Plan explain in detail the connection between the measure/activity and the problem it aims to solve; this would serve to overcome the lack of understanding of the measure on the part of the responsible entity, which has been noted in some cases. The Agency believes that such novelties would significantly facilitate both the implementation and monitoring of the Strategy and the Action Plan.

One of the challenges in implementing the Strategy has been observed regarding the so-called "capacity measures". The experience in overseeing the implementation of these measures shows that there is a need to figure out how to formulate them differently. Namely, all the entities with this sort of obligation naturally tend to increase their capacities in order to be able to carry out their duties and, to this end, they prepare analyses, amend the systematisation of the job positions, employ and train new staff, and procure space and equipment necessary for work. The fact that such obligations exist in the Action Plan, or as a matter of fact in any document of this type, generally does not change their relation toward the above needs, nor is there an impression that it much affects the intensity of their dedication to their fulfilment. However, indicators for these activities, as they are now set, leave no room for an assessment of whether the capacity has actually been increased in each individual case, and to what extent. Also, the "capacity measures" that imply strengthening the capacities of several institutions within the same field obviously require greater coordination on the part of the institution in charge for this field, but also a very clear formulation of its obligation to provide it.

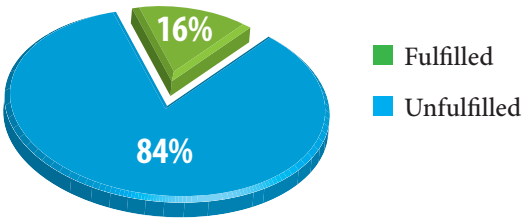
On the other hand, responsible entities from almost all the areas have listed prohibition and restrictions of employment in the public sector as a challenge when fulfilling obligation of strengthening their capacities. It is possible that, due to the austerity policy, an atmosphere laden with announcements of possible layoffs, and the rationalisation of costs in the public sector in general, the public authorities tend to apply self-censorship, i.e. it is possible that they are forsaking certain improvements or good ideas on their own, believing that during this period they should only cover their regular costs and perform their regular duties. It should however be borne in mind that, by doing things this way, not only will there be no achievement of capacity increase needed to perform the already formulated tasks; no significant improvement or modernisation will be achieved either – unless all the funds required for these purposes are expected to come from donations.

The measures that prescribe training present a significant challenge for assessing the compliance with the Action Plan, given the ambitious indicators that so far have not been provided by any of the responsible entities in their full scope. It is possible

that this situation, as well as some others like it, does, not indicate a problem in the reporting, but in the implementation, which could be overcome with intense coordination and adoption of an appropriate instruction for the implementation of these documents and by providing appropriate training to the representatives of responsible entities working on the implementation of commitments from the Action plan.

3.1. POLITICAL ACTIVITIES

Assessment of the Implementation of the Action Plan



Of the 51 assessed activities, only 8 (16%) have been implemented in line with the indicator, while 43 (84%) were not – 19 because the previous conditioning activity was never fulfilled. Out of 8 implemented activities, 3 have been implemented properly but not within the set time frame, 2 have been implemented properly within the time frame, while 2 have been implemented neither properly nor within the time frame provided in the Action Plan.

Objective 3.1.1 – Eliminate deficiencies in the legal framework for the control of financing political activities and political entities

Conclusions:

Despite the already described problems, the legal framework for the implementation of control of the financing of political activities remained unchanged compared to that from 2014, while the AP 23 extended the deadline for its amendment for two years.

The problems outlined in the Strategy, based on which this objective has been formulated, have yet to be resolved. The situation regarding the legal framework relevant to the implementation of control of the financing of political activities remains unchanged compared to that from 2014. As at the end of 2015, there have been no:

- Amendments and supplements to the Law on Financing Political Activities (LFPA) which would clearly identify and delineate the responsibilities of the Agency, the State Audit Institution (SAI) and other bodies in the process of control of political activities and subjects, and accurately establish the obligations and mechanisms for transparent financing of political entities;

- Amendments and supplements to the Law on State Audit Institution, so that the audit programme includes mandatory audit of the parliamentary political parties at the national level;
- Amendments and supplements to the Law on Tax Procedure and Tax Administration, which would introduce the obligation of the Director of the Tax Administration to include in the annual or interim tax control plan the providers of funds and other services to political entities, in accordance with the Agency's report on the financing of political activities and entities.

For reasons of expediency, all the above solutions were entered in the Draft Law on Amendments and Supplements to the LFPA, which has presumably already spent one year pending for adoption in the Government procedure; information about the reasons for this are, however, not available.

On the other hand, the Law on Tax Procedure and Tax Administration was subjected to amending and supplementing for a total of four times as of the beginning of implementation of the Action Plan, so the opportunity to implement the necessary changes through the law that had initially been designated as a target of the measure was missed on several occasions. It seems that the aggregation and transfer of amendments and supplements to this Law to the Draft Law on Amendments and Supplements to the LFPA was a case of bad judgment, as the significance of this Law, viewed from the perspective of the Government's legislative agenda, has now dropped to a negligible level.

In the absence of amendments and supplements to the LFPA envisaged in the Action Plan, the recommendations provided in the Joint Opinion of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the Venice Commission of the Council of Europe from October 2014[15] remain relevant in their entirety. In its Alternative Report on the implementation of the Strategy, TS was of the opinion that the solutions from the Draft Law on Amendments and Supplements to the LFPA, which has not yet reached the Parliament, should be considered in the light of amendments to the Law that were adopted at the initiative of the ruling parliamentary group in November 2014. Namely, considering the fact that the aforementioned changes have significantly undermined some of the important concepts on which the LFPA is based – such as the division between the financing of regular work of political parties and financing the election campaigns – the new legal reality must be strictly implemented throughout the entire Law through additional work on the Draft.[16] Also, by making rapid amendments and supplements to the LFPA, adopted by urgent procedure in November 2014, the state has left the public in doubt as to why the amendments and supplements to the LFPA envisaged in the Action Plan have not yet been adopted, and

15 Venice Commission, Joint Opinion on Draft Amendments to the Law on the Financing of Political Activities of Serbia, Opinion No. 782/2014, 15 October 2014; available at: http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD%282014%29034-e.

16 TS Alternative Report, January 2016, p. 21.

why the deadline for all the above amendments and changes to the AP 23 was extended by as much as two years.[17]

Despite the absence of amendments and supplements to the legal framework, in 2015 SAI conducted an audit of financial statements (balance sheet and income statement) and the regularity of operations (audit of activities, financial transactions and information included in the financial statements) of three political entities for the year 2014. Irregularities that were noted during the audit involve the lack of property records, failure to perform inventory, unreconciled receivables and payables, inadequate internal control system, and presentation of incorrect or unrealistic data in the financial statements.

The authorities in charge of control of financing have been working to strengthen their capacities required for these activities, but, as with other "capacity" measures, the Action Plan has failed to formulate these measures in a way that would make it possible to assess whether the capacities were indeed strengthened and whether this was done to a sufficient extent. Measures to strengthen the capacities of these public authorities have been included in the AP 23.[18]

Trainings of political entities in line with the applicable provisions of the LFPA were held in 23 cities in 2015, while new training sessions are awaiting amendments to the LFPA.

Recommendation:

Provide conditions, as soon as possible, for the adoption of the amendments and supplements to the LFPA to eliminate the deficiencies in the legal framework regulating this area.

Objective 3.1.2 - Eliminate deficiencies in the legal framework and build capacities in the field of prevention of conflict of interest, and control of property and incomes of public officials

Conclusions:

Despite the described problems, the legal framework on the basis of which the Agency operates has remained unchanged compared to 2013, the year when the Strategy and Action Plan have been adopted. The AP 23 extended the deadline for the amendments thereto by almost a year; however, although this deadline had also expired, the new Law on the Agency does not yet exist even in the form of a draft.

17 Activities 2.2.2.2 and 2.2.2.3.
18 Activities 2.2.1.4 and 2.2.2.6.

The problems outlined in the Strategy, based on which a part of this objective has been formulated, have yet to be resolved. The legal framework that serves as grounds for the Agency's operations has remained unchanged in comparison with 2013, when the Strategy and Action Plan were adopted.

By the end of 2015 no amendments were made to the Law on the Agency. In accordance with the Action Plan, said amendments were supposed to provide the following, inter alia:

- To delineate and clearly regulate the terms 'cumulation of functions' (prevention of performing multiple functions with mutually conflicting interests) and 'conflict of interest' (elimination of private interests in the exercise of public powers);
- To expand the circle of persons associated to public official, defining precisely which persons are to be included in the enlarged circle of related parties concerning whom an official is obliged to submit an assets and income report, and to prescribe the obligation and responsibility for such persons to personally submit all necessary information and documents to the Agency;
- To expand the obligation to submit documents and information to include banks, financial institutions and companies;
- To provide for the obligation to submit an extraordinary report in certain circumstances;
- To authorise the Agency to carry out emergency asset verifications, outside the regular annual verification plan;
- To authorise the Agency to act upon anonymous complaints.

On 29 January 2015 the Ministry of Justice established the working group and tasked it with the preparation of the draft version of the new Law on the Agency. The group which, among others, includes several representatives of the Agency, began to work on 23 February 2015 and is still preparing the draft, although the deadlines set in the Action Plan and the AP 23 have now expired.[19] As work on the final version of the draft has been intensified, the Ministry of Justice expects the drafting process to be completed by the end of the first quarter of 2016. In the Government Work Plan for 2016, the adoption of the Draft Law on the Agency is planned for June 2016. The significant delay in amending the Law on the Agency to reinforce its key role in the fight against corruption has been pointed out in the European Commission's 2015 Serbia Progress Report.

On 30 December 2015, the Agency signed a memorandum of cooperation with the Ministry of Interior Affairs (MOI), defining the method of cooperation and the obligation to identify the contact person in charge of data exchange.

19 Activity 2.2.1.1.

Compared with 2014, the number of *ex officio*-initiated verifications concerning the timeliness of reporting on the assets and income of officials decreased by 10.5% in 2015, while the number of *ex officio*-initiated verifications concerning the accuracy and completeness of data provided in the reports decreased by 11.5%. Reports that were subjected to verification based on the annual verification plan for 2015, as well as reports transferred from 2014, were incomplete and required additional formal and substantive checks. At the same time, the number of *ex officio*-initiated proceedings in the area of conflict of interest decreased by 7.59%. In 2015, this organisational unit was assigned a new competence relating to the control of transfer of management rights; the number of reports increased, resulting in a larger number of proceedings initiated on these grounds.

Recommendations:

Provide, as soon as possible, conditions for the adoption of a new Law on the Agency to eliminate the deficiencies in the legal framework concerning conflict of interests and the control of assets and income of officials. Also, ensure that this Law also includes all other components envisaged in the Action Plan for other areas of the Strategy (Prevention of Corruption and Implementation and Monitoring of the Implementation of the Strategy).

Objective 3.1.3 – Adopt and implement an effective legal framework which shall regulate lobbying and participation of the public in the decision-making procedure

Conclusions:

Public participation in the development of regulations has not been improved.

The Law on Lobbying has not been enacted.

The problems outlined in the Strategy, based on which a part of this objective has been formulated, have yet to be resolved. According to the EC 2015 Serbia Progress Report, public debates should include general public and be organised within more realistic time frames so that all interested parties could provide their qualitative contributions. This is particularly necessary in the cases of draft laws that carry a significant economic and social impact. The EC notes that the use of urgent procedure in the legislative process is still very common, and that it is applied even in the cases of most important laws.[20]

20 European Commission, "Serbia Progress Report 2015", 10 November 2015, pp. 6–7, 31, available at: ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_serbia.pdf .

According to the assessment from the TS Alternative Report, the Strategy failed to pay attention to the issue of adoption of a specific type of regulation - international agreements. Due to the constitutional hierarchy of the legal acts, they can effectively repeal the implementation of already adopted anti-corruptive statutory provisions, while, on the other hand, they are developed in a manner which prevents citizen participation and transparency of the process, thus creating a risk of corruption.[21]

Within the Fourth Evaluation Round, whose topic was "Corruption Prevention in Respect of Members of the Parliament, Judges and Prosecutors", and which was conducted under the auspices of the Council of Europe's Group of States against Corruption (GRECO), the report on Serbia was adopted at this organisation's 68th plenary session, held from 15 to 19 June 2015. As regards the degree of transparency of the legislative process, the GRECO Evaluation Team (GET) was of the opinion that there is still much room for improvement. It was also noted that, although the National Assembly had adopted a Resolution on the Legislative Policy back in 2013, no concrete action was ever taken towards meeting the objectives proclaimed in it.

Several issues drew the attention of GET. The first mentioned issue was the significant number of laws that are adopted by the Parliament under urgent procedure. In this regard GET recommended a revision of the use of urgent procedure to specify that it is to be implemented as an exception rather than a rule.

It was concluded that, contrary to the Rules of Procedure, amendments to the draft laws are not published on the Internet. The attention of the members of GET was also drawn to the fact that the opinions of the Government and the parliamentary committees concerning the amendments are not always published, that the agendas of the committees are not always published prior to their meetings, and that written minutes of the meetings of the committees contain scant information.

The report also includes an overview of deficiencies in the rules that apply to public debates and public hearings, and their enforcement. The solutions according to which public debates are mandatory only when the Government is the proponent of draft laws, where similar obligation was never established in relation to draft laws submitted by MPs or groups of citizens, have been characterised as problematic. It was therefore proposed that the relevant rules be extended to include the latter draft legislation, or that measures be taken to increase the transparency of these legislative initiatives, such as mandatory public hearings in specific cases, which are currently organised only by parliamentary committees at their own discretion. It was also pointed out in the evaluation process that the criteria for mandatory public debates, established by the Rules of Procedure and formulated as "substantial changes" or "issues of particular interest to the public" are not clear, and that the rules on public debates are often ignored in practice, even when obviously significant legislative changes are at hand (for example: such a debate never takes place or information about its outcome is never published). GRECO has formulated recommendations

21 TS Alternative Report, January 2016, p. 14.

for further improving the transparency of the legislative process: 1) by ensuring that draft laws, amendments to draft laws, as well as agendas and outcomes of committee meetings are published on time, that appropriate time frames for submitting amendments are effective, and that urgent procedure is applied as an exception, not a rule; and 2) by further developing the rules on public debates and public hearings and ensuring their application in practice.[22]

According to the data obtained from the Open Parliament[23] - a joint initiative of several civil society organisations, on average every eighth law adopted by the urgent procedure later suffers amendments as a result of material errors or illogical solutions. Regardless of the fact that the adoption of any law by way of the urgent procedure should be an exception, from the moment of constitution of the current composition in April 2014 until the end of 2015, the National Assembly adopted most of the laws in this way. Specifically, out of the 342 laws enacted by the National Assembly during this period, all of 185 were passed under the urgent procedure.

The Law on Lobbying is not even in the drafting phase, nor are there any publicly available arguments that explain this situation. In its Alternative Report, TS provides that no progress whatsoever has been noted in practice in terms of the public nature of information on the attempts to influence the decision-making process in the legislative or executive branches of power.[24] The GET report points to the need to ensure that an appropriate framework is in place to regulate the contacts of MPs with lobbyists and other third parties that are trying to influence the parliamentary process. The competent authorities have indicated to the members of GET that MPs are free to maintain contact with whomever they wish as part of their political activity, including lobbyists, interest groups, non-governmental organisations, trade unions, employers' associations and other organisations. Commenting on the working version of the Draft Law on Lobbying, GET took the view that its scope is rather limited, as it applies only to professional lobbying, explicitly excluding the direct involvement of citizens, interested legal entities, the general public and professional communities from the regulatory processes and public decision-making. GET was also informed that, in Serbia, the prevailing influence on MPs is exercised informally by third parties who are not professional lobbyists. At the same time, the MPs are not under any obligation to disclose information about their meetings and consultations with third parties.[25]

The campaign to inform the public about the mechanisms of participation in the development and adoption of regulations at all levels was never organised, because, according to the opinion of the Ministry of Public Administration and

22 GRECO, Fourth evaluation round, Corruption prevention in respect of members of parliament, judges and prosecutors Evaluation report – Serbia, June 2015, pp. 13–15, available at: http://www.acas.rs/ greco-група-држава-за-борбу-против-корупци/.

23 See: Open Parliament, September 2015, available at: http://www.otvoreniparlament.rs/ statistika-i-zanimljivosti/ zakoni-po-hitnom-postupku-aktuelni-saziv/.

24 TS Alternative Report, January 2016, p. 17.

25 GRECO, Fourth evaluation round, Corruption prevention in respect of members of parliament, judges and prosecutors, Evaluation report – Serbia, June 2015, p. 25.

Local Self-Government, the preconditions for a professional and high-quality campaign have not been provided, i.e. there was a risk that the campaign would not achieve the expected results by the time of adoption of an effective legal framework regulating lobbying and public participation in decision-making at all levels.

Objective 3.1.4 - Determine clear criteria for nomination, selection and dismissal, as well as for evaluation of results of work of directors of public enterprises

Conclusions:

The criteria for the nomination, appointment, dismissal, and performance evaluation of directors of public enterprises, provided in the new Law on Public Enterprises, are not entirely satisfactory.

The problems outlined in the Strategy, based on which a part of this objective was formulated, have yet to be resolved.

The National Assembly has enacted the new Law on Public Enterprises on 24 February 2016.[26]

At the same time, AP 23 stipulates that, by the fourth quarter of 2015 and with the participation of civil society organisations, the Ministry of Economy is to prescribe "criteria for objective and transparent appointment of directors and members of executive and supervisory boards of public enterprises."[27] In this way, a document that was adopted at a later date contains an obligation which is softened to the point that it does not even specify in what form the responsible entity ought to develop said criteria.

Although the new Law on Public Enterprises introduced certain novelties that are useful from the standpoint of prevention of corruption, the Agency pointed out the following deficiencies:

- The criteria for the appointment of directors of public enterprises will be prescribed by the Government. Professional qualifications, expertise and skills of candidates will be evaluated in the process of appointment on the basis of provided criteria. In the opinion of the Agency, the Law itself should have regulated at least the elements for prescribing said criteria.
- The Law does not prescribe the criteria by which to determine the reasons for the dismissal of a director: whether s/he had acted contrary to due diligence; whether s/he had performed his/her duties unprofessionally and negligently i.e. acted unconsciously; whether there has been a

26 "Official Gazette of the RS", No. 15/16.
27 Activity 2.2.9.3.

significant deviation from achieving the basic operational objective of a public company. These *standards* can, therefore, be differently interpreted and applied in practice, thus creating room for potential abuse, and making it difficult to determine the directors' liability.

- The Law also provides for the so-called optional dismissal, that is, the cases in which a director of a public enterprise *may be dismissed*. The competent public authorities are thereby given broad discretion in deciding whether in a specific case a director will be dismissed or not. The Agency has therefore proposed to delete this provision from the Law, and to clearly state in which cases the dismissal of a director of a public enterprise will be mandatory.
- One of the requirements for a person to become director of a public enterprise is that s/he is not a member of any political party's body or that his/her function in a body of a political party be suspended for the duration. However, as the principle of depoliticisation happens to be one of the principles proclaimed in this area, the Agency believes that there are no valid reasons to allow for a possibility to have as director of a public enterprise a person who is a member of a body of a political party, even though this function is suspended, and that such an option should be omitted from the text of the law.

At the end of December 2015, the Draft Law on Public Enterprises was published on the website of the Ministry of Economy, which organised several promotional events and invited the participants to submit comments. This, however, cannot be considered an adequate substitute for a public debate. The TS Alternative Report indicates that the Ministry of Economy agreed on the contents of the Draft Law on Public Enterprises with the representatives of international institutions, without any intent to involve local stakeholders in the process and organise a public debate. In practice, once the consent from international actors has been obtained, opportunity for local entities to put across modifications of proposed regulation is substantially diminished.

Objective 3.1.5 – Adopt provincial and local anti-corruption action plans whose implementation shall be supervised by standing working bodies of provincial and/or local assemblies

Conclusions:

The models of regional and local anti-corruption action plans have not been adopted because the AP23 extended the time frame set for the implementation of this objective.

In 2014, the Agency conducted a survey and analysis of the causes for and forms of corruption at the local level[28] and, in the period January-April 2015, research and analysis of the causes and forms of corruption at the provincial level, to use as a basis for the development of models of local and provincial anti-corruption plans. In February, meetings were held with representatives of the Assembly of the Autonomous Province of Vojvodina (APV), representatives of provincial secretariats, and the Provincial Protector of Citizens. There was some delay in the development of the analysis due to operational difficulties related to the scheduling of necessary meetings and late data collection.

The most important recommendations resulting from the analysis, relating to the potential content of the future model of the provincial anti-corruption plan, are the following:

- The model of the provincial anti-corruption plan should take into account the specific competences of the Province, especially those assigned to it by the Law on Establishing the Competences of the APV which transferred the rights, obligations and the opportunity to regulate a wide range of areas relevant to the lives of citizens in its territory to the Province itself. Within these areas decisions are taken concerning a significant number of rights and obligations of the citizens and businesses, a large number of approvals, licenses and certificates are issued, and public resources are distributed, which are all situations that are particularly prone to corruption.
- One of the peculiarities of the Province, which affects the functioning of the community at this level, is the co-existence of a large number of different national minorities and ethnic communities that enjoy certain rights based on the principle of positive discrimination. In the anti-corruption plan it is necessary to pay particular attention to this area, so that the implementation of affirmative measures in relation to national minorities and ethnic communities can be made impervious to corruption, especially in terms of ensuring equal representation of minorities in the provincial authorities and regarding functioning and financing of national councils of the national minorities.
- In their anti-corruption plan, the regional authorities need to overcome certain legal ambiguities in certain areas of their operation, which may be particularly at risk from corruption. One of such areas involves, for example, employment and regulation of labour relations, management of public property, or regulation of conflicts of interest of public officials at the provincial level.[29]

28 For additional information see: Anti-Corruption Agency, Report on the Implementation of the Strategy for 2014, March 2015, pp. 43-44.

29 See: Anti-Corruption Agency, "Analysis of the Causes and Forms of Corruption at the Provincial Level", available at: http://www.acas.rs/wp-content/uploads/2012/06/Analiza-uzroka-i-pojavnih-oblika-korupcije-na-pokrajinskom-ćirilica.pdf.

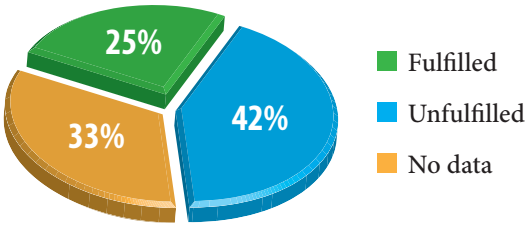
Since AP 23 pushed the creation of the model and the adoption of local and provincial anti-corruption plans to the fourth quarter of 2016,[30] that is, to the second quarter of 2017,[31] the Agency suspended its work on their development because it believes that imposing virtually identical obligations based on both documents, within a relatively short period of time and with potentially different outcomes, would undoubtedly lead to misunderstandings and irrational use of resources. The Agency has informed the responsible entities listed in the Action Plan about the delay in the creation of the model.

Due to the extension of deadlines set for development of the model and the adoption of local and provincial anti-corruption plans, the relevant training and campaign have been postponed as well.

30 Activity 2.2.10.36.
31 Activity 2.2.10.37.

3.2. PUBLIC FINANCES

Assessment of the Implementation of the Action Plan



Of the estimated 76 activities, 19 (25%) were implemented in line with the indicator, 32 (42%) were not implemented, while in the case of 25 activities (33%) it was not possible to assess the implementation due to lack of data. Of the 19 implemented activities, 9 were implemented properly and within the time frame provided in the Action Plan, while others failed to meet some of the requirements envisaged by the Action Plan, and there were no data available for assessment. All of 32 activities were not implemented, 7 of them because a previous conditioning activity has not been fulfilled.

3.2.1. Public Income

Objective 3.2.1.1 – Develop fully the e-Tax system and regularly update the data

Conclusions:

It is impossible to conclude with certainty whether the e-Tax system has been fully developed. The data within the system are regularly updated.

As regards the three measures encompassed by this objective, involving full development and effective functioning of the e-Tax system, it is impossible to say with certainty that they have been implemented in full. The reports of responsible entities show that they have been mostly implemented, except for the hiring of new employees due to restrictions and prohibition of further employment of staff in the public sector. The fact that the time frame set for strengthening the capacity of the Tax Administration (TA) to perform these activities has been pushed forward during the drafting of the AP 23, first to the fourth quarter of 2015, and then in the final version for three additional years, may be pointing to the fact that the priorities in this area have changed in the meantime, or that it was estimated that TA currently possesses sufficient capacities to

efficiently implement the e-Tax system. As stated in the TS Alternative Report, the e-Tax portal is already functioning, but its potential positive effects are not visible, at least not publicly. There is an impression that the TA has increased the efficiency of its work. During the current year there have been some decisions that placed a question mark next to the issue of equal treatment of similar types of taxpayers in similar situations.[32]

Concerning all three measures from this objective, the TS Alternative Report assesses that they are connected to the fight against corruption only indirectly, having more to do with the achievement of other goals such as combating tax evasion. Namely, the primary objective of this system is not to achieve greater transparency of the operations of TA – for example, the disclosure of information about where control is being carried out, or how much was collected in taxes for specific categories; the system can primarily increase the efficiency of the TA, reduce the costs of citizens, and so on. Therefore, it is not realistic to expect that the anti-corruption strategy will be the driver of changes in this field, and it would be useful to either reformulate them so that their connection with the fight against corruption becomes clear, or exclude them altogether from the Action Plan.

Recommendation:

Reformulate the measures so as to make clearer and more direct their connection with the fight against corruption, to enable the Anti-corruption Strategy to be the driver of change in this area.

Objective 3.2.1.2 – Establish the legal and institutional framework for the implementation of the unique tax identification number system for physical and legal entities

Conclusions:

The legal and institutional framework for the implementation of the unique tax identification number system for physical and legal entities has not been established, nor is any information available as to whether discussions on the introduction of such a system have begun.

The problems specified in the Strategy concerning this area have not been solved. The objective has been formulated as such because there is no system that would connect records of persons with records of their assets and income. It is therefore difficult to track changes and control the reported data, as this is the period between the existing, schedular system and the introduction of the new system of synthetic personal income taxation. It is stated in the Strategy that such a situation also negatively affects the efficient control

32 TS Alternative Report, January 2016, p. 62.

of reports on the assets and income and the control of financing of political parties. However, the Agency has not received any information on whether certain activities are being undertaken to achieve this objective. As with the previous objective, the AP 23 has extended the deadline for the establishment of the *unique tax identification number* (UTIN) system, first to the fourth quarter of 2016, and then, in the final version, to the fourth quarter of 2018. The Agency has concluded that there is probably no agreement regarding the introduction of such a system, in light of the postponement provided for in AP 23 and given the fact that there is no information available on whether an analysis has been conducted and whether the issue is being discussed at all. As in the case of the previous objective, in its Alternative Report TS has repeated the recommendation, stating that the presence of such measures in the Action Plan ought to be reconsidered as they are only indirectly related to the fight against corruption and significantly more to the achievement of other objectives, which is why it is not realistic to expect the Anti-Corruption Strategy to be the driver of change in this area.

Recommendations:

Initiate a public debate on the introduction of the UTIN system and make details of any such debate available to the public.

Reformulate the measures so as to connect them more clearly and directly to the fight against corruption, to allow the Anti-Corruption Strategy to be driver of change in this area.

Objective 3.2.1.3 – Identify and eliminate all the deficiencies in the legal framework of the customs system conducive to corruption.

Conclusions:

A law which would comprehensively regulate the customs service has yet to be enacted. The customs information system is continuously improving.

On 20 March 2015, the National Assembly adopted the amendments and supplements to the Customs Law,[33] but a law which would comprehensively regulate the customs service has not yet been enacted. The Government Work Plan for 2016 plans to have the Draft Law on the Customs Service approved in June 2016, while AP 23 envisages activities related to a comprehensive corruption risk analysis of the legal framework of the customs system[34] by the second quarter of 2016 and changes to the legal framework in line with said analysis[35] by the second quarter of 2017.

33 "Official Gazette of the RS", No. 29/15.
34 Activity 2.2.10.30.
35 Activity 2.2.10.31.

The developed text of the Draft Law on the Customs Service is mentioned in the Strategy, as well as in both previous Customs Administration reports on the implementation of the Strategy. In the last year's report it had recommended the coordination of activities of all the stakeholders in the legislative process in order to accelerate the process of enactment of this Law, the draft of which, according to its assessment, provides for strong anti-corruption mechanisms and conditions for the fulfilment of certain obligations from the Action Plan. As work on this Law has been going on for quite a while now, and taking into account the recommendation of the Customs Administration and the fact that AP 23 had extended the deadlines for its development, the question remains whether an agreement has been reached regarding its concept.

As stated in the TS Alternative Report, during the year there was almost no news concerning corruption or the fight against corruption[36] in connection with the work of the customs services. This measure, too, only indirectly relates to the fight against corruption, the Strategy speaks more about the suppression of irregularities in the operations of the customs in general rather than focusing on the problem of corruption and its specific forms, and the Action Plan is vague in terms of concrete results the adoption of this Law should bring to the field. Given the fact that the set objectives, as with the tax services, are focused more on their reform and the improvement of work in general rather than on the fight against corruption as a specific segment, it is not realistic to expect that the fight against corruption will be the main driver of change in this area.

The prohibition of hiring new staff represents a significant limitation for the customs services as well. An increased outflow of trained and experienced IT personnel is noted, which has also been indicated by the European Commission in its 2015 Serbia Progress Report.

The Customs Administration exchanges information with the customs services of the neighbouring countries which are not members of the European Union through the SEED system, with representatives of foreign customs administrations and organisations through the CEN platform developed by the World Customs Organisation, and there is an ongoing EU Newly Computerised Transit System (NCTS) project which became fully operational on 25 January 2015. It is expected that the Republic of Serbia will begin with full implementation of the Common Transit Convention on 1 February 2016.

Objective 3.2.1.4 – Introduce efficient control of the application of customs regulations

The Customs Administration continually provides information to citizens about the ways to report occurrences of corruption, while in terms of strengthening the

36 TS Alternative Report, January 2016, p. 62.

capacity of the Customs Administration's Department for Internal Control, prohibition of further employment of staff, in force until the end of 2016, represents a challenge.

Recommendations:

Provide conditions so that a law which will comprehensively regulate the customs service can be enacted as soon as possible.

Reformulate the measures so as to connect them more clearly and directly to the fight against corruption, to allow the Anti-Corruption Strategy to be the driver of change in this area.

3.2.2. Public Expenditures

Objective 3.2.2.1 – Enhance participation of the public in monitoring budget expenditures

Conclusions:

Public participation in monitoring the budget has improved to a certain extent, but there is still room for improvement.

Complete records of the assets in public ownership have yet to be created, and in accordance with the amended legal framework the Republic Property Directorate (RPD) will submit its first annual report on real property in public ownership to the Government no sooner than on 31 May 2017, as at 31 December 2016.

According to an international survey on budget openness (Open Budget Index - OBI),[37] in 2015 Serbia ranked 42nd among 102 countries, having been awarded 47 out of possible 100 points. The study refers to the budget for 2014, and the ranking was based on data that was available as at 31 December 2013. The result is slightly below the regional average (53 points), and it is worse than the result Serbia had in 2010 (54 points), but it is also better than its ranking in 2008 (46 points) and 2012 (39 points), given the disclosure of much information in the Budget Law itself,

37 International survey of budget openness examines whether the assessed countries have eight key budget documents, whether they include all the required information, and to what extent they are made available to the public. The second part of the survey refers to the quality of the legal framework and the effectiveness of control practices of the Parliament the supreme audit institution over the executive in connection with the budget preparation and spending. Finally, the survey results also show the extent to which citizens can influence decision-making concerning the budget. This is not a study on the perception, or an opinion poll. It is research which provides a picture of budget transparency and the existence of public accountability in the budget process, based on predetermined criteria and precise methodology. The annual report on the Open Budget Index cites a number of examples of good practice in the world. See: Transparency Serbia, "Openness of Serbia's budget still poorly evaluated", 16 September 2015, available at: http://transparentnost.org.rs/index.php/sr/59-srpski/naslovna/7869-srbija-i-dalje-lose-ocenjena-po-otvorenosti-budzetan. For additional findings see: http://internationalbudget.org/opening-budgets/open-budget-initiative/open-budget-survey/.

thanks in part to the useful amendments to the Budget System Law of September 2012.

The number of points received in 2014 places Serbia among the countries that provide their citizens with a "limited amount of information necessary for understanding and analysing the budget."[38]

The problems mentioned by TS as causes for such a bad position are: the fact that the fiscal strategy has not been published within the prescribed time frame, as in the context of this study it is considered good budget practice to have the main directions and assumptions of budgetary policy fully known at least one month before the draft budget is submitted to the Parliament; and – as in the previous years – the fact that the "citizens budget" i.e. the document that explains and acquaints the citizens with the contents of the proposed budget and semi-annual report on implementation of the budget was never published. Also, there is still no progress in terms of enabling the citizens, groups of stakeholders and experts to obtain complete and timely information during the preparation of the budget and, consequently, influence its content through public debates. It is exactly in the area of "public participation" that Serbia received its worst mark in the entire survey, only 21 of 100 available points – a result lower even than the global average (25 points).

On the other hand – as TS states – the most important progress which will affect the improvement of Serbia's score in the future lies in the fact that in 2015, for the first time, Serbia adopted a budget based entirely on the programmatic principle.

Instructions for the preparation of a programme budget and the Summary Instruction for Input of Programme Budget Elements are available on the website of the Ministry of Finance (MF).[39] In the course of 2014, 173 beneficiaries of the budget of the Republic of Serbia and 34 beneficiaries of the provincial budget switched from the line model to the programme budgeting model, while the methodological guide for the preparation of programme budgets was adopted by 145 local self-government units. The TS Alternative Report states that MF does not possess information on the local self-government units' violations of the budget preparation rules in 2015 and 2016.

This objective has been formulated in the Strategy, among other reasons, because the public is not fully and comprehensibly acquainted with the processes of budget planning and spending due to the fact that the laws governing the budget for each fiscal year are most often enacted quickly, while in the last ten years – viewed from the moment of the adoption of the Strategy – there have been no debates in the National Assembly on the spending of public funds in any given financial year.

The draft budget for 2016 was submitted to the National Assembly after 1 November, that is, after the deadline stipulated by the Budget System Law. Not only were the

38 According to this year's evaluation, the best ranked are: New Zealand (88 points) and Sweden (87), while the lowest ranked are: Chad, Equatorial Guinea, Iraq, Lebanon, Myanmar, Qatar and Saudi Arabia. Serbia shares 47th place with Botswana. In the region, Slovenia (68 points) and Croatia (53 points) were placed higher than Serbia, while BiH (43 points), Albania (38 points) and Macedonia (35 points) were placed lower.

39 See: http://www.mfin.gov.rs/pages/article.php?id=9824.

citizens unable to influence its contents – by way of, let us say, a public debate – the MPs themselves were allowed only a short time to do the same. This year's overt reason for the delay was the negotiations with the International Monetary Fund, while the systemic Budget System Law was changed together with the adoption of the budget. For the second time, this budget was prepared as a programme budget for all the beneficiaries. Still, according to the assessment of TS, the outcome is not completely satisfactory. Such a budget contains, *inter alia*, non-financial performance indicators of projects and programmes that ought to be implemented, but a significant question remains as to what extent they happen to be binding, considering that they are only present in the draft version of the Law, and not in the adopted text of the Budget Law. Also, the statement of accounts for this budget, the draft of which has appeared in public, does not include non-financial indicators which would be comparable with the approved budget. There was no debate on the budget's statement of accounts this year either.[40]

The Parliament has little control in the planning stage of the budget cycle, and limited control during the implementation phase. The legislators do not have a specialised unit for budget research *(budget research office)* at their disposal, the executive's draft budget is not submitted to the legislators at least three months before the beginning of the budget year, the consultation of the legislation authorities prior to spending the budget reserves that are not included in the approved budget is neither provided in the law, nor is applied in practice. Parliamentary control over the budget has been assessed as limited (42 points out of 100), while the control of the supreme audit institution over the budget was assessed as adequate (67 points of the available 100).[41]

The portal used to control the public finances, created within the framework of the project "Strengthening the Oversight Function and Transparency of the Parliament", implemented by the United Nations Development Programme with the financial support of the Swiss Agency for Development and Cooperation was presented to deputies on 7 December 2015. The portal allows access to data on budget execution made available on a monthly basis, provides insight into public expenditure, and allows for more efficient and more operational exercise of the supervisory role of the National Assembly. In its Alternative Report, TS states that the members of the Finance Committee are satisfied with the current volume and speed of data on budget expenditure available to them; some of them, however, remarked that obtaining even this level of access to information has been a problem. TS is of the opinion that there is no reason to limit access to said information only to MPs, especially not only to members of a single parliamentary body, particularly in view of the fact that these data are not confidential and that they can be obtained upon submission of an individual request for access to information. From the standpoint of the use of these data, TS, on the other hand, states that they do not know of any cases where MPs directly referred to this portal as the source of data in any of the requests, analyses or proposals submitted to the National Assembly.

40 TS Alternative Report, January 2016, pp. 62–63.

41 See: Transparency Serbia, "Openness of Serbia's budget still poorly evaluated", 16 September 2015, available at: http://transparentnost.org.rs/index.php/sr/59-srpski/naslovna/7869-srbija-i-dalje-lose-ocenjena-po-otvorenosti-budzetan.

Due to an incorrectly specified responsible entity in the Action Plan, the analysis of regulations governing the appropriateness and accountability in spending public funds was not carried out; consequently, the mechanisms for the introduction of effective control in this area have not been established either. In its Alternative Report, TS recommends that the starting point for regulating the control of appropriateness of public spending should be the determination of appropriateness in the planning stages, and states that in this regard some rules relating to public procurement have already been introduced, concerning the internal acts of contracting authorities. Preparation of a programme budget is another thing that can facilitate appropriate planning, although the first two years of implementation of this model do not offer much reason for optimism, because of the generality and lack of meaningfulness of the formulated programmes, projects and their performance indicators. They are also recommending the engagement of internal auditors and public debates on the budget – which are not organised in practice –while some of the experiences that SAI acquired to date while conducting the appropriacy audits may also be of help.

Bearing in mind that the legal framework for the establishment of complete records on publicly owned assets was modified in 2015, that the deadline for the identification of public property of the Autonomous Province of Vojvodina and the local self-government units is 6 October 2016, and that the legal grounds for the implementation of this measure are found in the Law on Public Property, the Republic Property Directorate proposes, as it did last year, that the deadline for the establishment of complete records on publicly owned assets its users, as well as the deadline for its publishing, be extended until the time when the statutory requirements for it will have been met, that is, until 28 February 2017. In accordance with the amendments to the Regulation on the Registration of Real Property in Public Ownership from 2015, the Directorate will submit to the Government the first annual report on publicly owned real property as at 31 December 2016 no earlier than on 31 May 2017.

In July 2015, SAI published the Report on the Review of Appropriateness - Disposition of Real Property Owned by the Republic of Serbia,[42] in which it stated that the Republic of Serbia does not possess exact information on the number and value of its real property due to failure of the competent authorities and users of said real property, as well as regulatory deficiencies.

Recommendation:

In order to solve the problems outlined in the Strategy, provide conditions so that the public can be better informed about the budget planning and spending processes, so that budget law for individual fiscal years are not always adopted within such as short period of time, and so that a debate at the National Assembly on public funds spent in any given budget year is organised every year.

42 See: http://www.dri.rs/.

Objective 3.2.2.2 – Consistent application of the Law on Public Procurements and keeping records on the actions of competent authorities related to the irregularities found in their reports

Conclusions:

Specific by-laws and documents provided for in the Law on Public Procurement have been passed.

It is not clear whether a record of actions of competent authorities regarding irregularities in the area of public procurement noted in the reports of control and regulatory bodies has been established.

The public procurement portal has been improved, but there is still room to improve the transparency of public procurement.

The analysis of the existing legislative and institutional framework for the implementation of e-Procurement in the Republic of Serbia (e-Tender, e-Auction, e-Dynamic Procurement System, e-Catalogues) has been prepared.

In the course of 2015 there have been significant changes to the Law on Public Procurement, which were adopted without any public debate and under the urgent procedure.[43] According to the TS Alternative Report, among the new solutions there are some that are useful, some that are confusing, but also some that are potentially harmful. The following are listed as good solutions: publication of a large number of documents on the Public Procurement Portal, centralised procurement by lots, norms of competitive dialogue, reduction of arbitrariness of the contracting authorities, detailed rules concerning procurement following natural disasters, and easier work of the Republic Commission for the Protection of Rights in Public Procurement Procedures as a result of an increased number of members. The following are listed as bad solutions: restriction of the possibility to apply for the protection of rights as an "interested party", restriction of the fees' increase, elimination of the definition of similar goods, works or services, expansion of the circle of purchases to which the law will not apply, abandonment of the concept of special services to control public procurement and the idea that the Government ought to adopt a plan for the fight against corruption in public procurement, leaving room for interpretation of the rules on prohibition of conflict of interest and the consequences of said conflict on the survival of contracts, relativised importance of negative references, greater flexibility in the planning of public procurement which can be turned into a

43 Nevertheless, in the reasoning of the Draft Amendments and Supplements to the Law of July 2015, in the part of the analysis of the effects relating to the question whether all interested parties had the opportunity to be heard about the Law, it was stated that "during the drafting of this Law there have been consultations, focus groups, and a detailed public debate with experts in the field governed by the Law. Suggestions submitted by the contracting authorities, line ministries and other actors to the Public Procurement Office and the Ministry of Finance together with the initiatives to amend the Law have been taken into account. Problems with the implementation of the Law have been discussed at many consultative meetings, and solutions to overcome them have been proposed."

relativisation of the existing rules, and the risk of non-disclosure of data because of "trade secrets".[44]

In October 2015 the Public Procurement Office (PPO) adopted a Rulebook on the Form of Public Procurement Plans and the Method of Publication of Public Procurement Plans on the Public Procurement Portal,[45] which applies from 1 January 2016. The software for planning and reporting is available on the website of PPO. In its Alternative Report, TS assesses that there is still room for improving transparency in public procurement by allowing data to be sorted according to the wishes of the users (for example: bidders who were awarded contracts, or those who have taken part in public procurement processes), as well as by cross-referencing the data with other available databases (for example: payments made from the budget, data on companies owned by public officials) and so on.

The analysis of the existing legislative and institutional framework for the implementation of e-Procurement in the Republic of Serbia *(e-tender, e-auction, e-dynamic procurement system, e-catalogues)* was prepared and published on the website of the PPO.[46] On the other hand, on 30 December 2015 the Government of the Republic of Serbia adopted the Action Plan for the Implementation of the Development Strategy for Public Procurement in the Republic of Serbia for 2016,[47] in which the preparation of an analysis and the selection of optimal statutory, institutional and technical e-Procurement model suitable for use in the Republic of Serbia have been planned for the second quarter of 2016. It remains unclear why this document envisages another analysis, that is, whether the analysis in question is a new, additional one.

The institutional framework of public procurement was established in the Development Strategy for Public Procurement in the Republic of Serbia 2014-2018, and PPO has compiled a list of 10 public authorities which, in accordance with the measure contained in the Action Plan, should strengthen their capacities related to public procurement. The reports of all these authorities clearly show that some work aimed at strengthening the capacity has been done, but it is also obvious that a more systematic approach, in which undertaken measures would be coordinated and monitored by a single public authority, would provide better results.

The Strategy has estimated that the decisions of the Republic Commission for the Protection of Rights in Public Procurement Procedures should contribute to the introduction of discipline in public procurement and elimination of irregularities; the problem, however, lies in the fact that they are not consistently implemented. In 2015, the Republic Commission reviewed 1.151 cases relating to the reports of contracting authorities, involving decisions that served to fully or partially annul procurement procedures. It was found that 24 contracting authorities failed to comply with the decisions, while 15 failed to submit the requested report and documents,

44 TS Alternative Report, January 2016, pp. 63–64.
45 "Official Gazette of the RS", No. 83/15.
46 See: http://www.ujn.gov.rs/ci/strategija/realizacija-akcionog-plana/analize.html.
47 "Official Gazette of the RS", No. 113/15.

based on which further measures have been taken in terms of informing the relevant institutions and opening case files for the purpose of imposing fines.

Trainings on the implementation of new solutions in the field of public procurement are being organised for suppliers, purchasers, representatives of the police, prosecution and the courts, as well as managers within the organisations of purchasers, while the following are available on the website of the PPO: Manual for Taking the Examination for Acquiring a Certificate for Public Procurement Officer, Instructions for Bidders in Connection with the Amendments and Supplements to the LPP, examples on how to carry a dialogue between the contracting authorities and bidders so as not to breach the principles of transparency and equality of bidders, prepared by the expert team *Local Government of Denmark - LGDK*, as well as models of the internal act and internal plan for preventing corruption in public procurement, which have all been aligned with the new statutory provisions.

At the end of December SAI presented its report on the previous year's audits. Although numerous irregularities have been identified this time as well, it was observed in the report that the share of problematic public procurements within the sample has decreased.[48]

Objective 3.2.2.3 – Improve cooperation and coordination on anti-corruption activities between relevant institutions at all levels of the government

Conclusions:

The grounds for the improvement of cooperation and coordination of activities in this area were established when, on 15 April 2014, a memorandum of understanding was signed between the Public Procurement Office, the Republic Commission for the Protection of Rights in Public Procurement Procedures, the Ministry of Finance, the Ministry of Economy, SAI, the Commission for Protection of Competition, the Agency and the Anti-Corruption Council.

The training of police officers, prosecutors and judges on the topic of public procurement, to enable them to carry out more effective investigations and more efficient court proceedings, is taking place within the framework of the programme titled "Preventing Corruption in Public Finances." On the other hand, it seems that the training of the employees of PPO and SAI on various characteristics of crimes, in accordance with the Action Plan, is not organised in a systematic way.

In 2015, SAI has filed 191 and PPO 9 requests for the initiation of misdemeanour proceedings.

48 TS Alternative Report, January 2016, pp. 64–65.

3.2.3. Public Internal Financial Control, External Audit and Protection of the Financial Interests of the European Union

Objective 3.2.3.1 – Establish and develop a system for public internal financial control in the public sector at all levels of the government

Conclusions:

As regards internal audit and internal financial control in the public sector, the state of affairs has not significantly changed compared to the situation at the time of the adoption of the Strategy.

Not even in 2015 has the position of internal auditor been regulated by law, as envisaged in the Action Plan. Still, the Screening Report and the European Union Common Position Chapter 32 - "Financial Control" state that the legal framework for PIFC has been largely established by the Budget System Law and the secondary legislation required for its implementation, and that it could be made more coherent through better connection of the provisions of the Budget System Law with the secondary legislation and through regular updating of the manual for financial management and control and the internal audit manual. The Screening Report also recommends adoption of the new PIFC Development Strategy and Action Plan for the period from 2015 to 2019, whose first draft has already been developed. As in the previous year, the TS Alternative Report assesses that in connection with this measure there is a need to resolve conceptual dilemmas that obviously exist because the Action Plan, on the one hand, advocates for a stronger legal position of internal auditors and provides for the adoption of a special law or relevant amendments to the Budget System Law, while, on the other hand, it seems that the Ministry of Finance is currently of the opinion that the existing legal framework is sufficient and in compliance with the standards. TS is of the opinion that this measure should perhaps be kept out of the Action Plan, as this issue will be resolved in another strategic document whose adoption is expected.

The 2014 Consolidated Report on the state of internal financial control in the public sector of the Republic of Serbia has been published on the website of the Ministry of Finance,[49] but it does not provide a clear picture as to which authorities have failed to fulfil certain obligations, given that the data on compliance with commitments have been provided according to groups of budget beneficiaries.

Continuous professional development of internal auditors on staff and certification trainings are implemented, as well as training for managers and employees in the public sector on the essence and importance of financial

49 See: Ministry of Finance, Internal Control and Internal Audit Sector, "Consolidated Report on the State of Internal Financial Control in the Public Sector of the Republic of Serbia", available at: http://www.mfin.gov.rs/UserFiles/File/dokumenti/2015/Konsolidovani%20izvestaj%20 za%202014_%20godinu.pdf.

management and control (FMC). The problem, however, lies in the insufficient number of top level managers who have attended this training; as a result, there is no visible in-depth understanding of the specific roles they play and the responsibilities that are assigned to them in the process of establishing a system of internal control and the development of risk management processes as integral parts of the process of managing a public sector organisation. This problem was recognised in the Strategy itself, while the European Commission stated in its 2015 Serbia Progress Report that senior managers in the public sector must be trained and must understand their specific roles and responsibilities in FMC.

The key problems faced by the Central Harmonisation Unit (CHU) and the recommendations for improvement contained in the 2013 and 2014 Consolidated Reports are the same, which indicates that the problems have been identified, but no attempts to solve them have been made in quite a while.

Recommendation:

Ensure the implementation of the recommendations of the Consolidated Report on the State of Internal Financial Controls in the Public Sector of the Republic of Serbia.

Objective 3.2.3.2 – Change the legal framework to ensure complete financial and operational independence of the SAI in accordance with the standards of the International Organisation of Supreme Audit Institutions (INTOSAI) and carry out the audit of appropriacy

Conclusions:

The Law on SAI has not been amended, and there is a discrepancy between the assessment contained in the Strategy and that of the latest European Commission report on said Law's compliance with certain standards.

In November 2015 SAI was assigned new office space to which it will move once the premises are furnished.

Because of the incorrectly specified responsible entity, the Law on SAI, which would have solved the problems outlined in the Strategy, and ensured full financial and operational independence as well as compliance with standards of the International Organisation of Supreme Audit Institutions (INTOSAI), has not been enacted. Still, in its 2015 Serbia Progress Report, the European Commission states that the constitutional and legislative framework complies with the standards of INTOSAI, and that the Law on SAI provides for exhaustive audit authority and guarantees the functional, organisational and financial independence of SAI.

According to an international survey on budget openness, the Supreme Audit Institution has sufficient resources to fulfil its mandate, but it has no quality assurance system.

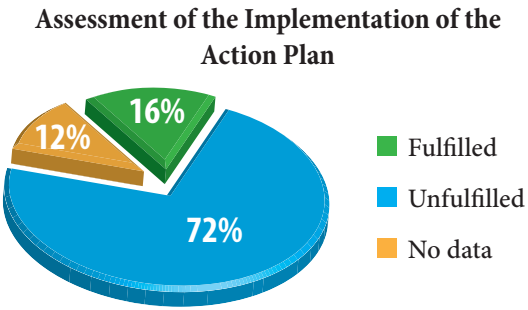
Recommendation:

Eliminate any dilemmas concerning the Strategy's assessment that the Law on SAI does not meet certain standards, and accordingly reformulate the appropriate part of this Strategy objective.

Objective 3.2.3.3 – Establish and develop the system for prevention, detection, reporting and treatment of irregularities using means from EU funds and funds of other international institutions and organisations

There has been no campaign to raise awareness of the need for conscientious managing of these funds. In 2015, the employees of AFCOS made study visits to Belgium, Lithuania and Romania, and an AFCOS seminar was organised in Belgrade from 17 to 19 June 2015, in cooperation with OLAF. The topics of discussion were the cooperation between OLAF and the competent national institutions in the protection of the financial interests of the European Union, the formulation of a national anti-fraud strategy, the establishment of a network of national institutions to eliminate irregularities and fraud in the handling of EU funds, and new developments in reporting on irregularities.

3.3. PRIVATISATION AND PUBLIC-PRIVATE PARTNERSHIP



Of the 25 assessed activities, only 4 (16%) have been implemented in line with the indicator, as many as 18 (72%) have not been implemented at all, while for three of them the Agency was unable to assess implementation due to lack of data. Out of the 4 implemented activities, only one permanent activity was implemented in the manner envisaged by the Action Plan, while the other 3 were not implemented in line with the requirements of the Action Plan.

Objective 3.3.1 – Change the legal framework to eliminate risks of corruption in the regulations governing the procedure and control of privatisation, reorganisation and bankruptcy of the companies with state and social capital

Conclusions:

Since the beginning of implementation of the Action Plan, the legislative framework in the field of privatisation was amended three times, and the Law on Bankruptcy and the Law on the Agency for Licensing of Bankruptcy Trustees once; however, not all the obligations from the Action Plan have been fulfilled by these amendments and supplements.

Within the body of measures aimed at eliminating the risk of corruption contained in the laws governing the area of privatisation, reorganisation and bankruptcy, the Action Plan includes one in a series of shortcomings of this document, due to which the achievement of this objective was questionable from the very beginning. Namely, the analysis of the risk of corruption in this area was to be prepared by March 2014, based on the Agency's methodology for whose official adoption, by way of another measure, the Action Plan envisages a substantially longer time frame. There is also a

previous conditional activity in the form of adoption of amendments and supplements to the Law on the Agency. Therefore, the Ministry of Economy could not have realised this activity within the provided time frame and in the manner required by the Action Plan. The Ministry of Economy, however, had the opportunity to contact the Agency and seek expert assistance with the analysis, or to incorporate the suggestions from the opinions provided to it by the Agency in the process of amending and supplementing the laws on privatisation and bankruptcy of 2014. Also, the necessary amendments to these laws were already known at the time of drafting the Action Plan, and were - as such – included in the notes that accompanied these activities; however, those were not fully incorporated into the enacted legislation either. All this supports the assumption that the amendments to these laws were clearly focused on other topics on the political agenda of the country, and not on the ones to which the state had committed itself in the Strategy.

The AP 23 envisages an analysis of the corruption risks in the implementation of the new laws on bankruptcy and privatisation, and for amendments and supplements to said laws in accordance with the results of the analysis. The deadline for the analysis is the third quarter, and for amendments and supplements to the laws - the fourth quarter of 2015.[50] As can be seen, this measure no longer envisages the analysis of corruption risks in the regulations themselves, but in their implementation.

On the other hand, it turned out that another measure, completely opposite to this one, which was clearly focused on fulfilling the obligations from the Action Plan from the very beginning, had a much greater impact on the achievement of this objective. Specifically, this measure involves semi-annual meetings held, based on the memorandum of cooperation signed between the Agency for Privatisation, the Supreme Court of Cassation (SCC), the Republic Public Prosecutor's Office (RPPO) and the Ministry of Interior Affairs (MOI), the Agency and the Council. One of the results of these meetings is the analysis of potential weaknesses and risks of corruption in certain normative acts in the field of privatisation and bankruptcy. This analysis was submitted to the Ministry of Economy on 23 March 2015. The Ministry stated in its report on the implementation of the Strategy, in one generalised sentence, that suggestions from this analysis "have been included in the regulations governing the process of privatisation, reorganisation and bankruptcy", without any additional clarification in support of this assertion, especially in light of the fact that, for example, the Law on Bankruptcy has not been changed following the submission of the analysis. The question therefore remains as to how the suggestions could have been acknowledged in the above cases.

Even though elimination of the risk of corruption seems "socially desirable" as a motive for amending the laws, the final effects of these amendments and new regulations do not encompass all the elements outlined by the Action Plan and various institutions that deal with this topic. Thus, there are well-recognised problems that are not being addressed, while, in reality, parallel mechanisms are being established

50 Activity 2.2.9.2.

to avoid the existing regulations. In the area of privatisation, there are certain processes which are not subjected to control by any particular body, as they are not considered regular privatisation processes (for example, the sale of shares in state-owned enterprises that are already partially in private ownership, or a decision on the separation of parts of public enterprises), and they usually depend on the assessment of the Government or the Assembly of a local self-government unit. In addition, national legislation in the area of privatisation, public-private partnerships and concessions is bypassed also by concluding international agreements, which lack transparency, competition, impact analysis and alternatives. These operating modes are not new, but they have become very significant in terms of volume and value, as explained in the TS Alternative Report.

The Law on Privatisation was amended and supplemented in May and December 2015, but the amendments and supplements did not cover certain issues of importance for the elimination of the risk of corruption in privatisation, to which the Agency had pointed in its previous opinions on several occasions. The main result of amendments and supplements to this Law from December 2015 was the termination of the Agency for Privatisation, whose competences concerning privatisation matters were taken over by the Ministry of Economy.

Despite the clear concerns of the European Commission expressed in the 2014 Serbia Progress Report regarding the fact that this Law was passed "under urgent procedure with limited opportunities for parliamentary debate,"[51] the Law on Privatisation was twice amended and supplemented the same way in 2015. A similar assessment also appears in the EC 2015 Serbia Progress Report, which points to the frequent application of this institute even concerning the most important laws, and when such a procedure is not necessary.[52]

The Law on Amendments and Supplements to the Law on the *Agency for Licensing of Bankruptcy* Trustees[53] was adopted on 23 October 2015 by urgent procedure. It stipulates that the agency is to take over some of the competences of the Agency for Privatisation in regard to the acting of bankruptcy trustees in bankruptcy proceedings against legal entities with a majority of public or social capital.

Preparation of the new amendments and supplements to the Law on Bankruptcy is in progress, and their adoption is anticipated in the first quarter of 2016. Given the fact that in 2015 there have been no new amendments and supplements to the Law on Bankruptcy, the assessment from the last year's report remains current: that all the elements envisaged by the Action Plan ought to be included in the text of the Law on Bankruptcy.

Frequent amendments and supplements to the regulations governing privatisation, reorganisation and bankruptcy have been noted; this, on the one hand, threatens legal

51 European Commission, Republic of Serbia, Progress Report 2014, October 2014, p. 7, available at: ec.europa.eu/enlargement/pdf/key_documents/2014/20140108-serbia-progress-report_en.pdf .
52 European Commission, Republic of Serbia, Progress Report 2015, p. 6.
53 "Official Gazette of the RS", No. 89/15.

certainty, while on the other hand undermines the activities envisaged by the Action Plan concerning the training and campaigns on new solutions. So, again and again, new legislation is awaited in order to implement the training and campaigns, making it impossible to ensure their lasting effect. This situation, too, speaks in favour of the assumption that amendments and supplements to the relevant laws do not have in mind the fulfilment of the Strategy and Action Plan; they are, rather, implemented for other reasons.

Recommendation:

It is recommended that the Ministry in charge of the economy initiate the procedure for amending the regulations indicated in the analysis carried out within the framework of the measure 3.3.2.1.

Objective 3.3.2 – Establish a system for efficient implementation and control of enforcement of positive regulations in the field of privatisation, reorganisation and bankruptcy

Conclusions:

The only activities from this area of the Strategy that are being implemented in line with the requirements from the Action Plan are the semi-annual coordination meetings held at the Agency for Privatisation. However, the Agency for Privatisation was terminated on 1 February 2016.

Based on the memorandum of understanding signed on 3 November 2014, two semi-annual coordination meetings were organised on 1 July 2015 and 22 January 2016 at the Agency for Privatisation. On the proposal of the Agency, the meetings were attended by a representative of the Ministry of Economy, even though the Ministry had not been included in the Action Plan as one of the signatories of the Memorandum. The analysis of potential weaknesses and risks of corruption in a number of regulations governing this area represents a very important outcome of the first meeting held in December 2014. The analyses prepared by the Agency, the Council, SCC and RPP were forwarded to the Ministry of Economy by the Agency for Privatisation on 23 March 2015.

The plan and programme of mutual professional development of the authorities participating in the privatisation process and the authorities in charge of prevention and prosecution of corruption cases has been developed; however, the concept according to which the Judicial Academy was designated as the carrier of these activities should be re-addressed.

The measure under which the Ministry of Economy is to prepare a performance analysis of the Agency for Privatisation has become, due to the termination of its

work, moot, even though performance control of a public authority in charge of privatisation remains a very important issue, especially as, pursuant to the solutions from the last amendments and supplements to the Law on Privatisation, the Ministry of Economy remains the only entity that implements and controls the privatisation processes even though the control tasks involve, in the majority of cases, control of the fulfilment of obligations of the counterparties.

Recommendation:

Bearing in mind the termination of the Agency for Privatisation, appropriately amend the Action Plan in the part relating to the duties and operations of this institutions.

Objective 3.3.3 – Eliminate risks of corruption in the field of public-private partnerships and concessions and its consistent application

Conclusions:

Amendments and supplements to the Law on Public-Private Partnerships and Concessions were adopted in February 2016. However, they are not the result of a previously conducted analysis and are therefore not aimed at the implementation of obligations from the Action Plan.

Data on the expediency of public-private partnerships and concessions are not available on the website of the Ministry of Economy.

As regards the analysis of the risk of corruption in the Law on Public-Private Partnerships and Concessions, the fact that the analysis was prepared by the Agency and the civil sector, while the public authority which under the Action Plan was in charge of preparing this analysis seems to have failed to do so, happens to be quite indicative.

In July 2014, the Agency prepared the Report on the Legal Framework and the Risks of Corruption in Public-Private Partnerships (PPPs) and Concessions, with recommendations forwarded to the Ministry of Finance, the Government, the National Assembly and the Commission for PPPs.[54]

The TS analysis of May 2015 identified a number of problems in the area of PPPs and concessions. In addition to some provisions of the Law on PPPs and Concessions not being sufficiently well thought-out, the greatest risks of corruption can be found in the fact that many PPPs were realised without analyses and auctions, based on international agreements. The second problem lies in the poor knowledge and lack of

54 Anti-Corruption Agency, Report on the Risks of Corruption in Public-Private Partnerships and Concessions, July 2014, available at: http://www.acas.rs/izvestaj-o-pravnom-okviru-rizicima-korupcije-u-oblasti-jpp-koncesija/.

understanding of the provisions of this Law, as well as poor knowledge of PPPs even as they are being applied. The third problem concerns inadequate direct application of the provisions of the Law on Public Procurement to PPPs. As a result of all the above, the solution requires not only amendments to this Law, but also supplements to the Law on Public Procurement and the regulation of conclusion of international agreements.[55]

Data on the expediency of PPPs and concessions are not available on the website of the Ministry of Economy. A document showing the methodology used in the analysis of the obtained values in relation to assets invested in PPPs and concessions (value-for-money) is available on the website of the Commission for PPPs, together with the list of proposed PPP projects, with or without elements of concession, that received a positive opinion from the Commission for PPPs. However, the opinions are not available, and neither are the data on the projects themselves.

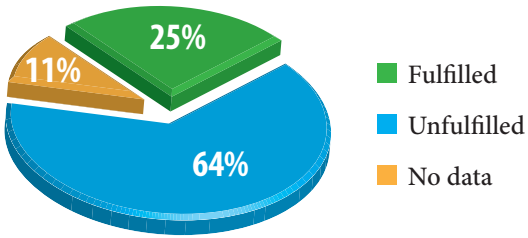
Recommendation:

Provide conditions for the adoption of amendments and supplements to the Law on PPPs and Concessions in accordance with the results of conducted analysis.

55 LS and TP Alternative Report, January 2016, p. 133.

3.4. THE JUDICIARY

Assessment of the Implementation of the Action Plan



Of the 98 assessed activities, 22 (25%) were implemented in line with the indicator, 55 (64%) were not implemented at all, while the Agency was unable to assess the implementation of 21 activities (11%) due to the lack of data. Of the 22 implemented activities, only 9 permanent ones were implemented properly, while not a single one-off activity was carried out in line with the requirements of the Action Plan. Of the 55 unimplemented activities, 12 were not carried out because of the lack of a previous conditional activity.

Objective 3.4.1 – Ensure full independence or autonomy and transparency of the judiciary in terms of budgetary powers

Conclusions:

The situation in relation to the capacity of the High Judicial Council and the State Prosecutorial Council to reach an adequate level of readiness for self-management of the budget competences remained the same in comparison with the previous reporting period.

The High Judicial Council and the State Prosecutorial Council are fulfilling their obligations relating to the transparency of their financing information.

The functional analysis of the judiciary in Serbia conducted by the World Bank indicates that the High Judicial Council (HJC) does not have the necessary capacity, and that it has not started to plan ways in which to exercise its powers in this area. For example, statisticians have not been hired to analyse data and define guidelines for the employees' level of work, while the employees of the HJC Human Resources sector mainly deal with the needs of the human resources of this body and its administrative office, which mainly involves the processing of data pertaining to salaries.

The status of the State Prosecutorial Council (SPC) contains a structural, legal deficiency in terms of budgetary competences. Namely, there are no provisions in the

Law on the Public Prosecutor's Office and the Law on SPC that are complementary to the relevant provisions of the laws governing the transfer of budgetary competences to the HJC.

Concluding with the report for 2014, HJC had published on its website all the annual financial statements, which simultaneously represent integral parts of its annual reports. The SPC, on the other hand, meets the above financial reporting obligation on a quarterly basis.

Objective 3.4.2 – Ensure that the process of selection, promotion and accountability of holders of judiciary functions is based on clear, objective, transparent and pre-determined criteria

Conclusions:

In the light of the decision of the Constitutional Court of 2014, the "path" to a judicial office through the Judicial Academy has been assessed as a "source of potential discrimination of judicial candidates" that have not passed the Academy's initial training.

The International Commission of Jurists believes that the system involving a probationary period for judges, the way it is applied in Serbia, is "extremely detrimental to the independence of the judiciary due to the high level of influence on first-time judges who are properly performing their judicial duty."

There are indications that amendments to the Law on the Judicial Academy will abandon the concept of mandatory continuous training for all judicial officials.

The HJC has yet to adopt a by-law which will govern the appointment and promotion of judges, while the SPC has passed a Rulebook on the criteria for the assessment of expertise, competence and worthiness of candidates in the process of nomination and appointment of public prosecutors, as well as the Rulebook on the criteria and standards for the performance evaluation of public prosecutors and deputy public prosecutors.

As regards the appointment of public prosecutors, regulatory framework and practice still provide reasons for the public to doubt that suitable candidates have been appointed to these offices.

HJC and SPC have established mechanisms to publish statistical data and the practice of their disciplinary authorities.

In the part describing the situation in the relevant area, the Strategy clearly shows the intent to have the Judicial Academy "... represent, in the upcoming period, the only method for the appointment of future judicial officers". In its decision from 2014, the Constitutional Court found those provisions to be unconstitutional.

According to the current Constitution, judges who are appointed to the office for the first time shall retain this status for three years, fully performing the work of judges during that time. Based on the current parameters of the situation in the judiciary, its functioning, and the composition of the highest judicial bodies, it is not unreasonable to assume that they are subjected to influence during several phases: the first phase takes place when the candidates are starting the initial training at the Judicial Academy; the second is the phase of selection between the candidates who have passed the initial training and those who have taken the test before the HJC; the third is the phase of their first appointment to judicial office, where the final selection of those who will enjoy tenure is made based on the quality of their rulings from the probationary period.

Amendments to Article 43 of the Law on Judicial Academy place voluntary and mandatory training practically on the same level. The second paragraph of this Article stipulates that continued training shall be voluntary "except when it is envisaged as mandatory." Training is mandatory when it is provided as such by the law or a decision of HJC and SPC in the event of change of specialisation, substantial legislative changes, introduction of new work techniques, to eliminate the shortcomings identified in the work of judges and deputy public prosecutors, and in the case of judges and deputy public prosecutors elected to judicial i.e. prosecutorial office for the first time without having attended the initial training programme.

The HJC has pointed out that the Law on Judges stipulates that the expertise and competence of candidates for first-time judges are verified at the examination organised by this body. By 28 March 2016, HJC is also required to prescribe the programme and procedure of the examination to assess the expertise and competence of candidates. The HJC had indicated that, by said date, it will have also passed a rulebook which will govern the appointment and promotion of judges. In May 2015 the HJC passed the Rulebook on Amendments and Supplements to the Rulebook on the criteria, standards, and procedures for the performance evaluation of judges and court Presidents, as well as the authorities in charge of said evaluation (the evaluation rules).

Rulebook on the criteria for the assessment of expertise, competence and worthiness of candidates in the process of nomination and appointment of public prosecutors came into force on 15 May 2015. Rulebook on the criteria for the performance evaluation of public prosecutors and deputy public prosecutors, which was adopted in May 2014, applies since 15 January 2015 to all public prosecutors' offices.

Practice has shown that candidates nominated for certain public prosecutors' offices were not those that ranked best on the SPC list. This problem is a consequence of the fact that the Government is under no obligation to nominate to the National Assembly the top-ranked candidates from the SPC list. The survival of such a system brings into question the very purpose of SPC's assessment and selection process.

By adopting the new Rulebook on the Establishment of Disciplinary Responsibility of Judges and Court Presidents, HJC envisaged the obligation of the President of the Disciplinary Commission to submit a report to HJC on his/her work for the previous

year by 1 March of the current year, and whenever requested to do so by the HJC. Under the earlier solution, the Disciplinary Prosecutor was the only one with such an obligation. Statistical data on the work of disciplinary bodies are also presented in the annual reports on the work of HJC, which are available on its website. The SPC has so far published four reports on the activities of disciplinary bodies, and they are available on its website.

Recommendations:

Consider the recommendations of the International Commission of Jurists, proposing the following:

With regard to the method of becoming a member of the judicial profession, it is necessary to define a comprehensive transition plan which must be agreed upon by different actors.

The probationary period for first-time judges should be significantly shorter than three years, and during that time the judges should not perform full judicial duty, but only assist in the process and follow trials.

Consider the recommendation from the Alternative Report of BCSP, APP and BIRN, which suggest that changes be made in the regulatory framework for the appointment of public prosecutors, so that the Government is excluded from the process.

Objective 3.4.3 – Establish efficient and proactive actions in detecting and prosecuting criminal offences related to corruption

Conclusions:

Proactive investigations still represent a challenge, and the police and prosecution lack a common approach to work. There is an evident lack of resources in these authorities when it comes to the fight against corruption.

Training sessions on how to conduct a proactive investigation have been carried out in 2015, with a significant number of attendees. It seems, however, that these types of specialisation rely heavily on donor support. At the same time, the structure, type and consistency of the implemented trainings are not entirely clear, when viewed parallel with the topics and target groups foreseen in the Action Plan.

The relevant area is characterised by the overlapping of several strategic documents that address measures to be taken the same or similar way, but with different deadlines. In addition to the Action Plan for the Implementation of the Strategy, the reports of responsible entities have also pointed to the existence of similar activities

in the AP 23, the Action Plan for Chapter 24 and the Financial Crime Investigation Strategy. This situation may create confusion among the responsible entities in terms of content, manner and deadlines for the fulfilment of relevant measures.

Individual prosecutors' offices keep separate records of financial investigations (Register of Confiscation of Material Gains) in the system for electronic case management (SAPO), as well as records of special investigative actions. However, such programmes have not been introduced in all the public prosecutors' offices. Findings from the 2015 Serbia Progress Report also indicate that the existing records of investigations, prosecutions and verdicts in corruption cases are still at a rudimentary level.

According to information obtained from the Judicial Academy, specialist trainings in the field of proactive approach to investigation have been attended by approximately 400 participants in 2015. The Judicial Academy has issued two manuals during the reporting period: "The Art of Conducting Proceedings for Public Prosecutors" and "Guide to the Implementation of the Criminal Procedure Code." On the other hand, the Judicial Academy has indicated that training was organised for 260 public prosecutors and deputy public prosecutors, also on the topic of proactive investigation. The confusion concerning the implementation of relevant measures is caused, above all, by the fact that the character and content of the specialisations and their relationship to other forms of training provided for in the context of this objective are not clearly defined. The Judicial Academy has stated that the aforementioned group of prosecutors has undergone training specified in the measure envisaging multi-disciplinary training on the topic of proactive investigation. This practically means that 400 attendees of the proactive investigation training include 260 prosecutors whose training is actually covered by another measure. Finally, the Judicial Academy states that the financial investigations represent an area that has been included in the Draft Training Programme for 2016. In the past, this area was only minimally represented, in the form of eight trainings implemented with the support of the PACS programme of the Council of Europe, attended by 130 judges and prosecutors.

Objective 3.4.4 – Improve substantive criminal law and harmonise it with international standards

Conclusions:

The illicit enrichment has not been introduced into the Criminal Code as criminal offence.

The Action Plan is ceasing to be the primary document through which the reform of the substantive criminal law in relation to criminal acts of corruption will be monitored.

Activities related to the introduction of the criminal act of illicit enrichment have been transferred to AP 23. It is possible that, in the meantime, the concept

of introducing this criminal act in the national legislation in its integrated form, as envisaged by the UN Convention against Corruption, has been abandoned, considering that there have been talks about implementing the analysis of the legal and institutional framework to define the precise consequences of illicit enrichment in relation to the existing mechanisms.

Activities related to the review of the substantive criminal law will also be monitored through AP 23. At the time of writing this report, the expert review of the Draft Law on Amendments and Supplements to the Criminal Code was under way. The Draft predicts a new systematisation of crimes against the economy i.e. their order, while their grouping was made according to specific criteria, the most important being similarity of criminal offences. It also introduces new crimes against the economy: instead of the present 25, the Draft envisages 33. The description of numerous criminal offences has been significantly altered.

Objective 3.4.5 – Establish efficient horizontal and vertical cooperation and exchange of information between the police, prosecutor's offices, judiciary, other state authorities and institutions, regulatory and supervisory bodies, and European and international institutions and organisations

Conclusions:

The fate of the only measure formulated to achieve the objective is uncertain. Namely, the content of the memorandum of cooperation signed between the police, prosecution, judiciary and other state authorities and institutions, which was supposed to specify the method of cooperation and the contact points has not been adequately defined, and SAI and PPO thus refused to sign it.

Objective 3.4.6 – Establish a uniform recording system (electronic register) for criminal offences related to corruption

Conclusions:

All the measures from this objective were transferred to AP 23.

The establishment of a unified electronic registry of criminal offences with corruption elements will require thorough analyses, appropriate time for implementation, and substantial financial resources.

The Ministry of Justice formed a working group, which began work on establishing a unified record of criminal offences involving corruption. Currently, the courts and prosecutors' offices use different case management programmes (LIBRA, SAPO, SIRIS). It seems that the Prosecutor's Office for Organized Crime (POC) has significant

advantage over the other prosecutors' offices when it comes to electronic systems for management and monitoring of criminal cases. Specifically, this authority has submitted information that it has been using the LIBRA electronic case management system since 2014. At mid-2015, POC began to compile its own database using the SIRIS programme, including registering all documents, scanning and recording basic data, and performing visual investigative analysis. This institution plans to introduce the SAPO programme in 2016.

On the other hand, some judicial authorities still do not use any type of case management application. Therefore, it is estimated that the introduction of a unified electronic register will require linking the existing programmes and introduction of programmes in all the courts and prosecutors' offices that are presently without them.

Objective 3.4.7 – Improve mechanisms for prevention of conflict of interest in judicial professions

Conclusions:

Adequacy of the measures envisaged under this objective is questionable, as the activities apply only to court experts, not all the judicial professions (notaries, mediators, enforcement agents, etc.).

The working group charged with drafting the amendments to the Law on Court Experts has been formed, and the adoption of amendments and supplements is expected in 2016. On the other hand, HJC believes that the activities related to the introduction of the obligation of the courts to report to the Ministry of Justice concerning each case when the judgment was reversed due to incompetent expert testimony should be corrected, due to the fact that a judgment may be reversed only on the grounds prescribed by law, not because of incompetent expert testimony.

Objective 3.4.8 – Provide adequate resources in the public prosecutor's office and courts for dealing with cases of corruption (capacity building)

Conclusions:

The number of employees in the public prosecutors' offices increased in the course of 2015, and the specialisation of public prosecutors is under way. On the other hand, some of the measures relating to the development of a needs analysis and the recruitment of new staff in the courts in accordance with said analysis have not been implemented.

SAPO has been introduced in a number of public prosecutors' offices, but it will take additional time and several phases to provide all the prosecutors' offices with an electronic case management system.

Economic forensic teams have not been introduced to the public prosecutors' offices, but the needs have been identified, as well as the public prosecutors' offices that require this type of specialist. The main obstacle is the lack of legal grounds for the introduction of economic forensic experts to public prosecutors' offices.

In its report, SPC states that the Republic Public Prosecutor and 9 deputy public prosecutors in higher public prosecutor offices have been appointed in September 2015, as well as 53 public prosecutors. SPC believes that new staff has been hired in line with the needs analysis, and that their structure corresponds to the recommendations from the analysis. The Judicial Academy has provided training in the form of criminal justice specialisation.

SAPO has been introduced in 13 public prosecutors' offices, and there are plans to expand it by purchasing equipment and additional SAPO software licenses for, and training the staff of, 75 additional offices. The second segment of improving the technical capacities of the prosecutors' offices refers to the acquisition of audio-visual equipment for prosecutorial investigation. In 2015, this type of equipment was provided to all the prosecutors' offices in the territory of Serbia.

A Draft Law on Organisation and Jurisdiction of State Authorities in the Fight against Organised Crime and Corruption has been developed in connection with the introduction of economic forensic experts. It foresees the possibility to establish financial forensic services in POC and the higher public prosecutors offices' special anti-corruption departments. The Judicial Academy stated that there was no training in this area in 2015 as the creation of forensic teams is still expected, but that it has developed a curriculum for a relevant five-day training in the meantime.

Objective 3.4.9 – Adopt a long-term strategy which comprehensively promotes the issue of financial investigations

Conclusions:

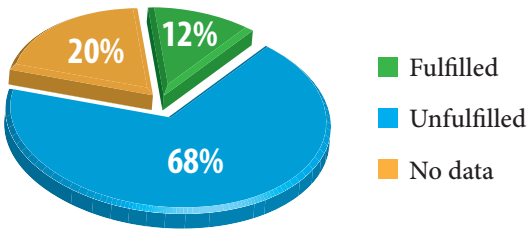
The Financial Crime Investigation Strategy 2015-2019 has been adopted, representing the basis for the reform of the system of authorities in charge of combating organised crime, corruption and other serious crimes. However, the challenges lie in the lack of an action plan and financial resources for implementation of the Strategy.

In May 2015, the Government adopted the Financial Crime Investigation Strategy 2015-2019. The planned reform of the authorities in charge of combating organised crime, corruption and other serious crimes implies the creation of special departments in the four higher public prosecutors' offices. The introduction of financial forensics in the Strategy enabled the engagement of persons with special skills – financial forensic experts, to work with public prosecutors on the detection and prosecution

of these criminal offenses, perpetrated by way of complex financial transactions. On the other hand, it has been pointed out that the implementation of the Strategy may create confusion in the responsible entities, in view of the fact that its text lacks in language and style and contains noticeable terminological inconsistencies.

3.5. THE POLICE

Assessment of the Implementation of the Action Plan



Of the 25 assessed activities, only 3 (12%) have been implemented in line with the indicator, 17 (68%) have not been implemented at all, while the Agency was unable to assess the implementation of 5 activities (20%) due to lack of data. For the same reason, the Agency was unable to assess whether the 3 implemented activities have been carried out in line with the requirements of the Action Plan.

Objective 3.5.1 - Strengthen police capacities required for investigations of criminal offences related to corruption

Conclusions:

The new Law on the Police has been enacted, but without a detailed definition of issues of importance for the prevention of corruption (integrity test, corruption risk analysis and verification of changes in the property status of police officers to be carried out by the Internal Control Sector). This has been left to secondary legislation.

The adoption of the Law on the Police has provided conditions for the implementation of all the measures that were conditioned, in the last year's Action Plan and this report, by the adoption of this Law.

The Law on the Police was enacted on 26 January 2016.[56] This Law contains certain innovations that may be important for the prevention of corruption: it envisages introduction of the integrity test, corruption risk analysis, and verification of changes in the property status to be carried out by the Internal Control Sector.

The idea of introducing the verification of changes in the property status of police officers, as a new anti-corruption measure, has been discussed for a long time. One

56 "Official Gazette of the RS", No. 6/16.

of the reasons for this is the fact that police superiors are not considered 'officials' in terms of Article 2 of the Law on the Agency, and are therefore not subject to the obligations provided for by that Law. On the other hand, it is often pointed out that the integrity test is one of the most effective means of preventing corruption in the police, which, if applied to gather evidence in disciplinary or criminal proceedings, would allow for identification of police officers prone to corruption and unethical conduct.

However, although the introduction of the corruption risk analysis, control of property records and the integrity test may be important, for their proper implementation it was necessary to regulate these issues more precisely in the statutory provisions. In particular, as regards control of property records and changes in the property status of police officers, it was necessary to precisely regulate the following issues in the provisions: which persons are required to submit reports on their assets and income, for themselves and members of their immediate families; the contents of these reports; the situations requiring an extraordinary declaration of assets and the deadline for its submission; and the adoption of the annual report verification and property status monitoring plan. On the other hand, as regards integrity tests, it was necessary to precisely regulate, in the statutory provisions, the purpose, principles, rights and obligations, procedure, legal consequences and supervision of their implementation, including the safeguards that will represent a guarantee that the tests will not be abused. As the issues that must be regulated in statutory provisions cannot be regulated in secondary legislation, there is a danger that these important issues are never going to be fully regulated, leaving room for interpretation and possible abuse in practice.

Although some of the organisational units within the MoI have begun drafting the secondary legislation, the main challenge lies in the fact that the implementation of the new Law on the Police requires the adoption of more than 40 by-laws within a period of one year. During the period when the Law on the Police of 2005 was in force, for example, 11 of the 23 required by-laws were never adopted.[57]

Draft Law on Records and Data Processing in Internal Affairs, which should regulate the keeping of records on criminal offences and their perpetrators and the data exchange within the MoI and with other entities, was drafted in 2015. Although it was announced that the Law will be adopted in the package with the new legal framework for the work of the police, as stated in the Alternative Report of BCSP, APP and BIRN, at the end of the reporting period it has yet to find its way to parliamentary procedure.[58]

The training programme to enable police officers to work on preventing and combating criminal offenses with elements of corruption was adopted on 4 September 2015. It includes basic, specialised and continuing training and is based on a multi-disciplinary approach which also includes specific, modern investigative techniques.

57 BCSP, APP and BIRN Alternative Report, p. 35.
58 BCSP, APP and BIRN Alternative Report, January 2016, p. 25–26.

Objective 3.5.2 – Strengthen integrity and internal control mechanisms for the purposes of combating corruption in the police

After the analysis of the competences and work of the Internal Control Sector of the police and the department of the Police Directorate which deals with the control of the legality of work of police officers, it was assessed that it is not possible to simply unite the work processes and employees of these organisational units into a sector, due to the criminal investigation inexperience of staff working in the Directorate's departments for control of the legality of work and the profile required for work in the above sector, which included competence, previous experience, etc. Also, the new Law on the Police envisages further strengthening of the Internal Control Sector of the police, which does not imply organisational uniting with other units dealing with the control of legality of police work.

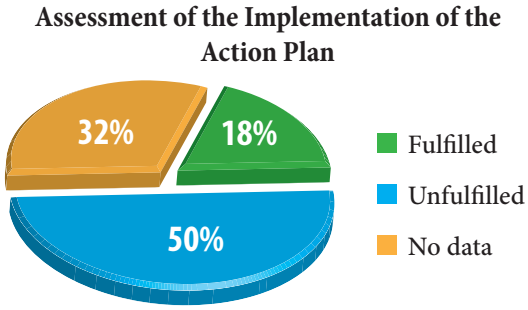
The working versions of the instructions on the manner and form of internal control and those for conducting a corruption risk analysis in the MoI have been drafted. The guidelines for the creation of a risk analysis have also been developed, and a pilot analysis has been implemented in one organisational unit of the MoI.

The integrity test is included in the new Law on the Police, and the working version of the rulebook on the implementation of professional integrity test in the MoI has been drafted. The working version of the rulebook and the comparative solutions – models of test implementation from the UK, Romania and the Czech Republic – have been presented at the round table organised on 27 November 2015 as part of the PACS project.

The BCSP, APP and BIRN Alternative Report suggests that so far no quarterly reports have been released concerning the results achieved by the MoI in the fight against corruption.[59]

59 BCSP, APP and BIRN Alternative Report, January 2016, p. 37.

3.6. SPATIAL PLANNING AND CONSTRUCTION



Of the 34 assessed activities, 6 (18%) have been implemented in line with the indicator, 17 (50%) have not been implemented at all, while the Agency was it not able to assess the implementation of 11 (32%) activities due to lack of data. For the same reason, the Agency was unable to assess whether the 6 implemented activities have been carried out in line with the requirements of the Action Plan.

Objective 3.6.1 – Register all the real property in the Republic of Serbia and real property related data in the public electronic Real Estate Cadastre

Conclusions:

Amendments and supplements to the Law on State Survey and Cadastre of 20 November 2015 provide that data and acts shall be issued in the form of electronic documents. The changes to the software used by the Real Estate Cadastre, which will allow for the issuance of excerpts from the Real Estate Cadastre in the form of electronic documents, are currently under way.

In terms of strengthening the capacity, both the Real Estate Cadastre services and the internal control within the Republic Geodetic Authority's Expert and Administrative Oversight Sector are faced, like every other authority, with the problem created by the prohibition and restriction of hiring in the public sector.

The LS and TP Alternative Report provides that various types of campaigns have been organised in this area, and that the interested public is therefore largely familiar with the functioning of the electronic cadastre and the benefits of its use. On the RGA website there is an Internet service, KnWweb, which enables one to search the database

of the Real Estate Cadastre, which happens to be the central Real Estate Cadastre database of the Republic of Serbia.[60]

Objective 3.6.2 – Reduce the number of procedures and introduce a 'single window' system for issuing building and other permits and approvals

Conclusions:

The Law on Planning and Construction has not been amended in accordance with the requirements of the Action Plan.

The Law on Amendments and Supplements to the Law on Planning and Construction was adopted on 8 December 2014. These amendments and supplements, however, did not meet the requirements that were set out in the Action Plan within three separate measures:

- The introduction of the unified procedure system changed the procedure for the issuance of: the location requirements, the building permit, the certificate of building registration, and the occupancy permit, but, in the opinion of the Agency, the procedures were not adapted to the types of buildings as envisaged by the Action Plan;
- The amendments include provisions relating to the early public review of spatial and urban plans, but, in the opinion of the Agency, said provisions also contain certain risks of corruption and therefore do not provide a sufficient guarantee that the objective of the Strategy will be achieved;
- The amendments have strengthened the role of building inspectors, but the network of inspection services has not been expanded. The Ministry of Construction, Transport and Infrastructure (MCTI) has stated that the analysis, that is, the schematic-tabular review of the needs of the inspection services shows that there is no need to increase the number of inspection units; what should be increased is the number of inspectors in the existing units.

The Government work plan for June 2016 envisaged the adoption of the Draft Law on Amendments and Supplements to the Law on Planning and Construction, which should serve to continue the reform of the issuance of building permits and regulate the system of unified procedures; it should also serve to initiate the issuance of electronic building permits, strengthen the accountability of all participants in the process of issuance of documentation required for construction, and strengthen the role of building inspectors.

60 LS and TP Alternative Report, January 2016, p. 129.

The Law on Conversion of Right of Use into Ownership of Construction Land with a Fee[61] was enacted In July 2015, and the Law on Legalisation[62] in November 2015.

In cooperation with the National Alliance for Local Economic Development (NALED) and with the support of USAID, MCTI is in the process of establishing a call centre which should provide relevant information to all interested parties, with the aim of better understanding and correct application of the provisions of the Law on Planning and Construction. A special website has been created within this project, providing answers to frequently asked questions regarding the provisions of the Law on Planning and Construction; it also contains the texts of the Law, the by-laws, and other documents relevant to the construction industry.[63]

Objective 3.6.3 – Ensure transparency of criteria and involvement of the public in the process of consideration, amendments and adoption of spatial and urban plans at all levels of the government

Conclusions:

The provisions governing (early) public review of the Law on Planning and Construction are not defined in a way that meets the essence of the purpose of the (early) public review and the involvement of citizens and other stakeholders in the process of developing these plans.

61 "Official Gazette of the RS", No. 64/15. When drafting the text, the Ministry of Construction, Transport and Infrastructure partially upheld the suggestions and recommendations formulated earlier by the Anti-Corruption Agency, in the part of the opinion concerning the assessment of the risk of corruption contained in certain provisions of the text of the draft law. However, the enacted law does contain certain shortcomings and risks of corruption, related primarily to: the broad determination of the right to a reduction of the market value of construction land, which should be an exception to the rule stating that a conversion fee represents the market value of the land; imprecisely regulated determination of the percentage of reduction of the market value of construction land located in underdeveloped local self-government units; and under-regulated obligations and responsibility of the authorities of the local self-government units in charge of property relations.

62 "Official Gazette of the RS", No. 96/15. When drafting the text of the law, the Ministry of Construction, Transport and Infrastructure partially upheld the suggestions and recommendations formulated earlier by the Anti-Corruption Agency, in the part of the opinion concerning the assessment of the risk of corruption contained in certain provisions of the text of the draft law. However, the risks of corruption which will make it possible to achieve particular interests, grant broad discretionary powers to public authorities, and place citizens to whom stipulated privileges will not apply in an unequal position, have not been eliminated from the Law on Legalisation of Buildings. Namely, even though it has been specified, through the adoption of amendments, that illegally built weekend cottages and holiday-homes may be legalised only in the second instance of protection of natural goods if they are not - under special laws - located in the protection zones, the following question remains: what justifies the application of a more favourable legal regime to the owners of these houses, in relation to the owners of all other houses that have been built illegally in these areas? The impression is that this solution serves to make a concession to persons who had illegally built weekend cottages and holiday homes in these areas prior to the adoption of this law, even when said facilities are not used to meet someone's existential needs, which could be viewed as the sole reasonable exception from the standpoint of public interest. In addition, imprecise exceptions concerning the requirements for legalisation make room for the legalisation of certain facilities built in areas in which otherwise construction would have been prohibited.

63 See: http://gradjevinskedozvole.rs/.

The obligation to include the provision on early public review is based on the right of citizens of a specific territory to be informed, in a timely manner, about the intentions in terms of preparation, content and basic concepts of the planning document. As per the assessment from the LS and TP Alternative Report, public review of the Law on Planning and Construction is not defined in a way that meets the purpose of (early) public review and the involvement of citizens and other stakeholders in the process of drafting a plan. Namely, the current provisions do meet the criteria concerning the formal notification of citizens, but they do not meet the essential requirement of citizen participation reflected in their right to be informed, be able to provide comments and suggestions, and receive a reasoned response, not just a response stating that a suggestion was accepted or rejected. In addition, all this needs to be publicly available. Therefore, the provisions governing the (early) public review must provide for the obligation of the person/entity that ordered the plan, the person/entity that processed the plan, and the Planning Commission:

- To allow public insight into all the received comments and suggestions;
- To provide reasoned responses to all comments and suggestions, especially those relating to the potential conflict between the offered solutions and the acquired rights, and to make all these responses and explanations available to the public;
- To organise - through the local community centre - notification of residents living in rural settlements in the territory of the plan about the upcoming public review, as the Internet is still not widely used in the rural areas and relatively large numbers of inhabitants of these communities are not in the habit of using the mass media.

The LS and TP Alternative Report also points out that, in this area, the notion of public participation is limited strictly to officially convened gatherings where interested participants can voice their objections and suggestions regarding the plan or submit written comments on it during the period of public review. This interpretation does not imply active participation of various categories of actors or various modalities of public gatherings concerning specific planning documents, such as meetings of professional and trade associations, universities or faculties, scientific and other institutions, organisations and citizens' associations, especially at the local level. According to the Alternative Report, public review as defined in the Law on Planning and Construction represents a one-way communication without public dialogue and confrontation of arguments, which is completely contrary to how this term has been defined in the key documents of the European Union and the Council of Europe. Because of this, an increase in the percentage of publicly reviewed plans cannot be a valid success indicator, as the number of public debates is a formal indicator which does not speak about the qualitative characteristics of the public debate itself. Findings and data about the contents of comments and suggestions received and approved in the course of a public debate, and the explanations of rejected comments and suggestions are therefore incomparably more important. This is why the LS and TP Alternative Report recommends to establish

binding and public criteria for the approval or rejection of comments and suggestions, a public debate procedure, and to introduce the obligation to include representatives of interested citizens, citizens' associations and members of professional and trade associations from the territory of the plan in the Planning Commission.[64]

Rulebook on the Content, Manner and Procedure of Creation of Urban and Spatial Planning Documents,[65] adopted in line with the new solutions of the Law on Planning and Construction, came into force on 28 July 2015. The standardised content of the plans has been published along with the Rulebook.

In the first quarter of 2015, workshops were organised for the local self-government units, and instructions to be followed in the uniform procedure were developed and forwarded to them. Instructions for the legalisation process will be developed in the first quarter of 2016.

Objective 3.6.4 – Ensure efficient internal and external control in the process of issuing building and other permits and approvals in the field of urban planning

Conclusions:

The Law on Planning and Construction introduced a uniform procedure for the electronic issuance of building permits, while software that allows the flow of cases to be monitored through the electronic portal began to function on 1 January 2016.

When drafting the Law on Planning and Construction, the working group has also created a feasibility study of introducing an electronic portal to allow case monitoring; thus, the Law also introduced a uniform procedure for the electronic issuance of building permits. Applicants can log into a unified system and follow the course of their cases. The equipment has been purchased, while the software is in the testing phase and will become operational on 1 January 2016.

The Action Plan for the implementation of electronic building permits has been approved in March 2015. MCTI has prepared draft by-laws defining the conditions of electronic data interchange i.e. uniform electronic procedure, and the development of secondary legislation for defining the electronic archiving procedures has begun. 70 trainers, who, as of 15 December 2015 should train approximately 4,000 employees in the territory of the Republic of Serbia to apply the software, have undergone their own training.

From 1 March 2015, the building permits are being issued under the new Law, which obliges the competent authorities to complete the procedure within 28

64 LS and TP Alternative Report, January 2016, pp. 139–140, 143–145; The marginal position of citizens in the field of spatial planning is contrary to all European documents (see the newest document European Charter on Participatory Democracy in Spatial Planning Processes, ECTP European Council of Spatial Planners of October 2015).

65 "Official Gazette of the RS", No. 64/15.

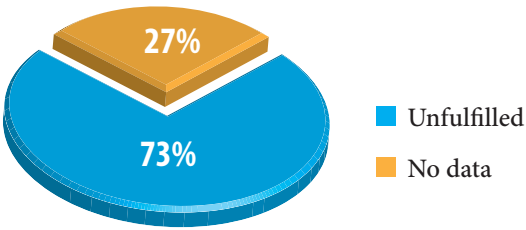
days. Based on partial reports it may be concluded that the implementation of this statutory obligation has begun. Given the long-standing practice which made the permit process extremely lengthy and largely dependent on the good will of the administration, the obligation to issue building permits within 28 days represents a significant step towards establishing the rule of law and reducing the number of opportunities for corruption and trade in influence. There are, however, no systematic reports and systematic insight into the submitted applications and issued building permits, by municipality, i.e. these data are not available. There is, thus, no reliable way to assess the efficiency of application of these articles of the Law.[66] As regards the World Bank Group's Doing Business list, Serbia has improved its ranking by 9 positions, moving in 2016 to position number 59, as opposed to having been ranked 68th in 2015. One of the two parameters that made this possible is the reduction of the number of days required to obtain a building permit. Namely, unlike in 2015, when it was necessary to allow 178 days on average for this category, in 2016 the number of days was reduced to 139.[67]

66 LS and TP Alternative Report, January 2016, pp. 143–145.

67 World Bank Group, Doing Business 2016, Ease of Doing Business in Serbia, available at: http://www.doingbusiness.org/data/exploreeconomies/serbia#close.

3.7. HEALTH

Assessment of the Implementation of the Action Plan



Of the 15 reviewed activities, none have been assessed as implemented in line with the indicator. 11 (73%) have not been implemented at all, while the Agency was not able to assess the implementation of 4 activities (27%) due to lack of data. Of the 11 unimplemented activities, 6 have not been carried out because of the lack of fulfilment of a previous conditional activity.

Objective 3.7.1 – Identify and eliminate all deficiencies in the legal framework that are conducive to corruption, and ensure their full implementation

Conclusions:

Within this area, most notable was a legislative activity too dynamic to be considered part of the strategic approach to the health system reform. The laws of this field had no effect on the elimination of the risk of corruption; the regulations are thus most probably amended due to their obsolescence in relation to the standards of the European Union. On the other hand, partial interventions in the texts of the regulations are equally risky, due to non-compliance with the standards that have remained the same.

The Health Care Law was amended on two occasions in 2015. Amendments and supplements were adopted in less than a month, and during this reporting period another working group was formed to develop new amendments whose adoption is planned for 2016. Amendments and supplements from the second cycle in 2015 included additional work of health professionals. The provisions of this Law have been harmonised with the Labour Law[68] concerning the hours of additional work. However, the specifics of the problem of overtime work in the medical profession require that this area be regulated separately. The solutions on keeping separate records on additional work, on the submission of copies of contracts for additional work to the health inspectorate, and on the introduction of the obligation for health

68 "Official Gazette of the RS", No. 24/05, 61/05, 54/09, 32/13 and 75/14.

care workers to inform the managers of institutions in which they are employed about their additional work, have been assessed are progressive. On the other hand, to achieve full control, the LS and TP Alternative Report proposes the introduction of a register of the health professionals who perform additional work, kept by the health inspectorate, and the publication of said register to make it available to policyholders. However, additional work is still not observed in correlation with the existence of waiting lists in public health care institutions; it is thus necessary to precisely define the conditions under which health care workers employed in public institutions may perform additional work in private practice. The control of contracts on additional work has also been weakened by the fact that the exact number of private health institutions is not known; there should, thus, be a register of private practice, and there is a need to regulate its work.[69]

A working group has been formed to draft the new Law on Health Insurance, which should propose a series of new systemic solutions relating, among other things, to the definition of a list of standard and non-standard services; this will inevitably have repercussions on the exercise and protection of rights and the "contracting with health care providers." Amendments to the Law on Health Insurance of December 2015 did not apply to issues contained in the Action Plan and did not address corruption risks identified by the analysis carried out in 2014, prepared by the working group formed under the auspices of the Ministry of Health.[70]

On the other hand, the risks of corruption have survived, in real life, and have grown in the meanwhile into a kind of a health system "brand", mainly due to the absence of clear rules that would establish precise procedures and transparency of the work and its effects. In the second cycle of development of model integrity plans for institutions of secondary and tertiary health care, the Agency has identified provision of non-standard services[71] and additional work of doctors and other medical staff[72] as particularly susceptible to risk.

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69 LS and TP Alternative Report, January 2016, pp. 149–150.

70 LS and TP Alternative Report, January 2016, pp. 149–150.

71 When it comes to provision of non-standard services, the risk occurs because such services are not covered by compulsory health insurance – they have to be paid for – and because the institutions of secondary and tertiary health care have a specific amount of resources whose purpose and consumption are not previously dedicated according to the type of health service provided. In this sense, it is possible that health care institutions are re-directing the resources towards the provision of non-standard services in relation to services covered by compulsory health insurance. Provision of non-standard services also generates additional revenues to health care institutions and medical staff, which causes the risk of their being favoured to the detriment of standard procedures.

72 In connection with the additional work, apart from the deficiencies pointed out below, the Agency has identified as risky the fact that there are no clear rules as to when a doctor and another member of medical staff is working within his/her regular working hours (for which s/he is receiving a regular salary providing services to patients - health insurance beneficiaries) and when s/he is performing additional work (in which s/he is generating additional fees, that is, in which patients are paying for health services, regardless of whether the institution at hand is public or private). In other words, there is a rule which allows medical workers to perform additional work of up to one-third of full working hours, but it is uncertain when the one third of the full working hours is exactly occurring, in relation to their regular working hours, and whether they are performing additional work in a public or a private health care institution (the situations where, for example, during his/her regular working hours in a public health care institution, a doctor instructs the patient to seek medical services in the private institution in which the same doctor performs additional work).

Draft laws on medication and medical devices have been developed in 2015, but because of the numerous objections of the EC the work on them will continue into 2016. A separate working group has been formed and tasked with developing the amendments to the Law on the Chambers of Health Workers.

The LS and TP Alternative Report points to another phenomenon: in parallel with the lack of results in terms of a systemic response to corrupt practices, bodies with unclear status and powers are being established under the banner of the fight against corruption. In September 2015, a working body was established to fight corruption in the health system. In the decision by which it was founded,[73] said body was given powers that the laws governing health do not grant to such organisational forms. The Alternative Report lists the following circumstances in relation to the powers of this working body as questionable: 1) acting in cases where there are grounds for suspicion of a criminal act of giving or receiving a bribe; 2) the role of mediator between patients and health care institutions in corruption cases; 3) authority to verify medical records of patients and make decisions on their correctness; and finally 4) nature of the legal acts issued by it – whether they are rulings or decisions, and whether patients have the right to appeal them.[74]

Objective 3.7.2 – Provide efficient mechanisms for integrity, accountability and transparency in the adoption and implementation of decisions

Conclusions:

In 2015 there were no amendments and supplements to the relevant legislation that would regulate gifts, donations and humanitarian aid.

The Ministry of Health has not drafted special manuals for health inspectors.

Some medical institutions have internal acts that regulate acceptance of gifts and donations; however, it is necessary to systemically include all these areas in a uniform mechanism. The Law on Donations and Humanitarian Aid has not been changed since 2002.[75] The Ministry of Finance states that it is not responsible for the drafting of this Law.

The Ministry of Health has not drafted specific manuals for health inspectors because the Ministry of Public Administration and Local Self-Government (MPALSG) has prepared and submitted to the inspection services the Guide to Implementing the Law on Inspection Control, with all the necessary instructions. It is not entirely clear how the MPALSG Guide can provide answers to any possible specificities of the procedure of inspection control of the medical facilities and services. The Law

73 Decision on the establishment of the Working Body to fight corruption in the health system, No. 119–01–542/2015-17 of 14 September 2015.
74 LS and TP Alternative Report, January 2016, pp. 149–152.
75 Ibid, p. 155.

on Inspection Control should be a general regulatory framework for the work of the inspection; however, in any case, it is necessary that the Ministry of Health draft specific manuals which would be applicable in health care.[76]

Recommendation:

Provide conditions for amendments and supplements to all the health care laws listed in the Action Plan and the corruption risk analysis prepared in 2014 under the auspices of the Ministry of Health.

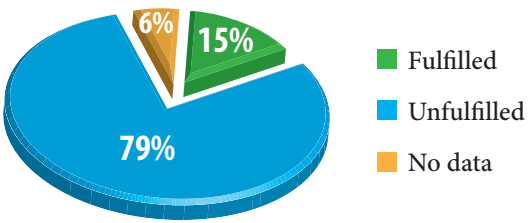
Objective 3.7.3 – Ensure a transparent information system in the health care system and participation of the public in the control of work of health care institutions, in accordance with legal protection of personal data

The Law on Health Records and Records in the Health Sector[77] was adopted on 8 November 2014, and its implementation began on 1 January 2016.

76 Ibid, p. 157.
77 "Official Gazette of the RS", No. 123/14.

3.8. EDUCATION AND SPORTS

Assessment of the Implementation of the Action Plan



Of the 34 assessed activities, 5 (15%) have been implemented in line with the indicator, 27 (79%) have not been implemented at all, while the Agency was unable to assess the implementation of 2 activities (6%) due to lack of data. Of the 5 implemented activities, only 1 has been carried out in the manner and within the time-frame provided by the Action Plan.

Objective 3.8.1 – Change the legal framework relating to the appointment, position and powers of directors of primary and secondary schools, as well as deans of faculties

Conclusions:

Legislative overproduction is notable also in the field of education. Changes to the legal framework, which will fully meet the requirements of this objective, are expected in the upcoming period.

The LS and TP Alternative Report expresses a dilemma regarding the quality and adequacy of measures and activities envisaged in the Action Plan concerning the field of education. According to the authors, the main shortcoming is the extremely formal and sterile approach to the education system. The measures provided in the Action Plan are not aligned with the principles and objectives of the Strategy for Education Development in Serbia 2020. This situation has led to the priority of the Ministry of Education, Science and Technological Development (MoES) being the fulfilment of the goals listed in the Education Development Strategy, through the development and implementation of new educational policy instruments. It is also stated in the report that MoES has independently determined that the centres of corruption are: the publishing of primary and secondary school textbooks, employment in primary and secondary schools, management of institutions of higher education, and the defence of doctoral dissertations. According to the findings of the authors of this alternative report, during the drafting of the Action Plan MoES had provided

comments and suggestions, which were not accepted. Because of all this, there is no feeling of ownership of the relevant activities in MoES, which is not basing its policies and actions on the Action Plan.[78]

Adoption of the new amendments to the Law on the Foundations of the Education System is expected in 2016. The LS and TP Alternative Report provides that the draft of this Law foresees solutions that will further improve the transparency of appointment of directors. Solutions aimed at filling the legal gaps, improving the process of appointment of directors, and reducing the directors' discretionary powers with regard to hiring are also anticipated. The Draft also envisages an anti-corruption measure, which has already been introduced into the legal system through a decision of MoES requiring that a request for the engagement of additional teaching staff be submitted to it before the start of the school year, thus reducing the scope of the directors' discretionary decision-making. At the same time, this will reduce the number of hirings that are in conflict with this Law: namely, it stipulates the obligation to take over the employees who have been made redundant or engage teachers with a sub-standard number of working hours. A list of vacancies, i.e. needs for partial engagement of teachers, is published on the website of MoES. In this way, teachers who have been made redundant or have a sub-standard number of working hours can reasonably quickly obtain information about the vacancies available in individual schools.[79]

At the initiative of MoES the National Assembly has adopted the authentic interpretation of Article 54 of the Law on Higher Education.[80] The interpretation was adopted in response to different practices regarding the number of mandates allowed to rectors, deans, presidents or directors of institutions for higher vocational studies. Namely, the provision of said Article of the Law, which stipulates a limited number of mandates and guarantees the replaceability of managers of education institutions, has become – in real life – the subject of creative interpretation and circumvention. The high level of detail contained in the authentic interpretation suggests that during its formulation the National Assembly kept in mind the variety of ways in which this Law had been bypassed and ignored.[81]

In the opinion of MoES, the majority of the recommendations relating to the field of higher education, formulated in the analysis of the Law prepared by the Ministry

78 LS and TP Alternative Report, January 2016, pp. 159–161.

79 LS and TP Alternative Report, January 2016, p. 163.

80 National Assembly of the Republic of Serbia, Authentic interpretation of the provision of Article 54 item 1 of the Law on Higher Education: "The managing authority of the appropriate institution of higher education – rector, dean, president or director shall be appointed for three years with the possibility of a single re-appointment in the same institution, where the total number of mandates that s/he may serve in said institution shall not be affected by the changes in his/her name and surname, the name of the institution of higher education, or by the amendments and supplements to the law, unless they serve to differently regulate the issue of the total number of mandates of a managing authority in the same institution. Whether the second mandate is consecutive or there has been a pause between two mandates is irrelevant in terms of the total number of mandates a managing body may serve in the same institution." "Official Gazette of the RS", No. 45/2015.

81 LS and TP Alternative Report, January 2016, p. 163.

and the Agency in February 2014,[82] have been included in the text of the Law on Amendments and Supplements to the Law on Higher Education, which was adopted in September 2014. The drafting of the new law on higher education, which should cover the remaining recommendations, is under way.

Objective 3.8.2 – Adopt regulations governing the education inspection

Conclusions:

The Law on Inspection Control in Education has not been enacted.

The MoES Work Plan 2016 envisages the adoption of the Law on Inspection Control in Education, which will be aligned with the general Law on Inspection Control, in the fourth quarter of 2016. The definition of the new legal framework in the field of inspection in education is also foreseen in the AP 23,[83] with the same timeframe set for implementation.[84]

Due to the restrictions introduced by the Budget System Law,[85] hiring of additional staff in state bodies and public services remains a challenge in this area as well.

The review of all current contracts, and requests for conclusion of contracts to lease parts of school facilities, has found its new place in the AP 23.[86] As per the LS and TP Alternative Report, practice shows that a significant number of schools are "solving" the issue of conclusion of lease agreements by signing contracts on business and technical cooperation. Under such contracts the schools rent out their facilities (the space used for physical education, as well as other space for commercial use), and tenants, in turn, donate equipment and teaching aids to schools. It is also possible that some educational institutions rent out their space without signed contracts and appropriate records.[87]

According to the LS and TP Alternative Report, MoES has improved the mechanisms used for informing citizens about petitions, requests and complaints. Specifically, the representatives of MoES can now be reached via e-mail and telephone, and both the content and updating of the MoES website have been improved. According to the findings of the authors of the Alternative Report, representatives of MoES do not share the view that preparation of reports on the most common petitions and complaints is expedient.[88] MoES cites lack of funds as the reason for its failure to prepare a report on the most common petitions and complaints, including the analysis of their causes and recommendations for remedial action.

82 See: Anti-Corruption Agency, Report on the Implementation of the Strategy for 2014, p. 157.
83 Activity 2.2.10.18.
84 LS and TP Alternative Report, January 2016, p. 164.
85 "Official Gazette of the RS", No. 108/2013.
86 Activity 2.2.10.19.
87 LS and TP Alternative Report, January 2016, p. 166.
88 Ibid, p. 167.

Objective 3.8.3 – Ensure transparency of the procedures for registration, examination, grading and evaluation of knowledge in all academic institutions

Conclusions:

The drafting of special laws on primary and secondary education has not yet begun because the work on the amendments and supplements to the Law on the Foundations of the Education System, which represents the umbrella law and on whose solutions depends the content of special laws, is still under way.

According to the LS and TP Alternative Report, it is necessary to conduct separate analyses of the enrolment process, according to different levels of education. The system of enrolment in secondary schools is based on the central enrolment system, which the alternative report evaluates as very transparent. The problematic practice, under which MoES used to permit popular schools to increase the number of students per class, or to increase the number of classes in relation to the conditions that were applicable at the time of the enrolment competition was abolished in school year 2014. This solution had placed significant discretionary powers in the hands of directors of secondary schools, who kept increasing the class sizes above the legal maximum at the expense of the quality of the teaching process. The introduction of a general baccalaureate, which is planned, may improve the process of enrolment in institutions of higher education by providing equal rights to students, that is, by preventing different criteria and individual enrolment rules.[89]

Connection of all the parts of the information system and integration of data collection within the education system has not been completed, as it is a complex process which, in addition to the enhancement of software solutions, also requires a change in procedures and data collection flow. At the same time, the analytical capacities of the MoES and the institutions in charge of data processing have not been improved because of the current prohibition on hiring additional staff in the public sector and the lack of financial resources. A project supported by UNICEF and aimed at improving the analytical capacity of the Ministry and establishing the information system for pre-school education in the Republic of Serbia is set to begin in February 2016.

Objective 3.8.4 – Ensure that the process of accreditation and subsequent control of fulfilment of conditions for work of public and private educational institutions is based on clear, objective, transparent and pre-determined criteria

Conclusions:

The mechanism of standards for accreditation and quality assurance has not yet undergone the process of comprehensive, qualitative review.

89 Ibid, pp. 167–168.

As stated in the LS and TP Alternative Report, accreditation standards represent "complete triumph of form over the substance of ensuring the quality of higher education".

The LS and TP Alternative Report includes the assessment that "at their professional meetings, European experts for accreditation and quality assurance place Serbia in the group of European countries with a rudimentary system of higher education quality assurance."[90] The wrong approach and outdated standards are not the only issues contributing to such a situation; there is also the problem of the functioning of the Commission for Accreditation and Quality Assurance (CAQA), which is predetermined by its status of a working body of the National Council for Higher Education. Consequently, CAQA is not fully independent. According to this alternative report's assessment, the accreditation standards represent "complete triumph of form over the substance of ensuring the quality of higher education". The requirements for accreditation are controlled only immediately prior to the decision on the accreditation itself, while the next control of compliance with the standards occurs no less than five years after the above decision. It is also believed that the concept of professionalisation of the accreditation process through the establishment of an independent agency is receiving an increasing number of supporters in the academic community.

As regards the obligation to involve independent experts in the accreditation process, amendments and supplements to the Law on Higher Education of 2014 stipulate that in the process of accreditation of doctoral studies at least one reviewer must be a teacher, a scientist, or an artist employed in an institution of higher education, that is, a scientific institution from abroad, who meets the requirements to be a mentor in the relevant study programme.

At the proposal of CAQA and to improve the evaluation procedures, the National Council for Higher Education has since 2006 adopted a number of regulations on standards and procedures for different types of evaluations conducted by CAQA. Independent experts (reviewers) are included in all forms of the evaluations conducted by CAQA. The identity of the members of the Council is kept secret, in accordance with the Law on Higher Education; the visits to institutions are performed by the members of CAQA, and since the latest amendments to the standards also by employers and students.

The LS and TP Alternative Report estimates that practice of publishing the reports relevant to the decision on accreditation has never truly taken root. To a significant extent this was not even possible, because of the very essence of the current accreditation process, the reviewers' tasks, and the content of the accreditation criteria.[91]

The available reports on the external assessment of the quality of higher education institutions, prepared by CAQA itself, contain guidelines stating that the reviewers'

90 Ibid, p. 169.
91 Ibid, pp. 169–170.

reports had indeed been submitted during the process of quality assurance. However, the reports on the findings of the reviewers, as such, are not available to the public. Also, the latest report on the work of CAQA, posted on its website, refers to the year 2013.

Recommendation:

Provide conditions for the enactment of all regulations that have been defined in the Action Plan as relevant to the elimination of the risks of corruption in education.

Objective 3.8.5 – Establish transparency of sports financing and the ownership structure of sports clubs and federations

Conclusions:

The lack of transparency of financing, unresolved ownership structure of sports clubs, membership of public officials in executive and supervisory boards of sports clubs and associations, and the lack of autonomy of sport, as the risks identified by the Strategy, have been neither resolved nor reduced.

The new Law on Sports has been enacted.

The Sports Development Strategy, which was adopted in early 2015, once again points to the lack of transparency of financing. When it comes to this phenomenon, one level the problem concerns the fact that highly limited resources must be distributed between more than 12,000 clubs in different sports. The second level of the problem concerns the fact that funds intended for sports are allocated through two umbrella associations (the Serbian Olympic Committee and the Sports Association of Serbia); they, on the other hand, use a substantial portion of these funds to finance their own operations, instead of creating conditions to meet some of the goals of the development of sport. The other segment of corruptive risks refers to the membership of public officials or members of the ruling political parties in sports clubs. The risks of corruption are found in the fact that these persons, as a rule, provide the clubs with funds from the revenues of public enterprises in which they exercise influence. Moreover, it has been observed in practice that politicians who are members of the boards behave as if they were actually the clubs' owners, freely disposing of their property. Thus, according to the LS and TP Alternative Report, public and party officials participate not only in the provision of financial support using the funds of commercial entities, but are now starting to participate in the re-sale of players and the fixing of matches associated with sports betting. LS i TP also mention the findings of the research conducted by the Balkan Investigative Reporting Network in 2012-2014, in which

aspects of behaviour of actors in the field of sport that represent significant risks of corruption are described in detail.[92]

The Law on Sports[93] was passed in February 2016. This new Law deals with the determination of the status of sports federations and associations, the ownership of assets, and the financing from public funds at the national and local level, while some important issues such as privatisation of assets and capital in social i.e. public ownership in sports organisations will be regulated at a later date, in other laws.

As regards categorisation and the ranking list of sport organisations, the new Law on Sports stipulates that the National Categorisation of National Sports Associations shall establish criteria for ranking and rank the competent national sports associations based on the sports' branch; results achieved by athletes, sports organisations and national teams in international sports competitions; the number of registered sports organisations, athletes and experts; the national tradition; and the number and types of organised competitions. The by-law to regulate the details of this matter will be passed within two years from the entry into force of this Law. Rulebook on the detailed regulation of the content, deadlines and manner of reporting on the implementation of programmes to meet the needs and interests of citizens in the field of sports in the autonomous province and local self-government units shall be passed within 90 days of the entry into force of this Law.

Rulebook on the categorisation of sports at the level of APV 2015-2016 was adopted on 29 December 2014. The branches of sports' categorisation rank list at the level of APV for the same period was created on the same day.

As regards the level of the local self-government units, various rulebooks on the categorisation of sports organisations have been developed during the reporting period. According to the provisions of the Law on Sports, which was in force until the enactment of the new one, local self-government units were allowed to closely regulate the terms, criteria, methods and procedures for allocating their budget funds to sports organisations and were not obliged to submit their general acts to the Ministry of Youth and Sports.[94]

The LS and TP Alternative report indicates that the measure relating to the adoption of acts that serve to harmonise the rules on the categorisation of sports organizations at the level of territorial autonomy and local self-government with national categorisation contains a structural deficiency, which is why it was doomed to failure from the very beginning. Namely, the Law on Sports, which was effective until the end of 2015, did not include the concept of categorisation of sports organizations; instead, the term used was the categorisation of sports, athletes, sports experts and sports facilities. Incorrect responsible entities were also tasked with the implementation of the measure.

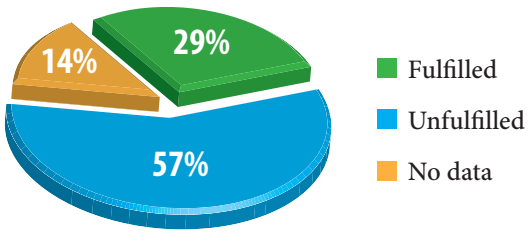
92 Ibid, pp. 171–176.
93 "Official Gazette of the RS", No. 10/16.
94 LS and TP Alternative Report, January 2016, January 2016, p. 181.

Rulebook on the nomenclature of sports occupations and vocations,[95] passed in early 2013, does not contain provisions on the prohibition of conflicts of interest in performing activities of sport managers.[96]

95 "Official Gazette of the RS", No. 7/13.
96 LS and TP Alternative Report, January 2016, p. 184.

3.9. THE MEDIA

Assessment of the Implementation of the Action Plan



Of the 7 assessed activities, 4 (57%) have been implemented in line with the indicator, two (29%) have not been implemented at all, while the Agency was not able to assess one activity (14%) due to lack of data. Of the four implemented activities, only one has been carried out in the manner and within the timeframe envisaged in the Action Plan.

Objective 3.9.1 – Transparent ownership, media funding and editorial policy

Conclusions:

Almost a year after the creation of the Register of Media, it still cannot be said that its main purpose – to create a clear picture of potential influence on the editorial policy of the media – has been realized.

The once-direct subsidising of media by public authorities has now taken the form of misuse of project co-financing and public procurement, providing a wide field of influence on the editorial policy of the media.

At the time of adoption of the Strategy and Action Plan, the lack of transparency of media ownership and financing was for many years emphasized as one of the most important problems. The strategic objective was thus formulated accordingly. The availability of data concerning the owners and how the media receive funding for their work from public sources should help the media consumers decide whether a particular medium represents a credible source of information or not. In addition to the new legal framework, the measure which should contribute to achieving this objective is the introduction of the Register of Media, which replaced the former Register of Public Media and which, when compared to it, contains numerous new data on the media. However, in terms of practice, almost a year after the establishment of the Register we still cannot say that its main purpose – to provide a clear picture of potential influence on the editorial policy of the media – was actually achieved.[97]

97 Ibid.

In accordance with the Law on Public Information and Media (LPIM) of 2014,[98] the Register of Media began to operate on 13 February 2015. The Register contains data on the publishers of individual media and documents with information on legal and natural persons who directly or indirectly hold more than 5% stake in the founding capital of the publisher; data on the persons related to them in terms of the law governing the legal status of companies; and data on other publishers in which said persons hold more than 5% stake in the share capital. The Register of Media is available on the website of the Business Registers Agency (BRA).[99]

Compared to the previous situation in the area of registration of mass media, the Register includes numerous new data on the media. Registration in this register is not mandatory, but unregistered media cannot take part in competitions for project co-financing or one-off allocations, and the public authorities are not allowed to use them for the purposes of communication/advertising. However, LPIM has failed to regulate the details of the obligations of BRA related to the updating and presentation of information in the register, and its obligation to regulate control over the fulfilment of obligations of all participants in the process of registration, the registrar, the media and the public authorities, while failure to comply results in inadequate sanctions. The corresponding by-law stipulates only documents to be submitted for the purpose of registration of data, and has not dealt with data which is to be made publicly available, or the issue of data updating.

According to the LS and TP Alternative Report, it is possible that the creation, updating and availability of data in the Register depends entirely on the good will of BRA, which is actually just a "technical" body that keeps various registers. In other words, the competent Ministry knows what the Register should look like and how it should be kept, but it lacks the capacity to control the implementation of LPIM, while BRA has the capacity, but does not possess the necessary knowledge, nor is such obligation prescribed to it by law. It also appears that the 15-day timeframe for informing the register about each change is not always respected in practice. The law does not prescribe sanctions in case of failure to regularly update data, and no other sanctions are prescribed for the registrar either. Practice has shown the following main deficiencies in the implementation of LPIM in the part referring to the Register of Media:

- The Register does not enable an average media consumer to easily gain insight into data on the ownership structure and resources provided to the media by the public authorities;
- It is impossible to determine whether the Register is being updated or not and how reliable and current the data are on a particular medium, and there is no legal obligation of the registrar to ensure promptness;

98 "Official Gazette of the RS", No. 83/14.
99 See: http://www.apr.gov.rs/eng/Registers/Media.aspx.

- The Register had transferred data from the Register of Public Media, although it is not known whether all the media from the previous Register still exist;
- The display of Register data has not been regulated, which gives the registrar disproportionate freedom as to which data on the media will be available to the public.

Furthermore, the fact that the registrar was given the freedom to organise the display of data in the Register is not a purely technical matter. In practice, it looks like this: the amount of state aid is specified in the Register for a specific medium; this data is accompanied by the date when the amount was paid and a note stating that the payment is related to said aid, but without any indication as to which public authority has awarded the funds, nor on what basis (project co-financing, public procurement, advertising or other). LPIM provides that data on the amount of funds received from the public authorities must be registered, but the same does not apply to the name of the public authority or the reason for allocation.

As a result of the above, it can be concluded that the Register of Media does mean that some progress was made in terms of regulations, but that the public in fact remains deprived of a number of important information, such as the aforementioned data on state aid.[100]

The Media Strategy envisages withdrawal of the state from media ownership. The Strategy, in concert with the Media Strategy, identifies direct financing of media by public authorities as potentially risky, but does not perceive other ways of transferring funds between these entities, such as project co-financing, advertising and public procurement, as controversial. LPIM has prohibited direct subsidising of media from the budget at any level of government; a system of project co-financing of media content that serves public interest has been established instead. The essence of project co-financing is that it does not finance the entire work of the media, as is currently the case with the media in public ownership, but only the media content, and does so to the extent to which the media at hand works in the interest of the public. The public authority which announces the competition also issues a decision on the allocation of resources, based on a reasoned proposal of the expert commission composed predominantly of journalists' and media associations. However, in the first year of application of this mechanism, the following problems have been observed, among others:

- Despite the obligation to announce a competition for the co-financing of projects in the field of public information, a number of local self-government units never complied with this obligation;
- According to the Coalition of Journalists' and Media Associations, a large number of competitions at the level of local self-government units and city municipalities were not organised in accordance with the law;

100 LS and PT Alternative Report, January 2016, pp. 191–194.

- There have been reports of improperly assembled competition commissions, i.e. the cases where persons who were not competent to assess whether and to what extent a project serves the public interest in the field of public information have taken part in the work of commissions;
- Non-transparent decision making in the process of allocation of funds;
- Allocation of large amounts to certain public enterprises that in the meantime have been privatised.[101]

The LS and TP Alternative Report assesses that in the first year of implementation of the project co-financing, local self-governments units did not understand the purpose of this mechanism very well, which is why the provisions of LPIM have been openly violated. It seems that the main problem lies in the lack of true will to end the financing of "suitable" media; consequently, the competitions are often "rigged" to suit a particular medium. The fact that the essence of project co-financing is the government's financing of quality programme content of public interest, not to help a certain media "overcome a crisis" or finance its entire operation, is thus completely ignored.[102]

In practice, the regulations governing public procurement are sometimes used to indirectly finance "suitable" media; as a result, local public authorities thus allocate modest funds or no funds whatsoever for project financing, but they allocate substantial funds for public procurement of "media services", which mainly refer to media coverage of the work public authorities. This creates a situation in which the Law on Public Procurement is formally complied with, while the provisions of LPIM are completely circumvented or ignored. Previously established and widespread practice thus continues, even after the adoption of the media laws in August 2014.[103]

At the public debate on the draft of the new Law on Advertising, held in January 2015, the Association of Independent Electronic Media (in Serbian: ANEM) and TS pointed out the wrong approach to the concept of the draft, which, despite its name, deals only with the advertising of retailers, while completely ignoring the advertising of the public authorities. The fact that the Draft Law on Advertising, which was submitted to the parliamentary procedure in November 2015, contained a solution that turned out to be problematic during the public debate,[104] points to the casual attitude of the state towards an issue the relevant social factors identified as neuralgic. However, the Law on Advertising, enacted on 26 January 2016,[105] was changed in relation to the text of the Draft by way of amendments. The effect of these changes is that the same principles, such as the prohibition of abuse of minors, hate speech, etc. now also apply to government and political advertising. The Law also stipulates that

101 For examples of most obvious violations of the Law and the continued practice of the financing of "suitable" media, see: LS and PT Alternative Report, pp. 198–205.
102 LS and PT Alternative Report, January 2016, pp. 204–205.
103 Ibid, pp. 205–206.
104 Ibid, p. 188.
105 "Official Gazette of the RS", No. 6/16.

media service or programme content may not be sponsored by public authorities and organizations, or political organisations, while non-compliance with this provision carries a misdemeanour liability of legal entities. Practice will show whether these changes will really solve the perceived problems, especially because they still require greater detail.

In 2015, the media laws were amended in a technical sense only; the Law on Public Media Services (LPMS) now stipulates that in 2016 the basic operations of RTS and RTV will be partly financed from the state budget, while LPIM has extended the deadline by which equity of the publisher of the media must be sold and, accordingly, set later dates for the beginning of the prohibition of media financing from public funds.

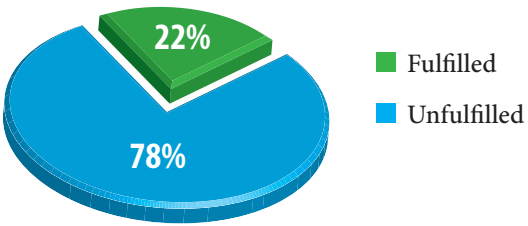
The new Law on Public Enterprises does not include provisions prohibiting the financing of the founders of the media through sponsorship contracts and/or donations of public funds. Instead, it only envisages that the business programme of a public enterprise shall include criteria for the use of aid funds, for sports activities, propaganda and entertainment; at the same time, legal provisions do not specify the elements of these criteria. With the abuse of the use of funds in mind, in its opinion on the assessment of corruption risk in the provisions of the Draft Law on Public Enterprises, the Agency recommended that legal provisions prohibit the financing of the founders of the media through sponsorship contracts and/or donations of funds from the budget. On the other hand, this Law includes a provision that prohibits advertising of public enterprises that have no competition in the market and perform a business activity of general interest, without the consent of the founders. However, statutory provisions must regulate this issue much more precisely and in greater detail.

According to the LS and PT Alternative Report, this Law is not an adequate legal instrument for the establishment of transparent financing of the media from the funds of public authorities, which, in addition to public enterprises, also include a number of other organisational forms financed from public funds. It would be best to provide the solution for this in LPIM, which already partly regulates this issue, albeit insufficiently to render this objective fulfilled, or in a special law that would encompass all the ways in which the public authorities provide funds to the media.[106]

106 LS and PT Alternative Report, January 2016, pp. 227–228.

4. PREVENTION OF CORRUPTION

Assessment of the Implementation of the Action Plan



Of the 50 assessed activities, 11 (22%) have been implemented in line with the indicator, while 39 (78%) were not implemented at all. Of the 11 completed activities, 6 have been carried out in line with the requirements of the Action Plan (5 of them being permanent activities). Of the 39 unimplemented activities, 14 have not been fulfilled because of the lack of a previous conditional activity.

Objective 4.1 – Set up an analysis of risks of corruption in the process of drafting regulations

Conclusions:

Considering that the Law on the Agency still does not stipulate the authority of the Agency to prescribe a methodology for analysing the risk of corruption in the regulations, institutional mechanisms for the continuous performance of this analysis have not been established.

Work on the Draft Law on the Agency is still in progress, even though all the deadlines set forth in both the Action Plan and the AP 23 have expired.[107]

The nearly two-year delay in the introduction of the Agency's competence to develop the methodology for analysing the risk of corruption in the regulations in the Law on the Agency, that is, the lack of fulfilment of only one – the first – activity of the Action Plan, has led to a chain of non-fulfilment of all the other obligations provided for in order to round off this system, achieve the objective as intended by the authors of the Action plan, and eliminate the deficiency ascertained in the Strategy: that the current legislative process and the process of adoption of other regulations contain no obligation to identify the effects of these acts on corruption during their preparation.

107 Activity 2.2.1.1.

All the other measures within this objective – adoption of an official methodology and a guideline for its implementation, training of those who are proposing and adopting regulations to apply this methodology, as well as changes to the Rules of Procedure of the Government and the National Assembly to ensure that the draft laws are submitted to the National Assembly together with the opinion of the Agency about them – have not been fulfilled, because the precondition for their fulfilment – the introduction of new provisions in the Law on the Agency – has not been fulfilled first.

On the other hand, some Ministries did establish a practice of submitting draft laws to the Agency in order to obtain the assessment of the risks of corruption. In the course of 2015, the Agency has assessed the risk of corruption in the provisions of 17 draft laws and 11 proposed laws regulating the issues envisaged in strategic anti-corruption documents. Some of the recommendations relating to the draft and proposed laws that were enacted in the meantime have been adopted, in part or in their entirety. However, some solutions that do contain risks of corruption have remained in all these laws.[108]

Although still not a mandatory element of the process of drafting legislation, the corruption risk assessment was one of the more frequent topics of draft law debates in the National Assembly in 2015. Namely, out of 9 draft laws that were discussed in 2015 and subjected to analysis, in 7 of them the MPs had used the Agency's corruption risk assessment. On the other hand, some Ministers and MPs have challenged the right of the Agency to deal with this issue.

Objective 4.2 – Establish a system of hiring and promotion in public authorities based on criteria and merit

The first two measures in this objective, which are seemingly primarily and directly aimed at its fulfilment, have very long timeframes, which is why they have not yet been subjected to control. The first measure provides for the creation of conditions and criteria for hiring and promotion in the public sector by January 2017 in accordance with the principles of competition and transparency, including nominated and appointed persons. The second measure is aimed at the harmonisation of the payment system, that is, the alignment of wages and salaries in accordance with the type, volume and complexity of work, and the social rights in the public sector by December 2016. It's likely that the implementation of these measures was aimed at first solving the problems listed in the Strategy concerning this area; in particular: 1) the system of hiring and promotion is still not fully merit-

108 In 2015, as in previous years, the most common deficiencies and corruption risks found in the analysed draft laws were: ambiguous provisions, broad discretionary powers of the public authorities in their application, and leaving it to the Ministries to closely regulate certain issues in by-laws, although such issues must be regulated by statutory provisions. In this way, public authorities who apply these provisions are provided with an opportunity to do so at their own discretion, which increases the possibility of misuse. Also, due to the fact that by-laws cannot govern issues that must be regulated by statutory provisions, a number of significant issues have not been fully regulated in practice.

based, 2) hiring and promotion are still subject to political influence, 3) the position of participants in the election process is not completely equal, and managers still have too many discretionary powers in selecting candidates from the lists proposed by electoral commissions, 4) there are no criteria for temporary employment, and contracts are thus concluded without internal or public competitions, 5) there is a need to harmonise the legal framework governing the employment status of public administration employees, 6) it is necessary to adopt provisions that will uniformly regulate the issue of salaries and the right to social insurance, 7) it is necessary to regulate the criteria for the selection, nomination and appointment of persons to the managerial job positions, the prevention of conflicts of interest, and the method of evaluating their performance. Due to the long timeframes foreseen in the Action Plan, all these problems are still present.

As regards the review of implementation of other measures relating to the functioning of the Central Registry of Compulsory Social Insurance (CRCSI), there are challenges in capacity building, as in other public authorities, caused by restrictions on hiring new staff. The trainings of taxpayers required to file a single tax report, aimed at acquainting them with the submission of the e-form for mandatory social insurance and the use of the CRCSI Portal, are being implemented, and full implementation and commissioning of the part of the CRCSI Portal relating to its connection with the Tax Administration is expected by the end of January 2016, as well as the establishment of a technical connection with the following mandatory social insurance organisations: the Pension and Disability Insurance Fund of the RS (PDI), National Health Insurance Fund (NHIF), and the National Employment Service (NES), in the part that refers to the exchange of data on paid mandatory social insurance contributions.

Objective 4.3 – Ensure transparency of work of public authorities

Conclusions:

Amendments and supplements to the Law on Free Access to Information of Public Importance have not been adopted.

On 31 March 2015, the Ministry of State Administration and Local Self-Government established a special working group to prepare the Draft Law on Amendments and Supplements to the Law on Free Access to Information of Public Importance. The Government 2016 Work Plan envisages the adoption of the draft amendments and supplements to this Law in June 2016, so that it may be effectively implemented in line with the conclusion adopted by the National Assembly after the consideration of the Report on the Implementation of the Law on Free Access to Information of Public Importance. AP 23 mentions the second quarter of 2016 as the deadline for the adoption of amendments to this Law, based on an analysis of its previous application and in line with the conclusion of the National Assembly for the year 2014.

In its Alternative Report, TS states that Draft Amendments and Supplements to this Law, which have resolved a considerable part of the problem outlined in the Action Plan, have already been in parliamentary procedure, only to be withdrawn from it in 2012. For this reason, TS raises the question of the existence of political will to resolve the problems identified in the Action Plan, given that there are no legitimate reasons not to adopt, to start with, the proposals that had been formulated no less than five years ago.

As the challenges in this area TS has identified: the question of confidentiality of data, as earlier decisions on the determination of confidentiality have never been reviewed; the fact that electronic communication has not yet become a statutory rule, which is why access to information is difficult; and the need for specifying the method of use of public authorities' databases, and their mutual compatibility, which would facilitate access without the submission of special requests. As regards the reasons for denying access to information, TS has noted several new examples over the past year:

- Reference to the decisions of the Commission for Protection of Competition (CPC) in accordance with Article 45 of the Law on the Protection of Competition. Namely, at the request of the parties to the proceedings conducted before it, CPC adopts a conclusion on the determination of data confidentiality, in order to preserve - according to the view of CPC itself - the confidentiality of the proceedings conducted before it, that is, so that the authority would not disclose data obtained from the parties in the proceedings to third parties. The state authorities refer to these conclusions as a "legal grounds" that prohibit them from disclosing the requested information to anyone;
- Alleging that a request for access to information is incomplete, as grounds for the denial of rights or deferral of fulfilment of obligations;
- Stating that a contract cannot be disclosed because it is not effective.

The formulation of new legal norms may be challenged by the emergence of negative trends in some European countries, which can sometimes lead to restricting access to information of public interest under various pretexts such as security, the commercial value of data or alleged misuse. This is why TS recommends that priority, when formulating amendments to this Law, be given to the achieved level of exercised rights, while the right of access to information should be strengthened at the time of amending the Constitution, which currently lacks precision. All other regulations in which significant incompatibility with the provisions of this Law has been observed should be amended together with the amendments to the Law.[109]

In its 2015 Serbia Progress Report, the European Commission states, yet again, that there is a need to increase the capacity and financial resources of the Commissioner for Information of Public Importance and Personal Data Protection (hereinafter: the Commissioner); to further strengthen the parent law to ensure the implementation

109 TS Alternative Report, January 2016, pp. 161–162.

of his/her decisions; and that the analysis of rejected requests for information shows that this information most often refers to privatisation, concessions, public-private partnerships and other associated issues that impact the budget.

By formulating this objective, the Strategy pointed to the need to ensure transparency in the work of public authorities, as the manner of its realisation is not fully developed, and stated that the text of the Law on Free Access to Information of Public Importance should be improved despite the fact that it stipulates a wide range of rights. According to this measure, amendments and supplements to this Law should have been adopted in September 2014. However, as can be seen, the working group charged with drafting them was formed six months after the expiry of the set timeframe, while AP 23 pushed the deadline for the adoption even further, by almost two years (to the second quarter of 2016), compared to the initial one, set by the Action plan. These amendments should be made in line with the conclusion adopted by the National Assembly in June 2014, following consideration of the Commissioner's report on the implementation of this Law during 2013. Looking at the chronology of formulation of obligations and the timeframes set for their implementation, we can conclude that the Action Plan was completely neglected as the driver for change in this area, and that – in this case – it took two years to implement the Conclusion of the National Assembly.

Hiring restrictions and the rationalisation of the number of employees in the public sector have contributed to the strengthening of capacity of the Professional Service of the Commissioner. Strengthening the capacity of the Commissioner based on a previously conducted analysis is envisaged also in AP 23,[110] with a deadline in the first quarter of 2017. Provision of sufficient financial and human resources to the Commissioner is also included, in the form of a continuous activity, concerning the field of personal data protection, from the first quarter of 2016.[111]

The project "Capacity Building of the Commissioner for Information of Public Importance and Personal Data Protection to Effectively and Adequately Perform its Statutory Powers and Ensuring the Realisation of the Right to Free Access to Information and the Right to Data Protection in Line with European Standards" was initiated in September 2015, in cooperation with the European Integration Office. The project, which will last until 2017, envisages various types of training and study visits of staff, and the procurement of equipment necessary for the work of the Commissioner. In 2015, 6 employees acquired the status of Auditor, which is the highest level of certification for ISO 27001 – data security, while 20 employees received certificates for access to classified information: the degree of secrecy: "state secret" (two Deputy Commissioners) and the degree of secrecy: "strictly confidential" (18 employees).

The act containing instructions on the procedures used in the work of the authorities in providing information of public interest has not been prepared, while the AP 23 foresees continuous training of employees responsible for acting upon requests for free

110 Activity 2.2.5.3.
111 Activity 3.11.1.3.

access to information in accordance with the case law and international standards.[112] TS points out that development of such a document would be very important given the significant number of errors of the authorities, due to which applicants remain deprived of their rights, or due to which the exercise of these rights is made difficult.

In 2013 and 2014 the Government adopted a series of decrees necessary for the implementation of the Data Secrecy Law. According to TS, the Decree on the detailed criteria for determining the "Confidential" and "Internal" degrees of secrecy has brought a certain refinement to the legal norm. The Data Secrecy Law provides that the designation "confidential" is used to prevent the occurrence of damage to the interests of the Republic of Serbia, whereas the Decree lists 13 areas in which such damage may occur. Each of these criteria must however be further interpreted on some basis – whether disclosure of information would "undermine the constitutional order and democratic principles of the Republic of Serbia", "inflict harm to the economic interests of the Republic", "jeopardise the interests of criminal prosecution and court proceedings, suppression of crime and the functioning of the judiciary" and so on. "Endangering the unity of the political activity of the Government" is a particularly interesting criterion which, in the opinion of TS, will likely constitute future grounds for denial of all information on the discussions held at the meetings of the Government, as is currently the case. TS adds that it is not easy to formulate precise criteria for all the situations that may include the need to declare certain information confidential in order to protect the legitimate interests of the state, but current generalised criteria should be made more precise through practice.[113]

Recommendation:

Provide conditions to adopt, as soon as possible, amendments and supplements to the Law on Free Access to Information of Public Importance envisaged by the Action Plan and to eliminate the problems encountered in practice related to the transparency of the work of public authorities.

Objective 4.4 – Ensure continuous education on corruption and anti-corruption methods

Conclusions:

Through continuous training of trainers, development of brochures, manuals, portals for distance learning and educational films, the Agency has largely provided conditions for the availability of training mechanisms on ethics and integrity to all the employees in the public sector.

112 Activity 2.2.5.5.
113 TS Alternative Report, January 2016, p. 167.

On 5 August 2014, the Government adopted the Decree on the amendments to the Decree on the Programme and Manner of Passing a State Professional Examination.[114] However, according to the supplements to the Decree, this programme will include only examination questions relating to the Law on the Agency, not to other anti-corruption regulations and practices. In this way, the need for continuous training in this area, which has been outlined in the Strategy with particular emphasis on issues concerning ethics, integrity, recognition of conflict of interest situations and the rights of whistleblowers, will be solved only partially.

On the other hand, AP 23[115] does not foresee the new Law on the Agency stipulating the obligation to organise training in the field of ethics and integrity for officials and employees in the public sector, which may mean that this need is no longer a priority.

In 2015, the Agency has organised two train-the-trainers sessions on ethics and integrity, while five trainings on ethics and integrity, attended by 92 participants, were carried out in cooperation with the HRMS of the Government of RS and the Department for Human Resources of the APV. In 2015, training on ethics and integrity has been included for the first time as compulsory module in the Managers' General Professional Development Programme. On average, this training was one of the ten most attended trainings organized by the HRMS.[116]

The Agency has prepared and printed the manual for conducting training on ethics and integrity, as well as the brochure entitled "Owning One's Values" which represents a brief guide to the key values of employees in the public sector; it has prepared a series of seven educational films[117] presenting the Agency's competences and topics related to the values and responsibilities of the public sector employees, institutional integrity, conflict of interest, receipt of gifts, resolution of ethical dilemmas;[118] and has created, in late 2015, a portal for distance learning (e-learning) through which employees in the public sector will be able to attend training on ethics and integrity,[119] with the possibility of taking the test and receiving a certificate of participation.

Objective 4.5 – Create conditions for more active participation of civil society in anti-corruption

Conclusions:

According to the TS Alternative Report, in 2015 no changes were made in the regulations or practices to create favourable conditions for more active

114 "Official Gazette of the RS", No. 84/14.
115 Activity 2.2.1.1.
116 See: Training evaluation January-December 2015, available at: www.suk.rs.
117 Filming of the educational series was financially supported by the USAID Judicial Reform and Government Accountability Project; production company Beomedija was in charge of the realisation.
118 See: www.youtube.com/channel/UC_2y-kk9H1Zgf71SMPOizzA.
119 The address of the portal is: edukacije.acas.rs.

participation of citizens and civil society in the fight against corruption. Due to the budget deficit, significant lack of financial assistance was expected from the state – in the form of direct budget subsidies or through tax incentives for donors – but the state failed to provide support even where no financial resources were required: in the consideration of recommendations suggested by this sector to the public authorities. Moreover, TS states that the role of civil society as a critic and controller of those in power has been challenged on numerous occasions.

Amendments and supplements to the Decree on Funds to Encourage Programmes or Provide the Missing Parts of Funds for the Financing of Programmes of Public Interest Implemented by Associations[120] have been adopted in November 2015; however, the opportunity to also fulfil the obligations under the Action Plan through said amendments and supplements has been missed. The innovations, thus, did not include the request to introduce the obligation for users to submit a declaration on non-existence of conflict of interest and their internal anti-corruption policy act when applying for the allocation of public funds; improve the framework of the criteria, terms, scope, manner and process of fund allocation; limit the discretionary powers of the committee members who decide on the funds to be allocated; regulate the election of members and the accountability and control of performed allocations. In this way, the guideline set out in the Strategy, which states that government support will be made available to all the users who submit a declaration on non-existence of conflict of interest and the internal anti-corruption policy act (for example, a code of ethics) together with the application, has been overlooked.

Amendments to the Law on Public Administration, which would harmonise the standards of cooperation of state administration authorities with civil society and provide compliance with those of the Council of Europe and the UN Convention against Corruption, have not been adopted. Given the comprehensive nature of possible amendments to the Law on Public Administration, the 2016 Government Work Plan envisages a new deadline for the implementation of this activity, in 2016.

The methodology of monitoring the implementation of the programmes i.e. projects financed from the budget in order to prevent inappropriate spending was not created because the responsible entity was inaccurately identified in the Action Plan. AP 23 provides for an identical activity; the entities responsible for its implementation are the Office for Cooperation with Civil Society and SAI, and the deadline has been set in the fourth quarter of 2015.[121]

In 2015, the Agency received a total of RSD 3,658,000 for grants to civil society organisations. The fifth competition was announced in February, and it was decided to grant the amounts of RSD 1,829,000 to each of Vojvodina Green Initiative for its documentary TV series "Green Patrol at Work", and to the Center for Free Elections

120 "Official Gazette of the RS", No. 98/15.
121 Activity 2.2.11.3.

and Democracy, for their project "Towards Greater Accountability of Institutions in the Process of Granting Approval for the Employment of Former Government Officials". This was the largest amount of money the Agency granted to civil society organisations under this measure to date.

In 2016 the Agency did not receive funding for the implementation of this activity. Given the limit set for the following year's budget – for which no reasoning was provided – the Agency decided to accept funding for its regular operations, which is why it could not also be awarded resources for allocation of funds dedicated to the projects of civil society organisations. For these reasons, unfortunately, the identical activity envisaged in AP 23 will not be fulfilled in 2016 either.[122]

In 2015, as part of the project "Support to the Strengthening Corruption Prevention Mechanisms and Institutional Development of the Serbian Anti-Corruption Agency", financed by the Ministry of Foreign Affairs of the Kingdom of Norway, the Agency organised a second open competition for the civil society organisations that had participated in the second round of the pilot programme involving the alternative reporting on the implementation of the Strategy and the Action plan.[123]

Two consultative meetings with representatives of civil society organisations were held in 2015: one in Belgrade, in May, during which alternative reports on the implementation of the Strategy in 2014 were presented, and the other in Novi Sad, in September, which included the presentation of the results of research into the causes and forms of corruption manifested at the local and provincial levels, conducted by the Agency to use as basis for the development of a model for future local and provincial anti-corruption plans in line with obligations from the Action plan.

Objective 4.6 – Create conditions for more active participation of the private sector in anti-corruption

Conclusions:

According to the TS Alternative Report, there are no indications that the private sector is any readier when it comes to active participation in the fight against corruption through concrete actions such as filing criminal complaints, requests for the protection of rights, more frequent development and implementation of own ethical rules, etc. The adoption of the Law on Protection of Whistleblowers, which also applies to private companies, represents an important innovation.

The Law on Corporate Income Tax has not been amended to list fight against corruption as one of the purposes i.e. activities for which special tax incentives could be offered to companies that provide financial support to civil society. During the

122 Activity 2.2.11.4.

123 Details are provided in the text above, Introduction, Enhancing the Oversight Mechanisms.

drafting of this year's amendments and supplements to this Law, the MoF reviewed the possibility of introducing said tax incentive, but concluded that this is not the right moment, for the following reasons:

- There are no instruments to monitor compliance with the statutory requirements for granting tax incentives, and it is not possible to evaluate the effects to be achieved by said incentive; consequently, it is not possible to monitor the achievement of a set objective upon its introduction, which could lead to misuse in practice;
- Increased administrative costs of monitoring the implementation of the incentive;
- As a measure to achieve this objective, the tax incentive could only affect the provision of funds required for the operation of these organisations, which is why MoF believes that other means of securing financial resources – those that would involve easier monitoring and impact analysis – should also be taken into consideration;
- Reduction of budget revenues, the effect of which cannot be anticipated.

In this way, the intent described in the Strategy – that the state will develop a stimulative framework so that the private sector can provide financial support to anti-corruption projects in the civil sector – has obviously been put to the side.

In the course of 2015 the Serbian Chamber of Commerce has organised 7 events which directly or indirectly dealt with the topic of corporate anti-corruption. In its alternative report, TS suggests that part of this training ought to be organised in the form of discussions without the presence of the public, where entrepreneurs would receive an opportunity to talk about the difficulties they encounter in their interactions with the representatives of state authorities, e.g. in the area of public procurement, obtaining necessary licenses, and so on.[124]

Objective 4.7 – Ensure that the National Assembly monitors implementation of conclusions and/or recommendations adopted on the basis of reports of independent state authorities

Conclusions:

The Law on the National Assembly has not been amended to introduce the obligation of the Government to submit to the National Assembly, at least once a year, a report on the implementation of its conclusions issued following consideration of the reports of independent state authorities, organisations and bodies, within six months from the issuance of said conclusions, with the obligation that the report of the Government be considered at a National Assembly session.

124 TS Alternative Report, January 2016, p. 179.

Although the departmental committees discussed the 2014 reports of independent public authorities on 2 July 2015, until the conclusion of this report the National Assembly has not discussed them at a session.

The TS Alternative Report assesses that real effort is needed on the part of the National Assembly to exercise its monitoring role over the executive and utilise the reports of independent bodies in the process. According to TS, the political structure of both bodies leads to inefficient parliamentary control of the executive power. Namely, the executive branch includes presidents and vice-presidents of parliamentary parties who are trusted by the MPs from their own parties. Although there have been some parliamentary initiatives that could lead to stronger oversight *(e.g. Global Organisation of Parliamentarians Against Corruption – GOPAC)*, the situations where MPs from the governing parties challenge the decisions of the Government, or use their powers as MPs to initiate the establishment of responsibility of members of the Government for something that has (not) been done, are quite rare in practice. Thus, in the previous period there have been no initiatives to establish the responsibility of the members of the Government for their failure to act upon the conclusions of the National Assembly. This problem might be reduced if the duties of the National Assembly related to the formulation of conclusions based on the reports of independent public authorities and the consideration of the reports of the Government on the implementation of said conclusions were specified in e.g. the Rules of Procedure.[125]

Although the departmental committees have discussed the 2014 reports of independent state authorities on 2 July 2015, the National Assembly never discussed them at one of its sessions. In the previous reporting period, the reason for the problem was the fact that the parliamentary conclusions have been issued, but the Government never reported on their implementation. In its alternative report, TS states that in 2015 parliamentary committees were less inclined to independent bodies than in previous years, as indicated by recommendations that were formulated much more generally than in the past. Although this was envisaged by the Strategy and the earlier Conclusions of the National Assembly, no changes were made to any of the laws governing the work of independent bodies relevant to the fight against corruption, with the exception of the Law on Public Procurement. The latter changes, though, were not envisaged by the Action Plan. Work on some of the laws i.e. the Law on the Agency, is under way; it is however not proceeding efficiently, nor had it started on time.[126]

Thus, the problems specified in the Strategy in 2013 were never solved: acting on the annual reports of independent state authorities which have been submitted to the National Assembly is still very limited in scope, and the process is concluded by the National Assembly issuing conclusions i.e. recommendations on the proposals

125 TS Alternative Report, January 2016, p. 181.
126 Ibid, p. 154.

submitted by relevant committees, but without the mechanisms to make them binding for those public authorities to which they pertain. The Strategy concludes that it is therefore necessary to regulate the procedures for monitoring the implementation of the conclusions of the National Assembly, with the option to take measures in case the conclusions are not implemented without justifiable reasons.

In its Serbia Progress Report 2015, the EC once again states that the National Assembly should take a more proactive approach to promoting and monitoring the implementation of the conclusions and recommendations from the reports of the independent bodies, and that oversight of the National Assembly over the work of the executive must be additionally strengthened. The EC finds that the National Assembly should also increase support for the institutional role of independent bodies and promote the implementation of their recommendations, and that parliamentary debates should not be used to undermine the work of independent bodies.[127]

Recommendation:

Provide conditions for supplementing the Law on the National Assembly to fulfil this objective and remedy the problems formulated in the Strategy.

Objective 4.8 – Extend and specify competences and build personnel capacities and working conditions of the Anti-Corruption Agency, Protector of Citizens, Commissioner for Information of Public Importance and Personal Data Protection and State Audit Institution

Work on amendments and supplements, i.e. on the adoption of new laws regulating the work of the Agency, the Protector of Citizens and the Commissioner has begun, based on the needs analyses submitted in December 2013 by the Agency, the Protector of Citizens, the Commissioner and SAI, but the ongoing rationalisation of public administration still represents a general problem in terms of strengthening the capacity of these bodies. In its alternative report TS states that, when expressing the need for hiring new employees, the state authorities should provide a thorough comparison of the work results they might be able to produce if allowed to increase the number of staff with those under the current situation, for example: the speed and number of solved cases of a certain type, the number of performed controls, etc., to obtain greater support for the approval of additional budget funds.[128]

AP 23 provides for a series of measures to strengthen the capacity of these institutions.

127 European Commission, "Serbia Progress Report 2015", November 2015, p. 6. Available at: ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_serbia.pdf.

128 TS Alternative Report, January 2016, pp. 183–184.

Objective 4.9 – Establish efficient and effective protection of whistleblowers (persons that report suspected corruption)

Conclusions:

The by-laws necessary for the implementation of the Law on the Protection of Whistleblowers have been adopted: Rulebook on the System of Internal Whistleblowing, the Method of Identifying the Authorised Official at the Employer, and Other Issues of Importance to Internal Whistleblowing at the Employers with More than Ten Employees has been adopted on 3 June, while the Rulebook on the Programme for the Acquisition of Special Skills Related to the Protection of Whistleblowers was adopted on 15 January 2015.

In the cases of protection of whistleblowers, trials may be conducted only by persons who possess special expert knowledge; the implementation of this Law has thus been postponed for six months, *inter alia* so that a certain number of judges can be trained to deal with such cases. However, after the adoption of the Rulebook on the Training, it turned out that the entire training for judges took only one working day (five 60-minute lessons and a practical exercise by way of a case simulation), and that no test of the knowledge gained in training has been envisaged.

TS also criticises the Rulebook governing the system of internal whistleblowing, which – apart from some useful innovations – repeats some provisions of the Law, contains several ambiguous provisions, and fails to regulate the details of certain issues.

The curriculum of the "Whistleblower Protection" training has been adopted on 31 March 2015 as part of the General Continuous Professional Development Programme. The training was carried out in August, November and December 2015, attended by a total of 62 civil servants. Given the number of participants, TS Alternative Report finds that the number of trainings that have been organised to date is obviously far from sufficient (as only one out of 10,000 public sector employees has undergone said training). This is particularly insufficient with a view of the fact that this is the first year of application of this Law, when the risk of potential issues is by far the highest.[129]

Objective 4.10 - Establish a system for preventing conflict of interest of employees in the public sector

The draft of the law which would regulate in a uniform manner the prevention of conflicts of interest of employees in the public sector and the submission and verification of the reports on the assets and income of civil servants in public

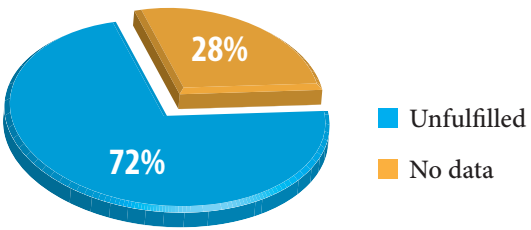
129 Ibid, p. 188.

administration has not been developed. AP 23 provides for the adoption of a law that will govern the prevention of conflicts of interest of civil servants by the second quarter of 2017,[130] based on the results of a feasibility study which should be completed by the fourth quarter of 2016.[131]

130 Activity 2.2.3.5.
131 Activity 2.2.3.4.

5. IMPLEMENTATION AND OVERSIGHT OF IMPLEMENTATION OF THE STRATEGY

Assessment of the Implementation of the Action Plan



4 of the 7 assessed activities (72%) have not been implemented at all, while the Agency was not able to assess the fulfillment of 3 activities (28%) due to the lack of data.

Objective 5 – Establish a system for implementation, coordination and monitoring of implementation of the Strategy

Conclusions:

According to the information available to the Agency, the Government's Coordination Body established in August 2014 to administer the Action Plan has so far held two meetings, one in 2014 and one on 25 January 2016.

Although the Action Plan envisaged the adoption of amendments to the Law on the Agency, providing for the improvement of mechanisms of oversight of the implementation of the Strategy in March 2014, almost two years later they do not exist even in the form of a draft.

Supplements to the Law on the National Assembly, aimed at improving oversight of the implementation of the Strategy have not been adopted, much like Objective 4.7 in 'Prevention of Corruption'.

Strengthening of the capacity of the Ministry of Justice's Strategy Coordination Group will be monitored in the future through AP 23.[132] At the beginning of August 2014, the Government established the Coordination Body to implement the Action

132 Activity 2.1.1.3.

Plan for the implementation of the National Anti-Corruption Strategy, at the highest level, within the Government itself. As the reason for the establishment of this body, the Minister of Justice cited "unsatisfactory results in terms of fulfilling the Action Plan" and, while opening the first meeting, stressed that "the establishment of this body raised coordination to the highest level" and that this was "done in consultation with representatives of the EC". According to the Decision, the Coordination Body includes the Prime Minister, who also manages its work, Ministers in charge of judicial and financial affairs, and a representative of the Anti-Corruption Council. It is foreseen that the Coordination body will meet at least semi-annually, while other members of the Government and heads of competent authorities can also participate in its work, as required. A special role is played by the State Secretaries of the Ministry of Justice and Ministry of Finance as they coordinate the work of the authorities in charge of the implementation of the Action Plan, via individuals from these authorities who have been designated as contact persons. The State Secretary of the Ministry of Justice is to hold meetings with these individuals at least once every three months, including bilateral meetings if necessary. Competent state authorities are required to inform the Coordination Body about the fulfilment of measures from the Action Plan, through the Ministry of Justice and the Council, and the Body is allowed to propose that the Government take decisions to implement the Action Plan.

The Law on the National Assembly has not been supplemented to introduce the obligation of the Government to submit to the National Assembly, at least once a year, a report on the implementation of the conclusions of the National Assembly issued upon consideration of the Agency's reports, within 6 months from the issuance of the conclusions, and with the obligation to discuss the Government report at a National Assembly session. The National Assembly has proposed that the deadline for implementation of this measure be extended.

The BCSP, APP and BIRN Alternative Report presented the findings of the analysis of the content of media reporting on the Strategy, for the period when the Strategy was in the process of adoption.[133] The main findings of the analysis are:

- Although it is an umbrella anti-corruption document, media reporting on the process of its adoption was modest;
- The majority of the articles were published in the printed media, followed by the agencies. Electronic media published fewer reports on the subject;
- Analysis was almost completely absent from the reporting – the dominating forms were: short newspaper-style facts, news and reports. Only one analysis and three interviews were published;
- The agenda was primarily defined by institutional actors from the executive, who were most often cited as individual sources. The Agency

133 BCSP, APP and BIRN Alternative Report, January 2016, p. 56-57.

and its representatives were listed as sources in three texts, whereas the only representatives of the non-governmental sector were TS and the Council for Monitoring, Human Rights and Combat against Corruption - Transparency. Conspicuously absent were also the representatives of the legislative branch, as they were listed as sources in a single text, which spoke of the diminishing role of the Parliament as a place to discuss the solutions proposed by the executive;

- The reporting was mostly of protocolar nature. The majority of the articles have been topically associated with the presentation of the Draft Strategy in the broader, political context. In addition, another 20% of the texts were related to the parliamentary sessions and the presentation and adoption of the Strategy. Other articles dealt with the wider social framework of the fight against corruption or criticised the proposed solutions;
- Media coverage was mainly neutral or positively worded, thanks to the fact that most sources had welcomed the Strategy or presented its key solutions. All the negatively worded texts came from the NGO sector or the Agency;
- Messages of direct sources were dominated by announcements, ambitious plans for the future, and promises. In their statements it was announced, among other things, that the citizens can expect a battle with political corruption at the very top, high standards and requirements during its implementation, prevention of corruption, and risk management. Concrete solutions, deadlines and direct responsibility of individual actors were mentioned a negligible number of times, reducing the ability of citizens to be fully informed.

6. RECOMMENDATIONS

In addition to achievement of Strategy objectives imposing corresponding obligations whose implementation will be the exclusive responsibility of the public authorities, the Strategy includes specific recommendations aimed at the public authorities, the private sector and the civil society.

Recommendation:

Given the fact that the Strategy does not envisage any methodology for monitoring of compliance with these recommendations, the Agency – as in the case of two previous reports – recommends that the Ministry of Justice specify to whom the third, fourth and fifth recommendations apply, and consider the possibility to obligate the relevant Ministries to monitor these fields within their duty to perform monitoring in their own departments, and inform the Agency thereof as part of their reporting on the implementation of the Strategy, to provide information on compliance with the recommendations.

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