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REPUBLIC  
OF SERBIA  
ANTI  
CORRUPTION  
AGENCY

**REPORT ON THE IMPLEMENTATION OF  
THE NATIONAL ANTI-CORRUPTION  
STRATEGY AND ACTION PLAN FOR THE  
IMPLEMENTATION OF THE NATIONAL  
ANTI-CORRUPTION STRATEGY**

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2012

Belgrade, 28 March 2013

# Contents

<b>INTRODUCTION</b> .....	7
<b>I GENERAL PART</b> .....	13
I.1. Problems and Challenges Encountered during the Preparation of the Report.	15
I.2. Assessment of the Enforcement of the Strategy .....	17
I.3. Executive Summary .....	18
I.4. Anti-Corruption Agency Recommendations .....	25
<b>II SPECIFIC FIELDS</b> .....	27
2.1. POLITICAL SYSTEM .....	29
2.1.1. General Overview .....	29
2.1.2. Implementation of the Strategy Recommendations .....	30
2.1.3. Anti-Corruption Agency Recommendations .....	40
2.2. JUDICIAL SYSTEM AND POLICE .....	41
2.2.1. General Overview .....	41
2.2.2. Implementation of the Strategy Recommendations .....	43
2.2.3. Anti-Corruption Agency Recommendations .....	53
2.3. SYSTEM OF STATE ADMINISTRATION, TERRITORIAL AUTONOMY, LOCAL SELF-GOVERNMENTS AND PUBLIC SERVICES .....	54
2.3.1. General Overview .....	54
2.3.2. Implementation of the Strategy Recommendations .....	56
2.3.3. Anti-Corruption Agency Recommendations .....	62
2.4. PUBLIC FINANCE SYSTEM .....	63
2.4.1. General Overview .....	63
2.4.2. Implementation of the Strategy Recommendations .....	64
2.4.3. Anti-Corruption Agency Recommendations .....	72
2.5. ECONOMIC SYSTEM .....	73
2.5.1. General Overview .....	73
2.5.2. Implementation of the Strategy Recommendations .....	75
2.5.3. Anti-Corruption Agency Recommendations .....	84
2.6. MEDIA .....	85
2.6.1. General Overview .....	85
2.6.2. Implementation of the Strategy Recommendations .....	86
2.6.2. Anti-Corruption Agency Recommendations .....	90
2.7. PARTICIPATION OF THE CIVIL SOCIETY AND THE PUBLIC IN COMBATTING CORRUPTION .....	91
2.7.1. General Overview .....	91
2.7.2. Implementation of the Strategy Recommendations .....	92
2.7.3. Anti-Corruption Agency Recommendations .....	99

# INTRODUCTION

## STRATEGY AND ACTION PLAN ADOPTION PROCESS

**The National Anti-Corruption Strategy**<sup>1</sup> was adopted by a Decision of the National Assembly of the Republic of Serbia of 8 December 2005.<sup>2</sup> The Decision obliges the Government of the Republic of Serbia to adopt an Action Plan for the Implementation of the Strategy, secure funds for its implementation, ensure the adoption of sectoral anti-corruption action plans and propose the adoption of a law on an autonomous and independent anti-corruption body. The Decision also obliges all state authorities in the Strategy to directly cooperate in its elaboration and in the design and implementation of the Action Plan and sectoral anti-corruption action plans and charges the autonomous and independent anti-corruption body with reporting to the National Assembly of the Republic of Serbia on the implementation of the Decision at least once a year.

**The Action Plan for the Implementation of the National Anti-Corruption Strategy**<sup>3</sup> was adopted by a Government of the Republic of Serbia Decision in late 2006. Unfortunately, the Action Plan was not promoted as a document of such relevance should be. Although it has been available on the Internet since it was adopted, it remains unknown whether it has been disseminated to all the entities obliged to implement it (hereinafter: implementing entities), i.e. whether they have been systemically notified of the tasks they are to fulfil under it. According to one assessment, for instance, the Action Plan does not elaborate the Strategy recommendations well enough and it was adopted in its present form because the representatives of the executive authorities in the Commission wanted to fulfil the obligation to adopt it as soon as possible.<sup>4</sup>

The Government of the Republic of Serbia in 2006 passed a Decision Establishing the Commission for the Implementation of the National Anti-Corruption Strategy and the Recommendations of the Group of States against Corruption (GRECO).<sup>5</sup> The composition of the Commission was subsequently modified by Government decisions to reflect the personnel changes in the Ministry of Justice given that the Minister of Justice simultaneously chaired the Commission. The Commission's meetings were irregular, but it did adopt its Rules of Procedure, design the Action Plan and review some other issues. It, however, failed to identify mechanisms for monitoring compliance with the obligations

1 Hereinafter: Strategy.

2 Official Gazette of the Republic of Serbia No. 109/05.

3 Hereinafter: Action Plan.

4 "Analysis of the Obligations of the National Assembly Arising from the National Anti-Corruption Strategy and Proposals for Further Action", Transparency Serbia, Belgrade, 2006, Available in Serbian at [http://www.transparentnost.org.rs/index.php?option=com\\_content&view=article&id=84&Itemid=31&lang=sr](http://www.transparentnost.org.rs/index.php?option=com_content&view=article&id=84&Itemid=31&lang=sr)

5 Official Gazette of the Republic of Serbia No. 63/06.

in the Strategy and Action Plan or deal with the design of sectoral action plans. Given the lack of systemic oversight of the fulfilment of the Strategy and Action Plan tasks by the state and other implementing entities until the establishment of the Anti-Corruption Agency,<sup>6</sup> the establishment of this autonomous and independent body also charged with such oversight, was of major relevance to the implementation of these two documents.

**The Anti-Corruption Agency**<sup>7</sup> was established as an autonomous and independent state authority pursuant to the Law on the Anti-Corruption Agency,<sup>8</sup> which has been in force since 1 January 2010. Article 5 of the Law lists the competences of the Agency, including, inter alia, oversight of the implementation of the Strategy, Action Plan and sectoral action plans and rendering opinions on their enforcement. According to the data available to the Agency, four Ministries - the Ministries of Internal Affairs, Youth and Sports, Health, and Education and Science - have designed their sectoral action plans to date.

This is the third Report on the Implementation of the Strategy and Action Plan that the Anti-Corruption Agency is submitting to the National Assembly of the Republic of Serbia pursuant to Article 26(2) of the Law on the Anti-Corruption Agency since the two documents were adopted and it covers the actions of the public authorities in accordance with them in 2012. The first Report covered the 2006-2010 period and the second Report covered 2011. The 2011 Report was submitted to the National Assembly within the Agency's 2011 Annual Report in March 2012. Given that parliamentary elections were held in May 2012, it was only on 31 October 2012 that the parliamentary Committee for the Judiciary, State Administration and Local Self-Governments reviewed this Report. Like the previous year, the Report was published in hard copy and posted on the Agency website and the key findings were publicly presented on several occasions.

The goal of the Report is to systematise as much information as possible on the 2012 developments, measures and activities that have affected the implementation of the Strategy recommendations and the Action Plan activities, to assess the fulfilment of the Strategy recommendations and highlight the problems still present in this field. The Report is targeting both the decision makers and the entities under the obligation to implement the Strategy and Action Plan, as well as experts and all other citizens interested in gaining insight in how far the Republic of Serbia has progressed in combating corruption.

The process of drafting a new National Anti-Corruption Strategy for the 2013-2018 period was under way at the time this Report was finalised.<sup>9</sup>

6 "Analysis of the Obligations of the National Assembly Arising from the National Anti-Corruption Strategy and Proposals for Further Action", Transparency Serbia, Belgrade, 2006, Available in Serbian at [http://www.transparentnost.org.rs/index.php?option=com\\_content&view=article&id=84&Itemid=31&lang=sr](http://www.transparentnost.org.rs/index.php?option=com_content&view=article&id=84&Itemid=31&lang=sr)

7 Hereinafter: Agency.

8 Official Gazette of the Republic of Serbia Nos. 97/08 and 53/10.

9 More on the Strategy design process in the Anti-Corruption Agency's 2012 Annual Report, Chapter: Provision of Mechanisms for Establishing and Improving Integrity in the Institutional and Regulatory Framework

## Methodology

One of the goals of the Report was to consolidate most of the available information on the fulfilment of the tasks formulated in the Strategy and Action Plan. Given that the Strategy and Action Plan do not lay down an appropriate plan or methodology for monitoring and evaluating the fulfilment of the obligations they impose, the development of this methodology was one of the main challenges the Agency faced during its preparation of all three Reports. The Agency endeavoured to apply the lessons learned in the previous two reporting cycles and thus design adequate methodologies for collecting data and assessing the fulfilment of the tasks.

*Data Collection Methodology.* – Based on the experience gained during the prior reporting cycle, when the Agency collected more specific information for analysing the fulfilment of the Strategy and Action Plan thanks to its improved methodology, the Agency in 2012 again designed a sample of public authorities to which it sent a list of specific questions about the implementation of these two documents. The Agency again applied the following criterion when it selected the implementing entities that would be included in the sample: whether a specific public authority or a group of public authorities, given its purview, would be able to provide answers of essential relevance to the analysis of the fulfilment of the Strategy recommendations and Action Plan activities. The 2012 Questionnaire included a greater number of questions about individual recommendations in order to obtain replies more focused on the essence of the recommended measures. The Agency used as the starting point the replies to the Questionnaire provided by the National Assembly of the Republic of Serbia, the Assembly of the Autonomous Province of Vojvodina, the Government of the Republic of Serbia, all the ministries, forty local self-government units and 17 other selected public authorities, as well as the replies to the Questionnaire forwarded by the Association of Independent Electronic Media and the Press Council. The Standing Conference of Towns and Municipalities assisted the Agency in contacting the local self-government units. Only the following public authorities continued fulfilling the obligation to report on the basis of the old form and the 2011 questionnaire in 2012: the Access to Information of Public Importance and Personal Data Protection Commissioner, the National Bank of Serbia, the Mačva Administrative District and the Belgrade City Municipality of Vračar.

Like in 2010 and 2011, the Agency also perused various reports prepared by international organisations and development agencies and national non-governmental and professional organisations and their surveys, researches and analyses. The information in these documents was initially to have served as an additional source of data and as a means to verify the conclusions in the reports of the implementing entities. It, however, ultimately transpired that they again constituted the only source of information in some cases.

*Methodology for Assessing the Fulfilment of the Recommendations* – The 2010 Report already highlighted the challenges regarding the manner in which the tasks in the strategic documents were formulated and the lack of relevant indicators for measuring their implementation. On the other hand, notwithstanding the absence of a large amount of information, the Agency had been able to identify progress, trends, as well as problems in specific fields more easily during its preparation of the 2010 Report because it covered a much longer period of time. The 2012 analysis was in that respect somewhat narrower

given that it is difficult to assess whether specific headway has been made in one year, particularly with respect to permanent tasks. Like in 2011, this challenge was addressed by assessing the recommendations on the basis of the maximum amount of collected data in the following manner: 1) Continuously implemented recommendations – particularly those formulated as permanent tasks – such assessments were made where the Agency had information on the implementation of relevant activities and where none of the available sources indicated major or systematic problems in the field at issue; 2) Partly implemented recommendations – such assessments were made when the implementing entities had taken steps to implement the recommendations but where the available sources indicated that there was room for improvement and the need to invest additional efforts in a specific field; 3) Unimplemented recommendations – such assessments were made either in case a recommendation envisaged the fulfilment of a single task, which remained outstanding, or in case a crucial part of the recommendation had not been implemented; and 4) No available data – recommendations regarding which the Agency was unable to obtain the data needed for assessing their fulfilment and where the Agency emphasised that it failed to obtain the data relevant for their analysis.

### **Structure of the Report**

The Report on the Implementation of the Strategy and Action Plan is divided into three chapters: Introduction, General Part and Specific Fields.

The **Introduction** provides a brief overview of the Strategy and Action Plan adoption process, a description of the methodology used during the preparation of the Report and an overview of the structure of the Report.

The chapter entitled **General Part** presents the problems and challenges the Agency faced during the preparation of the Report, a general assessment of the fulfilment of the Strategy, a list of key findings on the implementation of this document and general recommendations.

The chapter entitled **Specific Fields** is divided into sections, each of which focuses on a specific system in the Strategy. Each section contains a general assessment of the situation and the fulfilment of the Strategy recommendations, as well as the main recommendations for further action within the specific system.

# I

## GENERAL PART

## 1.1. Problems and Challenges Encountered During the Preparation of the Report

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The Agency faced two types of problems and challenges as it prepared this Report on the Implementation of the Strategy and Action Plan. The text below will provide a brief overview of them to give the reader greater insight in the report drafting process and the potential constraints of the analysis of and the conclusions on the fulfilment of the Strategy recommendations: It will first review 1) the problems and challenges regarding the process of reporting on the fulfilment of the Strategy and Action Plan obligations, and, subsequently, 2) the problems and challenges regarding the content and quality of the Strategy and Action Plan.

**1. Reporting Process.** - In addition to the challenges it faced in designing a methodology that would ensure that its Report would be of appropriate quality, the Agency faced several other difficulties during the reporting process as well.

The July 2010 amendments to the Law on the Anti-Corruption Agency imposed an obligation upon the entities charged with implementing the Strategy, Action Plan and sectoral action plans to report on their implementation on a quarterly basis (Art. 62(2)). However, only the following entities continued complying with their obligation to submit their quarterly reports on the basis of the old forms and the 2011 Questionnaires in 2012: the Access to Information of Public Importance and Personal Data Protection Commissioner, the National Bank of Serbia, the Mačva Administrative District and the Belgrade City Municipality of Vračar.

The challenges the Agency encountered during the preparation of the first and second Reports on the Implementation of the Strategy and Action Plan remained largely present during the third reporting cycle as well. Although the replies, given the better focussed questions, provided much more specific material for analysis than the forms used during the first reporting cycle, and there was some improvement in the quality of the replies over the previous years, the deficiencies of the prior reporting processes recurred in 2012 as well. Namely, not all of the responses were of equal use or quality; some of them were descriptive rather than direct and did not focus on the very problem which had led to the formulation of the recommendation in the strategic document in the first place. This is why quite a few of the answers again boiled down to a mere enumeration of activities, which are frequently only tenuously related to specific activities or recommendations.

The impression therefore persists that the activities had not been undertaken to fulfil the obligations in the strategic documents, i.e. that they had not been undertaken to combat corruption and that they were regular activities of the implementing entities that can



in some respect be linked to the topics the Strategy and Action plan deal with. Indeed, the situation can be ascribed to the Strategy, and the Action Plan and the relationship between the two documents in particular, given that they provide a lot of room for doubts about which activities have to be undertaken to implement them and how the Action Plan activities correspond to the Strategy recommendations.

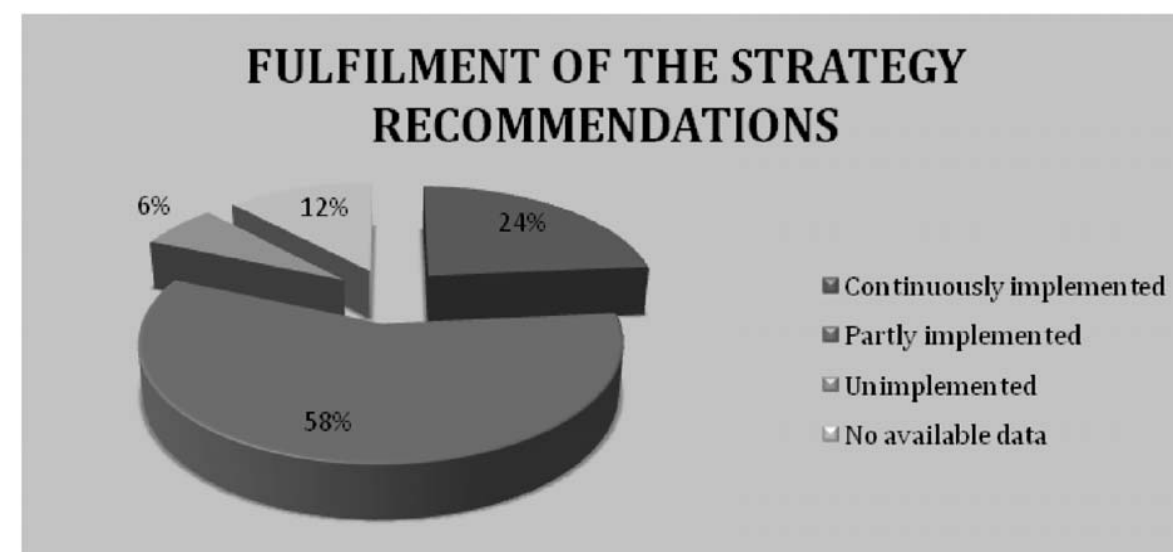
Another major problem the authors of the Report faced during the reporting process regarded the fact that the implementing entities continued submitting their replies to the Questionnaire with delay, while the Agency cannot move the deadline by which it has to submit its Report to the National Assembly. Such delays put the Agency in the following situation: it either did not have enough data for its analysis or was unable to perform a quality analysis across the board, given the magnitude and complexity of the Strategy and Action Plan and the diversity of issues they deal with. Therefore, like in 2011 and 2012, the authors of the Report again collected additional information from various reports by international organisations and development agencies and national non-governmental and professional organisations and their surveys, researches and analyses.

This is, therefore, the third consecutive Report that is to a much greater extent the product of a secondary analysis the Agency conducted by using all the available information and material rather than a compilation of reports by the public authorities, which should have sufficed for assessing the fulfilment of the strategic documents.

**2. Strategy and Action Plan** - One of the weaknesses of the Strategy is that it fails to specifically focus on the education and health systems, which are extremely important in terms of combating corruption. On the other hand, the impression is that the Action Plan did not make full use of the potentials indicated in the Strategy and that it gives rise to dilemmas about whether the activities it comprises adequately concretise the Strategy recommendations. The main features of the Action Plan that posed the greatest obstacles and challenges during the reporting process were described in the 2010 Report.<sup>10</sup>

<sup>10</sup> See the Anti-Corruption Agency "Report on the Implementation of the National Anti-Corruption Strategy and the Action Plan for the Implementation of the National Anti-Corruption Strategy – Annex I", March 2011, available at <http://www.acas.rs/en/component/content/article/229.html>.

## 1.2. Assessment of the Enforcement of the Strategy



Out of the 140 reviewed Strategy recommendations, the Anti-Corruption Agency concluded that 33 (24%) recommendations were continuously implemented, that 81 (58%) recommendations were partly implemented and that 9 (6%) recommendations were not implemented in 2012. The Agency failed to obtain data to analyse the fulfilment of as many as 17 (12%) of the recommendations.

Like in the past years, the majority of the recommendations were again merely partly implemented in 2012. This trend characterises all the Strategy systems for the third time running, which reinforces the impression that the tasks in the strategic document are not approached in a systemic and serious manner and that the public authorities and other institutions still lack the capacities to function effectively in these fields. On the other hand, it was impossible to assess the real practical impact on the fight against corruption of as many as 24% of the continuously implemented recommendations. What is particularly concerning is that the Agency was unable to obtain data for an analysis of 12% of the recommendations because the public authorities simply failed to answer all the questions in the Questionnaire or provided replies that could not be linked to a specific recommendation or question and because no additional sources of information about these recommendations were available. It may thus be concluded that two-thirds of the analysed Strategy recommendations, i.e. 58% of the partly implemented and 6% of the unimplemented recommendations, were still outstanding at the end of the reporting period although the Strategy has been in effect for seven years and its enforcement has been subject to institutionalised oversight for three years. Although these conclusions undoubtedly help form a general idea about the fulfilment of the Strategy, it needs to be noted that they are the result of numerical indicators which attach equal value to each recommendation and do not necessarily reflect the importance of every single recommendation for the achievement of the Strategy goals.

## 1.3. Summary

### Conclusions and Recommendations

The National Anti-Corruption Strategy recommends measures aimed at reducing corruption and creating an anti-corruption culture at the level achieved by developed European countries. This general goal is to be achieved by fulfilling sixteen specific objectives. Based on the collected data and analyses, the Anti-Corruption Agency can conclude that visible efforts have been made to achieve all the Strategy objectives and that some of them were partly achieved; however, most of these objectives regard the establishment of the legal and institutional frameworks for preventing and suppressing corruption, prevention of conflict of interests in the public sector, involvement in the regional and international anti-corruption efforts, the introduction of ethical standards and transparent funding of political parties.

Serbia was ranked 80<sup>th</sup> on the list of 176 independent states and dependant territories on the Transparency International 2012 Corruption Perceptions Index, having scored 39 of the maximum 100 index points. The findings regarding six of the seven used surveys were identical in 2011 and 2012, wherefore it may be ascertained that there have been no changes in the perceptions of corruption in Serbia. Actually, Serbia failed to improve its rating on this Index for the sixth consecutive year.<sup>11</sup>

The results of a Corruption Benchmarking Survey, commissioned by the United Nations Development Programme (UNDP) in Serbia and conducted by the Centre for Free Elections and Democracy (CeSID) in December 2012, show that 15% of the respondents perceive corruption as the greatest problem in Serbia. Corruption was the only non-economic problem that deteriorated in a society preoccupied by economic problems. The rise in perceptions of the gravity of the problem of corruption was accompanied, however, by an increase in the percentage of Serbia's citizens who believe that the state is addressing this problem more and more seriously. As many as 41% of the respondents thought that the level of corruption would fall in the coming year. Such an optimistic view had not been recorded in any of the previous five survey rounds. This survey cycle also recorded the best results in terms of experience with corruption in the past three years. The citizens think that corruption must be prevented by eliminating its causes (84%), and that each institution at risk of corruption must develop anti-corruption mechanisms and must be held accountable for preventing it.<sup>12</sup>

The following section presents the key findings of the Anti-Corruption Agency during its review of the implementation of the Strategy recommendations. Its recommendations on how to further improve the achievement of the Strategy's objectives and tasks were formulated on the basis of these findings.

11 Transparency Serbia "Six Years of Stagnation", 5 December 2012, available at [http://www.transparentnost.org.rs/index.php?option=com\\_content&view=article&id=255:konferencija%20-za-%20tampu&catid=14:vesti&lang=en&Itemid=](http://www.transparentnost.org.rs/index.php?option=com_content&view=article&id=255:konferencija%20-za-%20tampu&catid=14:vesti&lang=en&Itemid=)

12 UNDP and CeSID, Corruption Benchmarking Survey, Public Opinion on Corruption in Serbia, pp. 6-8, 23, available at <http://www.undp.org.rs/index.cfm?event=public.publicationsDetails&revid=CDB64BE5-B259-E26A-A74CE322069FD34F>.

### Political System

The 2011 amendments to Law on the Election of People's Deputies abolishing "blank" resignations, introducing the obligation to distribute the won seats in accordance with the order of the candidates on the tickets and mandating that the underrepresented gender account for at least one-third of the deputies were applied for the first time at the parliamentary elections on 6 May 2012.

The new legislative framework on the financing of political parties facilitated the transparency of the funding of the activities of political entities and the transformation of this area into a system of formally registered transactions, to which the regulations envisaged by positive law are applied. Sixty-nine of the 83 political parties complied with their obligation to submit their annual financial statements in 2012. By the end of 2012, 1,035 reports on election campaign spending were submitted in accordance with the regulations; 1,020 of them were verified and published on the Agency website; the other 15 were consolidated reports, i.e. reports covering more than one election unit. However, not all political entities fulfilled their obligation and submitted their reports. The Agency filed 53 motions for instituting misdemeanour proceedings over violations of the Law on the Financing of Political Activities: one motion regarded the abuse of funds, 13 regarded the entities' failure to submit their annual financial statements by the deadline set out in the Law and 39 the non-submission of reports on election campaign spending.

Exercise of the right of free access to information of public importance continuously increased in 2012, but the level of the right guaranteed by the law is still higher than the one achieved in practice.

The development of integrity plans by the public authorities was under way and they were due to adopt these documents by 31 March 2013. By 25 February 2013, 1,519 of 4,576 institutions submitted to the Agency their decisions on the establishment of working groups charged with designing integrity plans and 91 institutions had completed their integrity plans. The draft integrity plans (69 models covering 14 systems) developed by the Agency are available on the Agency server in the form of an electronic application and each institution can access them with its username and password. The institutions are actually automatically generating their own integrity plans by responding to the questions in the draft integrity plans for the system they belong to.

Under the working text of the Law on the Protection of Public Interests from Undue Influence Peddling drafted by the Ministry of Foreign and Internal Trade and Telecommunications, all lobbyists will have to be licensed by the state, report their income and pay taxes, accurately describe the interests they are advocating, and specify the value of the contracts they are signing. In return, they will be given "passes" to enter the parliament, Government and other state institutions, while the representatives of the executive authorities will be under the obligation to meet with them and hear out their proposals. This Law is to be adopted in the latter half of 2013 at the latest.

The legislative framework was not amended in 2012 to limit the immunity of public officials to their appearances and statements made during the course of duty (substantive immunity).

## **Judicial System and the Police**

Due to the non-fulfilment of specific standards, the Constitutional Court of Serbia in July 2012 overturned the 2009/2010 procedure for reappointing judges and prosecutors and the review process conducted to address its shortcomings. The Court revoked all the decisions of the High Judicial Council and the State Prosecutorial Council dismissing the complaints of the non-reappointed judges and prosecutors and instructed these bodies to reinstate all of them within 60 days.

The enforcement of the new Criminal Procedure Code introducing a number of novel provisions to improve the efficiency of court proceedings was suspended for four months because the courts had failed to complete the pending trials in which the old law is still applied. The Draft Law on Mediation Law was expected to be submitted to the parliament for adoption in April 2013. The enforcement of the Law on Notaries Public was put off until March 2013.

Professional bailiffs began operating in Serbia in June 2012 and have since mostly dealt with the enforcement of pecuniary claims for rendered public utility and similar services pursuant to authentic documents.

Hearings in the largest (i.e. best equipped and most overloaded) courts, especially those of general jurisdiction, are often scheduled twice a year per case. An appellate procedure usually takes more than a year to complete. Simply put, courts are overwhelmed with cases, and despite official statistics showing positive results of this reform, the situation in reality seems worse than before.

Most judicial institutions are insufficiently proactive in publishing the data on their performance, which is particularly concerning in situations when they do not comply with their legal obligations, like the one to publish their information booklets.

Despite the Rulebook on the Protection of Whistle-Blowers adopted in 2011, the Agency's manoeuvring space for providing adequate protection to the whistle-blowers has been largely constrained by the lack of effective norms. The Information of Public Importance and Personal Data Protection Commissioner has been coordinating a project aimed at, inter alia, developing a model of a law on the protection of whistle-blowers based on an analysis of a number of comparative law solutions.

A working group has been formed to draft a Law on the Attorney General.

The Assembly of the Bar Association of Serbia adopted the Professional Code of Conduct of Lawyers in February 2012.

The police Internal Affairs Sector undertook a number of activities in 2012 to improve the efficiency of the fight against corruption, from conducting preventive checks and launching initiatives to amend regulations to developing instructions, forms and internal Sector rules. The number of police officers charged with suppressing and fighting corruption did not increase in 2012; neither has all the funding needed for the work of the police officers been secured.

## **State Administration, Territorial Autonomy, Local Self-Government and Public Services System**

A General Administrative Procedure Law, aimed at ensuring proportionality in the satisfaction and protection of private and public interests in administrative matters, increasing transparency and improving the efficiency and cost-effectiveness of administrative procedures, aligning the work of the Republic of Serbia administration with the standards of European administrative practices, has been drafted and will be adopted in 2013. The Law on Administrative Disputes still needs to be fully aligned with European standards for judicial review of administrative acts.

The introduction of a uniform information system for collecting data needed for the development of the Government Work Programme is one of the major novelties in the field of public policy coordination. The Methodology for Analysing the Impact of Public Policy Measures and the Methodology of the Integrated System of Strategic Planning have also been drafted.

A project group has been established to design a new state administration reform strategy, which is to follow up on the prior one but cover a broader segment of the so-called public administration.

## **Public Finance System**

The new Public Procurement Law was adopted in December 2012 and comes into effect on 1 April 2013. The Law includes a separate chapter on the prevention of corruption and conflicts of interests, expands the powers of the competent institutions in the field of public procurement, notably the Public Procurement Administration and the Republican Commission for the Protection of Rights in Public Procurement Procedures, introduces more restrictive rules for negotiated procedures without prior publication of a notice (re-introduces the obligation to obtain prior consent from the Public Procurement Administration), introduces new public procurement procedures and purchasing mechanisms (competitive dialogue, framework agreement, dynamic procurement system), regulates the public procurement planning stage (adoption of an enactment on procurement plans and reports on the implementation of the procurement plans), imposes upon the contracting authorities the obligation to publish public procurement notices and the tender documentation on the Public Procurement Administration's Public Procurement Portal (free advertising), introduces a Register of Bidders and simplifies the procedure by which bidders prove their eligibility, abolishes the formal reasons for rejecting bids, and includes a separate chapter on public procurements in the defence and security sector.

Many information booklets of the public authorities suffer from the following shortcomings: they present the budget and public procurement data for the previous rather than the current years, they do not present the data in sufficient detail, they fail to present data on executed budget funds and public procurements, which are to be updated on a monthly basis under the Instructions, they present the wages in coefficients or simply omit to publish that chapter at all.

The conditions in which the State Audit Institution (SAI) has been working improved over 2011, but it still lacks office space, given that it already employs 152 staff members. The SAI's Strategic Plan envisages the introduction of suitability audits in 2013 and SAI began implementing the plan in January 2013 by piloting suitability auditing.

Some headway has been observed in the field of taxation in Serbia, but it needs to be modernised further. The Customs Administration established a fully functioning IT system based on interconnectivity between its various departments but is still in need of a properly equipped and functioning customs laboratory.

### **Economic System**

Of the 138 para-fiscal charges abolished in Serbia, 22 were local government revenues. Small companies and entrepreneurs witnessed the greatest savings because the so-called signage and forest fees were abolished. Amendments to the Law on the Budget System introduced important rules: the amount of a fee needs to be in accordance with the costs of service provision and a fee cannot be charged for issuing the data obtained from one state authority when requested by another authority. Furthermore, an end was to the practice of various state institutions of imposing taxes and charges on private individuals and businesses, which had led to lack of clarity and unpredictability of the tax system. The own revenues of ministries, authorities and agencies were abolished and all the revenues will be paid into the state budget, which will enable better control of the state funds and their more rational use.

The amendments to the Law on Tax Procedure and Tax Administration simplified the tax procedures and improved the treatment of tax payers. The professionalisation of the Tax Administration was strengthened and the obligation to receive tax returns from all taxpayers in electronic format was introduced. The Law now equally treats payment delays by the taxpayers and the state and the state is now under the duty to pay a penalty interest to VAT payers if it is late in refunding VAT.

The new Law on Deadlines for the Payment of Financial Obligations in Commercial Transactions aims to ensure the settlement of financial obligations in commercial transactions between businesses and between businesses and the public sector. The main goal of the Law is to reduce insolvency, cut the chains of indebtedness and halt blockades of companies over their inability to collect their receivables. This Law introduces discipline in the financial system and prevents the non-payment of obligations. Private businesses and the state have to settle their financial obligations within 60 and 45 days respectively. The following key reforms have not taken place yet: to simplify and reduce the costs of obtaining building permits and reform inspections and labour legislation. The responsible institutions were late on average 330 days in adopting 82 by-laws, necessary for the implementation of 19 laws relevant for businesses.

The new Law on Companies introduces several novelties into the legal system and regulates the existing legal institutes more thoroughly and clearly, thereby eliminating specific legal ambiguities in the prior law.

The Commission for the Protection of Competition (CPC) improved its competences in administrative and procedural law and strengthened its capacity, which is still insufficient.

The Law on Competition still contains shortcomings, not least the short three-year statutory limitation period and the fact that the CPC must pay interest on fines overturned on appeal. The timeframe for in-depth merger investigations could also be extended, sector-specific decrees on price regulations adopted without previous consultation with the CPC the Commission may undermine the effectiveness of competition policy in Serbia and the judiciary's capacity to rule on complex competition cases must be stepped up.

Under the new Law on Public Companies, public companies must have their financial statements audited by certified auditors and set up audit commissions that will be charged with selecting the external auditors and with the accounting procedures and financial reporting procedures, which are crucial for the external audits of companies.

### **Media**

The media situation in Serbia did not change much over the previous years. The media legislative framework was not changed, the transparency of media ownership has yet to be ensured, access to advertising in the media remains under the control of a few economic and political actors, entailing a significant risk of influence on the media and of self-censorship, and the implementation of the Media Strategy needs to be speeded up.

On the positive side, the Criminal Code was amended and defamation is no longer a criminal offence. The Criminal Code, however, still incriminates insult, and the legislator deleted the provisions imposing stringent punishment for threats against journalists related to their work and lowered the statutory minimum penalties for the perpetrators of this offence four times.

The Republican Broadcasting Agency improved the transparency of its work and enhanced its technical capacity for monitoring broadcasters, but the procedure by which RBA members are appointed continues to raise concerns about the independence of this body.

Cases of discrimination against and unjustified denial of information to individual media by the public authorities were registered in 2012.

The Press Council Complaints Commission reviewed 35 complaints in 2012 and established that nine of the texts complained of violated the Code, most of them breaching more than one provision. Most of the media found to have violated the Code abided by the Commission's decisions and fulfilled the obligation to publish them. The decisions of the Press Council Complaints Commission have been qualified by experts as fair, balanced and well-reasoned and did not provoke any polemics or negative criticism. The number of complaints is relatively small, however, particularly in comparison with the number of lawsuits against the media, which can largely be ascribed to the fact that the Council cannot review complaints against media that have not recognised its authority, which will soon change.

Media influence peddling is still not prohibited or penalised by the law.

### **Participation of the Civil Society and the Public in Combating Corruption**

Civil society organisations continued playing an important role in social, economic and political life and in promoting democratic values. The Office for Cooperation with Civil Society has been very active in raising awareness both among the public and among state institutions of the importance of involving civil society and citizens in decision-making. It has also established cooperation with other countries in the region. The Office has been allocated sufficient means, including financial resources, and now functions at full capacity.

The Government Office for Cooperation with Civil Society in 2012 prepared its Annual Summary Report on budget funding provided to associations and other civil society organisations in 2011 to support their programme activities. According to the collected data, a total of 3,052,736,657 RSD were allocated, mostly through public calls for proposals (40% of the granted funds). A total of 51.3% funds mapped in the report were allocated in accordance with the in-house procedures and enactments of the state administration authorities, while 5.1% were granted pursuant to decisions of heads of the state authorities.

Seventy-three percent of the calls for proposals set out the criteria in writing and 94% of the funds were disbursed through these calls. After analysing the data, the Office for Cooperation with Civil Society forwarded to the relevant authorities initiatives to amend the Law on Accounting and the Corporate Profit Tax Law.

The information available to the Office indicated that the enforcement of the Decree on Funds for Funding or Co-Funding Programmes of Public Interest by Associations adopted in February 2012 improved the transparency of the fund allocation process. The public authorities now regularly require implementation and financial reports from the grantees. It has, however, been established that specific Decree provisions have caused the associations difficulties in obtaining the required documentation and unnecessary costs.

## **1.4. Anti-Corruption Agency Recommendations**

In the view of the Agency, the following activities should be implemented to achieve the anti-corruption goals:

1. Continue strengthening the publicity and transparency of the work of the state authorities, notably by creating conditions for the use of information technology along with the publication of as much information of public importance as possible.
2. Improve the content of the reports on the fulfilment of the Strategy and Action Plan obligations submitted to the Agency by the implementing entities and ensure consistent compliance with the quarterly reporting obligation.
3. Oblige legislators to apply the Agency methodology for analysing the risk of corruption in the regulations during their drafting.
4. Regulate the field of public debates in the legislative process to ensure their regular and effective use, particularly by the application of information technology.
5. Adopt a law on lobbying.
6. Continue investing efforts to eliminate the shortcomings in the judicial reform process and complete the process in accordance with international standards and in consultation with experts.
7. Take the necessary measures to improve judicial efficiency, introduce information technologies to the greatest extent possible and wherever feasible to relieve the judiciary of unnecessary administrative work and create the basis for analysing the performance of the judiciary and continue investing efforts in consolidating alternative dispute resolution.
8. Adopt in the short term a separate law establishing a general legal regime for protecting persons disclosing corruption in various walks of life and in public interest (a Whistle-blower Protection Law).
9. Provide the police with adequate working conditions and resources to fight corruption.
10. Continue efforts to ensure a uniform reform of the state administration.
11. Fully align the Law on Administrative Disputes with European standards.
12. Oblige public authorities to map the discretionary powers in regulations applied in decision-making procedures and restrict them by formulating the relevant conditions, deadlines and criteria.
13. Introduce the principle of rotation of administration and public service staff on jobs susceptible to corruption and establish mechanisms for reporting unlawful and unethical work of administration and public service staff.
14. Invest further efforts to introduce a merit-based career system and effective human resources management and to develop the capacities of specific state administration sectors and ensure adequate coordination.

15. Establish efficient oversight of the enforcement of the Free Access to Information of Public Importance Law and an effective mechanism for initiating misdemeanor proceedings and for enforcing the Commissioner's final rulings.
16. Ensure the effective enforcement of the new Public Procurement Law and the Public Procurement Development Strategy.
17. Establish a mechanism for assessing the expediency of the budget beneficiaries' needs during budget planning.
18. Ensure the consistent enforcement of the Budget Law with respect to the publication of the draft budgets and annual statements of accounts.
19. Provide the State Audit Institution with adequate working conditions.
20. Invest further efforts in establishing an internal audit system.
21. Continue aligning economic regulations and eliminating unnecessary procedures and improve the system of enacting by-laws prerequisite for the enforcement of the laws.
22. Empower the Commission for the Protection of Competition and eliminate all the shortcomings of the legal framework governing competition, concentration and state aid policies.
23. Ensure adequate and independent oversight of privatisation processes.
24. Establish mechanisms allowing company workers to report corruption and mechanisms for their protection within the companies.
25. Ensure transparency of media ownership.
26. Eliminate circumstances enabling political and economic influence on the media.
27. Lay down penalties for media influence peddling.
28. Adequately formalise the practice by which the state authorities invite representatives of citizens' and professional associations to participate in the process of adopting relevant anti-corruption regulations.
29. Continue with the process of introducing and implementing ethical rules in the everyday work of civil society organisations and promote the participation of civil society organisations applying and advancing professional ethical standards in their work in the public calls for proposals to be financed from public funds.

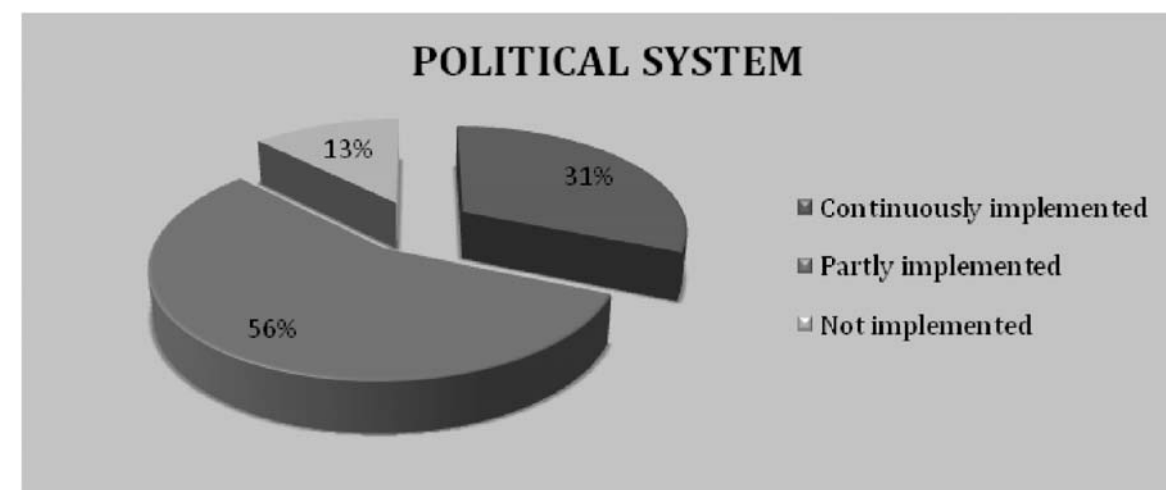
# III

## SPECIFIC FIELDS

## 2.1. Political system

**Serbia's political system** is the first field the Strategy elaborates. This section comprises recommendations, most of which pertain to: the alignment of the national legislation with international standards and the improvement of the national legislation by the adoption of new or the amendment of the existing regulations in general, consolidation of the publicity and transparency of the work of state authorities and access to information of public importance, and the creation of a legal and institutional framework ensuring greater efficiency, quality, integrity, accountability and of oversight systems within the public authorities.

The Anti-Corruption Agency concluded that out of the sixteen reviewed recommendations, five (31%) were continuously implemented, nine (56%) were partly implemented and that two recommendations (13%) were not implemented at all.



### 2.1.1. GENERAL OVERVIEW

The results of the Corruption Benchmarking Survey commissioned by the United Nations Development Programme (UNDP) and conducted by the Centre for Free Elections and Democracy (CeSID) in December 2012 show that the political parties clearly top the list of institutions perceived as corrupt by the public; as many as 72% of the respondents qualified them as corrupt or extremely corrupt. Furthermore, 86% of the respondents think that the political circumstances in the country are the most susceptible to corruption. Fewer respondents than in the previous rounds perceived the following political institutions as corrupt: the head of state (by 23%), the Government (by 13%) and the parliament (by as many as 21%). Apart from the high public perceptions of corruption, these institutions had also experienced a substantial drop in public trust over the past few years.<sup>13</sup>

Regular parliamentary, provincial and local elections and early presidential elections were held in Serbia in May 2012. As the European Commission stated in its Serbia 2012 Progress Report accompanying the document Communication from the Commission to the European Parliament and the Council (hereinafter: Serbia 2012 Progress Report), the elections were free, fair and peaceful and were described as 'competitive, held in a

<sup>13</sup> UNDP and CeSID, Corruption Benchmarking Survey, Public Opinion on Corruption in Serbia, December 2012, pp. 6-8, 21, 25, 26, available at <http://www.undp.org.rs/index.cfm?event=public.ublicationsDetails&revid=CDB64BE5-B259-E26A-A74CE322069FD34F>.

conducive environment and professionally organised' by international observation bodies in spite of a certain lack of transparency in the proceedings of the State Electoral Commission and in the administration of the new single voters' registry.<sup>14</sup> The 2011 amendments to election legislation abolishing "blank" resignations, introducing the obligation to distribute the won seats in accordance with the order of the candidates on the tickets and mandating that the underrepresented gender account for at least one-third of the deputies were applied for the first time at these elections.

## 2.1.2. IMPLEMENTATION OF THE STRATEGY RECOMMENDATIONS

### *International Standards and International Cooperation*<sup>15</sup>

The United Nations Development Programme in Serbia approached the National Assembly in December 2012 with the initiative to assist it in establishing a chapter of the Global Organization of Parliamentarians against Corruption (GOPAC), a voluntary organisation of former and active parliamentarians devoted to fighting corruption. The aim of this organisation is to engage parliamentarians in its national chapters and develop awareness of the fact that the parliament is the frontline institution in the fight against corruption with the aim of designing and applying legislation to fight against corruption and improve the oversight role of the parliament. Once the chapter is established, various forms of training shall be organised for the people's deputies and they will be familiarised with the work of the other national chapters and establish contact with them, et al. At the invitation of the National Assembly Speaker, nearly all the caucuses welcomed the founding of the GOPAC chapter in the National Assembly and notified the Speaker of the people's deputies interested in taking part in this form of activity. The chapter is to be established and begin work in 2013<sup>16</sup> (**Recommendation 1 – continuously implemented**).

### *Transparency of the Work of State Authorities*

As of 20 December 2012, the Information of Public Importance and Personal Data Protection Commissioner (hereinafter: Commissioner) received 3,541 cases regarding access to information of public importance and had 714 cases pending from the previous period. The number of cases filed in 2012 was approximately the same as in 2011. The Commissioner's Office reviewed 2,179 of the 2,294 complaints in this period and found that 80% of them were warranted. The Commissioner rendered 70 conclusions and imposed thirty-three 20,000 RSD fines and fourteen 180,000 RSD fines against entities that failed to enforce its rulings. The Office filed 10 motions with the Government to secure the enforcement of its rulings, but did not receive any feedback from it on whether it had acted on any of them. Eight motions for the mandatory collection of the fines were submitted to the competent court; the court dismissed two motions claiming lack of jurisdiction and suspended the proceedings on two motions until the Supreme Court of Cassation rendered a view on the impugned issue – on which institution has

14 Serbia 2012 Progress Report, p. 6, available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/sr\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/sr_rapport_2012_en.pdf)

15 More on international standards and international cooperation in fighting corruption in the Anti Corruption Agency 2011 Report on the Implementation of the National Anti-Corruption Strategy and the Action Plan for the Implementation of the Strategy, pp. 28-29, available at [http://www.acas.rs/images/stories/Report\\_on\\_the\\_Implementation\\_of\\_the\\_Strategy\\_2011.pdf](http://www.acas.rs/images/stories/Report_on_the_Implementation_of_the_Strategy_2011.pdf).

16 National Assembly of the Republic of Serbia, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2013.

the jurisdiction to enforce the Commissioner's conclusions imposing fines. The Office rendered conclusions to terminate the enforcement of its rulings on 120 cases because they had been enforced in the meantime. Forty-five lawsuits against the Commissioner's decisions were filed with the Administrative Court in this period. Of the 15 lawsuits it ruled on, the Administrative Court rejected eight of them as ill-founded and dismissed the other seven.

The Commissioner issued 61 warnings to public authorities legally obligated to design and publish information booklets either because they had failed to fulfil this obligation or align their information booklets with the Commissioner's new Instructions. Consequently, 20 administrative measures ordering the implementation of this legal obligation were issued.

In early 2012, the Commissioner sent memos to 12 ministries suggesting how they could improve the quality of their information booklets. Although most of his suggestions were upheld, the work stagnated due to the election campaign, the elections and the fact that the Government was not formed until late July. The Commissioner's Office then sent the ministries written reminders of the importance and obligation to publish information booklets. The Commissioner's Office analysed the degree in which the ministries complied with their commitments after the first 100 days of the work of the Government and forwarded the information to the Ministry of Justice and State Administration, which is charged with overseeing the implementation of the Free Access to Information of Public Importance Law (hereinafter: FOIA). The Commissioner issued thirty warnings to local self-governments, which had either failed to prepare their information booklets or whose booklets were not in compliance with the Instructions, and 20 rulings ordering local self-governments to design their information booklets. The Commissioner's Office also took measures at the initiative of the citizens and journalists who addressed it. The measures taken to date are aimed at ensuring that as many state authorities as possible design their information booklets. The Commissioner simultaneously endeavoured to assist the authorities attracting greater public interest in improving the quality of their information booklets. Although some headway has been made in that respect, the fulfilment of this legal obligation still falls short of the Commissioner's endeavours, due to the ineffectiveness of the misdemeanour liability mechanism.

The amendments to the FOIA initiated by the Commissioner were upheld by the competent ministry and the prior Government endorsed the draft amendments and submitted them to the parliament for adoption. However, after the constitution of the new Assembly and the appointment of the new Government, the latter withdrew both this draft law and all the other ones submitted by the former Government from the parliament pipeline. The exercise of the right of free access to information of public importance continuously grew in 2012, but the level of the right enshrined in the Law was still higher than the one achieved in practice.<sup>17</sup>

Administrative inspectors performed 267 checks of the implementation of the FOIA provisions on the public authorities' responses to the Commissioner's rulings on complaints by information seekers and also of the provisions on the design and publication of the information booklets by the state authorities in ministries. A total of 140 motions

17 Information of Public Importance and Personal Data Protection Commissioner, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.



for instituting misdemeanour proceedings have been filed since the oversight of the implementation of this law has been performed by the administrative inspectors of the ministry charged with administrative affairs. Fourteen of them regard the initiation of misdemeanour proceedings against responsible persons in state authorities over the non-fulfilment of the obligation to design information booklets comprising the requisite data on their work. The competent misdemeanour courts, however, forwarded to the ministry only one judgment rendered in 2012, which acquitted the responsible person in the state authority<sup>18</sup> (**Recommendation 2 – partly implemented**).

The new National Assembly website provides a lot of information about the work of the parliament and people's deputies. However, the reports the independent regulatory authorities have been submitting to the legislature are rarely posted on the website. Furthermore, the amendments to the draft laws are not posted at all, which will change after the introduction of the e-parliament system, which is expected in the imminent future.<sup>19</sup> The Assembly of the Autonomous Province of Vojvodina has been posting its decisions and conclusions on its website and taking measures to put in place the e-parliament system<sup>20</sup> (**Recommendation 3 – partly implemented**).

#### *Efficiency of the National Assembly's Oversight Role*

In view of the fact that the National Assembly of the Republic of Serbia reviewed the reports by the independent regulatory authorities for the first time in 2011, when it adopted the conclusions proposed by the Committee and that it did not review them at all in 2012, it is still premature to discuss the specific results and effects of the National Assembly's oversight role regarding these conclusions. It can, however, be concluded that specific provisions of the National Assembly Rules of Procedure governing the review of reports by independent regulatory authorities need to be elaborated in greater detail and that mechanisms ensuring monitoring of the implementation of the adopted conclusions and/or recommendations need to be regulated separately.

The reports by the independent regulatory bodies were not reviewed by the Committee on the Judiciary, Public Administration and Local Self-Governments within 30 days from the day of submission because 2012 was election year and the National Assembly Committees were not constituted before late July. The Committee reviewed these reports at its sessions on 31 October and 5 November and submitted its draft conclusions together with its report to the National Assembly on 14 December. The other National Assembly Committees performed their oversight roles during 2012 as well, by reviewing reports on the performance of various bodies and on the implementation of specific laws or the situation in specific fields.

In 2012, the National Assembly of the Republic of Serbia agreed on cooperating with the OSCE, USAID, UNDP and the NDI, including, notably, the support these organisations will extend the National Assembly in consolidating its oversight role, the Committees in reviewing reports by the independent regulatory authorities and monitoring the

18 Ministry of Justice and State Administration, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2012.

19 National Assembly of the Republic of Serbia, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2013.

20 Assembly of the Autonomous Province of Vojvodina, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

implementation of the National Assembly conclusions and recommendations, in organising public hearings within the fulfilment of the oversight role, in consolidating the oversight of public spending and in strengthening the National Assembly service capacities for performing the Assembly's oversight role. A plan of activities regarding the specific forms of cooperation with these organisations in 2013 has been prepared<sup>21</sup> (**Recommendation 4 – continuously implemented**).

#### *Election System*

The 2011 amendments to Law on the Election of People's Deputies abolishing "blank" resignations, introducing the obligation to distribute the won seats in accordance with the order of the candidates on the tickets and mandating that the underrepresented gender account for at least one-third of the deputies were applied for the first time at the parliamentary elections on 6 May 2012. No amendments to this Law were made in 2012 to introduce elements personalising the election of people's deputies in the election system<sup>22</sup> (**Recommendation 5 – partly implemented**).

#### *Anti-Corruption Obligations of Public Authorities*

Like in 2011, the implementing entities in the sample gave different replies to the Agency question about the activities they were undertaking to fulfil their obligations under the Action Plan, whether they held meetings to that end and how they familiarised their staff with these obligations. The entities said that they planned these activities and were apprised of them at regular meetings at which the activities were included in the agenda and at the educational activities their staff attended; that they took part in the drafting of the integrity plans; that the fulfilment of the Action Plan obligations was part of their regular activities; and that these obligations were fulfilled by the working groups charged with implementing the sectoral action plans and holding regular meetings. (**Recommendation 7 – continuously implemented**).

In order to facilitate the institutions' design of integrity plans, the Anti-Corruption Agency developed 69 draft (model) integrity plans for various types of institutions divided into 14 systems. The draft integrity plans are available on the Agency server in the form of an electronic application and each institution can access them with its username and password. The institutions are automatically generating their own integrity plans by responding to the questions in the draft integrity plans for the system they belong to. The Agency sent the usernames and passwords to access the application by e-mail to 4,500 state authorities and organisations, provincial and local self-government authorities, public services and public companies. The first step the public authorities made in designing their integrity plans was to establish working groups charged with preparing these plans. By 25 February 2013, 1,519 of 4,576 institutions submitted their decisions on the establishment of such working groups to the Agency. Apart from working directly with staff charged with designing the integrity plans, the Agency also published a package of documents that the working groups may find useful in the process. The documents include, inter alia, models of decisions that are adopted in

21 National Assembly of the Republic of Serbia, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2013.

22 National Assembly of the Republic of Serbia, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2013; Ministry of Justice and State Administration, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2013.

the integrity plan design process; a model of the staff questionnaire; questions the working groups are to ask the staff when they interview them, which is a separate step in the integrity plan design process. The Agency also published an Integrity Plan Design Guide and an Integrity Plan Design Manual and distributed 2,000 copies of this publication. The Agency provided 1,390 public authorities in Serbia with information, advice and instructions on the introduction of integrity plans by directly working with this target group. The initial deadline by which the integrity plans were to have been designed was moved from 31 December 2012 to 31 March 2013. By 25 February 2013, 91 institutions notified the Agency that they had adopted their integrity plans. Nearly all the public authorities and local self-governments in the sample that responded to the Agency questionnaire reported that the design of the integrity plans in their institutions was under way. Of the public authorities listed under Recommendation 9 in the Action Plan, the National Assembly of the Republic of Serbia, the President of the Republic and the Government notified the Anti-Corruption Agency that they had adopted decisions forming the working groups that will design the integrity plans (**Recommendation 9 – continuously implemented**).

The public authorities' cooperation with the Agency has improved over the previous reporting period and they have responded to the Agency requests within the deadline in the vast majority of cases. On the other hand, the timely submission of responses also depends on the complexity of the Agency's requests and on the workload of the specific public authority or the individuals who are to act on the requests (**Recommendation 10 – partly implemented**).

Like in 2011, the replies to the Agency questionnaire within the process of reporting on the implementation of the Strategy were submitted with delay, while the obligation to submit quarterly reports pursuant to the old form or last year's questionnaire had been honoured by only some public authorities. It needs to be noted that the Agency's analysis of the fulfilment of the strategic documents is based on the implementing entities' reports and that they thus constitute the most important source of information. Since the Agency cannot move the deadline by which it has to submit its Report on the Implementation of the Strategy to the National Assembly, such delays put the Agency in the following situation: it either did not have enough data for its analysis or did not obtain them on time, preventing it from performing a quality analysis across the board (**Recommendation 11 – partly implemented**).

#### *Financing of Political Activities*

The new legislative framework on the financing of political parties facilitated the transparency of the funding of the activities of political entities and the transformation of this area into a system of formally registered transactions, to which the regulations envisaged by positive law are applied. Under the Law on the Financing of Political Activities, the Agency is entrusted with reviewing two kinds of reports by political entities: their annual financial statements and their election campaign spending reports. The Agency is entitled to receive, analyse and publish the political entities' annual financial statements. As per the election campaign spending reports, the Agency is also entrusted with verifying the reported costs, that is, with controlling the data in the reports, wherefore it developed a methodology for checking the reported spending.

To facilitate the political entities' transition to the new system in compliance with the Law on the Financing of Political Activities, the Agency also put in place a mechanism to extend these entities support in fulfilling their obligations by advising them on how to fill the new report forms enacted by the Agency. Furthermore, it opened a special section on its website that includes 38 opinions elaborating the meanings of specific provisions of the Law on the Financing of Political Activities that had not been clear to the political entities. The Agency rendered these opinions either on the basis of the frequently asked questions by the representatives of the political entities or at its own initiative.

The Agency conducted the training of 209 shortlisted election campaign observer candidates in February and March 2012. The Agency held eight training sessions in five towns in Serbia and 165 candidates who had successfully passed the final test were recruited to observe the elections. The observers were organised and trained to work as field observers, coordinators and central coordinators and were deployed in 23 towns (22 towns and the City of Belgrade). The field observers monitored the activities of the political entities in the towns they were deployed in and registered their public events and election material and monitored the local media. The field observers submitted their reports to their coordinators, who both oversaw and managed the work of the field observers and personally monitored the election campaigns in the cities they were deployed in. The coordinators were also under the obligation to submit their reports and those of the field observers to the central coordinators. Each central coordinator managed and oversaw the work of the coordinators s/he was charged with, received their reports and systematised the submitted data by each political entity that took part in the election campaign. Each central coordinator was also charged with compiling data regarding a specific political party collected in the field across Serbia. Apart from the data obtained through the observer network, the Agency also collected the information it needed to check the reports on election campaign spending from the state authorities and companies.

The Agency sent 435 requests for information to state authorities, banks and companies that had provided services to political entities during the election campaign. Around 90% of them acted on the Agency's queries and forwarded it the required information, which was then processed and prepared for use during the verification of the entities' election campaign spending reports. The database formed on the basis of the implemented monitoring and the information collected from the state authorities and other legal persons provided for the cross-checking and control of the election campaign costs the political entities specified in their reports.

Sixty-nine of the 83 political parties complied with their obligation to submit their annual financial statements in 2012. These statements were scanned and published on the Agency website. By the end of 2012, 1,035 reports on election campaign spending were submitted in accordance with the regulations; 1,020 of them were verified and published on the Agency website; the other 15 were consolidated reports, i.e. reports covering more than one election unit. The political entities presented their costs of campaigning for the parliamentary, presidential, provincial and local elections. Although the Agency received a large number of reports, a number of political entities failed to fulfil their obligation and submit their reports.

The Agency filed 53 motions for instituting misdemeanour proceedings in 2012: one motion regarded abuse of funds, 13 regarded the entities' failure to submit their annual financial statements by the deadline set out in the law and 39 the non-submission of reports on election campaign spending.

Transparency Serbia reached the following conclusions after monitoring the funding of the May 2012 election campaigns and comparing the data: 1) most of the reported funding for the election campaigns came from the budget; this amount in RSD was double the amount of money from the budget spent during the previous election campaign. Although this increase resulted in greater transparency of information on the sources of campaign funding, it also led to a rise in the overall campaign costs (the total value of the reported parliamentary and presidential campaign spending was two times higher than in the previous campaign – around 400 RSD per capita, that is, over 750 RSD per voter respectively); 2) bank credits accounted for the second largest source of campaign funding (around 30%), giving rise to the question as to which sources the entities would repay these loans from; 3) funds raised from private sources accounted for a very small share of the reported funding, while donations from private individuals played a negligible role; 4) TV advertisements accounted for most of the reported spending – over 75% of the funds spent on the parliamentary election campaign.

Transparency Serbia also noted during its monitoring exercise several suspicions about violations of regulations or evident deviations from the regulations and issued recommendations on how to improve the legislative framework to ensure its greater clarity and comprehensiveness. It also underlined in its Report that the essential changes in this field can be effected only if all those who violate the law are penalised on time and effectively<sup>23</sup> (**Recommendation 16 – continuously implemented**).

#### *Anti-Corruption Regulations and Anti-Corruption Activities*

The Anti-Corruption Agency in 2012 designed a methodology for assessing the risk of corruption in legislation. This methodology should be applied by the entities proposing draft laws and adopting other regulations to ensure that greater account is taken that the elements that might generate incentives for corruption or corruptive behaviour in real life are eliminated from the text of the legislation during its drafting. The Agency would play the role of "quality controller" in that process and check whether those proposing or adopting regulations had properly applied the methodology when they drafted them. Although the application of this methodology in the legislative process has not been imposed as an obligation yet, the Agency designed the methodology and used it itself in its analyses of draft laws. The Agency applied the methodology in its analyses of 11 pre-draft laws in 2012; its opinions, comprising specific findings and recommendations for improving the provisions, were forwarded to the relevant authorities, publicly presented on the Agency website and presented by its officials at various public events (**Recommendation 18 – partly implemented**).

Serbia's legal system is still burdened by regulations that do not correspond to the real needs and capacities of the state and society, by mutually inconsistent regulations and

by the inconsistent use of legal terminology. Problems in applying the law have hindered the realisation of rights and interests, increased implementation costs and slowed down the activities of companies, citizens and state authorities. A large number of regulations, adopted in the second half of the 20<sup>th</sup> century when Serbia had different state models and political systems, are still in force.

One of the key requirements for producing high quality laws is how the norms and standards regarding the legislative process are regulated and whether they are complied with. The transparency of the legislative process hinges on how the procedure ensuring involvement of the interested parties is regulated. Public debate is one of the most commonly applied instruments for involving the public in the process. This is why the degree in which the procedure has been regulated, as well as the practice of and experience in conducting public debates at all levels - national, provincial and local alike - are key factors for advancing this stage of the legislative process. The comparative law analyses brought to the fore the regulated approach to public involvement in the legislative process through the statutory regulation of lobbying. The legitimacy of the legislation arises from the possibility of those being regulated to participate in the process of reviewing and deciding on regulatory solutions.

The Survey on the Improvement of the Legislative Process in the Republic of Serbia conducted within the GIZ Legal Reform Project in Serbia noted the following general problems regarding the legislative process: 1) Legislative plans are not published and do not reflect Government strategic priorities and realistic possibilities for adopting the law; 2) Shortcomings regarding the composition, modus operandi, funding and accountability of working groups; 3) Insufficient skills and knowledge required for a quality legislative process; 4) Insufficient coordination and cooperation among relevant participants in the legislative process; 5) Adoption of laws under urgent procedure without justified cause; 6) The coherence of the legal system is occasionally undermined by regulatory amendments; 7) Disrespect of deadlines for the adoption of by-laws requisite for the enforcement of the laws or the non-adoption of such by-laws; 8) Non-existence of a law on lobbying.

The authors of the Survey also identified the following problems with respect to the involvement of the public and the stakeholders in the legislative process: 1) Imprecise definition of consultations and public debates; 2) Imprecise criteria regarding the obligation to conduct public debates; 3) Time-frames and duration of public debates; 4) Insufficient transparency; 5) Imposition of particularistic interests; 6) Inertia of public debate participants; 7) Insufficient consideration of public debate results; 8) Insufficient degree of protection of public debate participants; and 9) Organisation and regulation of public debates at the local and provincial levels.

The determination of the concept of the law is not a rule. The political and administrative milieu in Serbia is overly reliant on the enactment of new legislation to address any and every problem, and legislation is often prepared in haste, without taking into consideration the general legal order that already exists. This approach has led to contradictory regulations, difficulties in interpretation and implementation of laws, legal uncertainty and a poor understanding of the rule of law. Greater investment in managerial capacities and capabilities could reduce the

<sup>23</sup> Transparency Serbia, "Financing of the Presidential and Parliamentary Election Campaigns in Serbia – May 2012, Report and Data Collected by 31 July 2012", pp. 5-8, available in Serbian at <http://www.transparentnost.org.rs/images/stories/materijali/Finansiranje%20kampanje%202012.pdf>.

dependence on legal instruments as the main way of attempting to resolve public problems.<sup>24</sup> Open Parliament's analysis of the legislative activities in the National Assembly shows that the line ministries play the crucial role in the legislative process but that they often lack the capacities to analyse and design public measures and thus rely on external resources – experts. These ministries also face the problems of institutional memory and continuity. The public and stakeholders are rarely involved in the drafting of the laws and they often use informal channels to influence the legislators, rather than the institutional negotiation and consultation mechanisms. It has been noted that individual stakeholders had difficulty presenting their views and interests and having them incorporated in the laws even when they took part in their drafting. Furthermore, there are indications that participation in a working group does not necessarily result in the representation of the interests or the improvement of the legal texts and that it often represents the fulfilment of a formal requirement in the legislative process and is treated as such – as formal rather than as essential. On the other hand, the Assembly is burdened by the large number of laws it is adopting, particularly in the context of EU integration, wherefore the deputies on average have less than half a day to debate a law. Furthermore, a large number of laws are adopted under an urgent procedure (over two-thirds of the laws adopted in 2008-2010 period), which has prevented the deputies from focusing on them in greater detail and undermined the transparency and democratic potential of the Assembly. The Assembly does not have channels for collecting information on the views of various interest groups or data presented in impartial expert analyses. The deputies as a rule familiarise themselves with laws only after they are submitted to the parliament for adoption and public hearings are rarely organised. In the 2008-2012 period, the Assembly Committees organised 10 round tables and 29 public hearings; more than half of these events regarded social policy issues (poverty reduction, internally displaced persons, children and youths, gender equality, education et al). The round tables are, therefore, devoted more to broader social and political issues than to laws, public hearings serve more to present legislative initiatives and the work of the parliament and the Government and are as a rule not organised on particularly controversial subjects. Amendments are increasingly used to improve the draft laws and less and less as a mechanism to obstruct the work of the Assembly, but the debates on them are superficial and short given the large number of submitted amendments and laws.<sup>25</sup>

The participation of interested parties in the legislative process may have both positive consequences and negative ones – imposition of particularistic interests. Public debates also carry this risk, since it may be assumed that those who have the most particularistic interests regarding a specific regulation will be the most active and endeavour to portray their own particularistic interests as public interest. However, the covert influence the stakeholders exert on the decision-makers in the executive and legislative branches of government pose an even greater risk to the realisation of public interest. This risk gives rise to the need to legally regulate the issue of lobbying.<sup>26</sup>

24 GIZ, Legal Reform Project in Serbia "Survey on the Improvement of the Legislative Process in the Republic of Serbia," June 2012, pp. 13, 17, 24, 27, 30, 96, available at <http://www.legalreform.rs/images/downloads/pdf/survey1.pdf>.

25 Open Parliament, "How Do Deputies Pass Laws? Analysis of the Legislative Activity in the National Assembly of the Republic of Serbia", pp. 8, 11, 13 – 14, 18, 27, 30, 32, 38 – 39, available in Serbian at <http://otvoreniparlament.rs/wp-content/uploads/2012/10/Kako-poslanici-donose-odluke-celostna-ziva-nje.pdf>.

26 GIZ, Legal Reform Project in Serbia "Survey on the Improvement of the Legislative Process in the Republic of Serbia," June 2012, pp. 116-117, available at <http://www.legalreform.rs/images/downloads/pdf/survey1.pdf>.

Under the working text of the Law on the Protection of Public Interests from Undue Influence Peddling drafted by the Ministry of Foreign and Internal Trade and Telecommunications, all lobbyists will have to be licensed by the state, report their income and pay taxes, and will, in return, be given "passes" to enter the parliament, Government and other state institutions, while the representatives of the executive will be under the obligation to meet with them and hear out their proposals. This law is to be adopted in the latter half of 2013 at the latest, once the working group reviews the existing draft and a public debate on it is held. Lobbyists will be under the duty to accurately describe the interests they are advocating, their activities, the value of the contracts they are signing and the incomes they are earning. Not one lobby company is registered in Serbia at the moment; lobbying is mostly performed by legal offices or individuals with strong political connections. According to the working text of the new law, all lobbyists will from now on have to undergo specific checks and obtain licences from the line ministry, and every contract they sign will be published on the website of the Anti-Corruption Agency, which will oversee their work.<sup>27</sup> (**Recommendation 19 – partly implemented**).

#### *Implementation of the Other Recommendations within the System*

The law was not amended in 2012 to enable the Government to publish the decisions on the appointment/dismissal of officials including reasonings on their fulfilment of the appointment criteria/grounds for dismissal<sup>28</sup> (**Recommendation 17 – not implemented**) nor to limit the immunity of public officials to statements and appearances made during the course of duty (substantive immunity) (**Recommendation 14 – not implemented**).

The working text of the Code of Conduct of People's Deputies drafted by the working group formed by the Administrative Committee in the previous convocation of the National Assembly will serve as the basis for the work of the working group established by the current Committee on Administrative, Budgetary, Mandate and Immunity Issues of the National Assembly. The new Code is to be applied as of the second regular sitting of the legislature in 2013. The working text prohibits corruptive behaviour by the people's deputies and envisages the establishment of an Ethical Council that will implement, monitor and issue opinions on the enforcement of the Code. The Ethical Code will be entitled to take the following measures in case the Code is violated: issue non-public or public warnings and demand of the public deputies to publicly apologise for their misconduct. Under the draft, the Ethical Council's decisions on the above mentioned measures shall include guidance on what the people's deputies should do to eliminate the violations and by when; in the event a people's deputy does not publicly apologise in the manner specified in the decision, the Ethical Council shall render a decision imposing a fine on him or her in the amount of his/her three base salaries. The draft also imposes the obligation on people's deputies to sign statements within eight days from the day their mandates are confirmed acknowledging that they are familiar with the obligations arising from the Code<sup>29</sup> (**Recommendation 20 – partly implemented**).

27 Serbian Lobbyists Association "Law on the Protection of Public Interests from Undue Influence Peddling Announced", 27 February 2013, available in Serbian at <http://www.drustvolobistasrbije.org/aktuelnosti/73.html>.

28 Government Secretariat General, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

29 National Assembly of the Republic of Serbia, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2013.

The Protector of Citizens submitted to the National Assembly amendments to the Draft Law on Maximum Public Sector Wages that aim to limit not only public sector wages, but all the other revenues public sector officials and staff earn on other grounds as well<sup>30</sup> (**Recommendation 8 – partly implemented**).

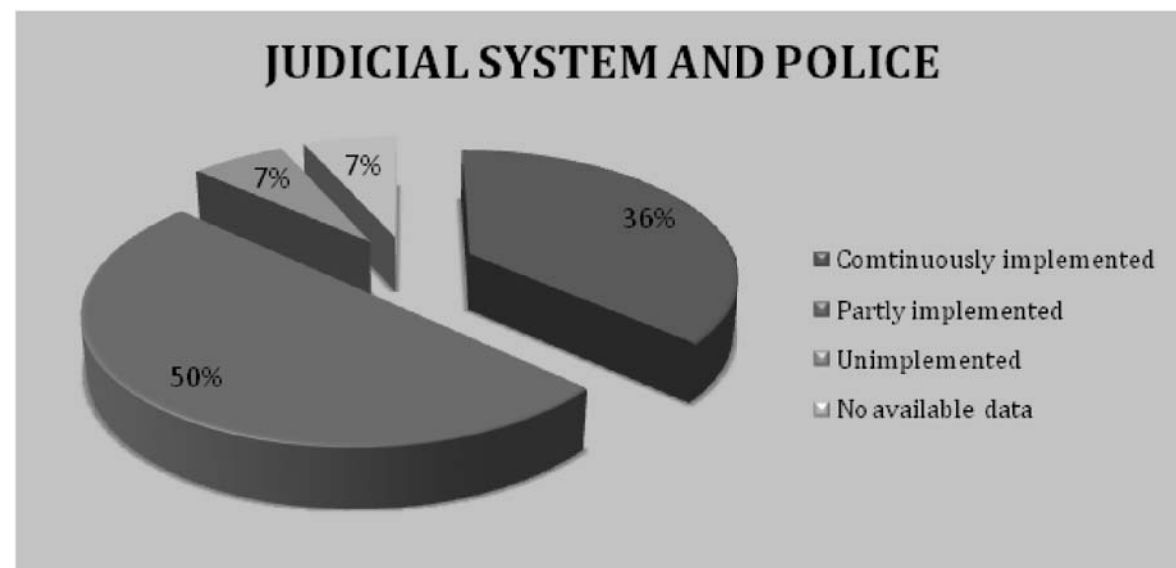
### 2.1.3. ANTI-CORRUPTION AGENCY RECOMMENDATIONS

1. Continue strengthening the publicity and transparency of the work of the state authorities, notably by creating conditions for the use of information technology along with the publication of as much information of public importance as possible.
2. Improve the content of the reports on the fulfilment of the Strategy and Action Plan obligations submitted to the Agency by the implementing entities and ensure consistent compliance with the quarterly reporting obligation.
3. Oblige legislators to apply the Agency methodology for analysing the risk of corruption in the regulations during their drafting.
4. Regulate the field of public debates in the legislative process to ensure their regular and effective use, particularly by the application of information technology.
5. Adopt a law on lobbying.

<sup>30</sup> Protector of Citizens, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

## 2.2. Judicial system and police

The next area the Strategy focuses on is the **judicial system and the police**, given that their independence, impartiality, efficiency and accountability are prerequisite for building the rule of law and that their empowerment is an extremely important task. The position of the judicial institutions and police in this area is specific and can be viewed from two perspectives: the judiciary and the police as authorities dealing with corruption and the judiciary and the police as systems in which cases of corruption happen. Of the 30 recommendations regarding the judicial system and the police it reviewed, the Anti-Corruption Agency concluded that 11 (36%) were continuously implemented, that 15 (50%) were partly implemented and that two (7%) recommendations were not implemented. The Agency was unable to obtain data to analyse the implementation of two (7%) recommendations.



### 2.2.1. GENERAL OVERVIEW

The results of the UNDP and CeSID December 2012 Corruption Benchmarking Survey indicate that the roots of perceptions that judges (as well as doctors) are corrupt are so deep that the citizens do not doubt corruption exists even when they personally had not experienced any unpleasantness in these institutions. Like the previous rounds of the survey, policemen ranked second on the list of bribed officials (19%). The vast majority of the respondents (86%) think that, in addition to the Anti-Corruption Agency, the judiciary and the police should lead the fight against corruption and that harsh sanctions against the perpetrators should be the main mechanism in that endeavour (86%). On the other hand, the professions linked to the judiciary – judges (64%), prosecutors (62%) and lawyers (60%) – are ranked among the top five (alongside the political parties and the health sector) professions perceived as the most corrupt – over 60% of the citizens claim that they are corrupt. These results, however, do not correspond to experience with corruption in the judiciary, because only one out of ten respondents said that they personally knew of a case of corruption in the judicial system. The media are actually the main source of information about corruption in the judiciary (39%); the citizens also heard about corruption in this field from their friends, relatives or neighbours. As many as 15% think that there is corruption in the judiciary but cannot say what they base their views on. Similarly to the health sector, the respondents think that the upper echelons are more corrupt than the lower ones – court

administration staff are perceived as the least and judges as the most corrupt parts of the judiciary. Thirty-five percent of the respondents said that the main reason for bribing the judiciary was to put off a trial until the statute of limitations for the offence expires, while 14% are convinced that judges can be bribed into delivering more favourable first-instance judgments. The survey, however, also showed an increase in public trust in the judiciary as one of the leading institutions in the fight against corruption over the previous cycle – from 24% to 37%. Public trust in the Anti-Corruption Agency also increased. The respondents also believe that the Government must show greater determination to combat corruption if it is to maintain or improve the positive trends (34%), that it has to protect the witnesses of corruption (11%), support the courts in ruling on corruption cases (11%) and ensure safe reporting of corruption (10%).<sup>31</sup> The World Economic Forum 2012 Global Competitiveness Report ranked Serbia 129<sup>th</sup> on the list of 144 countries by the judicial independence indicator.<sup>32</sup>

According to the survey “Judiciary in the Fight against Corruption” conducted by the NGO Transparency Serbia and published in January 2013, most judicial institutions are insufficiently proactive in publishing the data on their performance, which is particularly concerning in situations when they do not comply with their legal obligations, like the one to publish their information booklets. Furthermore, there is no systemic approach to the design of their websites; the types of documents and other information posted on the websites vary greatly as do the institutions’ practices of updating the information. Given that statistical data are not grouped in a manner that would allow comparisons by the subject the individual proceedings regard, it is impossible to draw clearer conclusions about the results of the individual institutions in the fight against corruption. Furthermore, the institutions do not practice publishing data on measures for preventing corruption, such as the implementation of the Strategy tasks or the design of integrity plans, except sporadically. The Court Portal does not allow search of data by groups of cases, except for Commercial Courts and there is no uniform methodology for keeping statistics on the police, prosecution offices and courts. The institutions do not practice publishing information about the complaints and proceedings against judges and prosecutors for violating the regulations or the codes of conduct or the courts’ and prosecution offices’ decisions, even those attracting major public attention. Only a few cases regard violations of anti-corruption law and even when such proceedings are initiated, they take a long time and are often discontinued because the statute of limitations expired. Fewer than 200 misdemeanour proceedings over violations of anti-corruption regulations were initiated in 2010 and 2011, mostly over violations of the Free Access to Information of Public Importance Law, the Law on the Anti-Corruption Agency, the Public Procurement Law, the Law on the Budget System and the Law on the Financing of Political Activities.

The public prosecution offices received nearly 13,000 reports alleging corruption-related crimes in 2010 and 2011 (around 17 a day) and had around 5,000 such cases pending from the previous years. The prosecutors rendered decisions on less than half of the criminal reports and dismissed as many as 77.8% of them. The vast majority of the criminal reports regarded abuse of post, violations of the law by judges and bribery. Most

31 UNDP and CeSID, Corruption Benchmarking Survey, Public Opinion on Corruption in Serbia, December 2012, pp. 8, 15, 23, 32, 35, 38, 40, available at <http://www.undp.org.rs/index.cfm?event=public.publicationsDetails&evid=CDB64BE5-B259-E26A-A74CE322069FD34F>.

32 World Economic Forum, *The Global Competitiveness Report 2012 – 2013*, p. 313, available at [http://www3.weforum.org/docs/WEF\\_GlobalCompetitivenessReport\\_2012-13.pdf](http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2012-13.pdf).

of the reports were filed by the police (59%), the injured parties (27%) and other state authorities (8%); only 5% were initiated by the public prosecutors themselves. In view of the huge caseloads of the public prosecution offices, it is obvious that these public authorities will face even greater challenges if corruption-related crimes are proactively investigated. It is difficult to ascertain the exact number of such offences on the basis of the official statistical data, particularly due to the fact that around 60% of all the cases regard abuses of post by the responsible persons in private companies. Apart from judgments, the security measure prohibiting the perpetrator from engaging in a profession or activity or holding an office, has been imposed in only 24 cases in the first instance, while various forms of seizure of proceeds are also imposed extremely rarely. The second-instance courts dismissed the appeals by the public prosecutors in five-sixths of the cases. Long periods of time pass between the commission of the crime and the filing of the indictment, three years on average. On average, two people are charged in each indictment. The processing of the submitted criminal reports exceeds the current capacities of the public prosecution offices because the number of pending cases from the previous years is almost the same as the number of reports filed every year. The crimes of corruption, pursuant to the definition in the Strategy, are not grouped in one chapter and can be found in a number of chapters of the Criminal Code. The Criminal Procedure Code limits the possibility of applying special measures to uncover and prove crimes to only four crimes of corruption – abuse of post, influence peddling, offering and taking bribes. Most judges trying crimes of corruption need not fulfil specific requirements, such as having a specific number of years of service or relevant training (with the exception of judges working in the special departments of the Belgrade Higher and Appellate Courts).<sup>33</sup>

## 2.2.2. IMPLEMENTATION OF THE STRATEGY RECOMMENDATIONS

### *Judges and Prosecutors*

The re-appointment procedure carried out for judges and prosecutors in 2009/2010 and the review process conducted to correct its shortcomings were overturned in July 2012 by the Constitutional Court as not meeting the required standards. The Court revoked all the decisions of the HJC [High Judicial Council] and the SPC [State Prosecutorial Council] on the non-re-appointment of judges and prosecutors that had been appealed and instructed the Councils to reinstate all of them within 60 days. For the judges, the Court considered, inter alia, that the HJC did not apply the required quorum and breached the requirement of impartiality. In this respect, the Court objected to the participation of ex-officio members — the President of the Supreme Court, the head of the parliamentary committee and the Minister of Justice — and the member representative of the lawyers to both the first decision on re-appointment and the review processes. The Court also considered that the presumption of suitability required that judges could only be dismissed by the positive votes of the majority of the HJC members, which was not the case as three of them were in part or fully unavailable to act (one resigned and was replaced 3 months later, another faced criminal proceedings and a third one faced a

33 Transparency Serbia, “Judiciary in the Fight against Corruption”, January 2013, pp. 5-13, available at <http://www.transparentnost.org.rs/images/stories/materijali/pravosudje%20u%20borbi%20protiv%20korupcije/Judiciary%20in%20the%20fight%20against%20corruption,%20key%20findings%20of%20research%20and%20recommendations.pdf>.

procedure for incompatibility of duties as dean of a law faculty). For the prosecutors, similar shortcomings were found which invalidated the SPC's assessment that the petitioners did not fulfil the criteria of worthiness, professional qualification and competence. In particular, the Constitutional Court found that the review process unfairly placed the burden of proof on the petitioners and that the Council's decisions were often based on facts and assertions that could not be challenged by the petitioners.<sup>34</sup> The final draft of the Rulebook on Appraising the Performance of Public Prosecutors and Deputy Public Prosecutors was endorsed in January 2013 and was ready to undergo expert and public debates<sup>35</sup> (**Recommendation 25 – partly implemented**).

The State Prosecutorial Council adopted the Rulebook on Disciplinary Proceedings and Disciplinary Accountability of Public Prosecutors and Deputy Public Prosecutors in July 2012. The appointment of the disciplinary authorities is under way. The State Prosecutorial Council did not conduct any disciplinary proceedings against public prosecutors or deputy public prosecutors in 2012<sup>36</sup> (**Recommendation 27 – partly implemented**). The State Prosecutorial Council has not been notified to date of any activities by public prosecutors or deputy public prosecutors that may be incompatible with the offices they are discharging<sup>37</sup> (**Recommendation 29 – continuously implemented**).

The Judicial Oversight Department keeps records of complaints against judges found to have been well-founded by the court presidents and of the judges at issue. The Department registered 355 well-founded complaints in 2012 and monitored the course of the court proceedings until their completion. Complaints alleging corruption are forwarded to the Republican Public Prosecution Office (RPPO) and monitored until the RPPO replies what actions it undertook in the event it established that the complaint was well-founded or whether the complaint was groundless. The Department keeps records of these complaints in a separate folder (a total of 61 complaints of corruption were submitted by 20 December 2012). The upgrading of the software application for monitoring action on complaints indicating judicial corruption is under way. This particularly concerns the enforcement of Article 8 of the Law on the Organisation of Courts, under which parties to and any other participants in the proceedings are entitled to complain about the work of the court if they believe that the proceedings are not conducted in a timely fashion, that they are irregular or that there is any form of undue influence on their course or outcome (**Recommendation 32 – partly implemented**).

In 2012, four proceedings were launched and three completed against judges for violating the Code of Conduct adopted by the HJC in 2010.<sup>38</sup> The final draft of the Code of Ethics of Public Prosecutors and Deputy Public Prosecutors, designed in cooperation with the Organization for Security and Cooperation in Europe, has been referred for public debate, communicated to the Association of Prosecutors and posted on the SPC's website. It is to be adopted in the first quarter of 2013<sup>39</sup> (**Recommendation 33 – partly implemented**).

34 European Commission, Serbia 2012 Progress Report, p. 10, available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/sr\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/sr_rapport_2012_en.pdf).

35 State Prosecutorial Council, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

36 Ibid.

37 Ibid.

38 High Judicial Council, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

39 State Prosecutorial Council, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

The Judicial Academy selected a new generation of students and provided a variety of in-service training programmes for judges, prosecutors, judicial staff and attorneys, which still need to be systematised and structured.<sup>40</sup> Topics related to the fight against corruption are covered by the training curriculum this institution implements (**Recommendation 34 – partly implemented**). Methodological manuals for public prosecutors on uncovering corruption-related crimes have not been designed. Training in conducting financial investigations for prosecutors in the anti-corruption department has been implemented within a project on the seizure of proceeds from crime and the training material was disseminated to all the prosecutors together with the guidelines on the proactive detection of corruption-related crimes. The practice of temporarily deploying public prosecutors, deputy public prosecutors, professional associates and trainees to the crime police has continued.<sup>41</sup> The MIA Internal Affairs Sector distributed to the prosecutors a manual on the fight against corruption, which was prepared within a twinning project and disseminated to all the Ministry departments. The curriculum of a specialist course on proactive investigations, which will include modules on the fight against corruption, is being designed by the Ministry of Internal Affairs<sup>42</sup> (**Recommendation 43 – partly implemented**).

#### *Judicial Performance*

The new court network was established by the Law on the Organisation of Courts to suppress corruption in small towns, ensure an even distribution of caseloads among judges, reduce the number of judges to boost court efficiency and cut the costs of court proceedings. Neither the HJC nor the Justice Ministry analysed whether any of these goals were fulfilled even two years after the new network was established. Since the reform, the parties have had to travel over 100 km to some of the courts; court costs have increased due to the new network and higher court fees; the distribution of caseloads is not even – the caseloads of judges in Belgrade and other large city courts are several times greater than of those in smaller courts and each judge has much more cases now than before the new court network was introduced. The number of cases per investigating and criminal department judge has increased eight times, which gives rise to major problems due to the expiry of the statute of limitations for criminal prosecution; the major imbalances in the workload of judges and courts have greatly deteriorated as well.<sup>43</sup> The automated allocation of court cases has now been introduced in all commercial courts and general courts. The new case management software was introduced in the Administrative and Appellate Courts in Belgrade and the Supreme Court of Cassation in July 2012.<sup>44</sup>

The court performance and penal policy analyses conducted by the Sector for the Judiciary of the Ministry of Justice and State Administration show that the courts impose conditional sentences and commute sentences very often and that they broadly interpret the conditions under which they impose conditional sentences. Furthermore, the Sector

40 European Commission, Serbia 2012 Progress Report, p. 11, available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/sr\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/sr_rapport_2012_en.pdf)

41 Ministry of Justice and State Administration, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2013; State Prosecutorial Council, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

42 Ministry of Internal Affairs, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

43 Anti-Corruption Council, "Report on Judicial Reform", 24 April 2012, pp. 5-6, available at <http://www.antikorupcija-savet.gov.rs/en-GB/reports/cid1028-1965/report-on-judicial-reform>

44 European Commission, Serbia 2012 Progress Report, p. 10, available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/sr\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/sr_rapport_2012_en.pdf).

identified discrepancies between the criminal sanctions prescribed by the law and those imposed on the perpetrators, which may lead to the conclusion that, during their deliberations of the type and gravity of the penalties, the judges prefer individualising the criminal penalty in a particular case over imposing the penalty prescribed for that criminal offence. The penal policy could be improved by the more frequent use of the institute of revoking conditional sentences; commutation of sentences has to be an exception, not a rule.<sup>45</sup>

The MIA Internal Affairs Sector analyses the performance of the entire Sector and its individual staff on a monthly basis. The analysis covers activities regarding the submission of criminal reports, checks of allegations in complaints and grievances filed by citizens, with particular emphasis on the analysis of the identified deficiencies in the work of police staff, measures proposed against the liable police staff and the measures the Sector is proposing to eliminate the identified deficiencies. Together with the MIA Analytics Directorate, the Internal Affairs Sector prepared an Analysis of Corruption within a twinning project in 2011 and 2012 in order to comprehensively review the problem of police corruption, research the views of the public and the police staff on corruption, their experience in this field, identify which jobs are at risk of corruption, how police staff are bribed, analyse the measures the Ministry has been taking to suppress and penalise corruption in its ranks and, on the basis of this information, formulate recommendations and suggestions on how to prevent corruption and fight against corrupt police staff more efficiently. This was the first time the polling of police staff and private citizens in the police administrations was organised in this fashion. In 2012, the Sector conducted an analysis of the unlawful and unprofessional conduct of police staff in a number of regional police administrations and organisational units in the MIA headquarters; the analysis results were used for operational purposes and conducting additional preventive checks. This has, inter alia, resulted in improved performance by the overseen organisational units; in addition to the measures that the Sector recommended be taken against the liable police staff, it also took “early intervention” measures to eliminate the deficiencies identified during the oversight. The Sector accordingly initiated the amendment of Article 175 of the Police Law. The Analytics Directorate prepared six reports in the reporting period in which it published statistical data on the MIA’s efficiency in suppressing corruption; these reports were developed at the request of external and internal users.<sup>46</sup>

The analysis of the performance of the lower instance courts conducted by the Supreme Court of Cassation indicates that the implementation of the programme for closing old cases is generally good, as is the resolution of the so-called “custody” and other urgent cases, but that there is still room for improving court efficiency. This goal is expected to be achieved, in particular, by the new procedural laws, the drafting of which is under way and which introduce more efficient procedures. The HJC has also been conducting separate analyses of the performance and oversight of lower-instance courts regarding their staffing needs and problems, and of the number and substance of the complaints about the work of the courts.<sup>47</sup>

45 Ministry of Justice and State Administration, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2013.

46 Ministry of Internal Affairs, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

47 Supreme Court of Cassation, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

In its replies to the Questionnaire, the RPPO stated that a number of analyses of the prosecutors’ work on uncovering, prosecuting and trying offenders were conducted in 2012. The analyses showed that the prosecutors’ caseloads and the number of corruption-related criminal cases have increased. In 2012, the RPPO analysed the trends and prepared a report on corruptive crimes of abuse of post, violations of the law by judges and public prosecutors, embezzlement and offering and taking bribes in the 2009-2011 period.

The number of people reported to have committed all the analysed crimes increased considerably over 2008 and 2009. The RPPO also noted an increase in the number of indictments in 2011 against people for abusing their post, against judges for violating the law and for offers of bribes; as well as an increase in the number of convictions for abuse of post over 2010; it also noted a trend of increase in the share of imposed imprisonment sentences vis-à-vis conditional sentences, which indicates that graver forms of corruptive crimes were prosecuted and that the penal policy was tightened. Most of the criminal reports and prosecutions regarded abuses of post, which is the consequence of the way in which the elements of the crimes of bribery and tax evasion are defined in the Criminal Code. The considerable increase in the number of reports of and prosecutions for the crime of influence peddling is the result of the 2009 amendment to the Criminal Code elaborating this criminal offence in greater detail. The analysis of the statistical indicators for corruption-related crimes, abuse of post and receiving and offering bribes, which the prosecution office for organised crime has been acting on from 2009 to 1 June 2012 shows a trend of increase in the number of motions to investigate and in the number of indictments since 2010. In 2011, the RPPO received a total of 398 grievances and complaints, i.e. significantly less than in 2010, when it received 535 grievances and complaints. Twenty-two of these cases regarded the work of the RPPO, as opposed to the 36 cases in 2010. All the grievances regarding the work of the RPPO were assessed as ill-founded. The RPPO also monitored and acted on grievances and complaints about the work of other public prosecution offices, which were referred to the regional public prosecution offices pursuant to the Rulebook on Administration in Public Prosecution Offices (**Recommendation 35 – continuously implemented**).<sup>48</sup>

In its White Book, the Foreign Investors Council said that the hearings in the largest (i.e. best equipped and most overloaded) courts, especially those of general jurisdiction, are often scheduled twice a year per case. An appellate procedure usually takes more than a year to complete. Simply put, courts are overwhelmed with cases, and despite official statistics showing positive results of this reform, the situation in reality seems worse than before. The application of the new Civil Procedure Code, which started on 1 February 2012 and which established strict deadlines for activities of the parties and courts, was stalled in the first four months from entering into effect, because the courts were unable to complete older (existing) cases. Most courts of general jurisdiction, as well as commercial courts, now have online databases showing the status of the ongoing cases. However, not all the courts have useful online databases, like the Administrative Court and the Constitutional Court of Serbia. Indeed, some have no databases at all, such as the Appellate Courts, Misdemeanour Courts and the Supreme Court of Cassation. The enforcement of the new provisions of the Civil Procedure Code introduced some

48 Republican Public Prosecution Office, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.



promising improvements in terms of the summoning and notification of parties and other participants in the procedure in order to prevent present abuses by the parties and addressing the option of electronic communication between parties and the court, is still pending since the courts do not possess the technical capacities for such activities. The case files should be more accessible, not only to the parties, but also to the public, since insight into particular decisions is still not possible and it often happens that parties to a case cannot access the case files due to various “technical issues”.<sup>49</sup>

In its replies to the Questionnaire, the Ministry of Justice and State Administration stated that it expected that the Draft Law on Mediation would be submitted to the parliament for adoption in April 2013. The Law on Notaries Public was amended and its entry into force was moved to March 2013. Fifty-five candidates passed the three rounds of examinations organised for notaries public from May to December 2012<sup>50</sup> (**Recommendation 39 – partly implemented**). Professional bailiffs began operating in Serbia in June 2012 and have since mostly dealt with the enforcement of pecuniary claims for rendered public utility and similar services pursuant to authentic documents. Given the very short period of time bailiffs have been operating, it is still impossible to analyse whether their work has improved the efficiency of the enforcement of judgments<sup>51</sup> (**Recommendation 41 – partly implemented**).

One of the goals of amending the Criminal Procedure Code is to create the conditions for ensuring that criminal proceedings are fast and efficient and that they cost less, which will be achieved, notably, by the introduction and improvement of specific forms of summary proceedings, whilst preserving and improving all the basic elements of a fair trial, particularly the consistent respect of the defendants’ right to defend themselves and the right to “equality of arms” in criminal proceedings. The Code, for instance, specifies the deadline within which the parties and the defence counsel may seek the recusal of a judge of the court ruling on an appeal; during the investigation, the defendant and his/her counsel may file a complaint with the competent public prosecutor over the dilatoriness of the proceedings and other irregularities. In the event a defence counsel duly summoned to a main hearing failed to notify the court of the reason preventing him/her from attending the hearing as soon as s/he became aware of it or left the main hearing without consent, the judge may invite the defendant to immediately retain another counsel and, in the event the defendant fails to retain another counsel, the court chamber may decide to hold the main hearing in the absence of the defence counsel<sup>52</sup> (**Recommendation 51 – continuously implemented**).

Oversight of prosecutorial decisions not to initiate or to suspend criminal prosecution of corruption-related crimes and cases regarding dilatoriness of criminal proceedings is continuously and constantly performed by the Anti-Corruption Departments of the RPPO and the four Appellate Public Prosecution Offices and special registers have been formed to that end. Abidance by Binding Instruction A. 194/10 is also periodically monitored. The RPPO acted on a total of 1,768 cases in this field in 2011 (**Recommendation 44 – continuously implemented**).

49 Foreign Investors Council, White Book 2012, Proposals for improvement of the business environment in Serbia, pp. 50-52, available at <http://www.fic.org.rs/admin/download/files/cms/attach?id=331>

50 Ministry of Justice and State Administration, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2013.

51 Ibid.

52 Ibid.

A system for reviewing reports of pressures exerted during pre-trial proceedings has not been introduced.<sup>53</sup> The RPPO and Appellate Public Prosecution Offices have organised their work and implemented their obligations pursuant to Binding Instruction A. 194/10 and thus acted preventively; apart from post hoc checks of the prosecutorial decisions not to initiate or to suspend proceedings for corruption-related crimes, these institutions also devoted particular attention to the reasonings of these decisions, which resulted in the reopening of specific cases after the dismissal of the criminal reports or the more comprehensive and proper reasoning of otherwise valid decisions. Multidisciplinary work on all major investigations is conducted by forming ad hoc work teams that process specific cases; these teams are made up of representatives of state authorities deemed capable of contributing to the resolution of the cases the most. The special Anti-Corruption Department of the RPPO is in charge of organising these teams<sup>54</sup> (**Recommendation 45 – partly implemented**).

The security measures prohibiting the perpetrators from engaging in a profession or activity or holding an office are enforced and monitored by the relevant inspectorates. The inspectorates are under the duty to notify the courts that had imposed the measures of their enforcement. The courts do not keep separate records of these measures, but they are under the obligation to forward a copy of the final judgment including such a measure to the authority, company or organisation the person concerned works in, the authority charged with issuing licences for or consent to engagement in a specific profession or activity, the competent inspectorate, the police in the person’s place of residence “for the record” and to notify the Statistical Office of the Republic of Serbia there of<sup>55</sup> (**Recommendation 56 – continuously implemented**).

Conditions are not in place for the introduction of an independent judicial budget although this possibility has been deliberated.<sup>56</sup> In its replies to the Questionnaire, the Ministry of Finance and Economy stated that the introduction of a separate judiciary budget authorities would be in contravention of the Law on the Budget System. Furthermore, the Constitution lays down that the state budget must include all revenues and expenditures by which the competences of the Republic of Serbia are funded, wherefore the Republic of Serbia can have one budget, i.e. it is impossible to set up separate budgets for specific budget beneficiaries. The Ministry also underlined that abidance by the Law on the Budget System does not bring into question the judiciary’s autonomy in disposing of the funds allocated for its work.<sup>57</sup> In its Report on Judicial Reform, the Anti-Corruption Council stated that the judiciary did not have its own budget that was totally separate from the budget of the executive government, wherefore the judiciary could not be qualified as independent from or equal to the executive and legislative branches in that respect either. The HJC rendered a decision to transfer its budget-related powers to the executive authorities, whereby it transferred part of its powers to the executive government without

53 Ministry of Internal Affairs, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

54 Republican Public Prosecution Office, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

55 Supreme Court of Cassation, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

56 Ministry of Justice and State Administration, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2013.

57 Ministry of Finance and Economy, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, January 2013.

legal grounds<sup>58</sup> (**Recommendation 38 – not implemented**). The Agency failed to obtain information on whether any activities had been undertaken in 2012 to provide the judges and prosecutors with adequate wages and working conditions (**Recommendation 30 – no available data**).

The Agency failed to obtain data on whether periodic analyses of the risk of corruption in the court administration are conducted and, if they are, on the basis of which criteria or on whether the court administration staff have been undergoing code of conduct and personal integrity training. The integrity plans in the judicial system are expected to reveal risks of corruption within the court administration as well (**Recommendation 42 – no available data**). Of the 237 institutions within the judicial system, 179 (75%) of them notified the Agency by 25 February 2013 that they had formed working groups to design the integrity plans and 13 reported that they had adopted their integrity plans (**Recommendation 31 – continuously implemented**).

A new Law on the Attorney General has been drafted by a working group comprising the representatives of the Republican Attorney General, the Belgrade City Attorney General, the National Assembly and the Ministry of Justice. The adoption of a new law in this field is necessary, particularly in view of the series of substantial changes in the constitutional order and the organisation of state government, the financing of public needs and the legal regulation of ownership and other property relations<sup>59</sup> (**Recommendation 57 – partly implemented**).

The Assembly of the Bar Association of Serbia (BAS) adopted the Professional Code of Conduct of Lawyers<sup>60</sup> in February 2012. The Code is in compliance with international standards and has been forwarded to the Council of Bars and Law Societies of Europe. The disciplinary bodies of the BAS and the member bar associations submit statistical data within their reports on the work of their disciplinary bodies to the BAS Assembly and the assemblies of the individual member bar associations respectively for review and adoption. The reports on the performance of the bar association bodies are published in the associations' annual performance reports and on their websites<sup>61</sup> (**Recommendation 58 – continuously implemented**).

As stated in the 2011 Report, although it adopted the Rulebook on the Protection of Whistle-Blowers in 2011, the Anti-Corruption Agency's manoeuvring space for providing adequate protection to the whistle-blowers has been largely constrained by the lack of material legal norms governing the nature, content and scope of the protected right, the types and ways of uncovering corruption in public interest, as well as the substance, character and type of corresponding protection. In cooperation with the UNDP, the Agency presented its report entitled "Protection of Whistle-Blowers in Serbia" in September 2012 within its endeavours to contribute to the state's efforts to formulate a public policy on the protection of whistle-blowers. The report includes an analysis of the valid legislation and recommendations for a model

58 Anti-Corruption Council, Report on the Reform of the Judiciary, 24 April 2012, p. 3, available at <http://www.antikorupcija-savet.gov.rs/en-GB/reports/cid1028-1965/report-on-judicial-reform>.

59 Ministry of Justice and State Administration, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2013.

60 Official Gazette of the Republic of Serbia No. 27/12.

61 Bar Association of Serbia, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

of the future legislative framework protecting people alerting to irregularities in public interest.<sup>62</sup>

With the support of the British Embassy in Belgrade and the Dutch Government, the Information of Public Importance and Personal Data Protection Commissioner has been coordinating the implementation of a project, which is, inter alia, aimed at designing a model Law on the Protection of Whistle-Blowers based on an analysis of a number of comparative law solutions and entailing a complex approach given that such protection affects various fields of law – labour, administrative, misdemeanour, criminal and commercial law. Research conducted within the project shows that a very high percentage of people (75%) believes that the state owes adequate protection to whistleblowers, while a much smaller percentage of them (14%) thinks that the state authorities are already capable of providing them with protection.<sup>63</sup> In addition to developing the model Law, the main project activities include an analysis of the legislative framework in Serbia regarding the protection of whistle-blowers, a comparative analysis of the legal protection of whistle-blowers in a number of countries with developed legal frameworks governing this field and the organisation of a series of educational activities on the subject<sup>63 64</sup> (**Recommendation 48 – partly implemented**).

#### *Effects of Corruption Convictions*

No amendments were made to the election laws in 2012; nor did the legislator deliberate limiting the right of people convicted for corruption-related crimes to be elected or imposing other similar legal consequences on them. On the other hand, Article 73(2) of the Law on the Anti-Corruption Agency prohibits an official convicted to imprisonment by a final judgment for the failure to report his/her assets or for submitting false data on his/her assets from assuming a public office ten years from the day the judgment comes into effect (**Recommendation 21 – partly implemented**).

Under the Law on the Criminal Liability of Legal Persons, the penal records are kept by the first-instance court in whose jurisdiction the headquarters of the legal person or the representative or branch office of a foreign legal person are located, while the first-instance court in whose jurisdiction the headquarters of the legal person or the representative or branch office of a foreign legal person are located shall keep the penal records of final convictions pronounced in criminal proceedings<sup>65</sup> (**Recommendation 24 – continuously implemented**).

62 "Protection of Whistle-Blowers in Serbia", available at: [http://www.acas.rs/images/stories/FINAL\\_REPORT\\_Paul\\_Stephenson.pdf](http://www.acas.rs/images/stories/FINAL_REPORT_Paul_Stephenson.pdf).

63 Information of Public Importance and Personal Data Protection Commissioner, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

64 Information of Public Importance and Personal Data Protection Commissioner, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

65 Ministry of Justice and State Administration, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2013.

### *The Police and the Fight against Corruption*

The new Rulebook on the Internal Organisation and Classification of Jobs in the MIA does not set out special requirements or criteria that have to be fulfilled by staff assigned to jobs focusing on suppressing corruption. The number of police staff charged with suppressing and fighting corruption did not increase in 2012<sup>66</sup> (**Recommendation 61 – not implemented**). Every annual Public and Confidential Procurement Plan has been designed with the aim of providing the police with all the equipment and material they need, but the funds for the work of the police have not been fully secured<sup>67</sup> (**Recommendation 63 – partly implemented**). Investments were made and contracts were concluded for the purchase of equipment and material in order to modernise the crime police<sup>68</sup> (**Recommendation 68 – continuously implemented**).

On 10 February 2012, the Minister of Internal Affairs enacted the 2012 MIA Staff Professional Advanced Training Programme, which envisages continuous training, seminars, study visits, consultations, scientific professional events and panel discussions. Thirty-four seminars on anti-corruption topics were organised. Not one organisational unit in the Ministry headquarters has approached the Directorate for Professional Education, Training, Advanced Training and Science and asked to oversee the implementation of the Programme by performing direct insight in the training methods and the quality of the curriculum. The Directorate has indirectly been overseeing the implementation of the Programme by perusing the documentation and has not identified any deficiencies to date<sup>69</sup> (**Recommendation 62 – continuously implemented**).

Police staff engaging in political activities on duty shall be held liable for breach of discipline but there is no specific system for overseeing compliance with this prohibition. The Ministry of Internal Affairs has not been notified of such misconduct by police staff to date<sup>70</sup> (**Recommendation 65 – partly implemented**).

The difficulties identified in the enforcement of the Police Law and the Complaints Review Rulebook indicate the need to introduce new regulatory solutions.

Furthermore, interpretations of the Police Law have given rise to dilemmas whether the Internal Affairs Sector's powers extended only to the Police Directorate staff or all the MIA staff. The Sector therefore submitted to the Ministry Secretariat its suggestions regarding the initiative to amend the Police Law. The Sector, inter alia, proposed that it be charged not only with monitoring the lawfulness of the work of police staff, but of other MIA staff as well, and that it be vested with the power to take measures and conduct activities in accordance with the law to uncover and suppress crimes of corruption and other forms of corruptive behaviour by police staff and other Ministry staff both on duty or with respect to their jobs. Article 76 of the Police Law is being amended and records of complaints and grievances will be established as one of the records of personal and other data kept by the MIA. The amended article will constitute the legal grounds for the establishment of a single automated database "Complaints, Grievances and

66 Ministry of Internal Affairs, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

67 Ibid.

68 Ibid.

69 Ibid.

70 Ibid.

Commendations" covering the entire MIA. The establishment of such a database was initiated by the Complaints and Grievances Bureau<sup>71</sup> (**Recommendation 66 – partly implemented**).

With the aim of improving the efficiency of the fight against corruption, the Internal Affairs Sector focused its activities on the following in 2012: 1) conducted preventive checks in regional police administrations; 2) identified the problems by analysing the performance of the staff in the Ministry headquarters and regional police administrations; 3) proposed amendments to regulations shown to have generated corruption in the police; 4) launched an initiative to codify all regulations requiring police engagement and the exercise of police powers; 5) opened a telephone line and e-mail address by which the public can communicate with the Sector; 6) designed Instructions on the Work of the Internal Affairs Sector and all the requisite forms; 7) developed seven in-house rules of conduct in the Sector – on the flow of mail, signing of official mail, use of official vehicles, out of hours duty and safe use of the IT system, receipt of complaints about the work of the police via the designated telephone line in the Internal Affairs Sector, on the Preventive Action Section's actions on and processing of cases and reviews of grievances; 8) initiated and integrated the Sector's IT system and interconnected all the centres with the in-house databases in the Sector headquarters facilitating safe exchanges of mail, documents and database search via a protected system<sup>72</sup> (**Recommendation 67 – continuously implemented**).

### 2.2.3. ANTI-CORRUPTION AGENCY RECOMMENDATIONS

Continue investing efforts to eliminate the shortcomings in the judicial reform process and complete the process in accordance with international standards and in consultation with experts.

Take the necessary measures to improve judicial efficiency, introduce information technologies to the greatest extent possible and wherever feasible to relieve the judiciary of unnecessary administrative work and create the basis for analysing the performance of the judiciary and continue investing efforts in consolidating alternative dispute resolution. Adopt in the short term a separate law establishing a general legal regime for protecting persons disclosing corruption in various walks of life and in public interest (a Whistle-blower Protection Law).

Provide the police with adequate working conditions and resources to fight corruption.

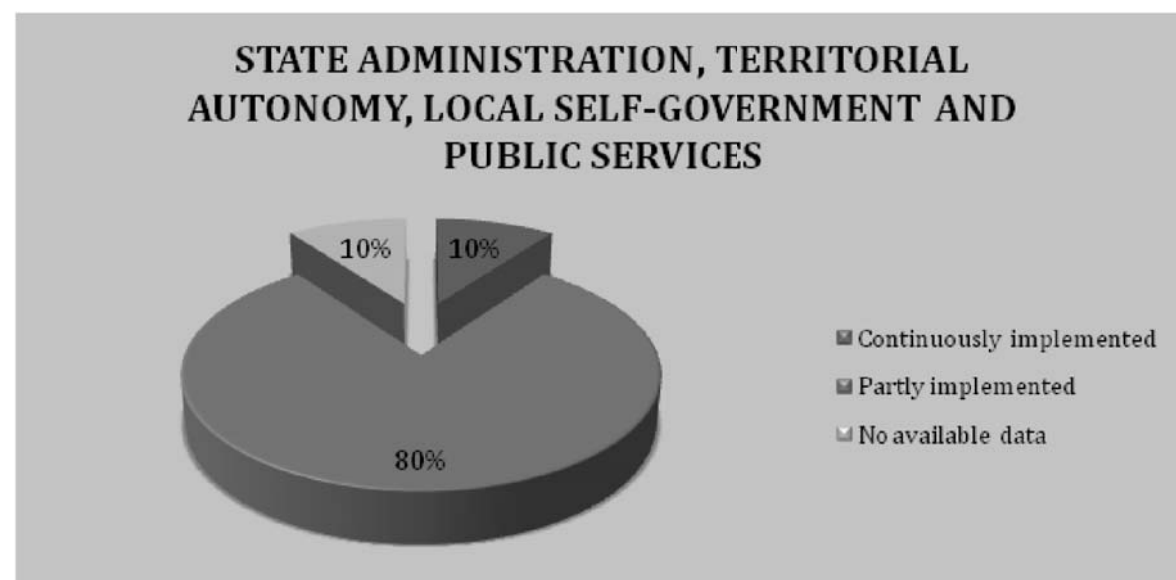
71 Ibid.

72 Ibid.

## 2.3. System of state administration, territorial autonomy, local self-government and public services

The **system of state administration, territorial autonomy, local self-government and public services** is the third large system the Strategy focuses on. Improving regulations and taking other measures to eliminate any opportunity for arbitrariness in decision-making, specifying the scope of rights, improving the transparency of the procedures and introducing a clear and effective principle of the personal accountability of the administrative and public service staff for lawful, efficient and quality performance are instrumental for fighting corruption within this system.

After reviewing 21 recommendations within this system, the Anti-Corruption Agency concluded that two (10%) were continuously implemented and that seventeen (80%) were partly implemented. The Agency was unable to obtain data to analyse two (10%) of the recommendations.



### 2.3.1. GENERAL OVERVIEW

In its Serbia 2012 Progress Report, the European Commission said that little progress had been achieved regarding public administration reform and that the Public Administration Reform Council continued to address only administrative and technical issues and did not actively steer the implementation of the Public Administrative Reform Strategy which remained insufficient. According to the European Commission, the legislative framework is still incomplete. New legislation on general administrative procedures and on local government employees and salaries is yet to be adopted. The Law on Administrative Disputes still needs to be fully aligned with European standards for judicial review of administrative acts. The policy planning and coordination system needs to be improved to steer policy development and produce consistent work plans for the public administration. The recruitment and career system is not yet fully merit-based and recruitment is still prone to political influence. Managers still have too much discretion when choosing candidates from lists drawn up by selection panels following

competitions. Temporary employees are still not recruited according to competitive criteria and contracts are allocated without internal or public competition. A new training programme for civil servants was adopted in 2012 and several training courses were delivered. However, only a small percentage of civil servants, and in particular a very small percentage of managers, took part in training. Induction training is not provided. As regards local self-government, there is no available overview of the functions delegated to municipalities. Responsibilities have continued to be transferred without ensuring sufficient capacity and resources at local level. The National Council for Decentralisation continues to be inactive. Consultation of local authorities when deciding on new legislation or amendments to existing laws that have implications at local level needs to be further improved. Administration and management capacity at local level are weak and significant disparities between municipalities persist. Local government does not have a merit-based and professional human resources service.<sup>73</sup>

The NGO Bureau for Social Research (BiroDI) initiated the design of local anti-corruption action plans (LAPs) in 13 local self-governments in Serbia; the conditions for implementing them were put in place in four of these local self-governments. BiroDI's report on the implementation of the anti-corruption LAPs by the Zrenjanin, Kragujevac, Niš and Požega assemblies concludes that the four local self-governments made headway in establishing an anti-corruption system. This headway, however, still does not guarantee a sustainable level of the fight against corruption because the technical and financial capacities of the local anti-corruption forums (LAFs) and the conditions for implementing the LAP measures still need to be improved and an environment has to be created in which these LAFs will be autonomous both vis-à-vis the local self-governments and their political influence and power and vis-à-vis BiroDI, which had initiated the process. The four local self-governments achieved the following chief results in applying the LAPs by January 2013: they defined the in-house work procedures, collected information on public procurement, donations and sponsorships at the local level, promoted the LAP and LAF concepts through the media, established communication with the citizens and published competitions for annual anti-corruption prizes.<sup>74</sup>

As per the implementation of a number of recommendations within this system, which is reviewed in the text below, the Agency sent out the same questions to a large number of public authorities in the sample. The analysis of the submitted questionnaires leads to the conclusion that the exceptional diversity of the replies, presented in the text below, as well as within some other Strategy systems, demonstrates that the practice of the public authorities in the fields covered by these recommendations is anything but uniform. This conclusion highlights the broader need to regulate these issues systemically in order to ensure at least a minimum of common standards in these fields and, thus, the predictability of the actions of the public authorities.

<sup>73</sup> European Commission, Serbia 2012 Progress Report, pp. 7-8, available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/sr\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/sr_rapport_2012_en.pdf).

<sup>74</sup> Bureau for Social Research, "First Report on the Implementation of Local Anti-Corruption Plans, 2012, Zrenjanin, Kragujevac, Niš, Požega," January 2013, pp. 5, 9-10, available in Serbian at <http://www.birodi.rs/images/PRVI-IZVESTAJ-O-SPROVODJENJU-ANTIKORUPCIJSKIH-PLANOVA-2012.pdf>.

## 2.3.2. IMPLEMENTATION OF THE STRATEGY RECOMMENDATIONS

### *State Administration Reform*

The following assessment of the scope of the implementation of the activities listed in the Action Plan for the Implementation of the State Administration Reform in the Republic of Serbia can be made on the basis of the Implementation Overviews for the January 2009 – March 2012 period: 12 of the 21 activities were completed and five were still being implemented in the field of **rationalisation**; 18 of the 34 activities in the field of **professionalisation and depoliticisation** were completed and two were still being implemented; 29 of the 47 activities in the field of **decentralisation** were completed and nine were still being implemented; five of the activities in the field of **Action Plan implementation and State Administration Reform promotion** were completed and five were still being implemented; 25 of the 63 activities in the field of **e-Government – modernisation of the state administration** were completed and the implementation of another 23 activities was under way; 10 of the 16 activities in the field of **oversight mechanisms** were completed and the implementation of another four was under way; one of the 10 activities in the field of **public policy coordination** was completed and the implementation of another six was under way. Therefore, a total of 153 (75.7%) of the Action Plan activities have been completed or were still being implemented. According to the replies of the Ministry of Justice and State Administration, the completion of the legal framework for all fields of reform is one of the main results of the implementation of the Strategy. A General Administrative Procedure Law, aimed at ensuring proportionality in the satisfaction and protection of private and public interests in administrative matters, increasing transparency and improving the efficiency and cost-effectiveness of administrative procedures, aligning the work of the Republic of Serbia administration with the standards of European administrative practices, has been drafted and will be adopted in 2013. The introduction of a uniform information system for collecting data needed for the development of the Government Work Programme is one of the major novelties in the field of public policy coordination. The Methodology for Analysing the Impact of Public Policy Measures and the Methodology of the Integrated System of Strategic Planning have also been drafted. A conclusion was reached during the preparations for the development of an action plan for the upcoming period that it would be expedient to adopt a new strategic document following up on the previous one but covering a broader segment of the so-called public administration. A project group, comprising representatives of ministries, individual organisations, Government departments and offices and independent authorities, has been established to that end<sup>75</sup> (**Recommendation 69 – partly implemented**).

Data from the vital records kept for 117 cities and municipalities and including 10,926,554 entries were entered in the Central System for the electronic processing and storage of data and storage of the electronic copies of the vital records by 1 December 2012. In the reporting period, 1,163 candidates passed the professional exam for civil registrars and deputy civil registrars and preparations were under way to test candidates for 60 more vacancies. The Instructions on the Compilation of the Existing Voters Registers in a Single Voters Register<sup>76</sup> and the Instructions on the Implementation of the Law on a Single

75 Ministry of Justice and State Administration, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2013.

76 Official Gazette of the Republic of Serbia No. 26/11.

Voters Register,<sup>77</sup> regulating the keeping and updating of the Single Voters Register in accordance with a single methodology, were enacted pursuant to the Law on a Single Voters Register<sup>78</sup> (**Recommendation 75 – partly implemented**).

### *Relevant Legislation*

The regulations on the work of public services and public agencies were not amended in 2012. The provisions of the Law on the Government governing the Government's accountability and powers have been amended and now also apply to entities vested with public powers at the state level. The Constitutional Court rendered a decision revoking several provisions of that Law in the part mentioning the "Deputy Prime Minister".<sup>79</sup> The amendments to the Law on the Government and the Law on Ministries created conditions for the appointment of the Government after the new National Assembly convocation was constituted. The Law Amending the Law on the Financing of Local Self-Governments, adopted in September 2012, laid down the maximum amounts of local public utility fees, abolished a number of local public utility fees, introduced exemptions from the payment of the local signage and billboard fees and established the criteria for the distribution of solidarity transfers to local self-government units (**Recommendation 71 – partly implemented**).

### *Oversight of the Enforcement of the Free Access to Information of Public Importance Law (FOIA)*

According to the replies to the Questionnaire submitted by the Ministry of Justice and State Administration, the Law on the Administrative Inspectorate<sup>80</sup> governs the work and modus operandi of the administrative inspectorate in greater detail, which has improved its efficiency in overseeing the enforcement of the Free Access to Information of Public Importance Law as well.<sup>81</sup>

The Commissioner had initiated amendments to this Law to provide him with the power to file motions for initiating misdemeanour proceedings against those violating the provisions of the Law. The need for these amendments arises from the fact that a relatively small number of misdemeanour proceedings over the violations of the Law have been initiated compared to the number of misdemeanours, which is due to the small number of administrative inspectors, on the one hand, and a large number of public authorities under the duty to implement the Law, on the other. Owing to the nature of his duties, the Commissioner has the opportunity to hear about a large number of such misdemeanours and alerts the Ministry to them. The Ministry then initiates the misdemeanour proceedings and a lot of precious time is wasted, particularly in situations in which there is the risk of the statute of limitations expiring<sup>82</sup> (**Recommendation 72 – partly implemented**).

77 Official Gazette of the Republic of Serbia No. 15/12.

78 Ministry of Justice and State Administration, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2013.

79 Republican Legislation Secretariat, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

80 Official Gazette of the Republic of Serbia No. 87/11.

81 Ministry of Justice and State Administration, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2013.

82 Information of Public Importance and Personal Data Protection Commissioner, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

### *Anti-Corruption Activities*

None of the ministries adopted their own anti-corruption action plans in 2012, wherefore only the sectoral action plans developed by the former Ministries of Internal Affairs, Youth and Sports, Health, and Education and Science are in place (**Recommendation 90 – partly implemented**). The adoption of integrity plans by administrative authorities and public services is under way<sup>83</sup> (**Recommendation 80 – continuously implemented**).

### *Cooperation and Coordination on Combating Corruption*

All the public authorities in the sample, which were asked whether they had appointed a staff member charged with cooperating with the Anti-Corruption Agency and with the implementation of anti-corruption activities in general, said that they had appointed such contact persons. Not all the local self-governments in the sample have done so, however. The cooperation between the public authorities and the Anti-Corruption Agency improved in 2012 over the previous reporting period (**Recommendation 73 – partly implemented**).

### *Discretionary Powers*

The public authorities and local self-governments in the sample gave different replies to the question whether they analysed the regulations they enforced in order to identify room for abuse and eliminate it and whether they had designed procedural instructions and criteria in the procedures they implemented to minimise discretionary powers. Some admitted that they had not undertaken any activities to that end, others provided general replies – that they abided by the regulations, whilst others, yet, listed the specific activities they have undertaken to that end; some implementing entities mentioned the link between these activities and the integrity plan design process. The Ministry of Internal Affairs stated that the Ministry Secretariat launched the drafting of a Rulebook on the Identification of Activities Incompatible with the Duties of Police Staff at the initiative of the Police Internal Affairs Sector in order to eliminate any ambiguities or broad interpretations of the discretionary powers of police staff and their superiors during the performance of police duties and the interpretation of the activities incompatible with police duties. The comprehensive regulation of this area is of crucial importance given that the Internal Affairs Sector staff were precluded from taking any action when they noted that police staff were engaged in activities incompatible with police duties<sup>84</sup> (**Recommendation 74 – partly implemented**).

### *Civil Servants*

Public authorities and local self-governments in the sample mostly provided general replies to the Agency question whether they had in place mechanisms to ensure impartial, objective and non-partisan staff recruitment and promotion, whether these mechanisms were efficient and how they monitored and established their efficiency, and claimed that the fulfilment of this recommendation was ensured by their consistent abidance by the Law on Civil Servants and other regulations governing this matter. The Protector of Citizens enacted Instructions on Recruitment in 2009. The Ministry of Internal Affairs stated that the Police Law did not prohibit police staff from joining political parties, just political activities at work, but that there was no monitoring and oversight system in

83 See more in Section II.1.2: Recommendation 9.

84 Ministry of Internal Affairs, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

place<sup>85</sup> (**Recommendation 76 – partly implemented**).

The Agency received diverse replies from the public authorities and local self-governments in the sample to its question about whether they had adopted plans for conducting regular and ad hoc checks of the staff's accountability, whether such plans were implemented and whether the relevant decisions rendered by the disciplinary authorities were published. Some stated that they adopted regular and ad hoc check plans while others said that they did not adopt such plans (**Recommendation 78 – partly implemented**).

In their replies to the Agency question whether they had in place a complaints procedure that could be applied by staff who refused to carry out the illegal orders of their superiors, whether they had designated contact persons whom such complaints could be submitted to, whether they had designed the complaints forms and notified their staff of their right to complain and the complaints procedure, most of the public authorities and local self-governments in the sample stated that they had not designed complaints forms or designated contact persons to whom the complaints could be submitted. The Ministry of Justice and State Administration developed a form entitled Notice of Refusal to Enforce a Superior's Order (**Recommendation 79 – partly implemented**).

In their replies to the Agency question on whether they conducted periodic checks of compliance with the obligation to submit written reports to the competent authority on activities that may be incompatible with the jobs of civil servants, who conducted such checks and what results the checks yielded, and whether their staff were notified of their obligations, the public authorities in the sample either provided general replies that they abided by the relevant regulations, while a number of them specified that they either did or did not conduct such checks (**Recommendation 82 – partly implemented**).

The public authorities and local self-governments in the sample gave diverse replies to the Agency question whether they had introduced in-house procedures for reporting unlawful and unethical work of their staff and mechanisms to protect persons reporting such misconduct and whether they complied with the obligation to notify the persons who had reported such misconduct of the undertaken measures. Some said that they had not introduced particular forms or procedures, while others underlined that they had ensured both the procedure and the safeguards and that they notified the persons who had reported misconduct of the undertaken measures (**Recommendation 84 – partly implemented**).

To the Agency question on whether they had designed plans for rotating staff doing jobs susceptible to corruption and whether their staff were aware of such plans, only a small number of the public authorities and local self-governments in the sample stated that they rotated staff doing specific jobs or planned to do so; most of the entities that had failed to implement these measures said that they did not have the possibility to introduce this mechanism or that they had not deliberated it because it was inapplicable, because the relevant regulations have not been adopted, while some said that they did not have the human resources or did not need to rotate their staff (**Recommendation 89 – partly implemented**).

85 *Ibid.*

The High Civil Servants' Council is charged with conducting disciplinary proceedings against civil servants appointed to an office by the Government. Like in the previous years, the High Civil Servants' Council did not receive in 2012 any motions to launch disciplinary proceedings against appointed civil servants over violations of the Code of Conduct of Civil Servants wherefore it did not keep records of such proceedings either. The imposed disciplinary measures are entered in the Central Human Resource Records of civil servants and state employees in the state administration authorities and Government services kept by the Human Resource Management Service. The state administration authorities are under the duty to forward the data relevant for the Central Human Resource Records and these data may be accessed by the managers and other persons deciding on the rights and duties of civil servants, by the administrative inspectors and by the civil servants they regard<sup>86</sup> (**Recommendation 81 – partly implemented**).

The Strategy for the Advanced Professional Training of Civil Servants in the Republic of Serbia in the 2011-2013 Period provides the main guidelines for establishing a new, comprehensive and sustainable system of advanced professional training of civil servants. The Action Plan for the Implementation of the Strategy was adopted as well. A project group was set up in October 2011 to design the legislative framework for the new system of advanced professional training of civil servants, but the implementation of the Action Plan activities was halted due to the elections in May 2012. The Action Plan will be revised in the forthcoming period.<sup>87</sup>

A total of 145 civil servants attended the seven training sessions on *Integrity Plans and Drafting Guidelines* organised by the Human Resources Management Service in the first half of 2012. Another six training sessions on the *Fight against Corruption* were organised for a total of 78 civil servants in 2012. They covered the following topics: Openly about Corruption – two sessions; Ethics in State Administration – two sessions; Right of Access to Information of Public Importance – one session; and, Corruption Prevention Mechanisms – one session. The training on the following *Public Finance* topics was attended by 134 civil servants: Implementation of the Public Procurement Procedure (one session), Budget Accounting and Reporting (two sessions), Basic Principles of Tax Operations in the State Administration (one session) and Auditing of Financial Reports and Lawfulness of Operations (four sessions). The Service also organised one training session that focused on Irregularities within the *Decentralised Management of EU Funds* thematic area<sup>88</sup> (**Recommendation 91 – continuously implemented**).

The Agency failed to obtain any information on whether activities had been undertaken in 2012 to provide the staff of administrative authorities and public services with adequate wages and working conditions (**Recommendation 77 – no available data**) or whether any activities had been undertaken in 2012 to introduce rules on transfers of public sector staff to the private sector and prohibiting them from taking advantage of their former offices (**Recommendation 83 – no available data**).

86 High Civil Servants' Council, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

87 Ministry of Justice and State Administration, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2013.

88 Human Resource Management Service, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

### Realisation of Rights

The administrative authorities and local self-governments in the sample gave diverse replies to the question whether they had designed plans to oversee the enforcement of regulations on the payment of administrative fees and whether they kept records of penalties imposed against those violating these provisions. Some of the implementing entities said that they did conduct such oversight, others specified that the parties had to pay the fees before their requests were acted on, whereby oversight was ensured. The Ministry of Foreign Affairs (MFA) said that the electronic system for recording consular activities and fee payments was being tested and would be installed in the MFA and diplomatic and consular missions. The competent MFA units will have insight in the consular financial operations of each mission through the linked system (application)<sup>89</sup> (**Recommendation 85 – partly implemented**).

As per the introduction of one stop shops at which the members of the public could obtain the documents they needed to exercise their rights and the possibility to obtain specific information directly from the other state authorities rather than through the clients, limiting the requirement regarding the submission of licences and certificates only to those explicitly specified in the law, and the provision of information to the citizens on all the documents they need for exercising a specific right, a fair number of local self-governments said they had formed assistance centres where the citizens could obtain a large number of documents and information. On the other hand, only a small number of the other public authorities replied that they had introduced one stop shops, obtained information from other state authorities themselves or worked on introducing this system; some said that they did not have the capacities to fulfil this recommendation. The required documents are specified in the laws, as well as in the by-laws, and the members of the public can find all the information they need on their websites (**Recommendation 86 – partly implemented**).

The Treasury Administration facilitated the integration of the information systems of the following state authorities in the nationwide system of the state authorities: *Republican Pension and Disability Insurance Fund and the Treasury Administration* via the network of the Administration of the Joint Services of Republican Authorities (AJSRA) to ensure access to the Integrated Payment System (IPS); the *Tax Administration and the Foreign Exchange Inspectorate* – at the request of the Foreign Exchange Inspectorate, the Treasury Administration provided the communication infrastructure needed to access the Foreign Currency Transactions and Foreign Exchange Operations system. The communication network of the Foreign Exchange Inspectorate was put in place via the links between AJSRA and the Treasury Administration and the links between the National Bank of Serbia and the Treasury Administration. The as built project of the Foreign Exchange Inspectorate was developed in the process. *Ministry of Internal Affairs* – the MIA of Serbia was linked to the Treasury Administration system in cooperation with the AJSRA colleagues to facilitate its access to the Digital Agenda Administration (e-Administration) production and test portals in the Treasury Administration. MIA users can use the e-payment service given that the MIA network is linked to the Treasury Administration via the AJSRA network. Furthermore, the Business Registries Agency was linked to the Tax Administration and the Pension and Disability Insurance Fund.<sup>90</sup>

89 Ministry of Foreign Affairs, Replies to the Questionnaire on the Strategy and Action Plan, January 2013.

90 Ministry of Finance and Economy, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, January 2013.

The Ministry of Internal Affairs' priority plan is to place some of its databases at the disposal of other interested institutions in accordance with the law. It has to that end established an extranet of a segment of the Ministry computer network and installed state of the art protection to control access to its servers. Data are exchanged through individual online queries by the application of web service technology<sup>91</sup> (**Recommendation 88 – partly implemented**).

### 2.3.3. ANTI-CORRUPTION AGENCY RECOMMENDATIONS

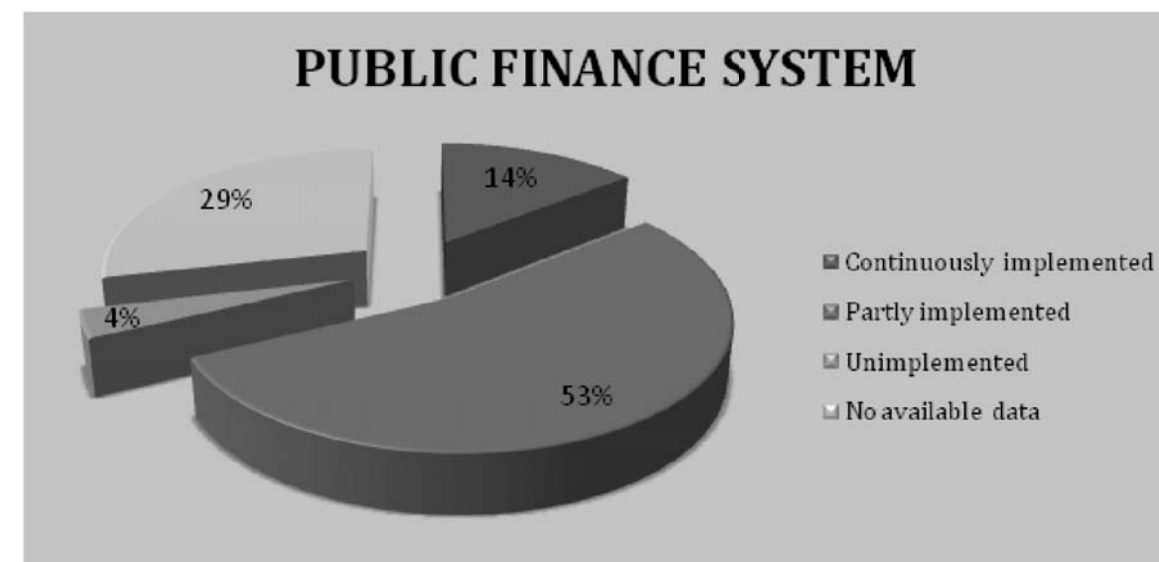
1. Continue efforts to ensure a uniform reform of the state administration.
2. Fully align the Law on Administrative Disputes with European standards.
3. Oblige public authorities to map the discretionary powers in regulations applied in decision-making procedures and restrict them by formulating the relevant conditions, deadlines and criteria.
4. Introduce the principle of rotation of administration and public service staff on jobs susceptible to corruption and establish mechanisms for reporting unlawful and unethical work of administration and public service staff.
5. Invest further efforts to introduce a merit-based career system and effective human resources management and to develop the capacities of specific state administration sectors and ensure adequate coordination.
6. Establish efficient oversight of the enforcement of the Free Access to Information of Public Importance Law and an effective mechanism for initiating misdemeanor proceedings and for enforcing the Commissioner's final rulings.

91 Ministry of Internal Affairs, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

## 2.4. Public finance system

The **public finance system** is the fourth field the Strategy deals with. The Strategy's authors were of the view that public finance planning, collection, management, transparency and monitoring are exposed to major risks of corruption and that reforms in the areas of the customs, tax and budget systems are extremely important.

Out of the 28 recommendations it reviewed, the Agency concluded that four recommendations (14%) were continuously implemented, that 15 recommendations (53%) were partly implemented and that one recommendation (4%) was not implemented. The Agency was unable to obtain data and analyse the implementation of as many as eight recommendations (29%).



### 2.4.1. GENERAL OVERVIEW

According to the European Commission Serbia 2012 Progress Report, the budget deficit in 2011 remained high for a third year in a row and continued to increase at a rapid pace in 2012. Government debt went above the legally binding threshold already at the end of 2011 and continued to increase in 2012. The adoption and implementation of urgent and decisive consolidation measures, backed by systemic reforms of the public sector in order to restore public finance sustainability, remain a key challenge. Public procurement and public expenditure are listed among areas of serious concern, in which independent supervision and capacity for the early detection of wrongdoing and conflicts of interest are underdeveloped. As regards local self-government, the legislation on municipal finance needs to be clarified and properly implemented to ensure that municipal funding is predictable.<sup>92</sup>

The Standing Conference of Towns and Municipalities and the United Nations Development Programme in Serbia in March 2012 published the findings of the analysis of the results of

92 European Commission, Serbia 2012 Progress Report, pp. 25, 12 and 6, available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/sr\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/sr_rapport_2012_en.pdf)



the pilot self-assessments by the Serbian local self-governments by applying the standard UNDP methodology for establishing responsibility, transparency and accountability (RTA), an instrument for obtaining measurable results and data on the hotbeds of corruption and the efficiency of the existing anti-corruption mechanisms at the local level. The analysis established the following in the field of public finance and asset management: none of the local self-government units in Serbia are evidently applying programme budgeting; a relatively large number of local self-governments organise public debates about the budget (39.39%), which indicates increasing awareness of the need to involve the citizens in the budgeting process at the local self-government level, providing the adopted decisions, mostly those regarding investments, with substantial democratic legitimacy; a worryingly high number of local self-governments do not fulfil even the minimum public spending transparency criteria when it comes to notifying the public about the fate of its proposals and whether they have been upheld or rejected; there is room for enhancing the role of the public in overseeing the budget execution process; many local self-governments do not have clear criteria for allocating subsidies to non-profit organisations, particularly because some sectoral laws entitle them to allocate funding for specific purposes without public competitions; the lack of a uniform practice and the non-existence of an obligation of the local self-governments to require financial reports are the greatest problems encountered in monitoring the flow of budget subsidies; more than half of the local self-governments have not established internal financial oversight bodies and the bodies that have been established play a minor role and it is very difficult to assess the real impact on the quality of financial reporting by the local self-governments that declaratively have internal oversight; all local self-governments are committed to advanced professional training and other forms of training and the perusal of the latest professional literature, thanks to which their staff stay abreast of the latest legal amendments and are thus able to perform their duties better and more efficiently.<sup>93</sup>

## 2.4.2. IMPLEMENTATION OF THE STRATEGY RECOMMENDATIONS

### *Budget System*

The Law on the Budget System lays down that the budget shall constitute a comprehensive plan of revenues and proceeds and a plan of expenses and expenditures; fiscal accountability has been established and the fiscal rules for the use of budget funds have been elaborated (**Recommendation 92 – partly implemented**). The budget preparation and adoption procedures are laid down in the budget calendar and the budget beneficiaries draft their financial plans in accordance with the guidelines in the Budget Preparation Instructions and pursuant to the fiscal rules and set ceilings and priorities. The Treasury Administration information system was extended in 2012 to cover direct budget beneficiaries established under the Law on Ministries<sup>94</sup> (**Recommendation 98 – continuously implemented**).

93 Standing Conference of Towns and Municipalities and the United Nations Development Programme in Serbia, "Determination of the Responsibility, Transparency and Accountability (RTA) Index at the Local Level, Analysis of the Pilot Self Assessment of the Situation in situation and Recommendations for Cities and Municipalities", March 2012, available at <http://www.undp.org.rs/index.cfm?event=public.publicationsDetails&revid=6C651C3A-A33C-3D11-F0453334E4066771>.

94 Official Gazette of the Republic of Serbia No. 72/12. Ministry of Finance and Economy, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, January 2013.

The amendments to the Law on the Budget System that came into force in January 2012 allow beneficiaries of public funds to hold foreign currency accounts in the Treasury Administration. The drafting of the by-laws that will govern the opening and holding of foreign currency accounts and foreign currency operations via these accounts is under way. This also necessitated the adoption of the relevant amendments to the Law on Foreign Exchange Operations; under the amendments, beneficiaries of public funds included in the consolidated treasury account system shall hold their foreign exchange accounts with the Treasury Administration. The 2012 amendments to the Law on the Budget System expanded the Treasury Administration's powers with respect to public payments regarding the keeping of a register of all beneficiaries of public funds as well as a register of other beneficiaries of public funds included in the consolidated treasury account system. The amendments also lay down the obligation of beneficiaries of public funds not included in the consolidated treasury account system to open dinar and foreign currency sub-accounts with the Treasury Administration for the funds transferred from the budget, which provides for greater solvency and the more cost-effective and efficient use of the budget funds. These amendments were made to facilitate direct regular monitoring of the overall volume of public revenues and expenditures, public fund management and improve control over budget spending and public spending in general. The Law also imposes upon the beneficiaries of budget funds the obligation to notify the Treasury Administration of the obligations they have assumed and the conditions under and deadlines within which they have to fulfil them. The Treasury Administration is consequently drafting by-laws which will govern the implementation of these legal provisions in greater detail<sup>95</sup> (**Recommendation 100 – continuously implemented**).

The borrowing plan is drafted and presented in the mid-term (three-year) Public Debt Management Strategy and published in the Fiscal Strategy, while the annual borrowing plans are published in the Republic of Serbia Budget Law. The monthly borrowing plans regarding state securities are published on the Ministry of Finance and Economy website. The borrowing plans regarding direct borrowings and guarantees issued by the Republic are prepared by the Ministry of Finance and Economy, notably the Public Debt Administration. The budget/spending plans are within the purview of the Treasury Administration. The criteria for submitting reports on borrowing are not fully defined and fall short of EU standards, wherefore the Public Debt Administration is of the view that all the criteria must be defined in accordance with international practices as soon as possible. The Public Debt Administration is under the obligation to report on borrowings in the manner specified in the Law on Public Debts, i.e. Serbia's direct debts and issued guarantees<sup>96</sup> (**Recommendation 96 – partly implemented**).

The Agency failed to obtain data on whether and how budget inspections and auditing are organised at the local level (**Recommendation 104 – no available data**).

### *Transparency of Budget Planning and Execution*

Pursuant to the Law on the Budget System, the Ministry of Finance and Economy submits to the Government a Report on the Execution of the Budget of the Republic of Serbia upon the expiry of a six-month period for the current fiscal year and the Government

95 Ministry of Finance and Economy, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, January 2013.

96 Ibid.

forwards the Report to the National Assembly for information<sup>97</sup> (**Recommendation 99 – partly implemented**).

The Instructions on the Design and Publication of Information Booklets adopted in 2010 by the Information of Public Importance and Personal Data Protection Commissioner specify which information on revenues and expenditures, public procurement, paid wages and other incomes the public authorities are to publish in this document. Most public authorities have failed to publish public spending data in their information booklets, but some authorities have been publishing this information in accordance with the Instructions. Many information booklets also suffer from the following shortcomings: they present the budget and public procurement data for the previous rather than the current years, they do not present the data in sufficient detail, they fail to present data on executed budget funds and public procurements, which are to be updated on a monthly basis under the Instructions, they present the wages in coefficients or simply omit to publish that chapter at all. The Commissioner regularly reacted to the deficiencies and some headway has been noted in that respect. The presentation of the revenue and expenditure data pursuant to the Instructions allows the readers to check whether budget spending is in accordance with the plan<sup>98</sup> (**Recommendation 107 – partly implemented**).

#### *Public Procurement*

The new Public Procurement Law<sup>99</sup> was adopted in December 2012 and will come into force on 1 April 2013. The Law, notably:

1. Devotes a separate chapter to the fight against corruption and prevention of conflict of interests, under which.
  - The contracting authorities are under the obligation to adopt in-house enactments governing all the public procurement stages (planning, implementation, enforcement of the contract) by 6 January 2014.
  - In cooperation with the Anti-Corruption Agency, the Public Procurement Administration shall design an anti-corruption plan by 6 October 2013 and submit it to the Government for adoption;
  - Communication related to public procurement procedures shall be in writing (e-mail, fax, ordinary mail);
  - Contracts may not be concluded if there is a conflict of interests;
  - The institute of civil supervisor is established;
  - Contracting authorities, the public procurements of which exceed one billion RSD a year, are under the obligation to design in-house plans for preventing corruption in public procurement and to establish departments that will oversee public procurement planning, the implementation of the public procurement procedures and the enforcement of the contracts);
  - All work arrangements with the suppliers are prohibited;
  - Everyone engaged in a public procurement procedure or working in a contracting authority is under the duty to report corruption in public procurement and violations of competition rules.

97 Ibid.

98 Information of Public Importance and Personal Data Protection Commissioner, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

99 Official Gazette of the Republic of Serbia No. 124/12

2. Expands the powers of the competent authorities, particularly the Public Procurement Administration and the Republican Commission for the Protection of Rights in Public Procurement Procedures:

- The Public Procurement Administration is now vested also with the following powers: it may initiate misdemeanour proceedings and the procedure for annulling a public procurement contract, adopt by-laws governing public procurement, keep a list of negative references, oversee the enforcement of the Public Procurement Law, appoint civil supervisors, design plans and normative enactments and, with the consent of the Government, undertake other activities related to public procurement with respect to EU accession talks;
- The Republican Commission for the Protection of Rights is now vested also with the following powers: it may annul public procurement contracts, initiate the procedure for annulling a public procurement contract and misdemeanour proceedings in the first instance; impose fines against contracting authorities and their responsible persons, oversee the contracting authorities, penalise abuses of the right to file requests for the protection of rights.

3. Introduces more restrictive rules for negotiated procedures without prior publication of a notice (re-introduces the obligation to obtain prior consent from the Public Procurement Administration).

4. Introduces new public procurement procedures and purchasing mechanisms (competitive dialogue, framework agreement, dynamic procurement system).

5. Regulates the public procurement planning stage (adoption of an enactment on procurement plans and reports on the implementation of the procurement plans).

6. Imposes upon the contracting authorities the obligation to publish public procurement notices and the tender documentation on the Public Procurement Administration's Public Procurement Portal (free advertising).

7. Introduces a Register of Bidders and simplifies the procedure by which bidders prove their eligibility.

8. Abolishes the formal reasons for rejecting bids.

9. Includes a separate chapter on public procurements in the defence and security sector.

Sixty-two exams were held in the December 2010 – December 2012 period in accordance with the 2008 Public Procurement Law and 1,479 of the 2,394 public procurement officer candidates passed the exam. Under the new Law, the Public Procurement Administration shall enact a by-law governing the mode and curriculum of the professional training for public procurement officers and their examinations. The preparation of information for the potential bidders will ensue after the tasks facilitating the enforcement of the new Law as of 1 April are completed (adoption of by-laws, preparation of the Portal for the changes to be made pursuant to the new Law, preparation of other instructions, design of standard public procurement notices et al)<sup>100</sup> (**Recommendation 120 – continuously implemented**).

100 Public Procurement Administration, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2013.

The above mentioned SCTM/UNDP analysis, which involved the application of the RTA methodology in the local self-government units, came to the following conclusions about public procurement: the local self-governments highly rated the alignment of the public procurement plans with other strategic and planning documents, but this finding cannot be considered impartial because a high rating would entail programme budgeting, which none of the local self-governments applied at the time of the survey; Serbia's cities perceive themselves as more transparent than they actually are, while the municipalities are extremely self-critical and rate the transparency of their public procurement planning very poorly; perusal of the documentation of most local self-government units shows an extremely widespread problem of "splitting up" public procurements; local self-governments are aware of the importance of good specifications and are striving to expand their databases; they are extremely self-critical and rate their efficiency and transparency poorly when it comes to the publication of their public invitations to bid, because hardly any of them post the invitations to bid for small value procurements on the state Public Procurement Portal; public access to the reports on implemented public procurements and information on contracted public procurements is evidently inadequate; the State Audit Institution's reports and the experiences of the city budget auditors corroborate the fact that the contracting authorities and successful bidders often contract additional services within the existing contracts, but that the data thereof are not posted on any websites of the local self-governments covered by the project; the certification of public procurement officers is still insufficiently recognised as a mechanism for safeguarding their impartiality and independence; most local self-governments claim that the composition of the public procurement commissions changes in every public procurement procedure, but practice has shown that they mostly comprise the same people, who have a high degree of discretion in decision making, and that the make-up of the commissions changes only when they require the involvement of a member highly specialised in a specific field.<sup>101</sup>

The Agency failed to obtain data on whether the possibility of centralising the public procurement procedures for all or specific procurements had been analysed in 2012. All public authorities and local self-governments who replied to the Questionnaire said that they developed annual public procurement plans; most of them stated that they published them in their information booklets (**Recommendation 121 – partly implemented**).

The Agency failed to obtain data about the implementation of the following recommendations in this field: whether there is another mechanism for controlling public procurement implementation apart from periodic (quarterly) reports on the number of implemented public procurements envisaged by the endorsed plans – this issue regards the recommendation to establish mechanisms for controlling public procurement implementation (**Recommendation 122 – no available data**); whether the autonomy and independence of the Commission for the Protection of Rights in Public Procurement Procedures from the executive authorities has been secured and how (**Recommendation 123 – no available data**).

101 Standing Conference of Towns and Municipalities and the United Nations Development Programme in Serbia "Determination of the Responsibility, Transparency and Accountability (RTA) Index at the Local Level, Analysis of the Pilot Self Assessment of the Situation and Recommendations for Cities and Municipalities", March 2012, available in Serbian at <http://www.undp.org.rs/index.cfm?event=public.publicationsDetails&revid=6C651C3A-A33C-3D11-F0453334E4066771>.

## Auditing

The State Audit Institution (SAI) of Serbia continued to gradually build up its capacities by recruiting further auditors and the term of office of its president was renewed by parliament in September 2012. The SAI also continued to work on improving audit methodology and increased audit coverage. However, the SAI Law does not provide for full financial and operational independence in line with the standards of the International Organisation of Supreme Audit Institutions (INTOSAI). The SAI is still in the institution-building phase, as it has only operated for four years. It is under-resourced, and the audit coverage is still rather limited. Performance audit work has not yet started. In addition, according to the requirements of the SAI Law, the SAI continues to have a specific responsibility to submit requests for filing misdemeanour and/or criminal charges to the competent authority. This responsibility, which rather should be part of wider budget inspection activities, takes up some of the SAI's limited resources that could be instead used for additional audit work.<sup>102</sup>

In its replies to the Agency Questionnaire, the SAI said that its working conditions had improved over 2011 but that it still lacked office space for its 152 staff members, who were working from offices in four locations in Belgrade (**Recommendation 101 – partly implemented**). The staff complement of the SAI increased from 99 at the end of 2011 to 152 at the end of 2012; most of the new staff work in the audit departments. The SAI has provided continuous advanced professional training for its staff, mostly in auditing. The SAI has been conducting training for candidates for the title of state auditor in accordance with a curriculum set out in the relevant Rulebook and other training required for auditing. The SAI's Strategic Plan envisages the introduction of suitability audits in 2013 and SAI began implementing the plan in January 2013 by piloting suitability auditing<sup>103</sup> (**Recommendation 95 – partly implemented**).

According to the replies of the Ministry of Finance and Economy to the Questionnaire, one budget inspector was recruited in 2012 bringing the number of budget inspectors up to nine. The Ministry has an outstanding vacancy for a job envisaged by the valid job enactment. The Financial Management and Control and Internal Audit Central Harmonisation Unit recruited three new staff members and now has a staff complement of 12; two more vacancies remain to be filled. The Human Resource Management Service provides advanced professional training to the budget inspectors, while the Central Harmonisation Unit is charged with training the auditors<sup>104</sup> (**Recommendation 103 – partly implemented**).

The Central Harmonisation Unit Sector, renamed into the Internal Audit and Budgetary Inspection Sector in November 2012, has to date prepared three annual consolidated reports on internal financial controls in the public sector in the Republic of Serbia, for 2009, 2010 and 2011, and will publish its 2012 report in 2013. The Government adopted the three reports and they were posted on the Ministry of Finance and Economy website. Follow-up action ensued after the prior internal reports were completed: after

102 European Commission, Serbia 2012 Progress Report, pp. 9, 11 and 64 [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/sr\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/sr_rapport_2012_en.pdf)

103 State Audit Institution, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, January 2013.

104 Ministry of Finance and Economy, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, January 2013.

collecting the data from the annual reports of the budget beneficiaries, the Sector issued recommendations on how to eliminate the identified weaknesses, particularly with respect to financial management and control, internal audits and the Central Harmonisation Unit. Basic training in financial management and control was organised for 122 candidates working in 56 organisations funded from the budget, while 102 candidates working in 50 budget beneficiaries underwent basic training in internal auditing. Continuous training of internal auditors is implemented by organising pilot audits in ministries, conducting risk management training and providing practical on the spot assistance to internal auditors<sup>105</sup> (**Recommendation 105 – partly implemented**).

The number of certified internal auditors in the public sector was increased by 20 and they now total 119. In terms of the INTOSAI standards under the COSO model, internal control is not a “service” and internal auditors are not civil servants. Internal control entails written policies and procedures and their enforcement; these policies and procedures are established to provide reasonable assurances that the risks of achieving the goals are limited to an acceptable level defined in the risk management procedures. The controls must be adequate and the costs of their introduction may not exceed the expected benefits<sup>106</sup> (**Recommendation 106 – partly implemented**).

The National Assembly Committee on Finance, State Budget and Public Spending Oversight reviewed the SAI’s Memo on its 2011 state audit reports at its session in 2012. The Committee and the National Assembly did not review the Draft Law on the Annual Budget Statement of Accounts in 2012<sup>107</sup> (**Recommendation 102 – partly implemented**).

#### Tax System

Some progress can be noted in the area of taxation, but modernisation needs to continue. Tackling the grey economy remains a challenge. Substantial efforts are required to improve the IT system and communication with taxpayers and to further align the legislation on excise duties.<sup>108</sup>

The Agency failed to obtain data on the extent to which the tax regulations have been aligned with EU regulations to date (**Recommendation 108 – no available data**).

Like in 2011, there is still no commitment to move from the schedular to the synthetic personal income tax model; nor have all the prerequisites been fulfilled for introducing the latter given the essential differences between the synthetic (global) and schedular systems for taxing the incomes of natural persons and the operationalisation of monitoring and scrutinising the tax administration’s collection of personal income taxes<sup>109</sup> (**Recommendation 109 – not implemented**).

105 Ibid.

106 Ibid.

107 National Assembly of the Republic of Serbia, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2013.

108 European Commission, Serbia 2012 Progress Report, p. 44, available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/sr\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/sr_rapport_2012_en.pdf).

109 Ministry of Finance and Economy, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, January 2013.

At the request of the local self-governments, the Ministry of Finance and Economy has been issuing professional opinions and clarifications about dilemmas arising in the enforcement of the Property Tax Law<sup>110</sup> (**Recommendation 110 – partly implemented**).

The 2012 amendments to the Republican Administrative Fees Law abolished a number of documents and actions for which both natural and legal persons used to be charged republican administrative fees. The amendments have cut the costs of doing business and brought relief to both private individuals and businesses<sup>111</sup> (**Recommendation 111 – partly implemented**). Working groups are being set up to analyse the ongoing internal control processes and propose their improvements. A round table was organised for the representatives of the Finance Ministry and Tax Administration to design an efficient model of oversight by the Ministry’s professional departments<sup>112</sup> (**Recommendation 113 – partly implemented**).

The Agency failed to obtain data on the fulfilment of the following recommendations in this field: how many reports were filed, proceedings instituted and penalties imposed for breach or evasion of fiscal discipline in 2012 and whether any activities or measures were taken during the year to improve the tax collection rates (**Recommendation 112 – no available data**); whether the project of introducing an information system with a single database geared at automating the tax procedure has been implemented (**Recommendation 114 – no available data**); whether any activities were undertaken in 2012 to modernise the Tax Administration and transform it from a functional to a client-oriented organisation, as well as to what extent was the Tax Administration Corporate Strategy for the 2010-2014 period implemented in 2012 and what its effects were (**Recommendation 115 – no available data**).

#### Customs System

The State Audit Institution reported on faultless 2010 financial records for the Customs Administration of Serbia (CAS) in December 2011. The coordination between CAS and the Ministry of Finance and Economy has also improved and new instructions have been issued on cooperation between the two entities. The CAS is establishing a fully functioning IT system based on interconnectivity between its various departments. Around 90% of customs declarations are submitted electronically and the concept of electronic signature has been introduced. However, the Customs Declaration Processing System (CDPS) should be renewed or upgraded and a properly equipped and functioning customs laboratory is needed.<sup>113</sup>

In cooperation with the World Customs Organization, the Customs Administration Internal Affairs Department has participated in a pilot project *Strengthening Integrity in the Fight Against Corruption*, focusing on the internal organisation of the structure for preserving integrity, preventive measures and dealing with corruption, and produced an Action Plan, which, inter alia, envisages the design of a Risk Atlas. The Strategic Risk Assessment questionnaires, which identify all the critical points in the Customs Administration from the viewpoint of the fight against corruption and the consolidation

110 Ibid.

111 Ibid.

112 Ibid.

113 European Commission, Serbia 2012 Progress Report, p. 61, available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/sr\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/sr_rapport_2012_en.pdf).

of integrity, were sent out to the managers of all the customs offices and field offices. The Risk Atlas was designed on the basis of the data the managers gave in their replies to the questionnaires<sup>114</sup> (**Recommendation 116 – partly implemented**).

The Customs Administration occasionally reports on the achievements of the customs services in its in-house bulletin *Carinik* (Customs Officer) which is available to all the CAS staff (**Recommendation 119 – continuously implemented**).

The Agency failed to obtain information on whether any measures had been undertaken in 2012 to improve the customs methodology and about the results of the implementation of the “system of simplified customs procedures”, applied since early 2011 (**Recommendation 117 – no available data**).

### 2.4.3. ANTI-CORRUPTION AGENCY RECOMMENDATIONS

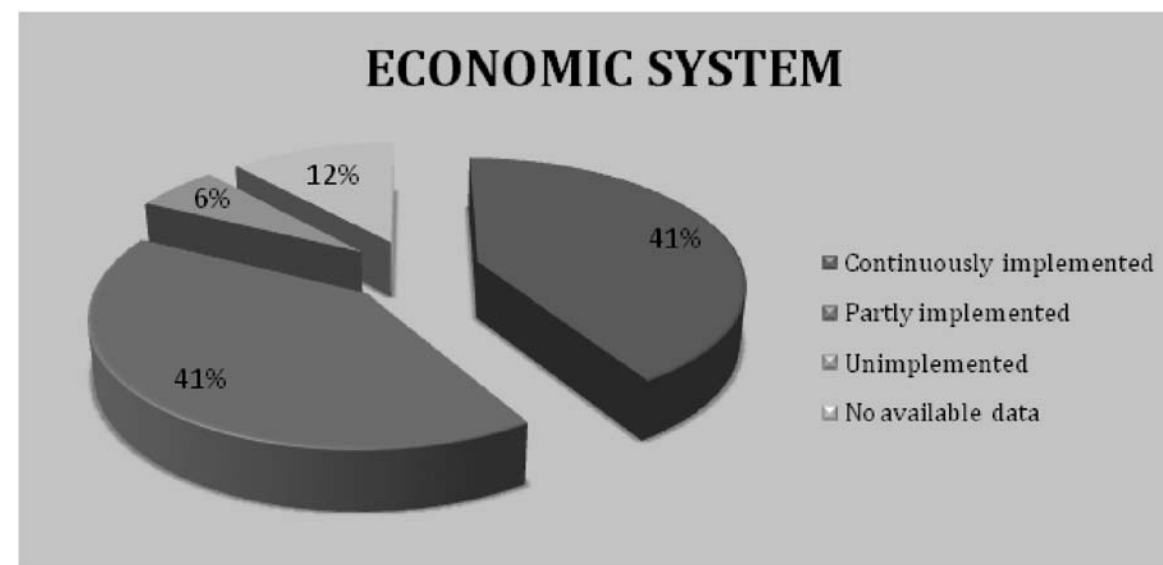
1. Ensure the effective enforcement of the new Public Procurement Law and the Public Procurement Development Strategy.
2. Establish a mechanism for assessing the expediency of the budget beneficiaries' needs during budget planning.
3. Ensure the consistent enforcement of the Budget Law with respect to the publication of the draft budgets and annual statements of accounts.
4. Provide the State Audit Institution with adequate working conditions.
5. Invest further efforts in establishing an internal audit system.

<sup>114</sup> Ministry of Finance and Economy, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, January 2013.

## 2.5 Economic System

The **economic system** is the fifth field the Strategy governs. Serbia's economy is still facing difficulties due to the longstanding crisis and uneven results of reform, further exacerbated by the global economic crisis.

Of the 17 reviewed recommendations regarding the economic system, the Anti-Corruption Agency concluded that seven (41%) were continuously implemented, that seven (41%) were partly implemented and that one recommendation (6%) was not implemented. The Agency failed to obtain data about the implementation of two recommendations (12%) and was thus unable to analyse them.



### 2.5.1. GENERAL OVERVIEW

The Foreign Investors Council noted in its White Book that no headway had been made with respect to the following recommendations it had made over the previous years: accelerate the rate of transition reforms with the dual goal of improving business conditions and bringing Serbia closer to the European Union; intensify the fight against corruption, since this is seen as one of the most problematic factors for doing business in Serbia; conduct a well-balanced economic policy that will be conducive to business and attracting investment. On the other hand, it noted some headway with respect to the following recommendations: reduce and simplify the bureaucratic procedures at both the national and local levels and create conditions for market competition in a well-regulated market, by providing equal rights to all competitors, and proper regulation of monopolies.

In the view of the authors of the White Book, 2012 was characterised by economic stagnation and Serbia still faced a complex set of macroeconomic problems, including one of the highest unemployment rates in Europe of 25% and still growing. They qualified as particularly worrying the fact that over 30% of those under 30 years old were unemployed, causing Serbia to have one of the highest “brain drains” in the world. The other listed problems included the highest inflation rate in Europe, public spending which was much higher than fiscal revenues and public debt that exceeded the 45% of GDP legal limit and was climbing still. The White Book authors noted that Serbia was facing the very complicated task of increasing production and employment while, at the same time

reducing public expenditure. Serbia's GDP growth, planned to be 1.5%, was falling short of expectations, and would most likely be either zero, or even slightly negative, while the share of investments in GDP was still rather low, at around 20%, and was not high enough to generate a higher growth rate, or to reverse the unemployment rate. The situation in the labour market was the biggest socio-economic and political problem facing the Government. Foreign direct investments were much lower than in previous years. In fact, there was a net outflow of investments. The credit rating of Serbia had slipped by a notch, thus making borrowing abroad more costly, and the inflow of foreign investment less attractive. Serbia took a step closer to the European Union by getting the status of candidate at the beginning of 2012 but did not get a date for the start of negotiations as the next desired step, until it fulfilled several requirements, the biggest being the normalisation of relations with Priština, reducing corruption, and improving the judiciary system.

Over the course of last year, the business climate did not improve. The latest Global Competitiveness Report (2012) shows Serbia holding the same unfavourable ranking of 95 among 144 countries. In some important aspects that form the complex Global Competitiveness Index, Serbia actually slipped lower than the previous year's low ranking. For example, Serbia is ranked 107<sup>th</sup> in intellectual property protection last year but 116<sup>th</sup> in 2012; in burden of government regulation 134<sup>th</sup> and 136<sup>th</sup> respectively; in extent of staff training 132<sup>nd</sup> and 138<sup>th</sup>; in effectiveness of anti-monopoly policy 137<sup>th</sup> and 142<sup>nd</sup>; in extent and effect of taxation 118<sup>th</sup> and 122<sup>nd</sup>; in firm-level technology absorption 136<sup>th</sup> and 142<sup>nd</sup>; in company spending on R&D 130<sup>th</sup> and 132<sup>nd</sup>. The Government institutionalised a Council for Competitiveness, but this high level Council has not produced visible results yet and the comprehensive review of legislation (the so-called Regulatory Guillotine) is still far from complete.<sup>115</sup>

According to the National Alliance for Local Economic Development (NALED) Regulatory Reform Status in the III Quarter of 2012 report, 138 para-fiscal charges were eliminated, with 22 of them being local government revenues. Major savings were realised primarily for small enterprises and entrepreneurs: the so-called "signage fee" was abolished. The obligation of paying the so-called "forest fee" was eliminated, which saved the businesses more than 17 million EUR. Amendments to the Law on the Budget System introduced two important rules: the amount of a fee needs to be in accordance with the costs of service provision and a fee cannot be charged for issuing the data obtained from one state authority when requested by another authority. Since October 1, the general VAT rate was increased from 18% to 20%, the limit for the mandatory transition to the VAT regime was increased to RSD 8 million and an option of paying VAT upon collection of receivables was introduced. The Government has implemented 22 out of a total of 80 recommendations from the Grey Book for cutting the red tape. Out of 304 recommendations by the Comprehensive Regulatory Review (Regulatory Guillotine), 212 (70%) have been implemented. The following key reforms have not taken place yet: simplifying and reducing the costs of obtaining building permits, reform of inspections and reform of labour legislation. The responsible institutions were late on average 330 days in adopting 82 by-laws, necessary for the implementation of 19 laws relevant for businesses.<sup>116</sup>

115 Foreign Investors Council, White Book 2012, Proposals for improvement of the business environment in Serbia, pp. 6-7, available at <http://www.fic.org.rs/admin/download/files/cms/attach?id=331>.

116 National Alliance for Local Economic Development, Regulatory Reform Status in the III Quarter of 2012, p. 1, available at <http://www.naled-serbia.org/documents/download/Report%20for%20III%20quarter%202012%20-%20Regulatory%20reform%20status.pdf>.

According to Serbia's economic profile in the Doing Business 2013 report of the International Financial Corporation and the World Bank Group, Serbia rose from 92<sup>nd</sup> to 86<sup>th</sup> place on the list of 185 observed countries. It made the greatest headway with regard to starting a business where it rose from 91<sup>st</sup> last year to 42<sup>nd</sup> place and is now above the regional average of East European and Central Asian countries, but it remains extremely poorly rated with respect to paying taxes (149<sup>th</sup>) and enforcing contracts (103<sup>rd</sup>) and the worst in dealing with construction permits (179<sup>th</sup>).<sup>117</sup> Rulebooks on central and local registers of planning documents are late more than 940 days, and the existence of these registers would significantly increase transparency and contribute to a faster pace of issuing building permits.<sup>118</sup>

The results of the UNDP/CeSID Corruption Benchmarking Survey indirectly testify to the situation in the economy as well. As many as 44% of the respondents think that their family financial situation deteriorated and only one out of ten said that it had improved in 2012. The replies indicate that the main problems the citizens face are directly correlated with their economic status and the economic situation in the country. The top five problems they list are unemployment (44%), corruption (15%), poverty (14%), lack of opportunities for young people (7%) and low wages (6%). It can, however, be concluded that the changes in the ruling structures in the country have led to a change in the mood of the citizens of Serbia that prevailed in the past five rounds of the survey – the record high pessimism in late 2011, when 73% of the respondents thought that Serbia was going in the wrong direction, has now fallen to 45%. The number of optimists has grown at the same time as well – one out of three respondents now thinks that Serbia is going in the right direction. This rise in optimism is not, however, directly linked to better living conditions, because the percentage of those who think their lives are unbearable still stands at as many as 13%, while the total share of citizens who think that their financial standing is bearable, bad or unbearable is extremely high and stands at around 90%. Only 11% of the respondents qualified their financial situation as mostly or extremely good.<sup>119</sup>

## 2.5.2. IMPLEMENTATION OF THE STRATEGY RECOMMENDATIONS

### *Limiting the State's Role in the Economy and the Legal Framework for Doing Business*

A number of activities were taken to relieve businesses of the administrative burden in 2012. Twenty-eight new or amended regulations were adopted in 2012 to improve the business environment and cut the para-fiscal charges. For instance, a total of 138 para-fiscal charges were abolished, including three in the field of construction, and entrepreneurs and small-sized enterprises are no longer obliged to pay "forest fees". The

-%20Regulatory%20reform%20status.pdf.

117 The World Bank and International Finance Corporation, "Doing Business 2013, Economy Profile: Serbia", 2012, available at <http://www.doingbusiness.org/~media/giawb/doing%20business/documents/profiles/country/SRB.pdf>.

118 National Alliance for Local Economic Development, Regulatory Reform Status in the III Quarter of 2012, p. 1, available at <http://www.naled-serbia.org/documents/download/Report%20for%20III%20quarter%202012%20-%20Regulatory%20reform%20status.pdf>.

119 UNDP and CeSID, Corruption Benchmarking Survey, Public Opinion on Corruption in Serbia, December 2012, pp. 8-9, available at <http://www.undp.org.rs/index.cfm?event=public.publicationsDetails&revid=CDB64BE5-B259-E26A-A74CE322069FD34F>.

state also abolished the obligation to register foreign trade deals and initiated a reform of court fees. These steps have considerably increased the predictability of the burden on businesses arising from numerous expenses and eliminated numerous “hidden” non-tax payments, which is expected to boost Serbia’s economic competitiveness. The 28 newly-adopted or amended regulations were the first stage in reducing the charges burdening the economy, a process which will continue in 2013 as well.

The amendments to the legislation on republican and administrative fees have relieved around 300,000 entrepreneurs and owners of small companies of various charges, which are to bring them savings of up to 200,000 RSD a year. A new rule has been introduced: no fee may be charged for the issuance of a document by one state authority in the event it is required by another state authority. All price lists and tariffs of various republican and local institutions will be analysed in detail by the Ministry of Finance and Economy, and, if necessary, revised.

The amendments to the Law on the Budget System put an end to the practice of various state institutions of imposing taxes and charges on private individuals and businesses, which had led to lack of clarity and unpredictability of the tax system. The own revenues of ministries, authorities and agencies were abolished and all the revenues will be paid into the state budget, which will enable better control of the state funds and their more rational use. The legal amendments are to bring savings of three billion RSD in the last quarter and of 20 billion RSD in 2013 and ensure a better overview of the tax burdens on businesses and lower their costs.

The following improvements were also made in 2012: the obligation to notify of changes in the VAT payers’ data was abolished; the opening of accounts in commercial banks was simplified; the amendments to Law on Copyright and Neighbouring Rights improve the efficiency of copyright protection control and abolish the obligation of craftsman shops to pay the so-called “music dinar”; self-employed entrepreneurs paying lump-sum taxes no longer have to record their trade of goods/services through fiscal cash registers.

The amendments to the Law on the Tax Procedure and Tax Administration simplified the tax procedures and improved the treatment of taxpayers. The professionalisation of the Tax Administration was strengthened, the obligation to receive tax returns from all taxpayers in electronic format was introduced and will be implemented in the following 18 months. The same will apply to the submission of annual statements and electronic communication between the taxpayers and the Tax Administration will become mandatory as of 2014. The electronic system of the Tax Administration will be modernised. The Law now equally treats payment delays by the taxpayers and the state and the state is now under the duty to pay a penalty interest to VAT payers if it is late in refunding VAT and excise duties.

Under the amendments to the Law on Value Added Tax, as of 1 January, small and medium-sized enterprises (whose annual trade does not exceed 50 million RSD, i.e. 86% of all the VAT payers) will pay their VAT only once they collect their receivables. The number of VAT payers was cut by raising the VAT threshold and the amendments introduce penalties for the state in the event it is late in refunding VAT. Under specific conditions, businesses can claim VAT refunds for baby food and equipment.

The Law on Foreign Exchange Operations allows online payments to other countries, which facilitates the arrival of PayPal in Serbia and considerably cuts the companies’ foreign trade costs.

The National Assembly of the Republic of Serbia in 2012 adopted the Law on Deadlines for the Payment of Financial Obligations in Commercial Transactions, aiming to ensure the settlement of financial obligations in commercial transactions between businesses and between businesses and the public sector. The main goal of the Law is to reduce insolvency, cut the chains of indebtedness and halt blockades of companies over their inability to collect their receivables. This Law introduces discipline in the financial system and prevents the non-payment of obligations. Private businesses and the state have to settle their financial obligations within 60 and 45 days respectively. The Law, which comes into force on 31 March 2013, also introduces misdemeanour penalties for and oversight of responsible persons who do not fulfil their obligations regularly<sup>120</sup> (**Recommendation 124 – continuously implemented**).

The Law on Companies<sup>121</sup>, which came into force on 1 February 2012, is aligned with specific EU Directives. As of 1 February 2012, the Law on Registration in the Business Registers’ Agency<sup>122</sup> applies to the Register of Companies, the Bankruptcy Estate Register and the Register of Injunctions. The amendments to the Law on Business Registers’ Agency<sup>123</sup> came into force on 4 January 2012. Several by-laws were adopted in this field in 2012 as well.<sup>124</sup> The Law on Foreign Exchange Operations came into force on 1 January 2012 and the amendments to the Trade Law, geared at reducing all the restrictions inhibiting trade and clarifying specific institutes to ensure legal certainty, have been drafted.<sup>125</sup>

The new Law on Companies was adopted to address specific shortcomings identified during the five-year enforcement of its predecessor. Although governing the same matter, the new Law is an entirely new piece of legislation introducing a number of novelties into the legal system and regulating the existing legal institutes in a more detailed and clear manner, whereby it eliminates certain legal ambiguities in the prior Law on Companies. However, since a capital and complex piece of legislation is at issue, the effects and results of the practical enforcement of the new solutions are yet to be ascertained, wherefore it is still too early to judge the effects of its application. Some fundamental changes have been made to the provisions that dealt with negative capital, which have been deleted following much public criticism. According to the authors of the White Book, the new Law on Companies is in many ways a positive development with respect to better regulation of corporate governance and company related issues. Nevertheless, the new Law, too, suffers from specific problems and the White Book authors give recommendations for their elimination.<sup>126</sup>

The Law on Capital Market adopted in May 2011 replaced the criticised Law on the Market of Securities and Other Financial Instruments. Unfortunately, the true test of the new regulatory framework has not yet occurred. The Serbian capital market is still too small to evaluate the numerous novelties. The amendments made to the capital market

120 Ministry of Finance and Economy, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, January 2013.

121 Official Gazette of the Republic of Serbia No. 36/11.

122 Official Gazette of the Republic of Serbia No. 99/11.

123 Official Gazette of the Republic of Serbia No. 99/11.

124 Ministry of Finance and Economy, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, January 2013.

125 Ministry of Foreign and Internal Trade and Telecommunications, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

126 Foreign Investors Council, White Book 2012, Proposals for improvement of the business environment in Serbia, pp. 42, 45-46, available at <http://www.fic.org.rs/admin/download/files/cms/attach?id=331>.

regulatory framework in Serbia have been fitted to European standards but the effects of these amendments are yet to be seen in practice. It appears that it takes more than just regulatory reform to stimulate capital market growth in Serbia. The new law regulates the procedure for the public offering of securities in a clearer way, which will hopefully result in first big initial public offerings in Serbia. Also, the novelties introduced by the Law are expected to reduce the costs of security issuance<sup>127</sup> (**Recommendation 125 – continuously implemented**).

The Chamber of Commerce and Industry of Serbia (CCIS) proposed a new economic policy for the 2012-2016 period to the Government. The proposal is available on the CCIS website.<sup>128</sup>

#### *Competition, Concentration and State Aid*

In its replies to the Questionnaire, the Ministry of Foreign and Internal Trade and Telecommunications said that the legal framework on the protection of competition was finalised, aligned with the EU *acquis communautaire* and that an adequate institutional solution was in place. Protection from unfair competition is guaranteed by the Trade Law. Amendments to this Law have been drafted to strengthen the legal safeguards.<sup>129</sup>

The Commission for Protection of Competition rendered a number of rulings in 2012 establishing violations of the rules on competition and imposing measures for the protection of competition, notably fines, as well as a large number of rulings approving concentration of market participants. The Commission also conducted several activities to implement the recommendations in the Peer Review Report of Serbia's competition policy presented at an UNCTAD dissemination conference and incorporated them in the amendments to the Law on the Protection of Competition. The Commission's administrative capacities for conducting economic analyses were strengthened and its staff were trained in using forensic software and conducting unannounced checks.

The Government did not render a decision in 2012 on the Commission's initiative that draft laws that may affect market competition be submitted to it for review before adoption. The possibility of expanding the Commission's jurisdiction to unfair competition was not deliberated. In other countries, bodies charged with the protection of competition are tasked with applying the competition rules regarding violations of competition (restrictive agreements and abuse of a dominant position) and controlling concentration, while the issues of unfair competition are within the purview of other authorities and organisations.<sup>130</sup>

Anti-monopoly and concentration by-laws on the application of the rules of competition to associations of companies and identifying rigged offers in public procurement procedures were adopted in the anti-monopoly and concentration field. According to the European Commission's Serbia 2012 Progress Report, the Commission for the Protection of Competition (CPC) improved its competences in administrative and procedural

127 Ibid, p. 47.

128 Chamber of Commerce and Industry of Serbia, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, January 2013.

129 Ministry of Foreign and Internal Trade and Telecommunications, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

130 Commission for the Protection of Competition, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, January 2013.

law, strengthened its capacity, which is still insufficient, established international cooperation with a number of peer competition authorities and concluded cooperation agreements with specific sector regulators. However, the Law on Competition still contains shortcomings, not least the short three-year statutory limitation period and the fact that the CPC must pay interest on fines overturned on appeal. The timeframe for in-depth merger investigations could also be extended. Also, sector-specific decrees on price regulation adopted without prior consultation with the CPC may undermine the effectiveness of competition policy in Serbia and the judiciary's capacity to rule on complex competition cases must be stepped up.

There has been some progress in the area of State aid. A decree on the rules for granting State aid was amended in December 2011 to broaden its scope to public enterprises. The number of notified State aid measures increased substantially, thanks to increased awareness among relevant State aid grantors at all levels of government. However, further efforts are needed to make aid grantors notify their projects before State aid is disbursed and to ensure the timely alignment of existing State aid schemes. The Commission's enforcement record needs to be strengthened and its operational independence is still to be demonstrated. Cooperation and coordination needs to be stepped up between the Commission on State Aid Control and all bodies granting State aid<sup>131</sup> (**Recommendation 129 – partly implemented**).

#### *Privatisation*

In its Serbia 2012 Progress Report, the European Commission said that privatisation remained one of the areas of serious concern, in which independent supervision and capacity for the early detection of wrongdoing and conflicts of interest were underdeveloped.<sup>132</sup> The work of the investigating authorities on the "24 controversial privatisation" cases the Anti-Corruption Council had alerted to in its reports drew a lot of public attention in the latter half of 2012.

The numerous reports and analyses the Anti-Corruption Council forwarded to the Government over the previous years lead to the conclusion that the process of privatisation in Serbia did not create conditions for economic and social development, rather, that it was one of the greatest generators of systemic corruption. The regulations on privatisation are rife with unelaborated and illogical provisions creating room for corruption. The unelaborated provisions have, inter alia, facilitated the collusion of civil servants and influential individuals, given unlimited powers to the Privatisation Agency Director to decide on restructuring and the method, manner, conditions and timing of privatisations and to control the enforcement of the contracts. The provisions on oversight of both the enforcement of the contracts and the Director, who has great powers in the privatisation process, are inadequate. The Agency is entitled to engage consultancies and analyses of the privatisations showed that the same consultancies were engaged time and again. The law does not define a strategic partner or lay down who identifies strategic partners or under which criteria. Furthermore, the assets of the companies were not fully assessed. The Privatisation Agency did not perform its main task during the sale of companies – to

131 European Commission, Serbia 2012 Progress Report, pp. 34-35, available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/sr\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/sr_rapport_2012_en.pdf).

132 Ibid, p.12.



find them good owners – because it did not control the activities of the buyers, the origin of the money the companies were bought with or check the financial standing, reputation and registration of the potential buyers, which enabled the participation of so-called “phantom companies” in privatisation. The Privatisation Agency concluded a large number of detrimental contracts with the buyers, which is a particularly serious problem, bearing in mind the fact that the Agency itself drafted the contracts and dictated the terms and conditions, while the other parties did not participate in the design of the contracts and had the choice of either accepting or rejecting them in their entirety. Many contracts were terminated subsequently. Unfortunately, when a contract is terminated, tremendous damage is caused to the privatised company, the buyer, the small shareholders and the state, and it is caused primarily by the actions of the Serbian Privatisation Agency during the sale, the conclusion of the contracts and the control of the fulfilment of the contractual obligations. No proceedings have, however, been initiated yet to establish who is liable for the bad contracts, their non-enforcement and subsequent termination, which in many cases ensued only after the bankruptcy of the companies was declared because of a violation of the law or contract. The Agency often presents the number of cases in which the contracts were terminated as a result of its successful oversight of the fulfilment of the contractual obligations, although it should be held liable for poor performance given that over one-third of all the privatisation contracts have been broken off.

Mishandled privatisations have had the following results: numerous companies are no longer performing their pre-privatisation core activities and, after the termination of the privatisation contracts, the state has again assumed majority ownership of companies, whose property has been completely devastated in the meantime. The likelihood of such devastated companies finding new buyers or strategic partners is extremely slim, because the investors’ trust in Serbia’s legal system is undermined. Consequently, numerous criminal reports and lawsuits have been filed by the ex-workers and small shareholders. These proceedings are still pending. The deceived buyers and investors have also sued the Privatisation Agency. There are numerous reasons why the initiated legal proceedings are taking so long, including the fact that the Privatisation Agency has additionally hindered them by sometimes envisaging international arbitration and sometimes arbitration in Belgrade in the contracts, without clear criteria which arbitration should be contracted in which cases and why.<sup>133</sup>

The privatisation of Serbia’s companies has not resulted in major changes in the structure of its economy and the analysis of privatisation in Serbia leads to the conclusion that it had not brought the expected economic growth based on improved business efficiency, but, rather, resulted in a kind of division of assets and economic power. It may be concluded that the positive effects of the hitherto privatisations are extremely modest, whilst the negative ones have fully come to the fore. Furthermore, the workers have extremely poor opinions about the overall situation in their companies since they were privatised. Save for the rare examples where positive effects were achieved, the gap between the expected, that is, declared principles of socially acceptable transition moves and the achieved results is

133 Anti-Corruption Council, “International Arbitration Disputes in the Privatization Process and Harmful Actions by the Serbian Privatization Agency”, pp. 2-3, available at <http://www.antikorupcija-savet.gov.rs/en-GB/reports/cid1028-2127/report-international-arbitration-disputes-in-the-privatization-process-and-harmful-actions-by-the-serbian-privatization-agency>.

increasingly visible. In its analysis “Effects of Privatisation in Serbia”, published in November 2011, the Social Economic Council of the Republic of Serbia said that the trade unions had not been involved in the privatisation process in nearly one quarter of the surveyed companies. This cannot be ascribed only to the company managements, many of which avoided or hindered the participation of the trade unions in the privatisation process, but also to the trade union leaderships as well, which had not displayed much agility and had failed to impose their demands. The average workforce in the surveyed companies that are still active has almost been halved. Projection of the survey results to the entire national economy, whilst taking into consideration companies that no longer employ any workers, confirm assessments that nearly three quarters of the people who had been employed in the socially-owned sector had lost their jobs during the privatisation process, not because the companies improved their productivity, but because they shut down a large number of their facilities. In addition to its adverse effects on the rise in unemployment, privatisation has also given rise to another major problem: the level of the workers’ labour rights has fallen and social insecurity has increased. The number of companies hiring workers on fixed-term contracts is rising, while the share of workers organised in trade unions is constantly falling, although the developments are increasingly demonstrating the need for solidarity. The number of privatised companies in which collective agreements are in force is now 20% lower than in the period just before the privatisation; the valid collective agreements are less favourable for the workers in one out of four companies; only in one out of eight companies are such agreements more favourable for the workers. As far as wages are concerned, the substantial downsizing was in many cases used to transfer the money to the wages of those who kept their jobs; in other cases, the increasing overall unemployment was the decisive factor for cutting the wages. It is also evident that some companies have not been paying their workers wages literally since they were privatised and that the wages are the highest in the companies that pay them regularly. The utilisation of capacities in the surveyed companies is now smaller than before privatisation and the increase in their exports is negligible. The fact that the buyers had invested more than they were obliged to in only one out of four companies that are still working and that the buyers of one out of five companies did not invest anything in them or even sold off the company assets testifies to the fact that they had not intended to revive production.<sup>134</sup>

On the other hand, the Privatisation Agency’s analysis of the effects of privatisation in Serbia in the 2002-2010 period of companies privatised by 2009 focuses on the positive effects of privatisation. It needs to be emphasised that this analysis covered both the companies privatised under the prior Ownership Transformation Law and the valid Privatisation Law, the non-privatised companies and companies undergoing restructuring and that its authors based their conclusions on comparisons of the privatised and non-privatised companies. The research showed that the privatised companies increased their revenues by 69%, while the non-privatised ones remained at the same level; although nearly 30% of the privatisation contracts were terminated, these companies account for merely 3% of the generated revenues; the privatised companies, which initially suffered 102 million EUR of losses, have begun making profit, which stood at 200 million EUR at the end of 2010; non-privatised companies were constantly generating losses and had not

134 Standing working body for economic issues of the Social Economic Council, “Effects of Privatisation in Serbia”, November 2011, pp. 83-86, available in Serbian at <http://www.socijalnoekonomskisavet.rs/doc/efektprivatizacijeus.pdf>.

registered any profits in the 2002-2010 period. Revenue per worker increased the most in the privatised companies, while the increase in productivity of the non-privatised companies was a consequence of drastic lay-offs rather than increases in revenue. The value of the assets of privatised companies grew by 47% while the value of the assets of the non-privatised companies fell by 17%. Employment has been falling in the privatised and non-privatised companies alike<sup>135</sup> (**Recommendation 128 – partly implemented**).

The ministry charged with privatisation sets the criteria for monitoring the application of the Privatisation Law and the subsidiary legislation and oversees the work of the Privatisation Agency. The ministry in 2012 initiated the procedure of official oversight of the Agency's work regarding its control of the fulfilment of contractual obligations in one case. Namely, the then Ministry of Economy and Regional Development on 27 April initiated the procedure of official oversight of the Agency's work in the case of the sale of the socially-owned capital of the Pančevo socially-owned manufacturer of artificial fertilizers and nitrogen compounds HIP Azotara, which was in the process of restructuring. The Ministry rendered a ruling terminating the official oversight procedure in late June<sup>136</sup> (**Recommendation 126 – partly implemented**).

The Agency was unable to obtain data on whether the possibility of introducing an independent body to oversee the privatisation process was deliberated in 2012 (**Recommendation 127 – no available data**).

#### *Good Governance, Training, Oversight and Protection*

The National Strategy and Action Plan for Improving Corporate Financial Reporting and Auditing were designed within a World Bank project for improving corporate financial reporting in the Republic of Serbia. The Law on Accounting and Law on Auditing were also drafted in 2012 and are due to be adopted in March 2013.<sup>137</sup>

The valid legislation does not stipulate the licensing of accountants or the continuous advanced professional training of staff keeping business books and preparing financial reports. These issues are to be governed by the new Law on Accounting<sup>138</sup> (**Recommendation 132 – partly implemented**). The CCIS Education Centre continuously organised training for company staff throughout 2012, both in accounting and business book-keeping and in corruption and company integrity<sup>139</sup> (**Recommendation 133 – continuously implemented**). The valid Law on Accounting and Auditing lays down the obligation of legal persons, whose financial reports are subject to mandatory audits, to submit to the Business Registries Agency reports on audits of their regular annual and consolidated financial reports pursuant to this Law and international audit standards. Furthermore, the new Law on Public Companies sets out that public companies must have their financial statements audited by certified auditors and that they must set up audit commissions that will be charged with selecting the external auditors and with the accounting procedures and

135 Privatisation Agency, "Analysis of the Effects of Privatisation in Serbia," available in Serbian at <http://www.priv.rs/upload/document/analizaprivatizacijewide.pdf>.

136 Privatisation Agency, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, January 2013.

137 Ministry of Finance and Economy, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, January 2013.

138 Ibid.

139 CCIS, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, January 2013.

financial reporting procedures which are crucial for the external audits of companies.<sup>140</sup> The reform of the inspection authorities and the adoption of a single piece of legislation governing this field were proposed in 2012<sup>141</sup> (**Recommendation 131 – continuously implemented**).

The CCIS is a member of the Managing Board of Global Compact in Serbia and it chaired the specialised Global Compact in Serbia Anti-Corruption Working Group until mid-2012. The Declaration against Corruption, initiated during its chairmanship, was signed by 17 members of the Working Group in 2012. These activities will continue in 2013 as well. The CCIS Belgrade headquarters hosted the *European Global Compact Local Networks Meeting* in October 2012, which focused on anti-corruption; the participants also discussed the achievement of integrity in small and medium-sized enterprises (**Recommendation 134 – partly implemented**).<sup>142</sup>

The CCIS adopted a new Corporate Management Code<sup>143</sup> on 17 September 2012. Although its principles and recommendations are not binding, all for-profit corporations, particularly CCIS members are advised to abide by them as the best corporate management practice. A for-profit corporation can either directly apply the Code principles and recommendations by having its competent corporate body adopt a decision to that effect or elaborate them in its own corporate management code or another company enactment it adopts. A for-profit corporation that is a member of the CCIS is under the duty to notify the CCIS which code it is applying and where it may be accessed by the public<sup>144</sup> (**Recommendation 136 – partly implemented**).

As far as the protection of whistle-blowers is concerned, the situation remained the same as the one described in the 2011 Report on the Implementation of the Strategy. A general legal system affording comprehensive protection to whistle-blowers in the public sector, which has not been established yet, would serve as a good model for introducing reliable mechanisms for private sector workers who want to report corruption and for ensuring their safety (**Recommendation 137 – partly implemented**).

The CCIS continued in 2012 with its activities aimed at raising awareness of and promoting the introduction of integrity plans in companies in accordance with the Guidelines adopted by the Anti-Corruption Agency. The Agency representatives took part in the work of the Global Compact Anti-Corruption Working Group and discussed, in particular, the introduction of integrity plans, which is an obligation all public companies have to fulfil. Private companies are advised to introduce integrity plans as well. As regards the fight against corruption in companies, the Global Compact Working Group will continue focusing on the transfer of UN and EU expertise into Serbian practices, the affirmation of the Global Compact Anti-Corruption concept, the introduction of integrity plans in companies, the promotion of the protection of whistle-blowers and the introduction of hotlines in companies. The CCIS in 2012 also organised the presentation of the annual National Corporate Social Responsibility Prize, which was introduced in 2007 and which

140 Ministry of Finance and Economy, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, January 2013.

141 CCIS, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, January 2013.

142 Ibid.

143 Official Gazette of the Republic of Serbia No. 99/12.

144 CCIS, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, January 2013.

aims at identifying the best programmes and initiatives in Serbia. The Prize is awarded to companies or company units that implemented the best and most successful corporate social responsibility projects<sup>145</sup> (**Recommendation 140 – continuously implemented**).

As an active member of International Chamber of Commerce (ICC) **Commission on Corporate Responsibility and Anti-Corruption**, the CCIS continuously notified the business and expert communities of the ICC's activities of this issue and introduced the practice of distributing the ICC Fighting Corruption Handbook and its Anti-Corruption Clause at various events organised in the CCIS and within the ICC Serbia national committee<sup>146</sup> (**Recommendation 138 – continuously implemented**).

Asked whether they complied with the obligation to introduce internal control of their operations, whether they had data on the effects of such controls and whether they continuously trained the controllers and notified the workers, most of the public authorities in the sample replied that they had introduced or were in the process of introducing an internal control system. The local self-governments that sent in their replies to the Agency Questionnaire provided different replies to this question – some stated that they had established an internal control system, others that such controls were conducted in accordance with ISO standards, by the budget inspectors in the course of their duties or by the senior local administration managers; some said that they were in the process of introducing internal control, while others, yet, admitted that they had not introduced internal control (**Recommendation 130 – continuously implemented**).

The Agency failed to obtain data on whether seminars or other forms of training were organised in 2012 to alert to financial transfers circumventing the rules and creating room for corruption (**Recommendation 135 – no available data**)

The Law on Public Agencies was not amended in 2012, wherefore no changes were made in the way donations are received and these funds are disposed of (**Recommendation 139 – not implemented**).

### 2.5.3. ANTI-CORRUPTION AGENCY RECOMMENDATIONS

1. Continue aligning economic regulations and eliminating unnecessary procedures and improve the system of enacting by-laws prerequisite for the enforcement of the laws.
2. Empower the Commission for the Protection of Competition and eliminate all the shortcomings of the legal framework governing competition, concentration and state aid policies.
3. Ensure adequate and independent oversight of privatisation processes.
4. Establish mechanisms allowing company workers to report corruption and mechanisms for their protection within the companies.

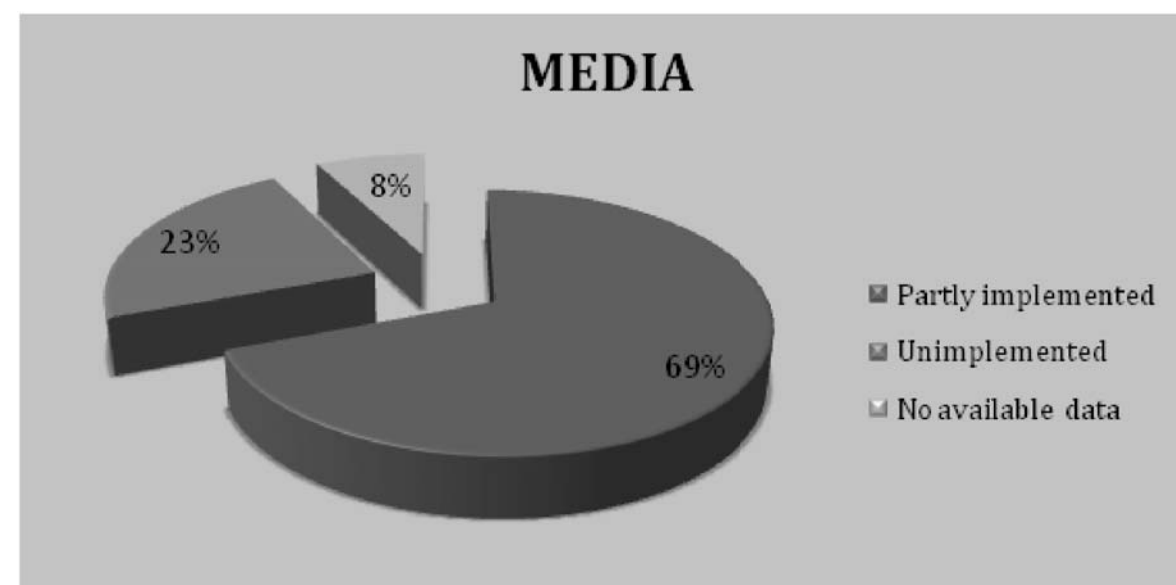
<sup>145</sup> Ibid.

<sup>146</sup> Ibid.

## 2.6 Media

**Media** are the next system the Strategy regulates. Media corruption renders objective informing meaningless and prevents public scrutiny of social activities. Prevention of media corruption is also extremely important in terms of raising public anti-corruption awareness. Furthermore, media reports of corruption cases are sometimes the only way to initiate their prosecution in the absence of judicial efficiency. This is why the professionalism, independence and impartiality of the media are crucial to this form of fighting corruption.

Of the thirteen recommendations regarding the media system, the Anti-Corruption Agency concluded that nine (69%) were partly implemented and that three were not implemented (23%). The Agency was unable to obtain data to analyse one (8%) recommendation.



### 2.6.1. GENERAL OVERVIEW

The media situation in Serbia did not change much over the previous years. The media legislative framework was not changed, the transparency of media ownership has yet to be ensured and the implementation of the Media Strategy needs to be speeded up.<sup>147</sup>

The deletion of defamation from the Criminal Code was a positive step, but the Criminal Code still incriminates insult. Furthermore, the legislator unfortunately deleted the provisions imposing stringent punishment for threats against journalists related to their work and lowered the statutory minimum penalties for the perpetrators of this offence four times.<sup>148</sup> On the other hand, the results of the UNDP/CeSID corruption benchmarking survey show that most respondents rely on the media as their primary source of information about corruption.<sup>149</sup>

<sup>147</sup> European Commission, Serbia 2012 Progress Report, p. 51, available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/sr\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/sr_rapport_2012_en.pdf).

<sup>148</sup> Association of Independent Electronic Media (ANEM), Legal Monitoring of the Serbian Media Scene, Publication VII, p. 24, available at <http://www.anem.org.rs/sr/aktivnostiAnema/monitoring/story/14161/SEDMA+MONITORING+PUBLIKACIJA+ANEMA.html>.

<sup>149</sup> UNDP/CeSID Corruption Benchmarking Survey, December 2012, p. 18, available at <http://www.undp.org.rs/index.cfm?event=public.publicationsDetails&revid=CDB64BE5-B259-E26A-A74CE322069FD34F>.

## 2.6.2. IMPLEMENTATION OF THE STRATEGY RECOMMENDATIONS

### *Transparency of Media Ownership and Impermissible Media Concentration*

The Media Strategy, adopted in September 2011, lays down an 18-month deadline for aligning law on media concentration and media ownership transparency with EU regulations. The provisions governing the transparency of media ownership will be an integral part of the new public information law.<sup>150</sup> The transparency of media ownership has yet to be ensured<sup>151</sup> (**Recommendation 142 – not implemented**).

### *Political and Economic Influence on Media*

The Draft Law on Public Information and Media, which is about to be finalised, will include provisions on the creation of conditions for the independent work of journalists (**Recommendation 144 – partly implemented**). The working text of a law governing the transparency of the financial transactions of the media was drafted in 2012 and work on it will continue in 2013<sup>152</sup> (**Recommendation 143 – partly implemented**).

In its Serbia 2012 Progress Report, the European Commission said that access to advertising in the media remained under the control of a few economic and political actors, entailing a significant risk of influence on the media and of self-censorship (**Recommendation 141 – not implemented**).

According to a report on local government funding of media, prepared by the Balkan Investigative Reporting Network and the Media Coalition in order to map the main models and mechanisms of local budget spending on local and regional print and electronic media in 2011, all local self-governments in the sample but one allocated funds for public information, mostly under budget line 423 budget line – information services and partly under budget line 451 – public company subsidies. The local self-government allocation practices vary considerably and the authors of the Report noted a major disproportion between the amounts of funds allocated to public companies vis-à-vis those granted private media outlets. Most local self-governments perceive funds for improving public information as a way to fund regular reports on the work of local self-governments, their bodies and public companies. The transparency of public spending and public insight in the effects and results of such funding is limited by the mere fact that only a handful of outlets submit expenditure reports. The bulk of the money was spent on covering running costs, above all the staff wages and mandatory contributions and a mere fraction on production costs, i.e. content production costs, which testifies to the chronic lack of money in the local media.<sup>153</sup>

150 Ministry of Culture and Information, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2013.

151 European Commission, Serbia 2012 Progress Report, p. 14, available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/sr\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/sr_rapport_2012_en.pdf).

152 Ministry of Culture and Information, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2013.

153 Balkan Investigative Reporting Network and the Media Coalition, Report on Media Financing from Local Self-Governments' Funds, September 2012, p. 32, available at <http://www.anem.rs/en/aktivnostiAnema/AktivnostiAnema/story/13801/%E2%80%9CHow+local+self-governments+allocate+funds+to+local+media%E2%80%9D.html>.

### *Regulatory Bodies*

In its Serbia 2012 Progress Report, the European Commission said that the Republican Broadcasting Agency (RBA) improved the transparency of its work and enhanced its technical capacity for monitoring broadcasters, but that the procedure by which RBA members were appointed continued to raise concerns about the independence of this body.<sup>154</sup>

In its replies to the Questionnaire, the Ministry of Foreign and Internal Trade and Telecommunications said that, pursuant to the Law on Electronic Communications, the Republican Agency for Electronic Communications was functionally and financially independent from the state authorities as well as from organisations and persons performing electronic communication activities. The need to amend the Law on Electronic Communications was reviewed in 2012 with regard to the determination, collection and spending of funds raised through numbering and radio frequency fees and fees for performing electronic communication activities in light of the development of a Law on Fees for the Use of Public Goods<sup>155</sup> (**Recommendation 145 – partly implemented**).

### *Discrimination against the Media by the State Authorities and Unjustified Denial of Access to Information to Journalists*

In its replies to the Questionnaire, the Ministry of Culture and Information said that one case of discrimination against a media outlet by a public authority was reported in 2012. Given that the valid law does not penalise such discriminatory conduct, steps were taken to incorporate provisions protecting journalists from discrimination in the new Law on Public Information and the Media.<sup>156</sup>

The Information of Public Importance and Personal Data Protection Commissioner forwards submissions claiming that specific public authorities had not invited particular media outlets to press conferences or had prohibited them from attending them to the ministry charged with public information and alerts the public authorities at issue that they had violated the law. The Commissioner did not receive such submissions in 2012 at all. The amendments to the FOIA initiated by the Commissioner to improve the provisions on media access to information and prohibition of discrimination have not been incorporated in the text of the Law yet. The proposed amendments impose upon the public authorities denying the published information the obligation to simultaneously publish the true i.e. correct information rather than merely issue a press release with the denial. Under the amendments, public authorities communicating information only to some journalists and outlets that had not requested it would also be under the duty to publish that information on their websites and forward it to every journalist or outlet that submits a request (prohibition of favouritism), and would not be allowed to publish information requested (electronically) from a journalist or outlet before responding to the request (protection of the legitimate interests of journalists-investigators).<sup>157</sup>

154 European Commission, Serbia 2012 Progress Report, p. 14, available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/sr\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/sr_rapport_2012_en.pdf).

155 Ministry of Foreign and Internal Trade and Telecommunications, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

156 Ministry of Culture and Information, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2013.

157 Information of Public Importance and Personal Data Protection Commissioner, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

The local self-governments gave different replies to the Agency question on how they ensured observance of the prohibition of discrimination against media. Some said that this was ensured by abidance by the regulations on free access to information of public importance and by designating a contact person to act in accordance with these regulations, some said that they invited the media to cover the activities of the local self-governments, that they provided the media with all the information they asked for or that they incorporated the prohibition of discrimination in their statutes. Some local self-governments said that there had been no cases of discrimination against the media in their communities.

The Association of Independent Electronic Media (ANEM) alerted to and reported in its monthly media monitoring reports about several cases of discrimination against the media by the public authorities in the reporting period (Bečej municipality – March 2012, Bačka Palanka municipality – May 2012, Ljig municipality – July 2012, Valjevo municipality – September 2012; Leposavić – October 2012, Pirot – December 2012)<sup>158</sup> (**Recommendation 149 – partly implemented**).

Fifty-six complaints by journalists and media representatives were filed with the Information of Public Importance and Personal Data Protection Commissioner since the beginning of 2012. The Commissioner reviewed 31 of the complaints and established that all of them were well-founded.<sup>159</sup> In addition to the above-mentioned cases of discrimination against the media ANEM reported about, which included the public authorities' unjustified denial to information to journalists, this Association also listed two cases of unjustified denial of access to information to its member stations, which had prompted it to react publicly (Sremska Mitrovica municipality – March 2012; Zaječar municipality – November 2012)<sup>160</sup> (**Recommendation 152 – partly implemented**).

#### *Media Accountability*

The Republican Broadcasting Agency on 7 March 2012 adopted General Binding Instructions on the conduct of broadcasters during the 2012 election campaign. The design of media laws began in late 2012 pursuant to the Media Strategy adopted in September 2011 and the deadlines defined in it. One of them, the Law on Public Information and Media, will, inter alia, regulate the issue of media accountability for what they publish. Amendments to the Criminal Code decriminalising defamation were adopted in late December 2012<sup>161</sup> (**Recommendation 148 – partly implemented**).

Amendments to the Press Code of Conduct were adopted in accordance with the recommendation to improve the implementation of the principle of incompatibility of the media profession and political engagement. The amendments to the Code, which now incorporates a number of anti-corruption provisions and, inter alia, prohibits active media professionals from working for a political party, marketing agency et al, have already been adopted by the Independent Journalists' Association of Serbia and are due to be adopted by the Association of Journalists of Serbia at its next Assembly session; the amended Code is expected to come into force in the first half of 2013<sup>162</sup> (**Recommendation 150 – partly implemented**).

<sup>158</sup> ANEM, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2013.

<sup>159</sup> Information of Public Importance and Personal Data Protection Commissioner, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

<sup>160</sup> ANEM, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2013.

<sup>161</sup> Ibid.

<sup>162</sup> Press Council, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2013.

The Press Council was established as a self-regulatory authority to warn the print media of their violations of the Press Code of Conduct. During its first year of work, the Press Council noted that most of the complaints had been filed against outlets that do not recognise the Council's authority. Amendments to the Press Council Statute are being drafted to allow the Council to issue public warnings also to media that have not accepted self-regulation and to extend the Council's authority to online media as well. The Press Council does not launch proceedings on its own initiative but only on complaints from private citizens and institutions and its services to the citizens are free of charge. The Press Council Complaints Commission reviews the complaints once a month and has to date rendered all its decisions within a month. The Commission reviewed 35 complaints in 2012, and established that nine of the texts complained of violated the Code, most of them breaching more than one provision of the Code. Most of the media found to have violated the Code abided by the Commission's decisions and fulfilled the obligation to publish them. The decisions of the Press Council, notably its Complaints Commission, have been qualified by experts as fair, balanced and well-reasoned and did not provoke any polemics or negative criticism. However, the number of complaints is relatively small, particularly in comparison with the number of lawsuits against the media, which can largely be ascribed to the fact that the Council cannot review complaints against media that had not recognised its authority, which will soon change<sup>163</sup> (**Recommendation 146 – partly implemented**).

The Agency failed to obtain data on whether any activities were undertaken in 2012 to improve the transparency and strengthen the work of the Court of Honour that deals with violations of the Press Code of Conduct (**Recommendation 147 – no available data**).

In its response to the question whether any activities were undertaken in 2012 to amend the regulations and prohibit media influence peddling and penalties for such acts, the Ministry of Culture and Information stated that this topic would be discussed during the drafting of the law governing public information<sup>164</sup> (**Recommendation 153 – not implemented**).

#### *Training of Journalists*

The Ministry of Culture and Information stated in its replies to the Questionnaire that no training for journalists was organised in 2012. The Anti-Corruption Agency in 2012 organised two two-day seminars for 23 media professionals on the topic "Ahead of the 2012 Elections", which focused on the Agency's role and mandate regarding the monitoring of the political entities' election activities and on professional ethics and integrity of journalists. At the invitation of the editor of Radio Television Vranje, the Agency organised a seminar on "Individual and Institutional Integrity of Media Workers" for 25 members of staff of that station in May 2012. The project "Illustrated Dictionary of Corruption", implemented in cooperation with the Association of Independent Electronic Media and with the support of the EU Delegation to Serbia, includes training of journalists in 2013, which will cover, among other topics, investigative reporting. The Agency will also organise training for students of journalism within the project "Youth Sleuth: Engaging Serbia's Youth to Fight Corruption through Investigative Journalism

<sup>163</sup> Press Council, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2013.

<sup>164</sup> Ministry of Culture and Information, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2013.

and Social Media” in partnership with the United Nations Development Programme in Serbia. Most of the Agency’s educational activities in 2012 (113 days) were covered by the representatives of local media; they, however, did not stay at the training sessions but only recorded the statements of the lecturers and prepared short reports on the seminars (**Recommendation 151 – partly implemented**).

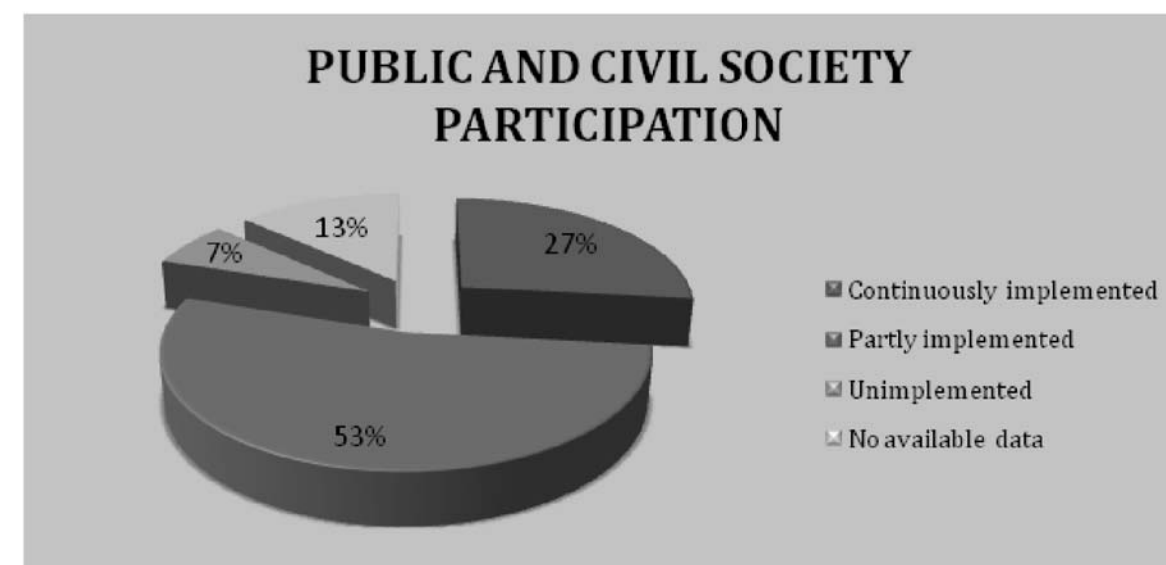
## 2.6.2. ANTI-CORRUPTION AGENCY RECOMMENDATIONS

1. Ensure transparency of media ownership.
2. Eliminate circumstances enabling political and economic influence on the media.
3. Lay down penalties for media influence peddling.

## 2.7. Participation of the civil society and the public in combatting corruption

The last system the Strategy focuses on is related to the **participation of the civil society and the public in combating corruption**. Public support to other Strategy and Action Plan implementing entities in undertaking anti-corruption measures is extremely important for the achievement of results, particularly for the creation of a culture intolerant of corruption. Non-government organisations are listed in the Strategy as an important factor in building the capacities for public scrutiny of the actions of the public authorities, while guilds and professional associations are perceived as being capable of identifying problems regarding typical forms of corruption faster and better than the state authorities, and as being in the position to raise the level of ethics of their members and penalise unacceptable behaviour.

Of the 15 reviewed recommendations within this system, the Agency concluded that four (27%) were implemented continuously, that 8 (53%) were partly implemented and that one recommendation (7%) remained unimplemented. The Agency was unable to obtain data to analyse two (13%) recommendations.



### 2.7.1. GENERAL OVERVIEW

As the European Commission noted in its Serbia 2012 Progress Report, civil society organisations continued playing an important role in social, economic and political life and in promoting democratic values. The Office for Cooperation with Civil Society has been very active in raising awareness both among the public and among state institutions of the importance of involving civil society and citizens in decision-making. It has also established cooperation with other countries in the region. The Office has been allocated sufficient means, including financial resources, and now functions at full capacity.<sup>165</sup>

<sup>165</sup> European Commission, Serbia 2012 Progress Report, p. 14, available at [http://ec.europa.eu/enlargement/pdf/key\\_documents/2012/package/sr\\_rapport\\_2012\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/sr_rapport_2012_en.pdf).

The Corruption Benchmarking Survey CeSID conducted for UNDP in December 2012 registered the best results regarding the public's experience with corruption in the previous three years. A total of 8% of the respondents had direct contact with corruption (i.e. 6% less than previously), while one out of five indirectly heard about corruption from their relatives, friends or neighbours, i.e. 15% less than during the previous round of the survey. Like in the previous cycles, the respondents who had given bribes singled out doctors and policemen as professions the most susceptible to corruption, but it needs to be noted that the percentage of respondents who directly experienced corruption in health was considerably smaller than in the previous period. The citizens openly admitted that they were the ones that offered the bribes in the vast majority of cases, wherefore the instances in which they are asked to give a bribe can be perceived as an exception rather than as a rule. The bribes averaged 168 EUR, slightly more than six months earlier. The respondents also demonstrated a specific degree of understanding for the practice of giving small gifts to administrative and technical staff and disagreed that this practice should be prevented, prohibited or branded as a form of corruption. The fewer cases of open corruption also led to a decrease in perceived levels of corruption over the previous period; two-fifths of the respondents said they thought that the level of corruption would drop in the next twelve months, which is clearly the best result in the last three years since this survey was launched. Furthermore, more than half of the respondents (51%) think that the NGO sector should play a greater role in the fight against corruption and that it should be accorded greater powers in controlling the public administration.<sup>166</sup>

## 2.7.2. IMPLEMENTATION OF THE STRATEGY RECOMMENDATIONS

### *Campaigns, Information and Education of Citizens*

Bearing in mind that the Law on the Financing of Political Activities, particularly election campaign monitoring, would be applied for the first time in practice in 2012, the Agency focused its activities in 2012 on familiarising the public with the mechanisms facilitating monitoring the activities of the political entities and taking realistic stock of the election campaign. The Agency, on the other hand, also took into account the fact that the citizens' observations would help it monitor the campaign spending reports, that is, that public awareness of the transparent flow of money in politics would be raised if it was familiarised with which actions of the political entities were or were not permissible. The Agency organised two seminars on the topic "In the Run Up to the Elections" for journalists and editors of print, electronic and online media across Serbia and thus established direct communication with the media at the local level, which resulted in the submission of a substantial number of requests for information falling within the scope of the Law on the Financing of Political Activities. The local media wrote about situations giving rise to suspicions about violations of this Law, prompting the citizens to report such suspicions to them; the media then submitted official requests to the Agency and the Agency received 82 such requests altogether.

<sup>166</sup> UNDP and CeSID, Corruption Benchmarking Survey, Public Opinion on Corruption in Serbia, December 2012, pp. 6-8., 23, available at <http://www.undp.org.rs/index.cfm?event=public.publicationsDetails&revid=CDB64BE5-B259-E26A-A74CE322069FD34F>.

The Agency regularly held news conferences, issued press releases, took part in round tables, conferences and other events organised by partner institutions throughout 2012, particularly during the election campaign. The Agency increased its visibility also in the broadcast media and the social networks, which resulted in improved public views of its role and mandate as well. The UNDP/CeSID Survey showed that as many as 77% of the respondents were familiar with the work of the Agency, its best result since it was established, and an increase in the number of citizens who perceived the Agency as an authority contributing to the fight against corruption in Serbia.<sup>167</sup>

The Agency marked International Anti-Corruption Day in 2012 by organising the competition "I am Changing Myself – I am Changing the World" for primary and secondary school students and university students in the territory of the Republic of Serbia. Prizes were again awarded for the best works in the following four categories: literary essay or news article, painting, audio-visual work and slogan. The contestants in each category were divided into three age groups. The Agency received 520 works from 72 towns in Serbia. Some schools sent in works of their pupils for the third time running and submitted more works than others – 10 such schools won prizes this year. The prizes comprised: 20 annual subscriptions to the children's weekly *Politikin zabavnik* and National Geographic, books published by the sponsors – the Institute for Textbooks and Teaching Aids in Belgrade, the Belgrade daily *Večernje novosti* and the Belgrade book publisher *Kreativni centar* – as well as Agency promotional material (T-shirts, notebooks, pens). The Agency also published in 2012 several information booklets and brochures on specific fields within the Agency's purview (on integrity plans, obligations of public officials, how to fill asset disclosure statements). A brochure on corruption, ethics and integrity has been prepared and is due to be published (**Recommendation 154 – continuously implemented**).

In response to the question how they informed citizens about the anti-corruption measures they had taken and their effects, the public authorities and local self-governments in the sample that said that they had taken such measures specified that they did so regularly via their websites, information booklets, their local self-government bulletins, press releases and news conferences, round tables and through specific projects. The Ministry of Internal Affairs drafted a Community Policing Strategy and organised a public debate about it in November 2012. The draft was praised for its user-friendly structure and the principles it is based on, its concept and clear value orientations for specific activities in the ensuing period. The Ministry also took part in the design of a questionnaire for a public opinion survey "Attitudes of Serbia's Citizens towards Police Work" conducted by CeSID and the OSCE in Belgrade in November and December 2012<sup>168</sup> (**Recommendation 156 – continuously implemented**).

<sup>167</sup> UNDP and CeSID, Corruption Benchmarking Survey, Public Opinion on Corruption in Serbia, December 2012, pp. 29-31, available at <http://www.undp.org.rs/index.cfm?event=public.publicationsDetails&revid=CDB64BE5-B259-E26A-A74CE322069FD34F>.

<sup>168</sup> Ministry of Internal Affairs, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

The Agency in July 2012 supported the Belgrade-based NGO New Policy Centre project proposal "Prevention: An Effective Tool to Reduce Corruption". The project was approved and will be implemented until mid-2013. It entails the design of a pilot curriculum of specialist studies about corruption at the Belgrade College of Political Sciences; the best seven students, who attended the course, will work as interns in the Agency for three months.

Five three-day seminars "Mechanisms for Preventive Corruption in Serbia" were held in November 2012 and January 2013 for 85 candidates who were not awarded Agency internships. A group of interns and candidates for internships in 2011 and 2012 attended the three-day "Training of Trainers" sessions and a team of 22 peer trainers on anti-corruption was thus formed. Their first activity was to promote the "I am Changing Myself – I am Changing the World" competition. This team will implement a project involving visits to schools and holding class on the fight against corruption, for which a methodology and curriculum have been designed. The team members – members of some youth NGOs – developed the project idea together with their NGOs and applied for donor funds (**Recommendation 155 – partly implemented**).

The Agency failed to obtain data on the activities public authorities conducted in 2012 to inform the public about the regulations governing access to information of public importance (**Recommendation 157 – no available data**).

#### *Legal Protection*

The mechanisms for implementing the Commissioner's final decisions on complaints are inadequate. The Commissioner enforces his rulings by imposing fines; pursuant to the Law, in the event these measures do not yield results, the Government will ensure the enforcement of the rulings, which it has not done once to date. The protection afforded through the administrative dispute institute is effective for now. The vast majority of public authorities do not comply with the legal deadline within which they have to act on the requests for access to information. The mechanism for calling to account those violating the right of access to information is inefficient and the statutes of limitations expired in the vast majority of cases because the ministries charged with oversight lacked the capacities to perform the oversight or for other reasons. Not one motion to initiate misdemeanour proceedings over the violation of this Law was submitted in 2011. The Commissioner has been updating the Catalogue of Public Authorities regularly with the information he himself has gained on the changes; given that this Office itself lacks resources, it does not have the capacities to collect data from public authorities, some of which did not submit the required data or submitted insufficient information when the Catalogue was established, particularly with respect to the delegation of public powers. The FOIA does not lay down the obligation to design a catalogue or specify which public authority is under the duty to do so. However, given that oversight of the enforcement of this Law is within the purview of the ministry charged with state administration affairs and that such oversight necessitates the possession of accurate data on all the implementing entities, the Commissioner is of the view that this ministry should be charged with the design of the Catalogue<sup>169</sup>

169 Information of Public Importance and Personal Data Protection Commissioner, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

#### **(Recommendation 158 – partly implemented).**

The administrative authorities are to establish an efficient, free and accessible procedure for receiving, reviewing and addressing public complaints about their work and designate staff to perform these duties because Serbia's legal system does not have a complete and comprehensive mechanism for reviewing public complaints about the work of the administrative authorities given that not all complaints necessitate the use of legal remedies in second-instance administrative proceedings i.e. court proceedings.<sup>170</sup> In their replies to the Agency question whether they had introduced reliable mechanisms via which the public could file their complaints and the obligation to respond to the complaints within the legal deadline, the vast majority of the public authorities and local self-governments in the sample said that they had such mechanisms in place and that they notified the complainants of the outcome of the reviews, but their replies greatly varied as to the procedures they applied, the deadlines within which they reviewed the complaints and notified the complainants of the outcome, and on whether they introduced complaints forms and prepared separate reports on the complaints. The Ministry of Youth and Sports introduced complaints submission mechanisms and designed Instructions on the Procedure for Reporting Unlawful and/or Unethical Work of the Ministry Staff and Instructions on the Review of the Reports. The deadlines within which the complaints have to be reviewed have been set, the complaints form has been designed and pre-addressed envelopes are available at two Ministry venues: in the Secretariat and in the office of the staff member charged with the fight against corruption. The Ministry prepares and publishes on its website annual reports on the complaints filed by private citizens and organises periodic checks of how the complaints system works<sup>171</sup> (**Recommendation 159 – partly implemented**).

#### *Participation of Civic and Professional Associations*

The Agency designed and in late 2012 published Guidelines on Cooperation with Civil Society Organisations.<sup>172</sup> The Guidelines set out the principles of and the conditions and procedure for cooperation, departing from the belief that civil society is one of the state's strategic partners in the fight against corruption and in consolidating social integrity. The Agency has in its hitherto cooperation with civil society organisations endeavoured to apply the principles of cooperation set out in the Code of Good Practice for Civil Participation in the Decision-Making Process Adopted by the Conference of international NGOs of the Council of Europe. The criteria, conditions and procedure set out in the adopted Guidelines are based on the hitherto practice and identified needs of the civil society organisations, the donors and the Agency.

The Agency published and implemented the second call to civil society organisations for project proposals strengthening society's capacities to fight corruption in February 2012.<sup>173</sup> The following two projects were granted funding: "Green Patrol in Action – Seen, Recorded, Uncovered", implemented by the Vojvodina Green Initiative and its partner organisations, and "Civil Society and Media together against Corruption: Empowering Members of Professional and Press Associations in Effective Anti-Corruption Activism",

170 Protector of Citizens, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

171 Ministry of Youth and Sports, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

172 The Guidelines are available in Serbian at: [http://www.acas.rs/sr\\_cir/podizanje-antikorupcijske-svesti/833.html](http://www.acas.rs/sr_cir/podizanje-antikorupcijske-svesti/833.html).

173 All information on the call for proposals is available in Serbian at: [http://www.acas.rs/sr\\_cir/podizanje-antikorupcijske-svesti/756.html](http://www.acas.rs/sr_cir/podizanje-antikorupcijske-svesti/756.html).



implemented by the Toplica Centre for Democracy and Human Rights and its partner organisations. Both projects were completed within the set deadlines and their results are available on the websites of the lead organisations.<sup>174</sup>

The Belgrade Centre for Security Policy project “Corruption Risk Map in the Security Sector of Serbia”, which was granted funding in 2011, was completed in September 2012 and all its results are posted on the organisation’s website.<sup>175</sup>

The Guidelines on Cooperation with Civil Society Organisations envisage three models of cooperation: provision of support in principle, cooperation, and project partnership. The Agency in 2012 also supported several projects of NGOs that had applied for donor funding, inter alia, the “Illustrated Dictionary of Corruption” of the Association of Independent Electronic Media and “Prevention: An Effective Tool to Reduce Corruption” of the New Policy Centre, the implementation of which is under way.

In their replies to the Agency question to provide a brief overview of the ways in which they involved civic associations in their anti-corruption activities in 2012, the public authorities and local self-governments in the sample that did involve them specified that they invited them to meetings and consultations and to take part in various events and that they granted them funding. Some local-self governments involved civic associations in the design and implementation of their local anti-corruption plans (**Recommendation 160 – partly implemented**).

Few public authorities that replied affirmatively to the question on whether they had received legal and other anti-corruption initiatives from professional and civic associations and acted on them in 2012. The Commissioner received two initiatives: one from Civic Initiatives calling for amendments to the Law on the Budget System and another from the Association of Internal Auditors, which called for the adoption of a Law on Internal Audits. The association Serbia on the Move forwarded its draft Anti-Corruption Charter to the Ministry of Health and called on it to display copies of the Charter in the health institutions (**Recommendation 161 – continuously implemented**).

#### *Legal Framework*

The Government Office for Cooperation with Civil Society in 2012 prepared its Annual Summary Report on Budget Expenditures Provided to the Associations and Other Civil Society Organisations from the Budget of the Republic of Serbia in 2011. The Report was prepared on the basis of collected and analysed data received from the line ministries and other Government institutions at the republican level which had extended financial and non-financial budget support to associations and other civil society organisations in 2011. The Report aims to provide an overview of the situation in this field, the total amount of extended support, the amounts and ratios of planned and allocated funding and to provide overviews of the economic classifications under which the funds were granted, the allocation procedures, the beneficiaries, the supported fields and activities, and the geographical breakdown of the supported projects and programmes.

<sup>174</sup> See: [http://www.acas.rs/sr\\_cir/podizanje-antikorupcijske-svesti/756.html](http://www.acas.rs/sr_cir/podizanje-antikorupcijske-svesti/756.html).

<sup>175</sup> See: <http://www.bezbednost.org/>.

According to the collected data, a total of 3,052,736,657 RSD were allocated, mostly through public calls for proposals (40% of the granted funds). A total of 51.3% funds mapped in the Report were allocated in accordance with the in-house procedures and enactments of the state administration authorities, while 5.1% were granted pursuant to decisions of the heads of the state authorities. Seventy-three percent of the calls for proposals set out the criteria in writing and 94% of the funds were disbursed through these calls. Most of the institutions posted their calls for proposals on their websites but also published them elsewhere, in the media, the Official Gazette or in dailies and on their websites at the same time. The associations and other civil society organisations granted funds were notified that they had been granted funds via the institutions’ websites, in writing, by e-mail or ordinary post, and, often, orally, in person or by telephone (**Recommendation 167 – continuously implemented**). Most institutions do not have procedures for receiving and reviewing complaints regarding all the public calls they implement and only two institutions said that they had envisaged complaints procedures for three public calls for proposals.

After analysing the data, the Office for Cooperation with Civil Society forwarded to the relevant authorities initiatives to amend the Law on Accounting and the Corporate Profit Tax Law. In its view, the Law on Accounting should be amended to adequately reflect the diversity of activities of non-profit organisations, particularly their specificities and differences vis-à-vis commercial companies, which gives rise to the need for different accounting coverage and a financial reporting system to ensure that all the specificities are expressed in a different account framework and financial reporting formats. The Corporate Profit Tax Law should be amended to expand the scope of activities defined as activities of public interest and recognise them as expenses up to a maximum of 3.5% of the total revenue and to align these provisions with the activities defined by the Law on Associations and the Law on Foundations and Endowments as activities of public interest and activities achieving public benefit purposes.<sup>176</sup>

The analysis SCTM and UNDP conducted in local self-government units by applying the RTA methodology showed that local self-governments very frequently lacked clear criteria for awarding subsidies to non-profit organisations, particularly given that sector-specific laws allow them to allocate funds for specific purposes without publishing calls for proposals. The analysis also demonstrated that the lack of a uniform practice and the absence of the obligation of the local self-governments to require financial reports were the greatest problems in monitoring the flow of budget funds granted as subsidies<sup>177</sup> (**Recommendation 163 – partly implemented**).

In its replies to the Questionnaire, the Office for Cooperation with Civil Society stated that the information this Office showed that the enforcement of the Decree on Funds for Funding or Co-Funding Programmes of Public Interest by Associations adopted in February

<sup>176</sup> Office for Cooperation with Civil Society of the Government of the Republic of Serbia, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

<sup>177</sup> Standing Conference of Towns and Municipalities and the United Nations Development Programme in Serbia, “Determination of the Responsibility, Transparency and Accountability (RTA) Index at the Local Level, Analysis of the Pilot Self Assessment of the Situation and Recommendations for Cities and Municipalities”, March 2012, available at <http://www.undp.org.rs/index.cfm?event=public.publicationsDetails&revid=6C651C3A-A33C-3D11-F0453334E4066771>.

2012 improved the transparency of the fund allocation process. The public authorities now regularly require implementation and financial reports from the grantees. It has, however, been established that specific Decree provisions have caused the associations difficulties in obtaining the required documentation and unnecessary costs and the Office received a number of initiatives from civil society organisations calling for amendments to the Decree. According to the data in the Office's Annual Summary Report, the reporting documentation the grantees are required to submit differs from one institution to another. Most of the grantees are under the obligation to submit final financial reports, final narrative reports, periodic financial reports and annexes and project products<sup>178</sup> (**Recommendation 164 – partly implemented**).

The Register of Associations and Register of Foreign Associations were incorporated in the one-stop shop system. The applicants submit a single registration form and the data needed for the assignment of a Tax Identification Number (TIN) are electronically forwarded to the Tax Administration, which then electronically forwards the assigned TIN to the Agency, which is generated in a decision on the establishment of an association or the representative office of a foreign association. The goal – to improve the economy of the procedure – has thus been achieved since the applicants save both time and money: they submit only one application form at one counter and are issued a decision allowing them to start work within the following 5-10 days, wherefore their administrative costs are cut as well<sup>179</sup> (**Recommendation 162 – partly implemented**).

The State Audit Institution did not audit the financial reports of civic associations, but it did cooperate with the Office for Cooperation with Civil Society in the design of the Budget Spending Questionnaire<sup>180</sup> (**Recommendation 165 – not implemented**).

The Agency failed to obtain data on whether accession to or enforcement of codes and rules of ethics could be imposed as a requirement for or considered as an advantage in allocation of budget grants and cooperation with state authorities (**Recommendation 166 – no available data**).

#### *Implementation of the Other Recommendations within the System*

The Law on Sports adopted in March 2011 provides for the more transparent work of budget beneficiaries. Both the Law and its numerous by-laws ensure clear funding and co-funding of sports projects and programmes of general interest to the Republic of Serbia from the budget and stipulate the submission of expenditure reports. The Law established a sports inspectorate, which is charged with monitoring its implementation. A number of requests for inspectorial oversight filed by sports organisations and private citizens alleged abuse of the allocated budget funds by sports organisations and abuse of budget funds by local self-government units. Given that there were elements of corruption in these unlawful activities, the Ministry of Youth and Sports is of the view that the adoption of provisions governing the work of the sports inspectorate would contribute to the fight against corruption. In cooperation with civic associations focusing on sports, the Ministry organised 10 panel discussions in 2012 on the

178 Office for Cooperation with Civil Society of the Government of the Republic of Serbia, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.

179 Ministry of Finance and Economy, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, January 2013.

180 State Audit Institution, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, January 2013.

provisions of the Law on Sports governing the allocation of budget funds and the Rulebook governing this matter in greater detail<sup>181</sup> (**Recommendation 168 – partly implemented**).

### 2.7.3. ANTI-CORRUPTION AGENCY RECOMMENDATIONS

1. Adequately formalise the practice by which the state authorities invite representatives of citizens' and professional associations to participate in the process of adopting relevant anti-corruption regulations.
2. Continue with the process of introducing and implementing ethical rules in the everyday work of civil society organisations and promote the participation of civil society organisations applying and advancing professional ethical standards in their work in the public calls for proposals to be financed from public funds.

181 Ministry of Youth and Sports, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2012.