



Republic of Serbia
ANTI-CORRUPTION AGENCY

Annex I
2011 Report on the Implementation of the National Anti-
Corruption Strategy and the Action Plan for the
Implementation of the National Anti-Corruption Strategy

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INTRODUCTION

Strategy and Action Plan Adoption Process

The National Anti-Corruption Strategy¹ was adopted by a Decision of the National Assembly of the Republic of Serbia of 8 December 2005². 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 Strategy³ 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.⁴

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).⁵ 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 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 Agency⁶, the establishment of this autonomous and independent body also charged with such oversight, was of

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

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

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 http://www.transparentnost.org.rs/index.php?option=com_content&view=article&id=84&Itemid=31&lang=sr

major relevance to the implementation of these two documents.

The Anti-Corruption Agency⁷ was established as an autonomous and independent state authority pursuant to the Law on the Anti-Corruption Agency⁸, 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.

The Anti-Corruption Agency's first Report on the Implementation of the Strategy and Action Plan in the 2005-2010 Period was submitted to the National Assembly within the Agency's 2010 Annual Report on 25 March 2011. The parliament reviewed both reports and adopted conclusions about them on 14 July. The Report, published in hard copy and on the Agency website, was presented on several occasions in 2011.

The Report, which consolidates a large amount of collected information about this topic, proved useful in the design of a new strategic framework for fighting corruption,⁹ while the lessons the Agency learned as it encountered obstacles in its endeavours to analyse and assess the fulfilment of the Strategy recommendations and Action Plan activities during the reporting process helped it preempt many of the identified difficulties during the design of the new strategic documents. To illustrate, given that the Agency is charged with overseeing and reporting on implementation, it designed and proposed implementation, oversight and reporting mechanisms, the criteria for identifying entities under the obligation to design sectoral action plans and monitor and report on them, as well as a series of measures, activities and indicators for measuring the implementation of the activities set out in the Action Plan for the Implementation of the Strategy.

New Report on the Implementation of the Strategy and Action Plan

This is the second Report on the Implementation of the Strategy and Action Plan, which is being submitted 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 strategic documents were adopted. The Report covers the activities of the public authorities undertaken in accordance with these two documents in 2011. The Report aims to provide a consolidated and systematic overview of as much data as possible on events, measures and activities undertaken in 2011 and impacting on the implementation of the Strategy recommendations and the Action Plan activities, to assess the fulfilment of the Strategy recommendations and draw attention to the persisting problems in these fields. The Report addresses both the decision makers, the Strategy and Action Plan implementing entities, experts and all others interested in the context in which the Republic of Serbia is fighting against corruption.

⁷ Hereinafter: Agency.

⁸ Official Gazette of the Republic of Serbia No. 97/08 and 53/10.

⁹ See Chapter III: Addendum.

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 or evaluating the fulfilment of the obligations they set out, the development of this methodology was one of the main challenges the Agency faced as it prepared both the 2010 and 2011 Reports. The Agency endeavoured to apply the lessons learned and eliminate the shortcomings in last year's methodology during its preparation of this Report.

Data Collection Methodology. – The Agency was unable to address the difficulties arising from the texts of the Strategy and Action Plan, but it amended its reporting methodology to try and alleviate the group of challenges it faced in the data collection process. Although, like last year, it used the replies of the implementing entities as the starting point for data collection, it applied a somewhat different approach. The extensive analysis conducted and the conclusions reached in 2010 were used as the basis for drawing up a list of specific questions for the implementing entities. The questions dealt with the Strategy recommendations identified as unimplemented in the prior Report, parts of the partly implemented recommendations and the topics on which the Agency had not obtained any data during the preparation of the 2010 Report. Namely, the Agency aimed at facilitating both the reporting obligations of the implementing entities by eliminating dilemmas about the meanings of the overly general tasks, at least to an extent, and its own analysis as it expected to receive focused answers to its questions that would provide it with a sound basis for analysing the fulfilment of the strategic documents. The Agency applied the following criterion when it selected the implementing entities that would be included in the sample and sent the questions: 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 strategic documents. The questions were sent to the National Assembly of the Republic of Serbia, the Government of the Republic of Serbia, all the ministries and several other selected public authorities. Only a few public authorities, however, continued complying with their obligation to submit quarterly reports on the basis of the old questionnaires in the first nine months of 2011.

Like in 2010, 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 implementing entities. It, however, ultimately transpired that they in some cases constituted the only source of information.

Methodology for Assessing the Fulfilment of the Recommendations. – The 2010 Report highlighted the challenges regarding the manner in which the tasks in the strategic documents were formulated and the non-existence 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 in 2010 because the 2010 Report covered a much longer period of time. The 2011 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. 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 (e.g. systematic advanced professional training of public administration and public service staff) – 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 a specific field; 2) partly implemented recommendations in areas in which it is still possible to make additional improvements – such assessments were made when the implementing entities had taken steps to implement the recommendations but where the available sources indicated that there were reasons for concern that called for investing additional efforts in a specific field; and 3) unimplemented recommendations – such assessments were made either in case a recommendation envisaged the fulfilment of a single task, which had not been fulfilled, or in case the crucial part of the recommendation had not been implemented. In cases where the relevant data needed for an assessment were not obtained, the authors of the Report underlined that the Agency failed to obtain the data it needed for its analysis.

Structure of the Report

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

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 Report structure.

The chapter entitled **General Part** presents the obstacles 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, a conclusion and general recommendations, and an overview of the main developments and problems noted during the preparation of the Report.

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 of the fulfilment of the Strategy recommendations, as well as the main recommendations for further action within the specific system.

The **Addendum** describes the process of designing a new strategic framework for fighting corruption in Serbia in the 2012-2016 period.

I GENERAL PART

1.1. Obstacles and Challenges Encountered During the Preparation of the Report

The Agency faced two types of obstacles 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 obstacles and challenges regarding the process of reporting on the fulfilment of the Strategy and Action Plan obligations, and, subsequently, 2) the obstacles 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 questionnaires in the first nine months of 2011: the City of Belgrade, the Belgrade City Municipalities of Vracar and Zvezdara, the Municipality of Surdulica, the National Bank of Serbia, the Ministry of Finance and the Macva Administrative District. The Ministry of Internal Affairs submitted a report on the implementation of its sectoral action plan. The above-mentioned new questionnaires were communicated to the National Assembly of the Republic of Serbia (NARS), the Government of the Republic of Serbia, all the ministries and several other selected public authorities.

The implementing entities were this year again late in submitting their responses to the questionnaire. These reports form the basis for analysing the fulfilment of the strategic documents and, 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 was unable to perform a quality analysis across the board.

The replies to the better focused questions in the 2011 questionnaires provided the Agency with much more concrete material for analysis than the 2010 forms. The implementing entities remarked to the Agency that the new reporting format was much easier to follow. However, some of the deficiencies of the 2010 reporting process recurred in 2011 as well. 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 boiled down to mere enumeration of activities which are frequently only distantly 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 which can in some respect be linked to the topics the Strategy and Action plan deal with. Furthermore, some public authorities failed to reply to all the questions in the questionnaire. Therefore, like last year, the authors of the Report were unable to analyse the fulfilment of the Strategy and Action Plan only on the basis of these data and used the above-mentioned reports and analysis of various international and national institutions as supplementary and, at times, only sources of information.

2. Strategy and Action Plan

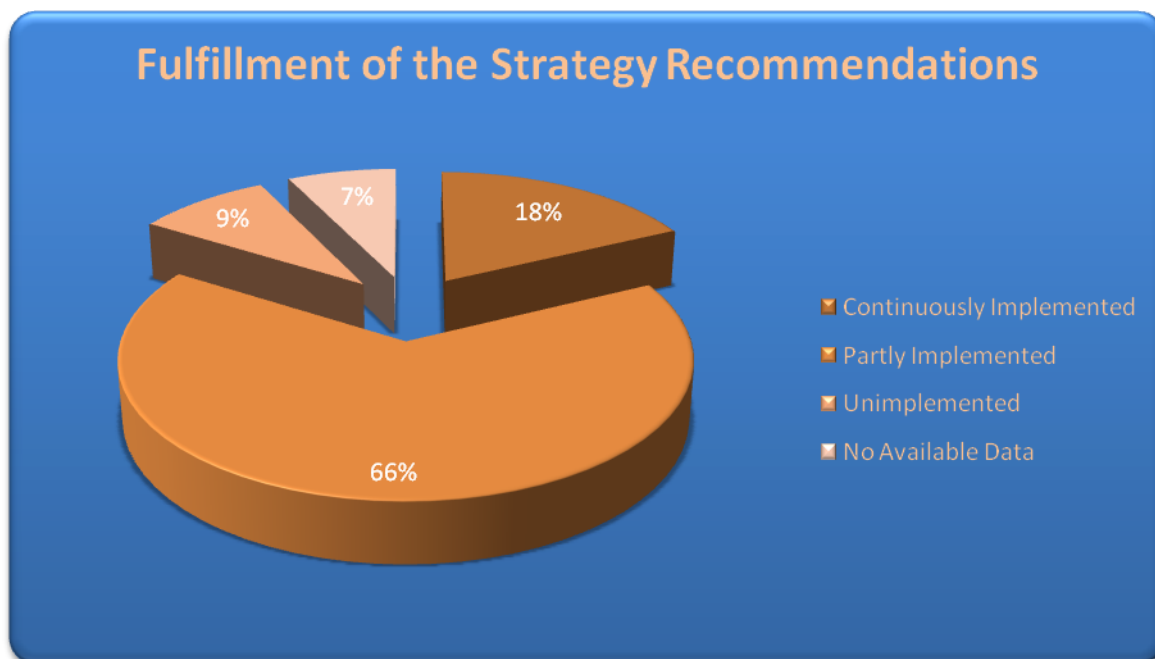
One of the weaknesses of the Strategy is that it fails to specifically focus on the education and health systems, which are extremely important in terms of combating corruption.

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 properly 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.¹⁰

1.2. Assessment of the Enforcement of the Strategy

Out of the 123 reviewed Strategy recommendations, the Anti-Corruption Agency concluded that 22 (18%) recommendations were continuously implemented, that 81 (66%) recommendations were partly implemented but that additional improvements could be made in these fields and that 11 (9%) recommendations were not fulfilled. The Agency failed to obtain data to analyse the fulfilment of 9 (7%) of the recommendations.

¹⁰ 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 P”, March 2011, available at <http://www.acas.rs/en/component/content/article/229.html>.



As the above pie chart shows, the majority of the recommendations were merely partly implemented in 2011 again. This trend characterises all the Strategy systems, which reinforces the impression that the tasks in the strategic document are not approached in a systemic manner and that the public authorities and other institutions in these fields still lack the capacities to function effectively. On the other hand, it was impossible to assess the real practical effects on the fight against corruption of as many as 18% of the continuously implemented recommendations. What is particularly concerning is that the Agency was unable to obtain data for an analysis of 7% of the recommendations, inter alia, because the public authorities simply failed to reply to all the questions in the questionnaire and because no additional sources of information about these recommendations were available.

It can thus be concluded that three quarters of the analysed Strategy recommendations, i.e. 66% of the partly implemented and 9% of the unimplemented recommendations, are still outstanding. Although these conclusions have undoubtedly helped form a general idea of the fulfilment of the Strategy, it needs to be noted that they are the result of numerical indicators which award equal value to all the recommendations and do not necessarily reflect the importance of every single recommendation for the achievement of the Strategy goals.

1.3. EXECUTIVE SUMMARY

Conclusions and Recommendations

The National Anti-Corruption Strategy recommends measures geared 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, albeit mostly those regarding the establishment of the legal and institutional framework for preventing and suppressing corruption,

prevention of conflict of interest 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 fell from 78th to 86th place on the Transparency International 2011 Corruption Perception Index over the previous year. Its rating on a scale of 0 to 10 slid from 3.5 to 3.3 in 2011 over 2010.¹¹

The results of the fourth round of the “Corruption Benchmarking in Serbia” survey conducted by the agency TNS Medium Gallup for UNDP Serbia in November 2011 show that public perceptions of corruption as a social problem have grown over the 2010 round of the survey and more respondents believe that corruption levels have increased over the previous year. Their expectations that corruption levels will fall in the following year are lower than in all previous rounds of the survey. Nearly 40% of the respondents said that someone from their immediate community had given a bribe and 11% admitted that they had personally been involved in corruption. The results also show that the respondents’ threshold of tolerance and acceptance of corruption has fallen and that they think that harsher legal penalties are the most efficient instrument for countering corruption. The survey also shows a substantial rise in public awareness of the importance of transparent decision-making for combating corruption.¹²

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.

Political System

The adoption of the Law on the Financing of Political Activities and the by-laws needed for its enforcement was the chief event within this political system in 2011. The new legislation substantially improved the legal framework in this field, because it inter alia increased the number and types of entities subject to oversight. The Law entrusts the Anti-Corruption Agency with overseeing the funding of the regular work of political entities and of their election campaigns. The Agency performs the oversight by applying the methodology it has developed and been continuously improving by expanding cooperation with the relevant entities, building the skills and knowledge of its staff and developing data processing software.

Exercise of the right of free access to information of public importance continuously increased in 2011, but the level of the right guaranteed by the law is still higher than the one achieved in practice.

The elements personalising the election of Assembly deputies have not been introduced by the latest amendments to the Law on the Election of National Assembly Deputies. A Law on Lobbying has not been adopted yet either.

¹¹ Transparency International, “Corruption Perception Index 2011”, December 2011, available at <http://cpi.transparency.org/cpi2011/results/>.

¹² UNDP Serbia and TNS Medium Gallup “Corruption Benchmarking in Serbia”, Perception of Corruption at the Household Level, 4th Round, November 2011, p. 3, available at http://www.undp.org.rs/index.cfm?event=public_publicationsDetails&revid=0E60B769-EB6D-662E-C949956889479FCD.

In order to assist the institutions in adopting their integrity plans, the Anti-Corruption Agency has designed the drafts i.e. models of integrity plans for various kinds of institutions. A total of 69 draft integrity plans, categorised by system, have been prepared. The institutions will be able to access the relevant integrity plan models with the usernames and passwords they will receive from the Agency. All implementing entities are duty-bound to complete their integrity plans by the end of 2012.

Judicial System and Police

The identified shortcomings in the judicial reform process led to amendments of the judicial laws in late 2010 and a review of the reappointment procedure. The amendments involved transferring the jurisdiction for reviewing the objections by the non-reappointed judges and prosecutors from the Constitutional Court to the High Judicial Council and the State Prosecutorial Council. These two bodies adopted the relevant guidelines for reviewing the objections in May 2011 and began the reviews in late June. Specific procedural shortcomings have, however, been noted during the reviews and criticisms have been voiced about specific elements of the approach to the reviews. The reform process has not been completed yet; nor have the shortcomings noted in a number of national and international reports and analyses been eliminated.

According to a Justice Ministry report, analyses of the performance of the courts and public prosecution offices conducted in 2011 demonstrate that their efficiency has increased over the previous period.

The following laws were adopted in 2011 to improve the efficiency of the judiciary: a new Civil Procedure Law, a new Criminal Procedure Code, a Law on Enforcement and Security, which introduces private enforcers, and the Law on Notaries Public; the latter two pieces of legislation are expected relieve the courts of their administrative burdens. A Draft Law on Mediation was submitted to parliament for adoption in December 2011. There are, however, concerns about insufficient procedural safeguards in the new Criminal Procedure Code;¹³ furthermore, an initiative to review the constitutionality of specific provisions of the Civil Procedure Law has been submitted to the Constitutional Court.

Serbian courts still face huge backlogs. Many of the cases regard the enforcement of civil and criminal judgments. On the other hand, the burdens on the courts still vary greatly despite the rationalisation of the court network and the numbers of cases filed with courts in Belgrade are particularly high.

The Rulebook on the Protection of Persons Reporting Suspicions of Corruption adopted by the Anti-Corruption Agency in July 2011 affords partial protection to a specific category of the so-called whistle-blowers. It should, however, be borne in mind, that the Rulebook was limited to governing mostly the Agency's actions when it receives reports of suspicions of corruption and could not cover the protection of the whistle-blowers as well, due to the lack of material provisions in general sources of law which would govern the nature, content and scope of the protected right, types of public interest disclosures, as well as the substance, character and type of corresponding protection. The need to put in place an effective legal regime protecting people reporting suspicions of corruption thus remains equally outstanding.

¹³ European Commission, Analytical Report Accompanying the Document Communication from the Commission to the European Parliament and the Council Commission Opinion on Serbia's Application for Membership of the European Union, Brussels, 12 October 2011, p. 24, available at http://www.seio.gov.rs/upload/documents/eu_dokumenta/misljenje_kandidatura/sr_analytical_rapport_2011_en.pdf.

The prosecutors again failed to adopt their code of ethics in 2011.

The improvement of the staff capacities of the Justice Ministry Sector for the Judiciary was launched by the establishment of a Judicial Professions Department commensurate with the funds available in the Republic of Serbia state budget and in view of the relevance of the Sector's new tasks regarding the introduction and monitoring of the work of the new judicial professions.

The Ministry of Internal Affairs did not complement the number of police staff whose jobs involve combating corruption in 2011.

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

By the end of the reporting period, 48% of the activities laid down in the State Administration Reform Action Plan for the 2009-2012 Period have been fulfilled, the implementation of 34% of the activities was ongoing, while the implementation of the remaining activities was scheduled for 2012. Viewed by fields, the greatest number of activities was implemented in the field of rationalising the work of the state administration (79%) and the least in the field of public policy coordination (25%). Concerns have been voiced that the implementation of the Strategy was slow and that it would benefit from greater political commitment, a stronger strategic approach to the reform, better coordination and monitoring of the implementation of the reform, as well as ensuring sufficient human and financial resources to improve coordination.

A Draft Law on General Administrative Procedures, aimed at introducing simplified procedures to address the caseloads, was submitted to parliament for adoption in February 2012. The Law on Administrative Disputes still has not been fully aligned with European standards on judicial reviews of administrative acts.

In addition to the three ministries that had already adopted their sectoral action plans – the Ministry of Internal Affairs, the Ministry for Youth and Sports and the Ministry of Health - the Ministry of Education and Science submitted its sectoral action plan to the Agency in 2011 as well.

Serbia still lacks an analysis of the scope of the public authorities' discretionary decision making powers or how they can be limited. This issue has not featured in the adoption of the new regulations either and the first steps in that direction were made by imposing upon the public authorities the obligation to design their integrity plans.

The Strategy for the Professional Training of Civil Servants in the 2011-2013 Period adopted in July 2011 aims at putting in place a new system of training through the establishment of a central institution in charge of implementing training programmes for civil servants.

Public Finance System

The Strategy for Developing the Public Procurement System of Serbia was adopted in September 2011. Amendments to the Public Procurement Law were submitted to the parliament for adoption in January 2012. The amendments aim to eliminate the shortcomings identified in the enforcement of the Law to date, improve efficiency and transparency, ensure a more efficient protection of rights and enable the further alignment of the law with EU directives and good public procurement

practices. The Ministry of Finance was, however, criticised, because the amendments are to be adopted in summary proceedings and without broad consultations with the civil society and experts.

The Ministry of Finance Central Harmonisation Unit organised the first exam for the title of *Certified Internal Auditor in the Public Sector* in May 2011. Sixty-eight candidates working in 22 entities funded from the state budget were awarded the title after they passed the exam.

The June 2011 amendments to the Law on the Financing of Local Self-Governments provide the municipalities with additional funding from income tax allocations. A comprehensive overview and a list of functions delegated to the municipalities, however, remains to be established and the powers were transferred to the municipalities without ensuring that they have sufficient capacities and resources they need to exercise them, in part because of the impact of the economic crisis on public finances which meant that municipalities' own revenues were also shrinking.

Economic System

The new Law on Companies enacted in 2011 further aligns legislation governing the economic system and comprehensively regulates the legal status of entrepreneurs. The new Laws on Voluntary Corporate Financial Restructuring and on Public Private Partnerships and Concessions and regulations on the registration of economic entities help limit the state's role in the economy, contribute to the formulation of the basic fair competition rules, contractual freedom and the creation of an environment conducive to efficient business operations and the elimination of inconsistencies and contradictions among specific systemic regulations governing the field of economy.

The comprehensive regulatory reform was completed with a year's delay, but, although it was not fully implemented, it eliminated a number of unnecessary and detrimental regulations and brought substantial savings to the national economy. However, the elimination of the old unnecessary and detrimental regulations was accompanied by the adoption of numerous new laws, decrees and rulebooks that introduced some new unwarranted obligations and procedures. A new Regulatory Reform Strategy needs to be adopted given that the last one covered the 2008-2011 period. The Draft Strategy for the 2011-2014 Period is available in Serbian on the website of the Regulatory Reform and Regulatory Impact Assessment Office.

The introduction of electronic communication between the Tax Administration and the tax-payers, which is expected to bring the greatest savings to companies and citizens and substantially facilitate operations, was under way at the end of the reporting period. However, the by-laws that have to be adopted to ensure the full enforcement of the Law on Electronic Documents and the use of qualified electronic certificates have not been finalised yet.

The Commission for the Protection of Competition has to be empowered. The shortcomings identified in the legal framework governing competition protection, concentration and state aid policies need to be rectified.

Media

The long-awaited Strategy for the Development of the Public Information System in the Republic of Serbia until 2016 was adopted in September 2011 with the aim of advancing editorial independence and providing media outlets with greater protection from undue influence.

Both Serbian and international reports on the media have been highlighting the problems regarding lack of transparency of media ownership, impermissible media concentration and the state institutions' economic influence on the media through various forms of budget allocations.

The Republican Broadcasting Agency and the Republican Telecommunications Agency have relatively good capacities, but their independence and powers need to be strengthened to ensure a level playing field for all the participants in the market.

The Press Council was established in 2010 as an independent regulatory authority and comprises representatives of the media industry and professional press associations. Its main roles include monitoring abidance by the Code of Journalists of Serbia by the print media, reviewing the complaints by individuals and organisations about specific content published in the print media, mediating between the damaged parties, organisations and newsrooms and issuing public warnings in case of violations of the ethical standards in the Code of Journalists of Serbia, organising training on conduct in accordance with the Code and strengthening the reputation of the media, as well as publishing its opinions and decisions in print media. No such independent regulatory authority has been established for the electronic media.

Participation of the Civil Society and the Public in Combating Corruption

Civil society organisations are well-developed in Serbia and play an important role in the country's social, economic and political life. The Government Office for Cooperation with Civil Society is not, however, fully operational yet; cooperation between state bodies and civil society organisations remains on an ad hoc basis and is unevenly developed across Serbia. Furthermore, additional efforts must be invested to increase the civil society's involvement in public consultation in the legislative process.

The Law Amending the Property Tax Law, which came into force on 1 January 2011, exempted associations established to achieve a goal of general public interest from paying tax on inherited or donated assets to be used solely for the purposes for which the association was established. The same exemption applies to endowments and foundations.

The Decree on Funds for Encouraging Programmes or Covering Lack of Funding for Programmes of Public Interest Implemented by Associations, which the Government of the Republic of Serbia adopted on 27 January 2012, introduces transparency in the procedure of allocating funds for such programmes by laying down the obligations that have to be fulfilled by the competent authorities and the grantees.

The Serbian Government Office for Cooperation with Civil Society has begun preparing an annual consolidated report on the Serbian budget funds spent to support the programme activities of citizens' associations and other civil society organisations. This analysis aims at increasing the transparency of planning and allocating the state budget funds for programme and project activities implemented by citizens' associations and other civil society organisations.

A Code of Ethics for Civil Society Organisations in Serbia was formally endorsed at an event hosted by the NGO Civic Initiatives in June 2011. It has to date been signed by 106 organisations.

1.4. Anti-Corruption Agency Recommendations

The Agency is of the view that the implementation of the following activities would be extremely conducive to the achievement of the anti-corruption goals:

1. Define, in a consultative process, criteria for categorising regulations as anti-corruption regulations in their entirety or in part and provide a legal framework enabling the Anti-Corruption Agency to involve itself more directly in the procedures for amending the existing and adopting new anti-corruption regulations.
2. 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.
3. 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.
4. Put in place regulations ensuring regular and effective public participation in the legislative process, notably by the use of information technology.
5. Impose upon the legislators the obligation to submit the draft by-laws necessary for the enforcement of the laws they are proposing together with the drafts of those laws.
6. Adopt a Law on Lobbying.
7. 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 the expert public.
8. Take the necessary measures to improve judicial efficiency, introduce information technology 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.
9. 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 Whistleblower Protection Law). Involve a broad scope of stakeholders - representatives of the public, private and civil sectors - in the preparation of the law and, in particular, ensure the involvement of independent oversight bodies.
10. Introduce multidisciplinary work on all important investigations of corruption-related crimes, and an efficient system for reviewing reports of pressures.
11. Provide the police with adequate working conditions and resources to fight corruption.
12. Continue efforts to ensure a uniform reform of the state administration.
13. Fully align the Law on Administrative Disputes with European standards.
14. Map the discretionary powers in regulations applied in decision-making procedures and restrict them by formulating the relevant conditions, deadlines and criteria.
15. 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.
16. Invest further efforts to introduce a merit-based career system and effective human resources management, improve the capacities of specific state administration sectors and ensure adequate coordination.
17. Establish efficient oversight of the enforcement of the Free Access to Information of Public Importance Law and an effective mechanism for the enforcement of the Commissioner's final decisions.

18. Ensure the effective enforcement of the Strategy for Developing the Public Procurement System of the Republic of Serbia and the Public Procurement Law and its principles.
19. Establish a mechanism for assessing the expediency of the budget beneficiaries' needs during budget planning.
20. Ensure the consistent enforcement of the Budget Law with respect to the publication of the draft budgets and annual statements of accounts.
21. Provide the State Audit Institution with adequate working conditions.
22. Advance the system for establishing internal auditors.
23. Continue aligning economic regulations and eliminating unnecessary procedures and improve the system of enacting by-laws prerequisite for the enforcement of the laws.
24. Empower the Commission for the Protection of Competition and eliminate all the shortcomings of the legal framework governing competition, concentration and state aid policies.
25. Ensure adequate and independent oversight of privatisation processes.
26. Establish mechanisms allowing workers to report corruption in economic entities and mechanisms for their protection within the economic entities.
27. Ensure transparency of media ownership.
28. Eliminate circumstances enabling political and economic influence on the media.
29. Lay down penalties for media influence peddling.
30. 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.
31. 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 funded from public funds.

1.5. Main Developments and Problems

Main Developments in the Reporting Period

- The Law on the Financing of Political Activities was adopted
- The Anti-Corruption Agency drafted 69 integrity plan models

- The Civil Procedure Law, Criminal Procedure Code, Law on Enforcement and Security and Law on Notaries Public were adopted
- The Rulebook on the Protection of Persons Reporting Suspicions of Corruption was adopted

- A Draft Law on General Administrative Procedures was prepared
- The Strategy for the Professional Training of Civil Servants in the 2011-2013 Period was adopted

Systems

POLITICAL SYSTEM

JUDICIARY AND POLICE

STATE ADMINISTRATION
...

Persisting Problems

- Elements personalising the election of National Assembly deputies were not introduced in the election legislation
- A Law on Lobbying was not adopted

- The judicial reform process has not been completed yet
- Courts still face huge backlogs, particularly in the field of enforcement
- The Ministry of Internal Affairs did not complement the number of police staff whose jobs involve combating corruption

- The Law on Administrative Disputes is not fully aligned with European standards yet
- Headway in the implementation of State Administration Reform Strategy is still too slow

- The Strategy for Developing the Public Procurement System of the Republic of Serbia was adopted
- The first exam for acquiring the title of Certified Internal Auditor in the Public Sector was organised

PUBLIC FINANCE

- Lack of transparency accompanied the drafting of the amendments to the Public Procurement Law

- A new Law on Companies, a Law on Voluntary Corporate Financial Restructuring and a Law on Public Private Partnerships and Concessions were adopted
- Introduction of electronic communication between the Tax Administration and the tax payers is under way

ECONOMY

- Delays in adoption of by-laws prerequisite for enforcing the laws in this field
- Shortcomings in the legal framework governing the competition protection, concentration and state aid policies

- Strategy for the Development of the Public Information System in the Republic of Serbia until 2016 was adopted

MEDIA

- Lack of transparency of media ownership, opportunities for impermissible media concentration persist
- State institutions exert economic influence on the media through various forms of budget allocations

- The Decree on Funds for Encouraging Programmes or Covering Lack of Funding for Programmes of Public Interest Implemented by Associations was adopted
- Ethical Code for Civil Society Organisations was adopted

CITIZENS AND CIVIL SOCIETY

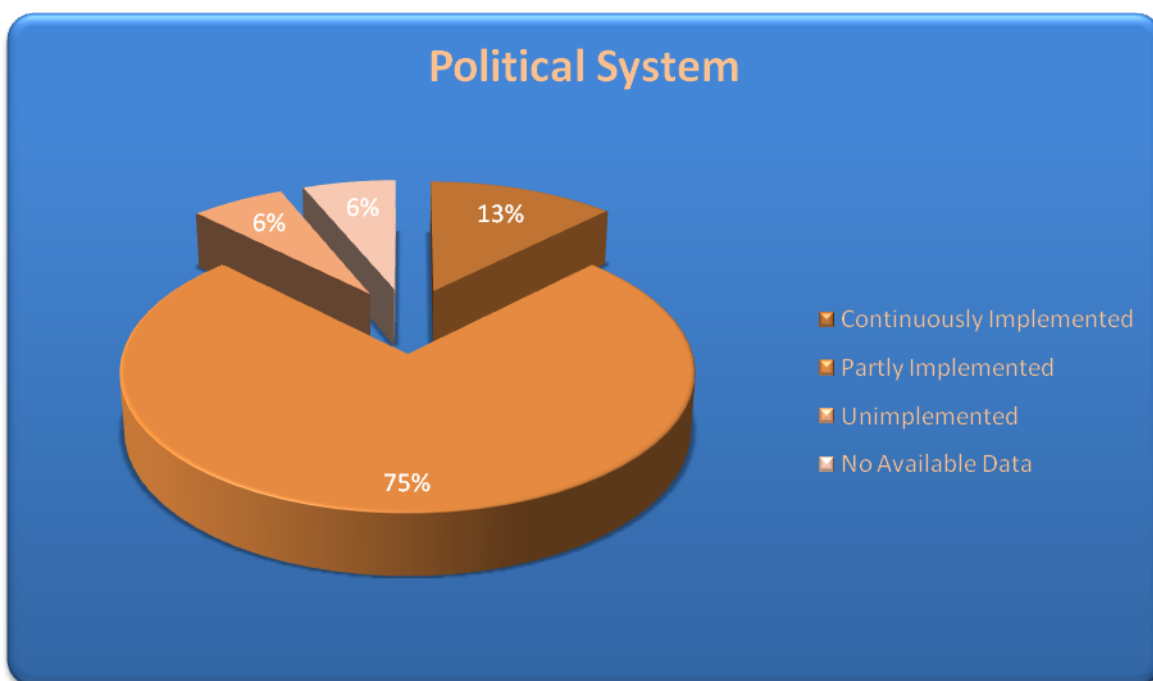
- Insufficient civil society participation in public consultations in the legislative process

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, strengthening 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. Political party funding, election of National Assembly deputies and lobbying are the crucial areas in this field in which the Strategy authors recommended the adoption of new laws.

The Anti-Corruption Agency concluded that out of the sixteen reviewed recommendations, two (13%) were continuously implemented, twelve (75%) were partly implemented but that additional improvements could be made in these fields and that one recommendation (6%) was not implemented at all. The Agency was unable to obtain data it needed to analyse the implementation of one recommendation (6%).



2.1.1. General Overview

The results of the survey conducted for UNDP Serbia by TNS Medium Gallup in November 2011 indicate that political life in Serbia is perceived as the field most fraught with corruption. As many as 80% of the respondents think that this field is greatly or moderately affected by corruption. The public thinks that only the Government and other state institutions are capable of countering corruption and that they should play the main role in fighting it, but it simultaneously perceives these institutions as greatly corrupt. The predominant impression one gains from all four rounds of the survey is that the respondents think that the politicians lack genuine will to put an end to corruption because they themselves are corrupt. Furthermore, most doubt that the Government i.e. the politicians are capable of putting an end to corruption.¹⁴

According to the European Commission's Analytical Report, parliamentary business has run more smoothly and effectively under the current legislature than previously. The parliament has since 2008 engaged in extensive legislative activity aimed at establishing a systemic legal framework in line with European standards. Nevertheless, urgent and other abbreviated procedures were applied in many instances, including for key pieces of legislation, thereby limiting parliamentary and public debate and there is no consistent approach to the consultation of stakeholders, nor is enough attention paid to the quality of legislation. As a result, the Constitutional Court invalidated parts of several important pieces of legislation.¹⁵

The legal framework and practice of organising public debates in Serbia are underdeveloped; there is no pre-defined format of public debates or penalties in case a public authority fails to conduct a public debate. The fulfilment of this legal obligation is not monitored adequately and the citizens' interest is low. The opportunities provided to the republican and local authorities by the E-Government Portal to publish information on the public debates they are organising are not used sufficiently, again because of the vaguely defined obligation to use it and the citizens' lack of knowledge.¹⁶ Another problem regarding laws arises from delays in their implementation, i.e. in adopting the by-laws requisite for their implementation.¹⁷

2.1.2. Implementation of the Strategy Recommendations

International Standards and International Cooperation

Serbia has ratified the UN Convention against Corruption, the Council of Europe Criminal Law Convention on Corruption and Additional Protocol thereto, the Civil Law Convention on

¹⁴ UNDP Serbia and TNS Medium Gallup "Corruption Benchmarking in Serbia", Perception of Corruption at the Household Level, 4th Round, November 2011, pp. 3 and 10-11, available at http://www.undp.org.rs/index.cfm?event=public_publicationsDetails&revid=0E60B769-EB6D-662E-C949956889479FCD.

¹⁵ European Commission, Analytical Report Accompanying the Document Communication from the Commission to the European Parliament and the Council Commission Opinion on Serbia's Application for Membership of the European Union, Brussels, 12 October 2011, p. 10, available at http://www.seio.gov.rs/upload/documents/eu_dokumenta/misljenje_kandidatura/sr_analytical_rapport_2011_en.pdf.

¹⁶ Transparency Serbia, Fostering Public Discussions on Draft Legislation in Serbia, available at http://www.transparentnost.org.rs/index.php?option=com_content&view=category&id=24%3Ajavne-rasprave-u-procesu-pripreme-zakona&Itemid=1&lang=en.

¹⁷ National Alliance for Local Economic Development, By-Law Barometer, available at http://barometar.naled-serbia.org/index_en.php.

Corruption, the UN Convention on Transnational Organized Crime and the CoE Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime.

The European Commission noted in its Analytical Report that Serbia has not signed the OECD Conventions on Combating Bribery of Foreign Public Officials in International Business Transactions and on Bribery in International Business Transactions.¹⁸

In their replies to the Agency question on whether they ensured that the new legislation they were drafting was aligned with the standards laid down in international anti-corruption instruments (**Recommendation 1**), most of the implementing entities answered affirmatively, specifying that they ensured that their draft laws complied with these instruments by submitting them to other competent authorities, notably the Ministry of Justice, which is in charge of the fight against corruption, for their opinion. The Ministry of Justice said in its report that a working group was established in June 2011 to draft amendments to the Criminal Code and align it with the recommendations of the Group of States against Corruption (GRECO) on the full implementation of the provisions of the Criminal Law Convention on Corruption and the Additional Protocol thereto. The Justice Ministry further stated that the authors of the amendments to the Law on Seizure of Proceeds from Crime were striving to ensure that its provisions were fully aligned with the CoE Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime.¹⁹ In parliament, the relevant National Assembly Committee assesses whether a draft law or another enactment is in line with ratified international treaties during the adoption procedure and notifies the National Assembly of any inconsistencies. None of the enactments submitted for adoption in 2011 were assessed as inconsistent with the ratified international treaties.²⁰ The Ministry for Human and Minority Rights, State Administration and Local Self-Government stated that the provisions governing the prevention of conflict of interest were incorporated in the Draft Law on Local Self-Government Unit Staff.²¹

The Republic of Serbia is a member of the following international anti-corruption bodies and initiatives: Group of States against Corruption (GRECO), the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), the Egmont Group of Financial Intelligence Units, the Regional Cooperation Council (RCC), the Regional Anti-Corruption Initiative (RAI), the International Anti-Corruption Academy (IACA), the South-East European Cooperation Process (SEECP) and the UN Global Compact Working Group on Anti-Corruption.

The Republic of Serbia has been taking part in the programme for evaluating the enforcement of the UN Convention against Corruption and the UN Convention against Transnational Organized Crime, and has been cooperating with specialised international initiatives promoting cooperation on

¹⁸ European Commission, Analytical Report Accompanying the Document Communication from the Commission to the European Parliament and the Council Commission Opinion on Serbia's Application for Membership of the European Union, Brussels, 12 October 2011, p. 101, available at http://www.seio.gov.rs/upload/documents/eu_dokumenta/misljenje_kandidatura/sr_analytical_rapport_2011_en.pdf.

¹⁹ Ministry of Justice, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2012.

²⁰ National Assembly, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

²¹ Ministry for Human and Minority Rights, State Administration and Local Self-Government, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

the seizure of proceeds from crime – the STAR Initiative and the CARIN Network. The relevant authorities in Serbia have also continuously cooperated with the International Criminal Police Organisation (INTERPOL), the European Anti-Fraud Office (OLAF) and with the European Judicial Cooperation Unit (EUROJUST).

Transparency of the Work of State Authorities

The Information of Public Importance and Personal Data Protection Commissioner (hereinafter: Commissioner), who oversees the public authorities' compliance with their obligations under the Free Access to Information of Public Importance Law (hereinafter: FOIA), has been collecting information on their performance in this field from the complaints and submissions submitted to his Office claiming violations of the right to access information, on the basis of the annual reports submitted to his Office by the public authorities, and from other sources in the field of free access to information (**Recommendation 2**).

The Commissioner received 3,747 cases by mid-December 2011. Together with the 1,365 cases pending from 2010, his Office had a caseload of 5,112 cases. The Office received 25% more cases in 2011 than in 2010. The Commissioner established that 91% of the complaints his Office reviewed by mid-December were warranted. The Commissioner imposed 50 fines against the authorities that had failed to comply with his rulings to provide access to information (28 fines amounting to 20,000 RSD each and 22 fines amounting to 180,000 RSD each). The Commissioner also submitted 16 requests to the Government asking it to ensure the enforcement of his rulings, but had not received any feedback from the Government on whether it had acted on any of his motions by mid-December.

The Administrative Court reviewed 20 of the 31 lawsuits against the Commissioner's decisions in the same period. The Commissioner reviewed 311 of the 329 submissions received in that period. The Commissioner will be notified of the number of lawsuits filed against the six public authorities, which the FOIA explicitly lists as those the citizens cannot complain against with the Commissioner, after the Administrative Court publishes its annual report.

The Commissioner performed oversight of around 370 websites of public authorities under the legal obligation to publish their information booklets and checked the quality of 50 information booklets individual public authorities submitted to the Commissioner in the reporting period. The Commissioner consequently issued suggestions with respect to 41 information booklets and 194 warnings to the authorities which had not fulfilled their obligation or whose information booklets were not in compliance with the Instructions; in the most drastic cases, when the public authorities failed to act on or respond to the warnings, the Commissioner issued 12 rulings ordering them to fulfil their obligations. The public authorities abided by the rulings in six cases; the measures set out in the Law will be taken against the other six. The fact that the Commissioner's Office issued only 12 rulings can be ascribed to the lack of staff in the Office and the need to simultaneously take other measures with the aim of improving the implementation of the obligation to prepare and publish the information booklets. The Commissioner's Office also emphasised that there were grounds for issuing rulings against other authorities as well.

The following public authorities were issued warnings: 60 warnings were issued against public

companies, republican agencies and other republican public authorities; seven warnings were issued against autonomous state authorities, nearly all of which fully or partly implemented their legal obligation; 34 warnings were issued against city authorities (again particular authorities within a city administration that publish their own information booklet) and 66 warnings were issued against municipal authorities. City and municipal authorities generally responded well to the warnings and expressed readiness to bring their information booklets into line with the Instructions.

In the last quarter of 2011, the Commissioner initiated amendments to the FOIA to advance proactive publication of information by the public authorities, give the Commissioner the power to file motions initiating misdemeanour proceedings, increase the fines for misdemeanours, et al. The Ministry for Human and Minority Rights, State Administration and Local Self-Government upheld the initiative and forwarded it to the Government to prepare a draft law. The amendments were not, however, drafted by the time the Commissioner submitted his report to the Agency.

Furthermore, the Commissioner in early November 2011 filed an initiative with the competent ministry to amend the State Administration Law and extend the obligation of the public authorities to have website presentations in accordance with the provisions of the law also to local self-government authorities, agencies and state companies and lay down penalties for non-compliance with the obligation. The Commissioner in December also submitted to the ministry suggestions to align the provisions regarding access to information in the Draft Law on Local Self-Government Staff with the standards underpinning the FOIA.

The Commissioner concluded that the exercise of the right of free access to information of public importance continuously grew in 2011, but that the level of the right enshrined in the Law was still higher than the one achieved in practice. The Commissioner was of the view that the public authorities had failed to take all the requisite measures to ensure the adequate conditions for the exercise of this right.

In his 2010 report on the enforcement of the FOIA, the Commissioner made several recommendations to the National Assembly to take adequate measures to ensure the better realisation of this right. To that end, he also called on the Government of the Republic of Serbia to put in place measures to ensure: more intensive and comprehensive oversight of the enforcement of the FOIA and the enforcement of specific measures against those who violate the law; a higher level of compliance with the Commissioner's binding and enforceable decisions; appropriate protection of "whistle-blowers"; a greater degree of transparency of the work of public authorities and proactive publication of information about their work; continuous training of staff working in public authorities to ensure the consistent and timely fulfilment of the obligations under the FOIA; and, allocation of adequate workspace that the Commissioner's Office needs to properly perform its duties as soon as possible. Unfortunately, most of the proposed measures have not been implemented.²²

In the previous year, the administrative inspectorate conducted 302 checks of the enforcement of the FOIA provisions on the preparation and publication of information booklets by the state authorities and their submission of annual reports on their activities geared at enforcing this Law.

²² Information of Public Importance and Personal Data Protection Commissioner, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

The inspectors established that 140 authorities had not been applying the FOIA provisions consistently and motions initiating misdemeanour proceedings were filed against 41 mayors, 93 directors of social work centres and six heads of republican departments. The misdemeanour courts found a specific number of the heads of public authorities in violation of the Law. The administrative inspectorate also checked whether the public authorities had complied with the Commissioner's rulings on 453 complaints filed by access to information applicants.²³

The transparency of the work of the National Assembly (**Recommendation 3**) is achieved by providing conditions for TV and Internet broadcasts of the sessions, by organising press conferences, issuing press releases, allowing the media, representatives of domestic and international associations and organisations and interested members of the public to observe the sessions, by providing insight in the NARS documentation, archives and session transcripts and minutes and via the NARS website.²⁴

In mid-June 2011, the National Assembly launched its new upgraded website developed within the Separation of Powers Program with the support of USAID.

The following information is to be published on the NARS website: the draft and adopted agendas of the sessions of the NARS and its working bodies; adopted minutes from these sessions; drafts of laws and other enactments submitted for adoption; the adopted laws and other NARS enactments; amendments to the draft laws and other enactments; session vote breakdowns; NARS Collegium session schedules and agendas; the information booklet; daily updates on the work of the NARS and its working bodies; reports on the work of the Assembly committees, and other information and documents drafted by or regarding the work of the NARS and of relevance to informing the public. The Assembly, however, at the moment lacks the technical capacities to publish the adopted minutes of the sessions of the NARS and its working bodies, amendments to the draft laws and other enactments or the NARS session vote breakdowns. Once these technical requirements are met, the competent National Assembly will issue a conclusion to that effect and these documents will be available on the Assembly website as well.²⁵

The NARS Administrative Committee held its first electronic session in late December 2011, which marked the end of the first stage of introducing e-parliament. The project, implemented with the support of the Swedish International Development Cooperation Agency and the OSCE Mission to Serbia, is expected to strengthen the oversight role of the parliament and the transparency of its work and that of its working bodies.²⁶

Efficiency of the National Assembly's Oversight Role

The NARS Justice and Administration Committee reviewed the 2010 Annual Reports of the

²³ Ministry for Human and Minority Rights, State Administration and Local Self-Government, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

²⁴ National Assembly of the Republic of Serbia, Information Booklet, p. 22, available in Serbian at <http://www.parlament.gov.rs/upload/documents/informator%2023.%20septembar%20I.at.pdf>.

²⁵ *Ibid*, p. 24.

²⁶ National Assembly of the Republic of Serbia "110th Sitting of the Administrative Committee", 28 December 2011, available at http://www.parlament.gov.rs/Hundred_and_Tenth_Sitting_of_the_Administrative_Committee.14795.537.html.

Protector of Citizens, Anti-Corruption Agency, the Information of Public Importance and Personal Data Protection Commissioner, the Equality Protection Commissioner, the High Judicial Council and the State Prosecutorial Council in May and June 2011. The NARS Finance Committee reviewed the State Audit Institution's Annual Report. The Committees then submitted the reports and the draft conclusions to the National Assembly, which adopted them in July 2011.

The NARS Family and Health Committee promptly reviewed the Health Council of Serbia's 2010 Annual Report, drafted its conclusions and submitted them to the NARS for review and adoption, but the NARS has not reviewed the report. The NARS Culture and Information Committee reviewed the Report on the Enforcement of the FOIA and the Personal Data Protection Law and rendered a conclusion endorsing the Commissioner's Report and proposed measures. This report was subsequently adopted by the National Assembly.

The competent NARS Committees regularly reviewed the ministries' quarterly reports and submitted reports on them to the NARS.²⁷

In its Analytical Report, the European Commission noted a "gradual improvement in parliament's role of oversight and control of the government. It is exercised mainly by means of parliamentary questions addressed to the government, to one or more ministers and to the Prime Minister, during sessions held on a monthly basis. There is provision for interpellations, votes of confidence and the establishment of committees of inquiry. The Government presents an annual report. Individual ministers provide specific reports and attend hearings of the relevant committees. Although the use of oversight tools has developed, it remains largely formal."²⁸

The National Assembly in February 2011 deleted from its Rules of Procedure a provision allowing the parliament to automatically launch proceedings for establishing the accountability of an independent regulatory authority if it rejected its report. This amendment to the Rules of Procedure clarified the Assembly's relations with independent regulatory bodies. In the view of the European Commission, the NARS still needs to develop the use of their findings to enhance its own oversight over the executive (**Recommendation 4**).²⁹

Election System

Elements personalising the election of National Assembly deputies (**Recommendation 5**) can be introduced by adopting a new legal framework changing the voting stage of the election system, to ensure a higher degree of directness of election and the voters' control over the representatives they elected. Such changes were not made in the year behind us, although specific initiatives to that end had been launched.

Two shortcomings of the proportional election system involving a system of closed election tickets

²⁷ National Assembly, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

²⁸ European Commission, Analytical Report Accompanying the Document Communication from the Commission to the European Parliament and the Council Commission Opinion on Serbia's Application for Membership of the European Union, Brussels, 12 October 2011, p. 11, available at http://www.seio.gov.rs/upload/documents/eu_dokumenta/misljenje_kandidatura/sr_analytical_rapport_2011_en.pdf.

²⁹ *Ibid.*

of candidates (tickets drawn up by those submitting them and not giving the voters the opportunity to intervene) - “blank resignations” and arbitrary allocation of seats to the candidates on the tickets by the party leaderships - were eliminated when the NARS adopted amendments to the Law on the Election of National Assembly Deputies and the Law on Local Elections in May and July 2011 respectively. “Blank resignations” were a form of contractual relationship between the head of the election ticket and the candidates on it, which allowed the head of the ticket to take a candidate’s mandate from him or her at any time and assign it to another candidate on the ticket; this institute totally undermined the principle of intra-party democracy and strengthened the arbitrariness of the party leaderships. The amendments that did away with the shortcomings were made in the process of fulfilling the conditions for a positive opinion on granting Serbia the EU candidacy status from the European Commission, which had over the past few years been emphasising that these provisions of election law were not in line with European standards.

The Constitutional Court of Serbia declared unconstitutional the provision in the July 2010 amendments to the Law on the Anti-Corruption Agency which the Anti-Corruption Agency challenged in its initiative for the review of its constitutionality. According to the expunged provision, officials directly elected by citizens to another second public office had been exempt from the obligation to notify the Agency of the multiple offices they were discharging. Under this obligation, in the event the Agency finds that the discharge of more than one office jeopardises the impartial discharge of a public office, i.e. that it constitutes a conflict of interest, the Agency shall set the official a deadline by which s/he shall cease discharging incompatible offices.

Anti-Corruption Obligations of Public Authorities

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 the staff with the obligations (**Recommendation 7**). 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, that their staff attended relevant training, took part in the drafting of the integrity plans and the reports on the implementation of the Strategy or in the design and implementation of the sectoral action plans, that they incorporated the Action Plan obligations in their institutions’ work plans or communicated the documents to the line managers and charged them with familiarising their staff with them.

The Anti-Corruption Agency designed models i.e. drafts of integrity plans adjusted to various types of institutions to assist them in the adoption of such plans (**Recommendation 9**). A total of 69 integrity plans categorised by system have been drafted.

The draft integrity plans are available electronically on the Agency server and every institution may access it with its username and password. The design of the content of the integrity plans involved two processes. One was based on data, proposals and suggestions the Agency received from the members of working groups set up to draft the plans, and the other on the analysis of data obtained through a research aimed at verifying and supplementing the content of the draft integrity plans.

The integrity plans were drafted by working groups comprising representatives of various state institutions (109 in all), each of which covered one of the 14 systems. In cooperation with the

Agency, the working groups identified the fields and processes in institutions the most susceptible to the emergence and development of corruption and other irregularities. They consequently defined the risks and formulated adequate measures to facilitate their prevention and elimination. The working groups developed the draft integrity plans in the December 2010-September 2011 period, during which they held meetings and designed the tasks to be covered by the draft integrity plans. The definition of the risks was, therefore, conducted with the assistance of the representatives of the institutions who are well-versed in the powers and modus operandi of the institutions they work in.

Draft integrity plans focus on areas which the working groups identified as the most susceptible to corruption and other irregularities in cooperation with the Agency. These identified areas were classified as common areas, ethical and personal integrity areas and specific areas during the drafting of the integrity plans. Common areas are those without which no institution would be able to operate well – institutional, financial, public procurement, documentation, staff and security management. The ethical and personal integrity area regards the conduct of public sector staff and officials in keeping with moral values and their exercise of public powers in order to achieve the purpose for which they were instituted – conflict of interest, gifts, effective reviews of reports of corruption, ethically or professionally unacceptable conduct and protection of staff reporting such conduct. Specific areas regard the powers of the institutions, the realisation of their social functions, i.e. the functions for which they were established. Specific areas are listed only in the draft integrity plans for institutions for which the working groups provided data or for which data were obtained during the conducted research. In each of the listed areas, the working groups identified the requisite processes, and, within each process, the individual and specific risks that may jeopardise the efficiency and quality of implementation of the processes, as well as measures for preventing or alleviating the identified risks.

All institutions will conduct self-evaluations on the basis of draft integrity plans and the staff and working groups will note whether they agree or disagree with the identified risks in all the listed areas and processes in accordance with the proposed methodology. Furthermore, the working groups have the opportunity to define the processes, risks and risk-elimination measures specific only to their institutions.

The institutions will access the relevant integrity plan models with usernames and passwords that the Anti-Corruption Agency will provide them with. All implementing entities are under the obligation to develop their integrity plans by the end of 2012.

The Agency communicated with a large number of entities at all levels by holding training sessions, meetings and consultations. As noted in the 2010 Report, there have been problems with the process of developing integrity plans. Namely, the representatives of institutions, which must develop integrity plans, perceive this task as yet another obligation they have to fulfil in addition to their already heavy workloads.

Finally, all public authorities under the obligation to develop integrity plans need to approach the development and implementation of their integrity plans seriously, given the importance of their adoption not only for their own work but for preventing and suppressing corruption in general as well. Integrity plans should be products of impartial self-evaluations of risks of corruption and other irregularities within the institutions, not documents adopted just to satisfy yet another legal obligation. The development of an integrity plan is a process that should engage as many members

of the institution's staff as possible; the more members of staff performing diverse jobs within an institution are involved in identifying and assessing corruption risks within their institution, the more comprehensive and adequate will the measures and activities they propose for their alleviation or elimination be. If an institution has organisation units in various parts of Serbia, the specific features of each unit need to be recognised in its integrity plan.

As regards the state authorities' obligation to reply to Anti-Corruption Agency requests within the legal deadline (**Recommendation 10**) and their obligation to submit periodic reports on the implementation of anti-corruption measures within their purview (**Recommendation 11**), the Anti-Corruption Agency's hitherto experience indicates that there is room for additional improvement in this field. For instance, the entities submitted their replies to the questionnaire with delays and only a few public authorities fulfilled their obligation to submit quarterly reports on the basis of the old questionnaire in 2011. It needs to be noted that the Agency's analysis of the fulfilment of the strategic documents is based on the 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 was unable to perform a quality analysis across the board.

Financing of Political Activities

The Republic of Serbia substantially improved its legal framework in this field by adopting a new Law on the Financing of Political Activities in June 2011³⁰ (**Recommendation 16**). The Law states that political entities shall comprise registered political parties, coalitions and citizens' groups (Art.1), while political activities shall comprise their regular and election campaign activities (Art. 2). These definitions commendably expand the scope of legislation on the financing of political activities, which now applies to a greater number and variety of entities ("political entities" instead of "political parties").

The new Law emphasises the relevance of overseeing funding of political activities, which its predecessor had not. The Anti-Corruption Agency is charged with overseeing the financing of the political entities' regular and election campaign activities. Oversight in that sense extends both directly to the political entities and indirectly to other legal and natural persons linked in a way to the political entities, either as donors or as persons not allowed to but nevertheless funding them.

The Agency oversees the funding of political entities in accordance with a methodology it developed, which has been continuously fine-tuned through expansion of cooperation with other state authorities and commercial banks, the continuous upgrading of staff skills and knowledge, and the development of data-processing software.

The Agency may initiate proceedings to establish a violation of the Law on the Financing of Political Activities either *ex officio* or upon receipt of a report alleging such a violation filed by a natural or legal person and impose measures in accordance with this Law (Art. 35). If in the course of oversight it identifies a remediable shortcoming, it shall issue a measure of warning to the

³⁰ Official Gazette of the Republic of Serbia, No. 43/11.

political entity; in the event the entity fails to act by the deadline set in its decision, the Agency shall file a motion for launching misdemeanour proceedings against it (Art. 36). The Law envisages penalties against both the political entities and their financial donors who violate the Law. Entities that violate the Law may be held accountable for a crime (Art. 38) or a misdemeanour (Art. 39). The penal sanctions include temporary suspension of transfers of funds from public sources until the completion of the criminal or misdemeanour proceedings (Art. 43) and the loss of the right to funding from public sources of entities found guilty of a crime or a misdemeanour (Art. 42). How efficient the penal provisions in the Law will be poses a challenge not only for the Agency, but the judicial authorities as well.

To ensure more efficient oversight of the financing of political activities, the Law provides the Agency Director with the power to pass the by-laws needed to apply the Law and, within them, design the forms of assets and contributions disclosure statements, of the annual financial statements and election campaign expense statements (Arts. 27-29). Pursuant to these powers, the Agency in September 2011 adopted the Rulebook on the Registers of Contributions and Assets, Annual Financial Statements and Election Campaign Expense Statements of Political Entities,³¹ and four kinds of forms – the Annual Financial Statement, the Election Campaign Expense Statement, the Register of Contributions and the Register of Assets. Political entities will use the new forms to submit their annual financial statements as of April 2012 and the new election campaign expense statements as of the first elections in 2012. Political entities shall report all their financial transactions in the given calendar year in their annual financial statements; in their election campaign expense statements, they shall report on their expenses and funds raised during the election campaign, which starts on the day the elections are called and ends on the day the final results are declared.

The Anti-Corruption Agency and the State Audit Institution are charged with conducting external audits of political party funding. The Agency is entitled to direct and unhindered access to the political entities' bookkeeping records, documents and financial statements and to engage relevant experts and institutions (Art. 32). Furthermore, it is entitled to direct and unhindered access to the bookkeeping records and documents of an endowment or foundation established by a political party. During an election campaign, a political entity is under the obligation to submit the data the Agency requires in order to perform its legally defined duties within the deadline set by the Agency. The Serbian state, provincial and local self-government authorities, as well as legal and natural persons funding political entities, i.e. persons that performed a particular service for and/or on behalf of an entity, are under the obligation to submit all the data the Agency needs to perform its legally defined duties upon its request.

After a review of a political entity's financial statements, the Agency may file a request with the State Audit Institution asking it to audit the statements in accordance with the law governing the competences of the State Audit Institution (Art. 34).

Under Article 10(1(10)) of the Law Amending the Law on the State Audit Institution,³² which has been in force since 5 June 2010, political parties must be audited in accordance with the law governing the financing of political parties. Article 9 elaborates the auditing of political parties in

³¹ Official Gazette of the Republic of Serbia No. 72/11.

³² Official Gazette of the Republic of Serbia Nos. 101/05, 54/07 and 36/10.

greater detail.

A comprehensive system of review by two independent institutions has thus been introduced. Its practical effects remain to be seen.

Article 33 of the Law on the Financing of Political Activities governs funding of the Agency's oversight of political entities during election periods. The Agency shall be provided with funds for overseeing the campaign expenses in presidential, parliamentary, city and local elections from the budget of the Republic of Serbia. These funds shall be no less than 1% for presidential and parliamentary elections, no less than 0.5% for city elections, and no less than 0.25% for municipal elections of the amount allocated in the state budget for a parliamentary election campaign. Funds for overseeing the regular work of political entities shall be earmarked in the Agency's annual budgets. The Agency envisaged the establishment of a Unit for Overseeing Financing of Political Entities in its Rulebook on the Staff Organisational Structure adopted on 22 July 2011.

The Law on the Financing of Political Activities improves the transparency of financing of political entities. Political entities are under the obligation to publish their annual financial statements on their websites within eight days from the day they submitted them to the Agency and forward them for publication in the Official Gazette of the Republic of Serbia (Art. 28). Political entities engaged in election campaigns are under the obligation to submit their statements on their election campaign expenses to the Agency within 30 days from the day of publication of the final election results; these reports shall also be published on the Agency website (Art. 29).

The efficient enforcement of the Law and its by-laws, the analysis of its implementation and any amendments to the legal framework that may need to be made subsequently will pose the greatest challenge in the coming period. This challenge will be all the greater given the political entities' lack of awareness and practical experience in complying with the Law and the insufficient capacities and experience of institutions and organisations charged with overseeing the financing of political entities in controlling the funding of the political entities. It is particularly important to improve the efficiency of misdemeanour courts' ruling on violations of the Law on the Financing of Political Activities.

Anti-Corruption Regulations and Related Legislative Activities

The Anti-Corruption Agency is entitled to initiate the amendment and adoption of regulations in the field of combating corruption, to cooperate with other state authorities in the drafting of such regulations and to provide professional assistance in fighting corruption (Art. 5(1(6, 11 and 12)) of the Law on the Anti-Corruption Agency). Furthermore, the Agency is entitled to file initiatives for amending regulations with the aim of implementing the National Anti-Corruption Strategy (Art. 62(3)). Its activities in this field thus entail analysis of the regulations and involvement in the process of adopting new or amending the valid regulations which are within the remit of other state authorities (**Recommendation 18**).

The Agency has, however, faced several major difficulties in exercising the above powers. First, the Law on the Anti-Corruption Agency does not provide clear instructions i.e. criteria that would facilitate the drawing up of a list of anti-corruption regulations which would indisputably be within

the remit of the Agency. The main challenge actually lies in the complexity and extensiveness of corruption as a phenomenon which permeates all facets of life, wherefore an indefinite number of regulations may be susceptible to it. Furthermore, some regulations, such as the Law on the Anti-Corruption Agency or the Rulebook on the Protection of Persons Reporting Suspicions of Corruption, are evidently anti-corruptive in their entirety; other regulations are partly anti-corruptive, e.g. the Criminal Code chapter on corruption-related crimes, the Public Procurement Law or the Free Access to Information of Public Importance Law. On the other hand, there is a plethora of diverse pieces of legislation comprising specific provisions that may create room for corruption. They are not anti-corruptive, but the public reasonably expects of the Anti-Corruption Agency to analyse them as well and issue recommendations on how to improve them, particularly when media publish comments of their abuse. The number of such regulations is, however, so huge and the matter they regulate is so diverse, that it is impossible for any single institution to fulfil this task all by itself. It would, therefore, probably be more expedient to raise the capacities of all the public authorities for conducting corruption risk assessments of the regulations. The Agency's role would then be limited to developing a methodology for such assessments and providing the authorities with all other forms of assistance they need to conduct the assessments. In any case, given that an assessment of which group a regulation belongs to would not be left to an individual, arbitrary decision of each public authority on a case to case basis, the Agency is of the view that it is necessary to adopt clear, precise and publicly available criteria for establishing whether a regulation is anti-corruptive in its entirety or in part or whether it only potentially creates room for corruption.

Another major difficulty in this area arises from the fact that not one public authority is under the legal obligation to consult the Agency while drafting a new law or amendments to a valid law, even laws relevant to combating corruption, whereby the decision is left to the good will of the public authorities. For instance, the Finance Ministry did not involve the stakeholders, including the Agency, in the drafting of the amendments to the Public Procurement Law although numerous reports and surveys highlight public procurement as high-risk in terms of corruption. Furthermore, the Agency was asked to join the working group drafting amendments to the Planning and Construction Law and the model by-laws on legalisation of buildings only after it publicly reacted to the disputable draft provisions. It needs to be emphasised here that the absence of the above-mentioned criteria has left the entities proposing the laws in a dilemma whether and when they are under the obligation to invite the Agency to take part in the design of the new regulations or the amendment of the existing ones.

Implementation of the Other Recommendations within the System

The following needs to be emphasised with respect to the other recommendations regarding the political system:

- The adoption of a Law on Lobbying is expected in the second quarter of 2012.³³ The Association of Lobbyists of Serbia has published its Code of Ethics (in Serbian) on its website <http://www.drustvolobistasrbije.org/eticki-kodeks.html> (**Recommendation 19**).
- The Government has been publishing its decisions on nominations, appointments and

³³ Ministry of Agriculture, Trade, Forestry and Water Management, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

dismissals of senior officials, but these decisions are still not reasoned (**Recommendation 17**).

- The NARS Administrative Committee on 27 June 2011 rendered a Decision establishing a working group charged with reviewing the provisions of the Law on the National Assembly and the NARS Rules of Procedure on the deputies' immunity for the purpose of their amendment. The working group is tasked with analysing the provisions of the Law on the National Assembly and the NARS Rules of Procedure on the deputies' immunity and notifying the Administrative Committee and National Assembly Speaker of the need to amend them (**Recommendation 14**).³⁴
- The NARS Administrative Committee established a working group comprising members of the NARS party caucuses and tasked with drafting the Code of Conduct of the NARS deputies. Pursuant to Recommendation 20, the draft Code should include a provision obliging the deputies to familiarise themselves with the Code of Conduct as soon as their mandates are confirmed. The working group held its first meeting in December 2011 (**Recommendation 20**).³⁵
- The Agency failed to obtain data on whether the drafters of the law on remuneration of officials are considering the need to formulate specific criteria and which and whether they will be linked to the officials' accountability for the offices they hold (**Recommendation 8**).

2.1.3. Anti-Corruption Agency Recommendations

- Define, in a consultative process, criteria for categorising regulations as anti-corruption regulations in their entirety or in part and provide a legal framework enabling the Anti-Corruption Agency to involve itself more directly in the procedures for amending the existing and adopting new anti-corruption regulations.
- 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.
- 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.
- Put in place regulations ensuring regular and effective public participation in the legislative process, notably by the use of information technology.
- Impose upon the legislators the obligation to submit the draft by-laws necessary for the enforcement of the laws they are proposing together with the drafts of those laws.
- Adopt a Law on Lobbying.

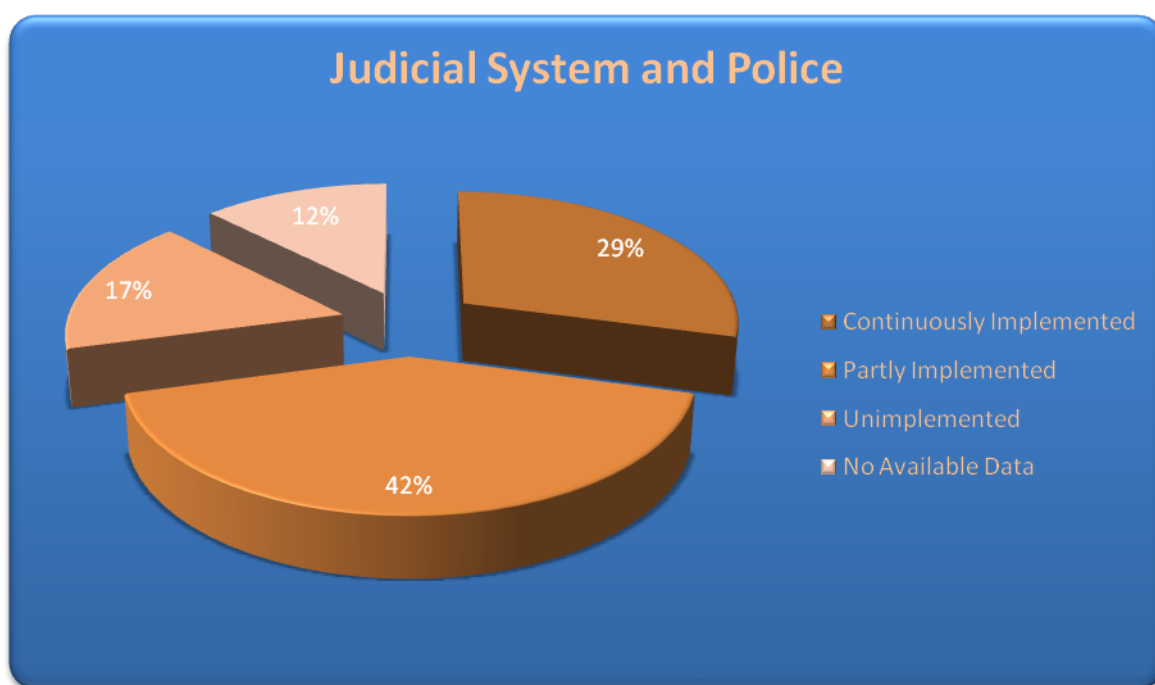
³⁴ National Assembly, Ninety-Third Sitting of the Administrative Committee, 27 June 2011, available at http://www.parlament.gov.rs/Ninety-Third_Sitting_of_the_Administrative_Committee.13331.537.html.

³⁵ National Assembly, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

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.

Out of the 24 recommendations regarding the judicial system and the police it reviewed, the Anti-Corruption Agency concluded that seven (29%) were continuously implemented, that ten (42%) were partly implemented but that additional improvements could be made in these fields and that four (17%) recommendations were not implemented. The Agency was unable to obtain data to analyse the implementation of three (12%) recommendations.



2.2.1. General Overview

According to the survey the agency TNS Medium Gallup conducted for UNDP in Serbia in November 2011, judges have a poor reputation given that two-thirds of the citizens perceive them as significantly or very corrupt. Prosecutors and lawyers did not fare much better, with over 60% of the citizens perceiving them as corrupt. The image of the police somewhat deteriorated over the October 2010 survey; policemen were ranked second on the list of bribed officials in the view of the citizens who had themselves paid bribes (26%).³⁶

³⁶ UNDP Serbia and TNS Medium Gallup “Corruption Benchmarking in Serbia”, Perception of Corruption at the Household Level, 4th Round, November 2011, pp. 8 and 13, available at

2.2.2. Implementation of the Strategy Recommendations

Judges and Prosecutors

The judicial reform in Serbia has not been completed and the shortcomings in specific aspects of the reform identified both by professional associations of judges and prosecutors and the European Commission and GRECO in their earlier reports have not been eliminated yet.³⁷ A review of the judicial reappointment process was launched in late 2010 to address the noted deficiencies by the adoption of amendments to the judicial laws, under which the review of the appeals the non-reappointed judges and prosecutors filed with the Constitutional Court was transferred to the High Judicial Council and the State Prosecutorial Council. The permanent members of these two bodies were appointed in the meantime and they in May 2011 adopted guidelines for reviewing the cases of the non-reappointed judges and prosecutors after broad consultations with all the stakeholders. According to the European Commission's Analytical Report, these guidelines include clear and transparent criteria and provide a sound basis for the review procedure which was launched at the end of June. In the 837 cases concerning non-reappointed judges, 375 hearings had been conducted and 155 cases decided by mid-September. As regards the 157 cases of prosecutors, 127 decisions had been made. While written justifications yet have to be issued for most cases, the EC assesses that the review on judges has been so far conducted in a satisfactory manner and that the majority of decisions were generally taken in line with the guidelines despite some procedural shortcomings. As regards prosecutors, certain procedural shortcomings occurred and remaining doubts on the observance of the guidelines will have to be dispelled by the written decisions. The review for newly elected judges and prosecutors and for those re-appointed despite ongoing disciplinary procedures is under preparation (**Recommendation 25**).³⁸

The European Movement in Serbia Research Forum published an analysis criticising specific elements of the approach to the judicial reappointment review launched by the adoption of the Law Amending the Law on Judges on 29 December 2010.³⁹ Namely, the main provisions on the retroactivity of the Law are set out in paragraphs 2 and 3 of Article 5 of the Law, under which all reviews of appeals and constitutional appeals filed by non-reappointed judges to the Constitutional Court shall be terminated *ex lege*, the cases shall be ceded to the High Judicial Council and the appeals shall be deemed objections. The retroactivity of the provisions in Articles 5 and 6 of the Law, however, gives rise to the following problem: it provides for the retroactivity of a by-law, the content of which the deputies had been unaware of at the time they adopted the Law, because they lay down that the decisions on judicial reappointments will be reviewed in accordance with criteria and standards for assessing the candidates' qualifications, competence and worthiness to be adopted by the High Judicial Council in its permanent composition. Serbia will thus have judges appointed in accordance with the 2009 criteria and standards as well as judges appointed in accordance with the

http://www.undp.org.rs/index.cfm?event=public_publicationsDetails&revid=0E60B769-EB6D-662E-C949956889479FCD.

³⁷ See 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, March 2011, pp. 37 and 38, available at http://www.acas.rs/images/stories/Annex_Report_I_for_2010.pdf.

³⁸ European Commission, Analytical Report Accompanying the Document Communication from the Commission to the European Parliament and the Council Commission Opinion on Serbia's Application for Membership of the European Union, Brussels, 12 October 2011, p. 19, available at http://www.seio.gov.rs/upload/documents/eu_dokumenta/misljenje_kandidatura/sr_analytical_rapport_2011_en.pdf.

³⁹ Official Gazette of the Republic of Serbia, No. 101/10.

2011 criteria and standards. Furthermore, the judicial appeals based on the 2009 criteria and standards have been turned into objections, which will be reviewed under some other criteria and standards. Another difficulty is that this Article transfers to the High Judicial Council the jurisdiction to review not only the judicial appeals to the Constitutional Court, but the constitutional appeals as well. The fact that the Law was adopted in a summary procedure and came into force one day upon publication is also problematic.⁴⁰

According to the State Prosecutorial Council's replies to the questionnaire, oversight of activities that may be incompatible with prosecutorial offices has been conducted continuously and no reports on this issue have been published to date since there have been no suspicions of such incompatibility (**Recommendation 29**).⁴¹

The judicial system is one of the 14 systems for which integrity plans have been drafted. Five plans have been drafted for this system, including one for courts and one for prosecution offices (**Recommendation 31**).⁴²

The Ministry of Justice Judicial Oversight Department has been keeping in-house records of warranted complaints categorised by court since 2010 (**Recommendation 32**). One of its priorities is overseeing the court administration's actions on the complaints filed directly with the courts, i.e. whether the court presidents review the complaints and establish whether they are warranted, whether they monitor the case flow of matters pending before the court, order the necessary measures and prepare reports for the immediately higher courts. The Appellate Courts have issued instructions on the registration of warranted complaints to the courts within their jurisdictions. The Sector for the Judiciary forwarded the complaints alleging corruption to the Republican Public Prosecution Office and the complaints indicating grounds for dismissal to the High Judicial Council, the Disciplinary Commission or the State Prosecutorial Council⁴³

The Agency was unable to obtain data on the enforcement of the Ethical Code for judges. The prosecutors did not adopt their code of conduct in 2011 (**Recommendation 33**).⁴⁴

Under the Judicial Academy Law, the Judicial Academy is charged with training judges and prosecutors (**Recommendations 34 and 43**). The Academy prepared an Initial Training Curriculum and a Continuous Training Curriculum. The Initial Training Curriculum, designed for future judges of Basic Courts and Deputy Basic Public Prosecutors, covers the fight against corruption, international standards and regulatory authorities. The Continuous Training Curriculum, designed for judges and prosecutors already in office, covers the fight against corruption in greater detail. This curriculum comprises the following units: crime of corruption, CoE Conventions, GRECO, national practice and international standards, organised crime and corruption, the Anti-Corruption Agency and its enactments within the legal order, special investigation techniques for

⁴⁰ European Movement in Serbia Research Forum, "Judiciary and Human Rights – Chapter 23", February 2012, pp. 14 – 15, available in Serbian at http://www.emins.org/sr/onama/forum-if/Pravosudje_i_ljudska_prava.pdf.

⁴¹ State Prosecutorial Council, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

⁴² More under II.1. Political System.

⁴³ Ministry of Justice, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2012.

⁴⁴ State Prosecutorial Council, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

uncovering corruption-related crimes. The Judicial Academy has been organising seminars for judges and prosecutors and a number of its seminars were attended by Ministry of Interior and the Anti-Organised Crime Unit staff as well. The curricula are adopted by the Academy's Programme Council and approved by the Managing Board. The Programme Council and Managing Board oversee the implementation of the curriculum through annual and periodic reports; information is also submitted on the implementation of the planned training, the participants, needs and evaluation.⁴⁵

In its Analytical Report, the European Commission assessed that the 2011 amendments to the Judicial Academy Law strengthened the merit-based approach to recruitments, making the completion of a vocational training programme a general precondition for the appointment of basic court and misdemeanour judges, as well as for deputy basic prosecutors. A proper merit-based career system for judges and prosecutors needs to be fully developed. The European Commission notes that it is still possible to enter the judicial profession, in particular at higher levels, on the basis of unclear criteria without having passed the Judicial Academy, that regular performance evaluations are only starting to be introduced and that the Judicial Academy operates on scarce resources.⁴⁶

Judicial Performance

According to the Ministry of Justice, the analyses of the performance of courts and public prosecution offices conducted in 2011 demonstrate that they have improved their efficiency over the previous period (**Recommendation 35**). According to the report on the work of the Public Prosecution Office, the prosecution offices in 2011 processed reports against 202,837 people or 0.26% reports more than in the previous reporting period, and dismissed 13.51% of them. Data on pending criminal reports indicate that authorities asked to provide the required information are traditionally slow and inefficient and that more attention needs to be devoted to this issue. The quality of the filed criminal reports needs to be reviewed in that context, as does the quality of the evidence submitted with them. The new Criminal Procedure Code is expected to improve the situation as it entrusts the prosecutors with conducting prosecutorial investigations. The data demonstrating a rise in the application of the institute of prosecutorial discretion in 2011 indicate that the burden on the courts is decreasing and that the possibilities for conducting more efficient criminal proceedings are increasing. The year 2011 also recorded a drop in the number of motions for investigation and an increase in the number of indictees and in the number of judgments (by 24.38%). The prosecution offices processed 11.58% more reports alleging economic crimes and crimes against official duty in 2011 than in the previous reporting period. A slightly greater number of reports was dismissed than the previous year and the institute of prosecutorial discretion was applied much more often. The number of motions for investigation has slightly fallen, as has the percentage of indictees. The number of first-instance judgments increased considerably and the percentage of acquittals fell in 2011. Thirty-two cases were processed to establish the accountability of legal persons for crimes, which marks an 18.51% rise over 2010. The number of plea bargains

⁴⁵ Judicial Academy, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, March 2012.

⁴⁶ European Commission, Analytical Report Accompanying the Document Communication from the Commission to the European Parliament and the Council Commission Opinion on Serbia's Application for Membership of the European Union, Brussels, 12 October 2011, p. 18, available at http://www.seio.gov.rs/upload/documents/eu_dokumenta/misljenje_kandidatura/sr_analytical_rapport_2011_en.pdf.

grew from 70 in 2010 to 358 in 2011.

According to the Ministry of Justice report, the analysed data lead to the following conclusions: 1) the number of reports alleging economic crimes and crimes against official duty has increased; 2) most of the criminal reports were submitted by the police 3) the advantages of team work and cooperation among state authorities, particularly with the Anti-Laundering Directorate and the Ministry of Finance in coordination with the prosecution offices, are visible when it comes to fighting economic crime and corruption; 4) the trend evidencing a decline in the number of dismissed criminal reports, terminated criminal proceedings and acquittals corroborates the significant results achieved by the Anti-Corruption Department. The expediency of the Law on the Seizure of Proceeds from Crime and the new institutes – plea bargains and prosecutorial discretion, i.e. the application of the principle of prosecutorial opportunity - was fully reaffirmed in 2011. The public prosecution offices primarily focussed on suppressing organised crime and corruption in the previous year.⁴⁷

On the other hand, one of the problems identified in this area is the lack of a tool for tracking individual cases and for conducting a strategic analysis based on an analysis of the results of criminal prosecution. The main prerequisite for such a tool would involve the possibility to follow the main “monitored units” (cases and suspects) throughout the criminal proceedings, from the moment they enter the police until they are completed at any level of the criminal law institutions. However, all criminal case documents currently have different reference numbers given by the diverse authorities processing them within their remits, so that each case is given three different reference numbers and is entered in different forms. This means that different information about the perpetrator, offence and ongoing procedure in each case is entered in each separate stage, without the possibility of bringing all these segments together. This is why it is still not possible to create a unified database; nor is there statistical coherence between the data kept by the courts and those kept by the public prosecution offices. The number of indictments in a given year cannot be linked to the cases the police dealt with. Nor can the number of court proceedings be linked to the number of indictments. This is why no answer can be given to a simple question, e.g. how many of the registered cases resulted in an indictment or a conviction in a specific year.

As far as improving the efficiency of judicial performance (**Recommendations 39 and 41**) is concerned, it needs to be emphasised that the following new laws were adopted in 2011: the Civil Procedure Law,⁴⁸ the Criminal Procedure Code,⁴⁹ the Law on Enforcement and Security⁵⁰, which introduces private court enforcers, and the Law on Notaries Public⁵¹ which is also expected to relieve the courts of their administrative burden. The Draft Law on Mediation was submitted to parliament for adoption in December 2011.

The Criminal Procedure Code radically alters the criminal procedure by entrusting the prosecution offices with the main role in investigations. It will first be applied only in organised and war crime cases and subsequently extend to the entire system. Concerns have, however, been voiced that the

⁴⁷ Ministry of Justice, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2012.

⁴⁸ Official Gazette of the Republic of Serbia No. 72/11.

⁴⁹ Official Gazette of the Republic of Serbia Nos. 72/11 and 101/11.

⁵⁰ Official Gazette of the Republic of Serbia No. 31/11.

⁵¹ Official Gazette of the Republic of Serbia No. 31/11.

Code lacks sufficient procedural safeguards. According to the European Commission's Analytical Report, the Civil Procedure Law is generally a good basis to increase the efficiency of the Serbian judiciary.⁵² The Access to Justice Coalition rallying several NGOs and legal experts, however, filed an initiative for reviewing the constitutionality of the new Civil Procedure Law to the Constitutional Court in January 2012. It challenged the provisions giving precedence to the state as a party to the proceedings, those limiting access to justice and the provisions on the protection of collective rights and interests.

Serbia continues to face a large backlog of old cases. On 30 June 2011, some 1.9 million pending cases were older than 9 months. Many of these relate to the enforcement of both civil and criminal decisions, with an average duration of over 600 days for civil cases. The impact of the rationalisation of the court network has not yet reached its full potential. There continue to be significant differences in the workload between courts, with a particularly high influx of cases in the Belgrade courts. Continued operation of court units in the locations of the previous municipal courts still creates maintenance costs for the buildings and travelling expenses of judicial staff and can entail some risks to the security of the proceedings, in particular in view of the need to transport files and to secure the court unit buildings. A programme was launched to reduce the number of old cases in five pilot courts, as have improvements to the infrastructure and equipment. The IT based case management system is not fully operational for the entire court network.⁵³

According to the latest report by the European Court of Human Rights, the number of applications against the Republic of Serbia grew by around 2,000 over the previous year. Serbia ranks sixth in Europe by the number of applications in the Court's docket, and ranks supreme by the number of applications vis-à-vis the size of its population, with an index of 5.10.⁵⁴ Most of the 6,750 applications against Serbia registered at the end of 2011 regarded the duration of enforcement proceedings.

Article 8 of the Law on the Organisation of Courts forms the basis for establishing a system for reporting corruption in the court administration (**Recommendation 42**). Under this Article, 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 impermissible influence on their course or outcome. This provision is further elaborated in Article 9 of the Court Rules of Procedure, under which a court president shall review the complaints, take adequate measures in accordance with the law and notify the complainant and the president of the immediately higher court of his/her findings and actions within 15 days from the day of receipt of the complaint. In the event the complaint was filed via the Ministry of Justice, a higher court or the High Judicial Council, the court president shall also notify these authorities on whether the complaint was warranted and of the undertaken measures.

⁵² European Commission, Analytical Report Accompanying the Document Communication from the Commission to the European Parliament and the Council Commission Opinion on Serbia's Application for Membership of the European Union, Brussels, 12 October 2011, p. 20, available at http://www.seio.gov.rs/upload/documents/eu_dokumenta/misljenje_kandidatura/sr_analytical_rapport_2011_en.pdf.

⁵³ *Ibid.*, p. 20.

⁵⁴ Agent of the Republic of Serbia before the European Court of Human Rights, "6750 applications against the Republic of Serbia were registered in the European Court of Human Rights at the end of 2011", 31 December 2012, available in Serbian at <http://www.zastupnik.mpravde.gov.rs/cr/news/vesti/na-kraju-2011.-godine-evidentiarno-je-6750-predstavki-pred-evropskim-sudom-za-ljudska-prava-protiv-republike-srbije.html>.

Under Article 328 of the Court Rules of Procedure, courts shall keep registers, including a Corruption Cases Control Book (Form 107), in which they shall enter the following data: case number, crime, final judgment, type of penalty, and modification of the judgment on appeal. Data on corruption-related proceedings, final judgments and convicted perpetrators are entered in a separate register.

The Ministry of Justice Sector for the Judiciary forwards complaints of corruption submitted directly to it to the Republican Public Prosecution Office. The European Integration and International Projects Sector was submitted a project proposal funded through Norwegian bilateral assistance and involving the design of software solutions for keeping records of reviews of corruption-related complaints, which should involve monitoring the course and outcome of proceedings conducted pursuant to these submissions. The oversight role of the Ministry of Justice Sector for the Judiciary will involve monitoring whether the court administration keeps the above-mentioned records and the steps it has taken with respect to corruption-related complaints and submissions. In order to improve the transparency and efficiency of the court administration, the courts designed their information booklets, established information desks, designed flyers advising the parties of their rights to submit complaints and initiate court proceedings, ensured that the work of the registry offices is public, and provided insight in the status of cases via the Serbian Courts Portal (www.portal.sud.rs).⁵⁵

The Republican Public Prosecution Office notified the Ministry of Justice that, like in 2010, no cases of influence on pre-investigation proceedings were registered in 2011, wherefore it did not introduce the system for reviewing reports of pressures (**Recommendation 45**).⁵⁶ In its Analytical Report, the European Commission stated that the constitutional and legislative framework still leaves some room for undue political influence on the judiciary and that the prosecution service is vulnerable to political influence due to its hierarchical organisation and the ongoing practice of issuing oral instructions, despite the legal obligation for written instructions.⁵⁷

Partial protection of a limited category of people reporting corruption (**Recommendation 48**) has been provided by the Rulebook on the Protection of Persons Reporting Suspicions of Corruption,⁵⁸ adopted by the Anti-Corruption Agency in July 2011. It should, however, be borne in mind that the Agency's manoeuvring space during the design of the Rulebook was extremely limited due to the lack of material provisions in general sources of law which would govern the nature, content and scope of the protected right, types of public interest disclosures, as well as the substance, character and type of corresponding protection. This is why this enactment is limited to governing mostly the Agency's actions when it receives reports of suspicions of corruption and could not cover the protection of the whistle-blowers as well. The way paragraph 3 of Article 56 of the Law on the Anti-Corruption Agency is formulated corroborates this -- it does not mention the protection the Agency provides people reporting their suspicions of corruption, only that the Agency shall "extend

⁵⁵ Ministry of Justice, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2012.

⁵⁶ *Ibid.*

⁵⁷ European Commission, Analytical Report Accompanying the Document Communication from the Commission to the European Parliament and the Council Commission Opinion on Serbia's Application for Membership of the European Union, Brussels, 12 October 2011, p. 18, available at http://www.seio.gov.rs/upload/documents/eu_dokumenta/misljenje_kandidatura/sr_analytical_rapport_2011_en.pdf.

⁵⁸ Official Gazette of the Republic of Serbia No. 56/11.

the necessary assistance in accordance with the law” (paragraph 3). Given that the Rulebook could not exceed the legally defined scope, the need to put in place an effective legal regime protecting people reporting suspicions of corruption remains equally outstanding. This conclusion was adopted also at an expert debate the Agency organised in July 2011 when it presented the draft Rulebook.

The improvement of the human capacities of the Ministry of Justice Sector for the Judiciary began in 2011 by the establishment of the Judicial Professions Department commensurate with the funds available in the Republic of Serbia state budget and in view of the relevance of the Sector’s new tasks regarding the establishment and monitoring of the work of the new judicial professions. The Department will particularly focus on institutions providing court expert services **(Recommendation 59)**.

Together with the new criminal and civil procedure laws, the new Law on Court Experts, adopted in 2010, is expected to improve the quality of work of court experts. It lays down stricter requirements and higher criteria regarding the education, knowledge, working and practical experience requisite for performing the duties of court expert. Court experts – natural persons shall be appointed in a recruitment procedure following the advertisement of the vacancies by the Justice Minister. The Minister shall advertise the vacancies after reviewing the needs for court experts in specific fields submitted by the presidents of first-instance courts. In addition to natural persons, court expert services may also be provided by legal persons entered in the register of the competent authority as a company providing court expert services in a specific field and employing people entered in the Register of Court Experts. State authorities, as well as scientific and professional institutions are also entitled to provide court expert services. Foreign natural and legal persons may exceptionally also perform the duties of a court expert in individual cases and under specific circumstances. The Justice Minister shall render decisions on appointing and dismissing court experts and on the registration and deletion of legal persons from the Register of Legal Persons Providing Court Expert Services. The Law specifies in detail the conditions under which a court expert may be dismissed. A court expert, who is not appointed or dismissed in accordance with the prescribed procedure, may initiate an administrative dispute. The Law also obliges the courts to monitor the work of court experts and review issues relevant to the court and regarding the work of court experts at sessions of judges in first-instance courts, at least once a year. Extremely intensive, comprehensive and complex activities were conducted in the final stage of reviewing the applications of candidates for the posts of court experts in the entire Republic, and a decision on the appointment of court experts in the Republic of Serbia was published in early July 2011. Reviews of applications by legal persons for entry in the register of legal persons providing court expert services and the design of a publicly available Register of Legal Persons was under way. These activities have been accompanied by the design and continuous upgrading of software which is to ensure the full reliability of the process, automatization of future public calls for court experts and the design of the Register of Court Experts and Register of Legal Persons Providing Court Expert Services. The Register of Court Experts was also duly published and is available on the Ministry website. These endeavours have contributed to court efficiency, because the judicial authorities now have simple access to all data on court experts enabling them to take reliable and timely decisions on the presentation of such evidence in court proceedings.⁵⁹

⁵⁹ Ministry of Justice, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2012.

No amendments were made to the regulations on the Republican Attorney General in 2011 (**Recommendation 57**).

Effects of Corruption Convictions

The 2011 amendments to the Law on the Election of National Assembly Deputies do not include provisions limiting the right of persons convicted of corruption-related crimes to be elected (**Recommendation 21**), nor was this issue raised during the debate on the draft amendments in the National Assembly. Article 52 of the Serbian Constitution defines the right of every person of age and with the legal capacity to vote and be elected as a fundamental human right, the exercise of which may not be limited.⁶⁰

In view of Article 52, the Ministry for Human and Minority Rights, State Administration and Local Self-Government stated in its replies in the Agency questionnaire that it saw no legal grounds for amending the Law on Local Elections and limiting the right to be elected of persons convicted for corruption-related crimes. Under the Law on Local Elections, a councillor's term of office shall be terminated before expiry in the event s/he is irrevocably convicted to an unconditional prison sentence of minimum six months (Article 46(1(3)).⁶¹

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. The Ministry of Internal Affairs IT Directorate purchased the equipment for improving the server and communication infrastructure, contacts have been established with the Business Registers Agency and access to its electronic records of legal persons has been tested. However, the lack of legal regulations on the exchange of data among these institutions is a problem that remains to be addressed (**Recommendation 24**).⁶²

The Agency was unable to obtain data on the enforcement of the measure restricting engagement in activities of people irrevocably convicted for corruption-related crimes (**Recommendation 56**).

The Police and the Fight against Corruption

As regards complementing the number of police staff whose jobs involve combating corruption, the Anti-Organised Crime Unit drafted a proposal to change the staff organisational structure and increase the number of police staff engaged in the fight against corruption from 15 to 20, the number of staff engaged in combating money laundering from 8 to 15 and the number of staff engaged in suppressing forgery of money and other means of payment from 5 to 10. No decision on this proposal has been taken yet. Furthermore, the Anti-Crime Unit, the Belgrade Police Directorate-Crime Police Directorate and the Police Directorate-Crime Police Department also proposed a change in the organisational structure under which a greater number of police officers would be engaged in jobs aimed at fighting corruption, but this proposal has not been upheld yet

⁶⁰ National Assembly, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

⁶¹ Ministry for Human and Minority Rights, State Administration and Local Self-Government, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

⁶² Ministry of Internal Affairs, Report on the Implementation of the Sectoral Action Plan, June 2011.

either. The number of police staff whose jobs involve combating corruption was thus not increased in 2011 (**Recommendation 61**).⁶³

Under the MIA Staff Professional Advanced Training Programme adopted in February 2011, the organisation units in the Ministry headquarters will oversee the implementation of the Programme independently or in cooperation with the Directorate. Not one organisation 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, given that the regional police directorates are under the obligation to submit monthly plans and reports on the elaborated topics and thematic units and has not identified any deficiencies to date. An Anti-Corruption Manual for the Police was drafted in 2011 (**Recommendation 62**).⁶⁴

Article 167 of the Police Law is applied to activities incompatible with police jobs – i.e. under this Article, police staff who had engaged in such activities shall be dismissed *ex lege* (**Recommendation 65**).⁶⁵

The Police Directorate established a working group to review problems in the work of organisation units and it conducted an analysis of the material and technical circumstances in which they work. Public and confidential procurements were conducted as planned in 2011. The Public and Confidential Procurement Plans, reflecting the needs of the Ministry organisation units and commensurate to the available funds, were for the most part successfully implemented. (**Recommendation 63**).⁶⁶

The plans for procuring the material and technical equipment for the Anti-Organised Crime Unit and the Crime-Intelligence Affairs and Undercover Investigation Unit were not implemented in 2011. The plan for procuring the material and technical equipment for the Anti-Crime Unit was partly implemented – the crime police were provided with new official vehicles and computer equipment (**Recommendation 68**).⁶⁷

Implementation of the Other Recommendations within the System

The Anti-Corruption Agency failed to obtain data on the consistent implementation of the professional code of conduct of lawyers and its effectiveness (**Recommendation 58**).

⁶³ Ministry of Internal Affairs, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2012.

⁶⁴ *Ibid.*

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

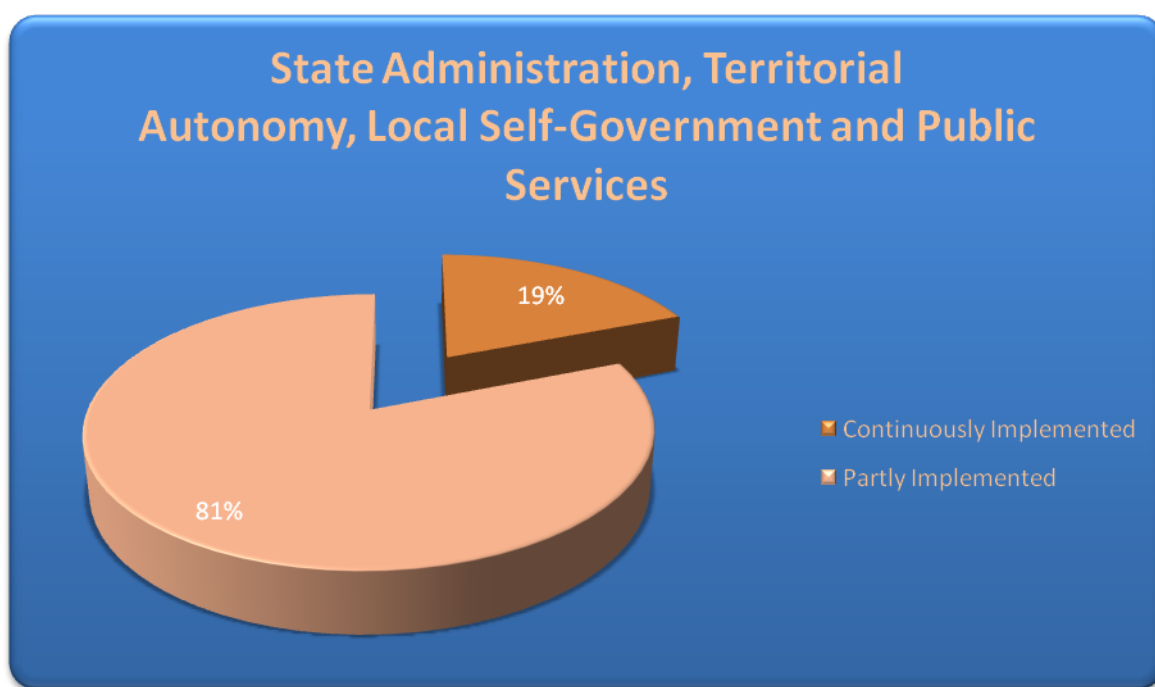
2.2.3. Anti-Corruption Agency Recommendations

- 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 technology 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 Whistleblower Protection Law). Involve a broad scope of stakeholders - representatives of the public, private and civil sectors - in the preparation of the law and, in particular, ensure the involvement of independent oversight bodies.
- Introduce multidisciplinary work on all important investigations of corruption-related crimes, and an efficient system for reviewing reports of pressures.
- Provide the police with adequate working conditions and resources to fight corruption.

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 four (19%) were continuously implemented and that the other seventeen (81%) were partly implemented but that additional improvements could be made in those areas.



2.3.1. General Overview

According to the Corruption Benchmarking survey conducted by the agency TNS Medium Gallup for UNDP Serbia, state administration staff rank third (19%), after doctors and policemen, on the list of those the citizens had direct or indirect experience in bribing; a trend of increase in corruption over the previous rounds was observed only in this category. The citizens' perceptions of public administration and civil servants were mostly similar to the ones in October 2010; there was a slight increase in the percentage of those who thought that bribery was the only way to cut through the huge red tape. Strict punitive measures are still perceived as the most efficient instrument for reducing corruption in public administration and there is some understanding for corruption among public sector staff because of their low salaries. Around half of the citizens think that the level of

corruption in the city administrations is high, while slightly over one-third of the citizens think that it is high in the municipal administrations (departments issuing certificates and permits and the public utility services). The participants in this round of the survey were of the view that inadequate oversight of public services was the main factor obstructing the fight against corruption.⁶⁸

2.3.2. Implementation of the Strategy Recommendations

State Administration Reform

The Ministry for Human and Minority Rights, State Administration and Local Self-Government is charged with the operational implementation of the state administration reform pursuant to the 2004 Strategy and with the coordination of the stakeholders involved in the process (**Recommendation 69**). In July 2009, the Government of the Republic of Serbia adopted a new State Administration Reform Action Plan for the 2009-2012 Period, which sets out the priorities in all areas of state administration reform and the activities and deadlines within which they are to be conducted. The Ministry has been preparing periodic overviews of the implementation of the Action Plan on the basis of the data and information it has been collecting. According to these overviews, 85 (48%) of the 176 activities in the Action Plan had been implemented, the implementation of 60 (34%) of the activities was under way and the implementation of the remaining activities was scheduled for 2012. The greatest number of activities per area were implemented in the areas of rationalisation (79%), professionalisation and depoliticisation (53% and 52% respectively), while less than half of the activities were implemented in the following Action Plan areas: promotion of the state administration reform (45%), e-government i.e. modernisation of the state administration (37%) and oversight mechanisms (36%). The fewest activities were implemented in the area of public policy coordination (25%).⁶⁹

In its Analytical Report, the European Commission stated that the legal framework providing for public administration reform (PAR) was largely in place in Serbia and that the administrative capacities were generally well developed, in particular at the central level. The EC, however, noted that the “implementation of the Strategy is making slow progress. The PAR Council has met several times since April 2009, but mainly to consider administrative and technical issues. A stronger political commitment and a strengthened strategic approach to reform are needed. Enhanced coordination is necessary because responsibilities are divided between several actors, and the monitoring of PAR implementation needs to be improved. Sufficient human and financial resources have to be allocated to the Ministry in order for it to efficiently carry out its PAR coordination tasks”.⁷⁰

⁶⁸ UNDP Serbia and TNS Medium Gallup “Corruption Benchmarking in Serbia”, Perception of Corruption at the Household Level, 4th Round, November 2011, pp. 9, 13-15, available at <http://www.undp.org.rs/index.cfm?event=public.publicationsDetails&revid=0E60B769-EB6D-662E-C949956889479FCD>.

⁶⁹ Ministry for Human and Minority Rights, State Administration and Local Self-Government, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

⁷⁰ European Commission, Analytical Report Accompanying the Document Communication from the Commission to the European Parliament and the Council Commission Opinion on Serbia's Application for Membership of the European Union, Brussels, 12 October 2011, p. 15, available at http://www.seio.gov.rs/upload/documents/eu_dokumenta/misljenje_kandidatura/sr_analytical_rapport_2011_en.pdf.

As per the implementation of the principles of depoliticisation, professionalisation, rationalisation, modernisation and transparency of the state administration (**Recommendation 75**), the Ministry for Human and Minority Rights, State Administration and Local Self-Government stated in its replies to the questionnaire on the implementation of the Strategy and Action Plan that the 2011 Government reshuffle led to the adoption of a new Law on Ministries with a fewer ministries and separate organisations with the aim of rationalising the state administration. The Ministry ensured the consistent implementation of the principles of depoliticisation, professionalisation, rationalisation and modernisation of the state administration in the opinions it rendered on the new staff organisational structure rulebooks and whilst performing other duties within its purview (drafting laws, opinions of laws and regulations of other authorities, etc).

Pursuant to the principles of professionalisation and modernisation in accordance with the Civil Registry Law, a Central System for the electronic processing and storage of data and storage of the electronic copies of the registers was established i.e. the Central System application and modules for entering the data from the original registers that are kept by local self government units were installed, tested and launched. Furthermore, licences – qualified electronic certificates – were issued to civil registrars and their deputies entitling them to use the central application, the infrastructure linking all the local self-government civil registries in a network with the Central System was developed and the registrars and deputy registrars have been trained in using these applications. The Rulebook on the Curriculum and Professional Exams for Registrars was adopted; 515 applicants passed the professional exam organised in accordance with the Rulebook in the reporting period. Preparations of another 60 applicants for the exam are under way.⁷¹

Relevant Legislation

A Law amending the Law on Wages in State Authorities and Public Services,⁷² a new Law on Ministries⁷³ and a Law amending the Law on the Government⁷⁴ were adopted in 2011. The Draft Law on General Administrative Procedures, the Draft Law Amending the Law on the Protector of Citizens and the Draft Law Amending the Free Access to Information of Public Importance Law were submitted to parliament for adoption. The text of the draft Law on Local Self-Government Staff is available in Serbian on the website of the Ministry for Human and Minority Rights, State Administration and Local Self-Government (**Recommendation 71**).

In its Analytical Report, the European Commission said that the new Law on General Administrative Procedures aimed “at introducing simplified procedures in order to reduce the caseload, while the Law on Administrative Disputes allows only individual administrative acts to be challenged before the administrative court, which is not in line with European standards on the judicial review of administrative acts”.⁷⁵

⁷¹ Ministry for Human and Minority Rights, State Administration and Local Self-Government, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

⁷² Official Gazette of the Republic of Serbia No. 92/11.

⁷³ Official Gazette of the Republic of Serbia No. 16/11.

⁷⁴ Official Gazette of the Republic of Serbia No. 16/11.

⁷⁵ European Commission, Analytical Report Accompanying the Document Communication from the Commission to the European Parliament and the Council Commission Opinion on Serbia's Application for Membership of the European Union, Brussels, 12 October 2011, p. 15, available at http://www.seio.gov.rs/upload/documents/eu_dokumenta/misljenje_kandidatura/sr_analytical_rapport_2011_en.pdf.

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

The Information of Public Importance and Personal Data Protection Commissioner is charged with protecting the right to access information and the Ministry charged with state administration affairs is tasked with overseeing the enforcement of the law (**Recommendation 72**). In his replies to the questionnaire, the Commissioner provided data on the continuous protection and advancement of this right, but did not have in his possession data on oversight of the enforcement of the FOIA in 2011 at the time. The Commissioner stated that the amendments to the FOIA allowing the Commissioner to submit motions for initiating misdemeanour proceedings over violations of the FOIA had been initiated but not endorsed yet. The law needs to be amended given the relatively small number of misdemeanour proceedings initiated over violations of the FOIA vis-à-vis the number of committed misdemeanour offences. This situation can be ascribed to the small number of administrative inspectors and a large number of public authorities under the obligation to apply the FOIA. Furthermore, given the nature of his duties, the Commissioner has the opportunity to become aware of a large number of violations of the Law. The Commissioner immediately notifies the Ministry for Human and Minority Rights, State Administration and Local Self-Government of such infractions and the latter then initiates misdemeanour proceedings. Precious time is thus lost, particularly in situations where there is a risk that the statute of limitations for misdemeanour prosecution will expire.⁷⁶

The Ministry for Human and Minority Rights, State Administration and Local Self-Government drafted amendments to the Free Access to Information of Public Importance Law to improve the consistent enforcement of regulations on free access to information of public importance and the publicity and transparency of the work of public authorities. The proposed amendments were submitted to the Government for review and to draft the Law Amending the FOIA. The National Assembly in late 2011 adopted the Law on the Administrative Inspectorate⁷⁷ which precisely governs inspectorial oversight of, inter alia, the enforcement of the FOIA.⁷⁸

Anti-Corruption Activities

Apart from the three ministries which had already adopted their sectoral action plans – the Ministry of Internal Affairs, the Ministry of Youth and Sports and the Ministry of Health – the Agency in 2011 also received the sectoral action plan of the Ministry of Education and Science. The Ministry of Internal Affairs submitted a report on the implementation of its sectoral action plan to the Agency in mid-2011 (**Recommendation 90**).

The state administration and local self-government system is one of the 14 systems for which the draft integrity plans were designed. Three draft models were designed for this system (**Recommendation 80**).⁷⁹

⁷⁶ Information of Public Importance and Personal Data Protection Commissioner, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

⁷⁷ Official Gazette of the Republic of Serbia No. 87/11.

⁷⁸ Ministry for Human and Minority Rights, State Administration and Local Self-Government, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

⁷⁹ More under: II.1. Political System.

Cooperation and Coordination on Combating Corruption

In their replies to the Agency's question whether they had designated a member of staff charged with cooperating with the Anti-Corruption Agency and for implementing anti-corruption activities in general (**Recommendation 73**), all the public authorities in the sample replied that they had designated one or more members of staff and some said that they had entrusted these duties to entire organisation units in addition to ones they were already fulfilling. The duties of the staff vary, from general cooperation with the Agency, cooperation on designing integrity plans, the enforcement of the current or the preparation of a new Strategy, to the implementation of anti-corruption activities in general. One illustration of a staff member entrusted with a broad scope of duties is the job of the Adviser to the National Assembly Secretary General; under the NARS 2011 Staff Organisational Structure Rulebook, the Adviser shall implement a series of activities related to combating corruption.⁸⁰

One of the challenges the Agency faced in reporting on the implementation of the Strategy in 2010 is that the implementing entities took part in it only at the invitation and initiative of the Agency, although they have been under the obligation to do so under the Law on the Anti-Corruption Agency. The challenge was very much alive in 2011 as well, with the exception of several public authorities, which continued submitting quarterly reports on the enforcement of the strategic documents in 2011. The impression remains that reporting to the Agency is perceived as yet another obligation imposed upon the staff of the implementing entities, who are already overburdened by their daily workloads. The possibility of the full and quality fulfilment of the reporting obligation by these staff thus remains an outstanding issue.

The Government of the Republic of Serbia charged the Justice Minister in May 2011 with coordinating the activities of the state administration bodies in fighting cooperation and with cooperating with the state authorities on the implementation of anti-corruption activities.

Discretionary Powers

The public authorities in the sample provided diverse replies to the Agency question whether they analysed the regulations they enforced in order to map the discretionary powers and what steps they had taken (**Recommendation 74**). Some said that they had not analysed the regulations in order to map the discretionary powers. Others said that they did or that they were implementing these activities as they were preparing the integrity plans, a process that has just begun. Some said that they applied relevant by-laws limiting such powers or that they established that there were no discretionary powers, that such powers were always limited during decision making by applying the principles of the Law on General Administrative Procedures (principles of lawfulness, efficiency, truth, etc) or that the appeal review procedures provided for re-examining the decisions from this perspective as well. The National Bank of Serbia (NBS) is one of the positive examples: it stated that it had developed for its organisation units operating procedures governing all operational processes in detail and methodological instructions on how the units should undertake measures within their remits to minimise risks of arbitrariness in decision-making. The NBS also developed codes of conduct for staff on jobs carrying a greater risk of corruption (jobs directly linked to the

⁸⁰ National Assembly, Replies to the Questionnaire on the Enforcement of the Strategy and Action Plan, December 2011.

fulfilment of the NBS' oversight/supervision role) and organised training for all staff directly enforcing the Law on General Administrative Procedures, notably, training on the provisions of this Law governing the use of discretionary powers in rendering decisions in administrative procedures.⁸¹

Serbia still lacks an analysis of the scope of the public authorities' discretionary decision making powers or how they can be limited. This issue has not featured in the adoption of the new regulations either and the first steps in that direction were made by imposing upon the public authorities the obligation to design their integrity plans.

Civil Servants

In their replies to the Agency question whether they had in place mechanisms to ensure impartial, objective and non-partisan staff recruitment and promotion and whether these mechanisms were efficient (**Recommendation 76**), all the public authorities in the sample replied that these procedures were being conducted in accordance with the Law on Civil Servants, the Decree on In-House and Public Recruitment in State Authorities and other regulations governing this matter. Therefore, none of them have put in place special mechanisms beyond the valid regulations. Nor is there a way to determine whether the mechanisms established by these regulations are efficient.

In its Analytical Report, the European Commission stated that selection procedures were not applied uniformly and, in the absence of criteria for final recruitment decisions, managers still had excessive discretionary powers when choosing candidates from lists prepared by the competitions' selection panels. The EC underlined that competence and professionalism in appointments at management and lower levels in the administration needed to become the rule.⁸²

The Presidency of the Standing Conference of Towns and Municipalities in early 2012 submitted an initiative to the Government of the Republic of Serbia to allow cities and municipalities to increase the net monthly base pay of their staff based on their merits and performance, as it had provided for in its earlier conclusion, without limiting the number and categories of staff who may be awarded a monthly raise on these grounds. Furthermore, it called for amending the Decree on Coefficients for Calculating and Paying Salaries to Civil Servants and Employees in State Authorities given its potentially adverse effects on local administration staff with primary and secondary education (**Recommendation 77**).⁸³

The public authorities in the sample gave diverse replies to the Agency 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 taken by the disciplinary authorities were published (**Recommendation 78**). Most said that they had not adopted such plans but that they conducted the checks in accordance with the Law on Civil Servants and other regulations, that regular checks were performed through performance reports and appraisals, and ad hoc checks by

⁸¹ National Bank of Serbia, October-December 2011 Quarterly Report.

⁸² European Commission, Analytical Report Accompanying the Document Communication from the Commission to the European Parliament and the Council Commission Opinion on Serbia's Application for Membership of the European Union, Brussels, 12 October 2011, p. 15, available at http://www.seio.gov.rs/upload/documents/eu_dokumenta/misljenje_kandidatura/sr_analytical_rapport_2011_en.pdf.

⁸³ Standing Conference of Towns and Municipalities, "SCTM Presidency Constituted", March 2012, available in Serbian at <http://www.skgo.org/reports/details/1073>.

occasional analyses of the staff's work and work results, that the decisions of the disciplinary authorities or the extremely important decisions of the disciplinary authorities were published on their bulletin boards or that they were not made public, that none of their staff had been subjected to disciplinary proceedings in the reporting period, etc. Several public authorities said that they had adopted such plans.

The National Assembly in April 2011 appointed an internal auditor who systematically assesses and evaluates risk and work process management and oversees the execution of the Assembly budget. A working group was formed in October to introduce internal oversight in the National Assembly Administrative Service. It is tasked with drafting a plan of activities for implementing and developing an internal auditing system, consolidating the maps of problems appearing in the work of all the organisational units and, based on the obtained data, proposing which parts of the operational processes in this Service need to be regulated in greater detail.⁸⁴

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 were submitted to and whether they had developed the complaint forms (**Recommendation 79**), the vast majority of public authorities in the sample said that they had no special procedure in place and that they applied the Law on Civil Servants in such cases. Many of the entities said that they had not designated a contact person to which such complaints should be submitted or developed special complaint forms.

In its reply to the Agency question whether any activities were undertaken in 2011 to establish a Court of Honour to review complaints and conduct disciplinary proceedings over violations of the Civil Servants' Code of Conduct, the High Civil Servants' Council replied that its purview was defined in Article 164 of the Law on Civil Servants and that it had no powers to establish any new institutes or amend the procedures and powers laid down in the Law. Given that the Law on Civil Servants fully governs the disciplinary and appeals proceedings, it was concluded that the objective of **Recommendation 81** has been fulfilled by the provisions entrusting such powers to the existing bodies. Namely, conduct of a civil servant in contravention of the Civil Servants' Code of Conduct shall be perceived as a minor violation of work duties unless the law defines such conduct as a gross violation of work duties and the Law on Civil Servants full regulates the disciplinary proceedings. This is why the deletion of the establishment of a Court of Honour as an activity to be conducted within Recommendation 81 was suggested.⁸⁵

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 their results were (**Recommendation 82**), half of the public authorities in the sample said that did not conduct such checks and the other half said that they did; two entities stated that they required of their staff to sign statements confirming that they were aware of the Law on Civil Servants provisions prohibiting conflict of interest.

⁸⁴ National Assembly, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

⁸⁵ High Civil Servants' Council, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

In their replies to the Agency question on whether they conducted any activities in 2011 to introduce rules on transfers of public sector staff to the private sector and prohibiting them from exploiting their former offices (**Recommendation 83**), all the public authorities in the sample replied that they had not undertaken any activities to that effect or introduced any special rules in this area.

In their 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 (**Recommendation 84**), most public authorities in the sample replied that they did have such procedures in place. The Tax Administration opened a hotline for reporting such misconduct and designed a standardised form and manual for reporting corruption. The anonymity of the staff filing such reports is guaranteed and they are notified of the undertaken measures.⁸⁶ The Ministry of Economy and Regional Development stated that it planned on designing the procedures and protection mechanisms in the upcoming period pursuant to the Rulebook on the Protection of Persons Reporting Suspicions of Corruption.⁸⁷

A specific category of persons reporting suspicions of corruption has been provided with partial protection under the Rulebook on the Protection of Persons Reporting Suspicions of Corruption, which the Anti-Corruption Agency adopted in July 2011.⁸⁸

The public authorities in the sample gave different replies to the Agency question on whether they had designed plans for rotating staff doing jobs susceptible to corruption and whether their staff members were aware of such plans (**Recommendation 89**). Some authorities said that they had not prepared rotation plans but would do so while they prepared their integrity plans, while some others illustrated the rotations they had introduced: rotation of the Bar Exam Committee Secretaries;⁸⁹ oversight of complex cases involving referring coordinators-market inspectors from the Market Inspection Sector headquarters to perform inspections in the field instead of the local market inspectors;⁹⁰ or the rotations in the Tax and Customs Administrations.⁹¹ Some entities replied that they had no legal grounds for introducing rotation, that this principle could be addressed by analysing the regulations and amending them, or that they faced specific problems with respect to rotation because it was sometimes difficult to ensure that the staff on rotation satisfied all the requirements -- education degree, years of service and knowledge of foreign languages -- specified in the Staff Organisational Structure Rulebook for particular jobs and that rotation required having enough staff that fulfilled all the job requirements for the different jobs.

In its response to the Agency question about whether it monitored the implementation of the programme of advanced professional training of administrative and public service staff and what

⁸⁶ Ministry of Finance, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

⁸⁷ Ministry of Economy and Regional Development, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

⁸⁸ See Section: II.2. Judiciary and the Police.

⁸⁹ Ministry of Justice, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2012.

⁹⁰ Ministry of Agriculture, Trade, Forestry and Water Management, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

⁹¹ Ministry of Finance, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

the results of the monitoring were (**Recommendation 91**), the Government Human Resources Management Service stated that, as provided by the Law on Civil Servants, the Government adopted annual General Advanced Professional Training Programmes for Civil Servants in the State Administration and the Government Services proposed by the Human Resource Management Service, and that the Service then organised the advanced professional training of civil servants in accordance with the Programme. In its explanation of the draft annual General Advanced Professional Training Programmes, which it submits for adoption to the Government, the Service provides inter alia data on the results achieved in the previous year, the number of conducted training sessions and the number of participants. The 2011 General Advanced Professional Training Programme included a series of training sessions covering the thematic field entitled *Fight against Corruption*.⁹²

In its Analytical Report, the European Commission stated that a “Strategy for the professional training of civil servants for the period 2011- 2013 was adopted in July 2011. The Strategy aims at creating a new system of training, through the establishment of a central institution in charge of the implementation of training programmes for civil servants. A fifth annual training programme was adopted in January 2011. The programme embraces a wide range of topics, including development of senior management and EU integration. However, only a small percentage of civil servants, and in particular a very small percentage of managers, takes part in this training. Induction training is not provided.”⁹³

Realisation of Rights

Most public authorities charging administrative taxes stated that they ensured oversight of the enforcement of the regulations governing the payment of such taxes (**Recommendation 85**).

In their replies to the Agency question on the introduction of the so-called one-stop shops facilitating the citizens’ realisation of their rights, of the possibility to obtain specific information directly from the other state authorities rather than through the clients and provision of information to the citizens on all the documents they need to exercise a specific right (**Recommendation 86**), most of the public authorities in the sample said that all the necessary information and forms were posted on their websites. The Government recommended that all state authorities publish regulations, information, forms and tariffs to facilitate the citizens’ realisation of their rights.⁹⁴ Some authorities said that the application of the one-stop shop system was impossible because of the diversity of the required documentation and some stated that there was no need to introduce the one-stop shop principle for the procedures conducted before them. On the other hand, the established Central System for the electronic processing and storage of data and storage of the electronic copies of the registers commendably enables the citizens to obtain copies of their birth, marriage and death certificates in any city or municipal administration provided that their civil

⁹² Human Resources Management Service, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

⁹³ European Commission, Analytical Report Accompanying the Document Communication from the Commission to the European Parliament and the Council Commission Opinion on Serbia's Application for Membership of the European Union, Brussels, 12 October 2011, p. 15, available at http://www.seio.gov.rs/upload/documents/eu_dokumenta/misljenje_kandidatura/sr_analytical_rapport_2011_en.pdf.

⁹⁴ Ministry of Economy and Regional Development, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

registry data have been entered in the Central System.⁹⁵ Another commendable one-stop registration system is operated by the Business Registries Agency, which simplified the procedures for establishing companies and associations and registering bankruptcy estates by enabling all entities to fully register by filing only one application form. The implementation of the second stage of the one-stop registration system, entailing the fully automated exchange of data with public sector partners by applying Web Services technology, is under way. The state of the art software platform will enable the alignment of work procedures at the level of the entire registration process and the introduced one-stop registration system will be faster, more reliable and cheaper. The establishment of a nationwide Central Mandatory Social Insurance Register database is under way.⁹⁶

The information systems of the Tax Administration, Treasury Administration, Customs Administration, the Republican Pension and Disability Insurance Fund and the Ministry of Internal Affairs are not part of a single information system of the state authorities, but are linked in specific ways and to an appropriate degree, reflecting their common interests in performing the duties within their remits (**Recommendation 88**).⁹⁷ In its reply to the Agency questionnaire, the Ministry of Internal Affairs stated that these systems were not interlinked at the moment but that intensive efforts to that end were being invested in cooperation with the above-mentioned entities. These authorities are expected to be interlinked during 2012, in accordance with the e-government development project. The Anti-Organised Crime Unit is connected to the Customs Directorate IT system. Interlinking with the information systems of the Tax Administration and Republican Geodetic Authority is under way.⁹⁸

The establishment of a single register of voters -- a nationwide public register of all nationals of the Republic of Serbia who have the right to vote -- is under way pursuant to the Law on a Single Voters Register. Under the Law, this register shall be an electronic database updated in accordance with a single methodology laid down by the Ministry for Human and Minority Rights, State Administration and Local Self-Government.⁹⁹

II.3.3. Anti-Corruption Agency Recommendations

- Continue efforts to ensure a uniform reform of the state administration.
- Fully align the Law on Administrative Disputes with European standards.
- Map the discretionary powers in regulations applied in decision-making procedures and restrict them by formulating the relevant conditions, deadlines and criteria.

⁹⁵ Ministry for Human and Minority Rights, State Administration and Local Self-Government, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

⁹⁶ Ministry of Economy and Regional Development, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

⁹⁷ Ministry of Finance, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

⁹⁸ Ministry of Internal Affairs, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2012.

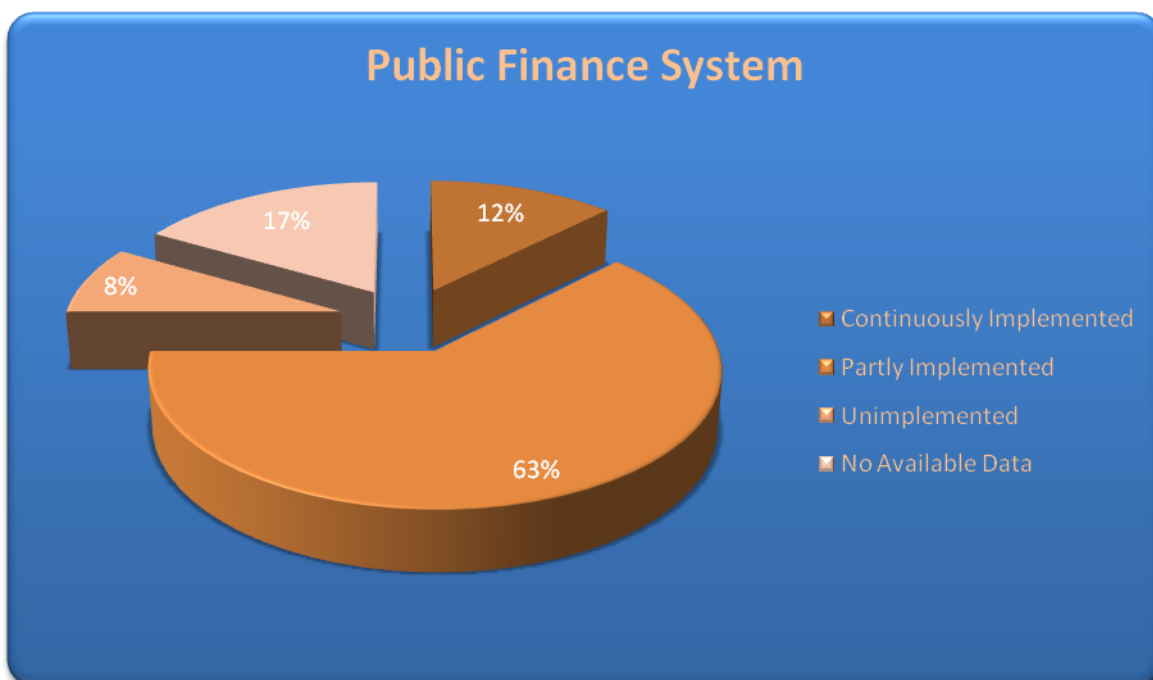
⁹⁹ Ministry for Human and Minority Rights, State Administration and Local Self-Government, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

- 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.
- Invest further efforts to introduce a merit-based career system and effective human resources management, improve the capacities of specific state administration sectors and ensure adequate coordination.
- Establish efficient oversight of the enforcement of the Free Access to Information of Public Importance Law and an effective mechanism for the enforcement of the Commissioner's final decisions.

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 24 recommendations it reviewed, the Agency concluded that three recommendations (12%) were continuously implemented, that 15 recommendations (63%) were partly implemented but that additional improvements could be made in those areas and that two recommendations (8%) were not implemented. The Agency was unable to obtain data and analyse the implementation of four recommendations (17%).



2.4.1. General Overview

In its Analytical Report, the European Commission stated that “since 2006, Serbia's public finances have been continuously eroded by expansionary policies and weak tax compliance. With a reduced fiscal space and significant pressures on public finances stemming from the economic crisis, Serbia's fiscal position deteriorated significantly after 2008. The expansionary fiscal policy became constrained by the SBA programme requirements. Expenditure savings came largely from a nominal freeze on public sector wages and pensions and restricted hiring in the public administration. Although the recent adjustments are an important step forward, further reforms will be necessary in order to enhance the long-term sustainability of public finances. Serbia will need to make additional

adjustments in the pension and healthcare systems, as well as to further improve the cost-effectiveness of the public sector.”¹⁰⁰

2.4.2. Implementation of the Strategy Recommendations

Transparency of Budget Planning and Execution

Pursuant to the Commissioner’s Instructions on the design and publication of information booklets on the work of state authorities enacted in September 2010, state authorities are under the obligation to publish and update data on their resources, budget planning and execution on a monthly basis (**Recommendations 107 and 99**).

The state authorities have listed lack of staff, political turbulences or technical problems as their greatest problems in this area. Despite the numerous suggestions the Commissioner communicated to them by phone or electronically, many of the information booklets posted on their websites are still of poor quality and lack updated information on revenues and expenses in the current year and public procurement plans. Data on wages are often presented in coefficients or simply not provided at all, which leads to the impression that lack of staff is less of a problem than the will to provide public access to such data.

Improvements in this field are expected once the proposed amendments to the FOIA are adopted. These amendments highlight the obligation to publish updated information on public revenues and expenses and other information relevant to fighting corruption. They also expand the list of persons under the obligation to publish information booklets.¹⁰¹

Public Procurement

In its replies to the Agency Questionnaire, the Ministry of Finance stated that the latest amendments to the Public Procurement Law (**Recommendation 120**) aimed at:

- Eliminating the shortcomings identified in its enforcement to date;
- Improving the efficiency of public procurement procedures conducted by the procuring entities and facilitating the bidders’ participation in the procedures;
- Enhancing the transparency of public procurement procedures and the transparency of compliance with obligations under public procurement contracts (e.g. the publication of public procurement plans i.e. of public invitations to bid for all types of public procurements on the Public Procurement Portal, et al);
- Ensuring the more efficient protection of rights in public procurement procedures;

¹⁰⁰ European Commission, Analytical Report Accompanying the Document Communication from the Commission to the European Parliament and the Council Commission Opinion on Serbia’s Application for Membership of the European Union, Brussels, 12 October 2011, pp. 47-48, available at http://www.seio.gov.rs/upload/documents/eu_dokumenta/misljenje_kandidatura/sr_analytical_rapport_2011_en.pdf.

¹⁰¹ Commissioner for Information of Public Importance and Personal Data Protection, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

- Providing for further alignment with European Union directives and good practices in this area (introduction of a Single Public Procurement Dictionary, i.e. the framework agreement institute, et al).¹⁰²

After it announced that the Public Procurement Law would be amended in late 2011, the Ministry of Finance was criticised, inter alia, because the amendments were to be adopted in summary proceedings and without broad consultations with the civil society and experts. The Ministry of Finance did not involve even the Anti-Corruption Agency in the preparation of the amendments to the Public Procurement Law in 2011, although numerous reports and surveys highlight public procurement as an area extremely susceptible to corruption.

In its Analytical Report, the European Commission stated that corruption was widespread in the award of public contracts and that Serbia's legislation on public procurement was partially aligned with the EU *acquis*. It noted that a strategy for upgrading the public procurement system in Serbia was adopted in September 2011 and that the administrative capacity of all key institutions forming part of the public procurement system, especially the Ministry of Finance, needed to be significantly strengthened. The EC stated that the decisions adopted by the Commission for Protection of Bidders' Rights had to be enforced effectively and that mechanisms needed to be instituted for coordination between the main stakeholders, including anti-corruption, audit and judicial institutions.¹⁰³

All public authorities in the sample affirmatively answered the Agency question on whether they had annual public procurement plans (**Recommendation 121**). Some of them noted that they published their plans in their information booklets.

The Commission for Protection of Bidders' Rights was set up in October 2010 as an independent body accountable directly to parliament. It still needs to build its credibility by timely handling of cases, consistent jurisprudence and a transparent enforcement record. Furthermore, it needs to ensure effective enforcement by systematically monitoring and scrutinising implementation of its decisions and to notify cases of non-compliance to the State Audit Institution, the Budget Inspectorate, the national parliament and the government of Serbia (**Recommendation 123**).¹⁰⁴

Auditing

As regards the improvement of the working conditions of the State Audit Institution (SAI), the SAI said in its replies to the questionnaire that its work was hindered because it was allocated offices in three different locations across Belgrade and that this office space would soon be insufficient if it successfully implemented its staffing plan in 2012 (**Recommendation 101**).¹⁰⁵

¹⁰² Ministry of Finance, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

¹⁰³ European Commission, Analytical Report Accompanying the Document Communication from the Commission to the European Parliament and the Council Commission Opinion on Serbia's Application for Membership of the European Union, Brussels, 12 October 2011, pp. 66, available at http://www.seio.gov.rs/upload/documents/eu_dokumenta/misljenje_kandidatura/sr_analytical_rapport_2011_en.pdf.

¹⁰⁴ *Ibid.*

¹⁰⁵ State Audit Institution, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan,

Under the Constitution of the Republic of Serbia, the National Assembly shall review the draft annual budget statements of accounts upon hearing the opinion of the SAI (**Recommendation 102**). The first report with SAI's opinion on the annual budget statement of accounts was submitted to the parliament for the 2009 state budget. The NARS Finance Committee in late 2010 and early 2011 reviewed the SAI Report on the Audit of the 2009 Republic of Serbia Budget Statement of Accounts and the Report on the Audits of the 2009 Financial Statements of the Audited Entities and proposed to the National Assembly to review these reports and recommendations. The NARS did not review the reports by the time SAI submitted its replies to the questionnaire.¹⁰⁶ The parliament has not discussed how the budget funds have been spent for seven years; nor has it adopted a Law on the Republic of Serbia Budget Statement of Accounts since 2002.

As regards complementing the budget inspectorate and audit staff (**Recommendation 103**), the Ministry of Finance Central Harmonisation Unit was given the go-ahead to hire another five members of staff and their recruitment was under way at the end of the reporting period. The Budget Inspectorate Sector hired five civil servants after conducting a public competition in 2011. The Sector thus now has a total of eight budget inspectors and plans to continue hiring budget inspectors in the coming period.¹⁰⁷ The SAI's staff now numbers 101 and it has continuously been recruiting more staff. It plans to have a total of 192 employees by the end of 2012.¹⁰⁸

The Ministry of Finance Central Harmonisation Unit is charged with central harmonisation, coordination, monitoring the enforcement and quality of financial management control and internal auditing in the public sector and with consolidating the annual reports of the beneficiaries of public funds in this field (**Recommendation 105**). This Unit prepares Consolidated Annual Reports on Internal Financial Audits in the Public Sector in the Republic of Serbia based on the individual reports of the heads of the beneficiaries of public funds listed in the Law on the Budget, including social insurance funds. Under the Law on the Budget System, these beneficiaries of public funds are under the obligation to submit their annual financial management control and internal audit reports for the previous year by 31 March.

The Unit's financial plan allocates funds for training to enhance the understanding and acceptance of the system of internal financial audits by the senior managers, i.e. their responsibility for establishing and improving the system. The implementation of an IPA-funded project aiming, inter alia, to design and develop an IT system and a website of the Unit to link it to other entities conducting internal financial audits is under way.¹⁰⁹

All line ministries envisaged internal auditor jobs in their staff organisational structure rulebooks which they submitted to the Central Harmonisation Unit for its opinion (**Recommendation 106**). The number of internal auditors in a specific beneficiary of budget funds depends on the

February 2012.

¹⁰⁶ National Assembly, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

¹⁰⁷ Ministry of Finance, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

¹⁰⁸ State Audit Institution, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2012.

¹⁰⁹ Ministry of Finance, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan,, December 2011.

assessment of the risks the beneficiary faces, wherefore the total number of internal auditors in the public sector varies and depends on the risk assessments. In May 2011, the Unit organised the first exam for the title of *Certified Internal Auditor in the Public Sector*. Sixty-eight candidates working in 22 beneficiaries of public funds passed the exam and were awarded the title. Comprehensive data on the number of internal auditors in 2011 will be available and compared to 2010 once all the beneficiaries of public funds submit their annual reports on financial management control to the Unit by the end of March 2012.¹¹⁰

Tax System

The tax regulations are partly in compliance with the EU regulations and their further alignment is under way (**Recommendation 108**).¹¹¹

Not all the prerequisites have been fulfilled for introducing a synthetic personal income tax (**Recommendation 109**) 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 collection of personal income tax by the tax administration. The decision to move from schedular to synthetic taxing of personal incomes has not been made yet.¹¹²

Under the Law on the Financing of Local Self-Governments, local governments shall dispose of original income earned in its territory, notably property tax, apart from the tax on the transfer of absolute rights, and the tax on inheritance and gifts. The local self-government units shall set, collect and control these public revenues. The Ministry of Finance issues professional opinions and explanations about dilemmas arising in the enforcement of the Property Tax Law at the request of local self-government units (**Recommendation 110**).¹¹³

The amendments to the Law on the Financing of Local Self-Governments adopted in June 2011¹¹⁴ provide the municipalities with additional funding from income tax allocations. However, a complete overview and inventory of the functions delegated to municipalities remain to be established. Transfers have been made without ensuring sufficient capacity and resources at local level, in part because of the impact of the economic crisis on public finances which meant that municipalities' own revenues were also shrinking.¹¹⁵

No analysis was conducted on which forms of tax should be abolished given the influx of public revenues into the Budget of the Republic of Serbia in 2011 (**Recommendation 111**).¹¹⁶ In its 2010 report to the Agency, the Finance Ministry recommended the deletion of this recommendation.

¹¹⁰ *Ibid.*

¹¹¹ *Ibid.*

¹¹² *Ibid.*

¹¹³ *Ibid.*

¹¹⁴ Official Gazette of the Republic of Serbia No. 47/11.

¹¹⁵ European Commission, Analytical Report Accompanying the Document Communication from the Commission to the European Parliament and the Council Commission Opinion on Serbia's Application for Membership of the European Union, Brussels, 12 October 2011, p. 14, , available at http://www.seio.gov.rs/upload/documents/eu_dokumenta/misljenje_kandidatura/sr_analytical_rapport_2011_en.pdf.

¹¹⁶ Ministry of Finance, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

Endeavours to strengthen the supervision of the work of the Tax Administration involved establishing working groups to analyse the internal audit process and prepare amendments to upgrade it and the organisation of a round table rallying Ministry of Finance and Tax Administration representatives to discuss the design of an efficient supervision model by the Ministry's professional units (**Recommendation 113**).¹¹⁷

The recommendation to automate the tax procedure by introducing an IT system with a nationwide database has been fulfilled through the *Single Register of Tax Payers* (SRTP) project, the design and development of a new database of individual tax payers, the design and development of a new database system for Tax Identification Numbers (TIN), outreach activities, registration of TINs of legal and natural persons and the registration of Unique Master Citizen Numbers (personal identification numbers) of natural persons (**Recommendation 114**).¹¹⁸

Customs System

The Customs Administration Internal Audit Department has taken part in a pilot project on strengthening the integrity of customs officials and the fight against corruption, implemented under the auspices of the World Customs Organisation, and has been involved in establishing an internal integrity structure and preventive measures and dealing with cases of corruption. The project Action Plan envisages the design of an Integrity Risk Atlas. The project is to be implemented by the end of 2012 (**Recommendation 116**).¹¹⁹

The so-called “system of simplified customs procedures” has been implemented since early 2011. Under this system, credible companies, which have concluded agreements with the Customs Administration, file their customs declarations with the competent customs offices electronically, i.e. their goods are not examined by the customs officers. The system has sped up the customs procedures considerably (**Recommendation 117**).¹²⁰

The Customs Administration is linked to all customs administrations, members of the World Customs Organisation, via the Enforcement Division, the Customs Investigation Department and the Intelligence Department. The online links with all the customs administrations were established under the auspices of the World Customs Organisation. The Customs Investigations Department cooperates with the Southeast European Law Enforcement Center (SELEC), while the Intelligence Department cooperates with all other foreign customs services. Their everyday cooperation is extremely successful and all the Customs Administration units have improved the quality of their work and the efficiency of their operations (**Recommendation 119**).¹²¹

Implementation of the Other Strategy Recommendations

The Treasury Administration's IT system was extended in 2011 to direct budget beneficiaries

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*

¹¹⁹ *Ibid.*

¹²⁰ *Ibid.*

¹²¹ *Ibid.*

established under the Law on Ministries.¹²² A number of indirect budget beneficiaries were linked to the electronic payment services within the Integral Payment Operations System project **(Recommendation 98)**.¹²³

The Anti-Corruption Agency failed to obtain data that would have enabled it to analyse the fulfilment of the following recommendations: consistent abidance by the principle of budget comprehensiveness and elimination of extra-budgetary funds **(Recommendation 92)**; establishment of mechanisms for assessing the expediency of the budget beneficiaries' needs during budgeting **(Recommendation 95)**; improvement of the valid regulations governing the work of the Treasury **(Recommendation 100)**; and, improvement of tax collection rates **(Recommendation 112)**.

2.4.3. Anti-Corruption Agency Recommendations

- Ensure the effective enforcement of the Strategy for Developing the Public Procurement System of the Republic of Serbia and the Public Procurement Law and its principles.
- Establish a mechanism for assessing the expediency of the budget beneficiaries' needs during budget planning.
- Ensure the consistent enforcement of the Budget Law with respect to the publication of the draft budgets and annual statements of accounts.
- Provide the State Audit Institution with adequate working conditions.
- Advance the system for establishing internal auditors.

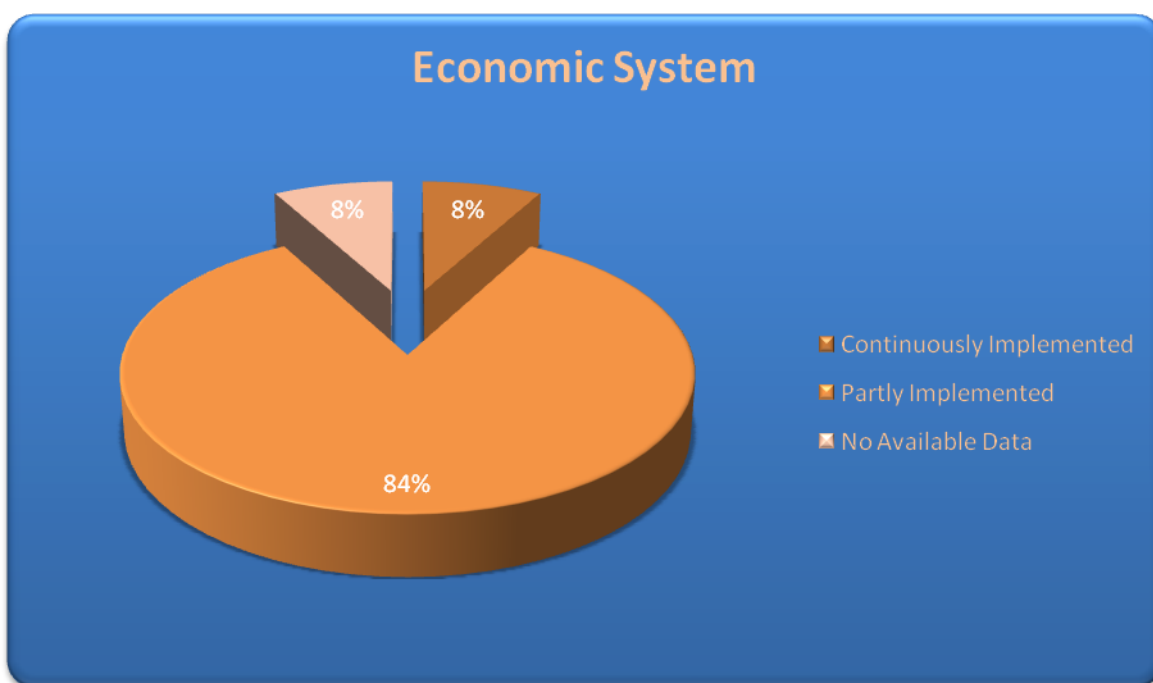
¹²² Official Gazette of the Republic of Serbia No. 16/11.

¹²³ Ministry of Finance, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

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 twelve reviewed recommendations regarding the economic system, the Anti-Corruption Agency concluded that one (8%) was continuously implemented and that 10 (84%) were partly implemented but that additional improvements in these areas could be made. The Agency failed to obtain data about the implementation of one recommendation (8%) and was thus unable to analyse it.



II.5.1. General Overview

The public opinion survey on corruption the agency TNS Medium Gallup conducted for UNDP Serbia in November 2011 shows that the citizens are generally pessimistic about the developments in Serbia. The majority (73%) thinks that the country is going in the wrong direction, while only 14% (less than in the previous rounds) think that it is heading in the right direction. Many of the respondents were undecided on this issue, which demonstrates their general confusion about this topic.

The citizens perceive their financial situation as extremely difficult; as many as 51% of the respondents qualified it as bad, even intolerable. Over one half of the respondents (54%) said that they were worse off than a year ago, 39% said that their financial status had not changed, while only 5% qualified it as better.

The following problems worry the citizens of Serbia the most: unemployment (41%), poverty (21%), corruption (12%) and low wages (7%). Unemployment and poverty have been the most serious chronic problems troubling the citizens of Serbia for a long time now and they were mentioned the most frequently in all four rounds of the survey. Furthermore, the prevailing opinion in all four rounds was that large companies constituted an important link in the corruption chain. A vast majority of the citizens (74%) think that it is in the interest of major companies to have corrupt governments they can bribe and thus achieve their own interests. On the other hand, the respondents perceive small and medium-sized enterprises as the sector adversely affected by corruption.¹²⁴

In its Analytical Report, the European Commission provided a general assessment of the existence of a functioning market economy in Serbia and of Serbia's capacity to cope with competitive pressure and market forces within the European Union. The EC says that Serbia has achieved a degree of macroeconomic stability which broadly allows economic operators to make decisions in a climate of predictability. The economic policies of the past decade supported steady growth of close to 5% on average, gradually declining inflation and a general improvement of living standards. However, the global financial and economic crisis exposed the vulnerabilities of a growth paradigm, which was based on domestic demand financed largely by borrowing abroad. A number of steps have been taken so far to establish a legal system which underpins the market economy. Nevertheless, the business environment has continued to be constrained by shortcomings in the enforcement of the rule of law and the so far unclear situation in relation to property rights. The scope of the informal economy in Serbia remains substantial. Despite some measures taken in recent years to strengthen the fight against corruption, informal methods of contract enforcement, which by-pass the legal system, continue to be widespread. This is abetted by the lengthy enforcement procedures for court decisions and the major backlog in this area. The state influence in the economy has remained high due to the slow progress of privatisation and price liberalisation. In spite of the steps towards establishing legal predictability and removing red tape, the business environment continues to be constrained by legal uncertainty. Unemployment remains high and the social situation strife. Serbia needs to urgently address structural rigidities on the labour market, including the mismatch between demand for and supply of skilled workforce.¹²⁵

In its White Book, the Foreign Investors Council states that 2011 was marked by a very slow and uneven recovery from the economic and financial crisis of previous years. In its view, Serbia is still facing a complex set of macroeconomic problems: the highest inflation in Europe, one of the highest unemployment rates at around 20%, and the number of unemployed is still growing. The percentage of actively employed among the potential work force (from 18 to 65 years) is therefore shrinking and stands at around 45%; fiscal revenues are shrinking because of the reduced activity and increase in the grey economy, which has led to higher borrowing and a higher budget deficit. Serbia's GDP growth is falling short of expectations, and still has to reach the pre-crisis level. The

¹²⁴ UNDP Serbia and TNS Medium Gallup "Corruption Benchmarking in Serbia", Perception of Corruption at the Household Level, 4th Round, November 2011, pp. 6, 7 and 13, available at <http://www.undp.org.rs/index.cfm?event=public.publicationsDetails&revid=0E60B769-EB6D-662E-C949956889479FCD>.

¹²⁵ European Commission, Analytical Report Accompanying the Document Communication from the Commission to the European Parliament and the Council Commission Opinion on Serbia's Application for Membership of the European Union, Brussels, 12 October 2011, pp. 50, 55, available at http://www.seio.gov.rs/upload/documents/eu_dokumenta/misljenje_kandidatura/sr_analytical_rapport_2011_en.pdf.

pace of recovery from the previous crisis is not strong enough to reverse the negative labour market trends or to contribute to an increase in public revenues. The situation in the labour market is the biggest socio-economic and political problem facing the Government. Liquidity is one of the greatest problems faced by companies and the number of illiquid companies has increased by over 30% during the past year.

The Global Competitiveness Report shows Serbia still holding an unfavourable ranking of 95 among 142 countries, which is just one place better than the previous year. In some important aspects that form the complex Global Competitiveness Index, Serbia ranks even lower than in the composite index. For example, Serbia ranks 134th in burden of government regulation, 132nd in extent of staff training, 137th in effectiveness of anti-monopoly policy, 118th in extent and effect of taxation, 125th in business impact of rules on foreign direct investment, 136th in firm-level technology absorption, and 130th in company spending on research and development.

The comprehensive review of legislation (the so-called Guillotine) is still incomplete and the intensity of the reform has waned. The Government institutionalised a Council for Competitiveness, but, as the authors of the White Book note, this high level Council has not produced visible results yet. In the view of the FIC, there have been some improvements in the sectors considered as pillars of development -- energy, real estate and construction, telecommunications, labour market and human capital -- but the FIC assessment remains the same as in the previous years: the improvements are smaller than they could have been and definitely smaller than necessary to attract more investments.¹²⁶

2.5.2. Implementation of the Strategy Recommendations

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

In its Grey Book, the National Alliance for Local Economic Development (NALED) states that the Comprehensive Regulatory Reform (CRR) was completed with a year's delay, but that lots has been done in eliminating unnecessary and damaging regulations during the reform, although it has not been fully implemented (**Recommendation 124**). The savings made to the domestic economy by the CRR are estimated at 120 million EUR per annum. However, the abolition of the old unnecessary and damaging regulations was accompanied by a "regulatory tsunami" of new regulations. Over 2,000 new laws, decrees and rulebooks were adopted in the past three years; some of them introduced new unwarranted obligations and procedures. A new Regulatory Reform Strategy needs to be adopted given that the previous one expired in late 2011.¹²⁷ The draft of the 2011-2014 Strategy is posted on the Regulatory Reform Office website. The "regulatory tsunami" has been hindering the work of companies, because they are also under the obligation to familiarise themselves with the new regulatory framework.

The alignment of the national legislation with the *acquis communautaire* has involved the establishment

¹²⁶ Foreign Investors' Council, "White Book, Proposals for improvement of the business environment in Serbia", 2011, pp. 12 – 15, available at <http://www.fic.org.rs/admin/download/files/cms/attach?id=261>.

¹²⁷ National Alliance for Local Economic Development, Grey Book IV, Recommendations for removing administrative obstacles to doing business in Serbia 2011/2012, 2011, p. 13, available in Serbian at <http://www.naled-serbia.org/documents/lavrint/Siva%20knjiga%20IV%20web.pdf>.

of commercial registers with the aim of reducing the state's role in economy, eliminating barriers and reducing the administrative procedures in this area to a minimum. The establishment of the Register of Companies and the introduction of a system for entering and registering companies in the Register, which replaced the system involving the submission of applications and granting of operating licences, abolished the state's discretionary powers regarding these issues and rendered impossible or at least minimised the possibility of corruption in the system of establishing companies entered in the Register of Companies of the Business Registers Agency as a single, centralised electronic database of all entities.¹²⁸

A functioning legal system is prerequisite for the existence of a good business environment (**Recommendation 125**). In its White Book, the Foreign Investors Council reiterates the problem arising from the lack of by-laws and the fact that specific by-laws are adopted with great delays. On the other hand, as it notes, it is not uncommon to experience long delays in the foundation of a state body or authority which is provided for by the new legislation. For example, the National Council for Consumer Protection has not been formed yet.¹²⁹

Within its By-Law Barometer project, NALED listed the laws the enforcement of which has been delayed because the relevant by-laws had not been adopted on time. Of the 204 by-laws in all, 34 (17%) were adopted before the deadline, 63 (31%) were adopted after the deadline, with an average delay of 146.35 days, while 67 (33%) of the by-laws have not been adopted yet and their adoption was overdue 313.15 days on average.¹³⁰

In its report on the status of the regulatory reform in the third quarter of 2011, NALED also mentioned the problem of the slow adoption of by-laws without which the new laws cannot be enforced and the obvious lack of accountability for the delays. The Government itself is not improving the transparency of the legislative process by publishing an updated plan of all regulatory activities and information related to the implementation of the plan and reasons for any deviations from it. It is thus clear why the regulatory bodies are not held accountable for delays in the implementation of the reforms and why businesses are unaware when they will be able to or have to adjust their business operations to a new regulatory framework. The time that passes from the moment an initiative to change a detrimental regulation is submitted until it is changed is unjustifiably long. Reforms will be stepped up in the extent in which regulatory bodies accept businesses as legitimate initiators and interlocutors in the process of amending the regulations within the areas these bodies regulate.¹³¹

The Register of Injunctions, established under the Law on Enforcement and Security, was launched on 19 September 2011. Provisional remedies ordered during or after judicial proceedings and prohibiting the alienation or encumbrance of movable property, real estate or real rights over real estate are entered in this Register. The establishment of the Register of Injunctions will significantly

¹²⁸ Ministry of Economy and Regional Development, Reply to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

¹²⁹ Foreign Investors' Council, "White Book, Proposals for improvement of the business environment in Serbia", 2011, pp. 47, available at <http://www.fic.org.rs/admin/download/files/cms/attach?id=261>.

¹³⁰ National Alliance for Local Economic Development, By-Law Barometer, available at http://barometar.naled-serbia.org/index_en.php (accessed in December 2011).

¹³¹ National Alliance for Local Economic Development, Status of the Guillotine Process for the Third Quarter of 2011, available at http://www.naled-serbia.org/documents/lavirint/NALED%20QUARTERLY%20REPORT%20III%202011_oct%205.pdf.

raise the level of legal predictability of doing business in Serbia. Online public access to the data in the Register is important both in terms of the protection of the persons in whose favour the courts ordered the provisional remedies and in terms of the protection of third parties who were planning to purchase the movable or immovable property or use it as security interest.

Electronic communication between the Tax Administration and tax-payers is expected to bring the greatest savings to businesses and citizens and considerably facilitate doing business. By mid-August 2011, the Tax Administration had registered about 20 thousand VAT payers who will communicate only electronically with it in this domain. The Tax Administration has to date developed electronic services for submitting VAT returns and annual personal income tax returns. Only the former service is operational for now, while the latter service is to be launched in early 2012, i.e. citizens will be able to file their personal income tax returns electronically. Of course, the tax-payers or their accounting agencies will need to possess qualified electronic certificates to submit the tax returns electronically because these certificates are requisite for digitally signing the tax returns. The extent to which this option will be used will depend on the users as well.¹³² The implementation of a Memorandum on Cooperation with the Tax Administration is under way and the electronic submission of tax returns by using the Chamber of Commerce and Industry of Serbia (CCIS) qualified electronic certificates is being tested in 50 municipalities in Serbia. However, not all by-laws needed for the full enforcement of the Law on Electronic Documents have been finalised, wherefore the public documents issued by the CCIS cannot be obtained electronically, by using qualified electronic certificates. Apart from simplifying and rationalising the operations of economic entities, the use of these certificates will help reduce corruption because it obviates the need for the interested parties to come into contact. The para-fiscal burdens, which have gone completely out of control, also pose a major problem. The situation in this area deteriorated in 2011 due to the substantial increase of nearly all administrative and utility taxes.¹³³

The new Law on Companies, adopted in 2011,¹³⁴ further aligned the legislation governing the economic system. The Law also regulates the legal status of entrepreneurs comprehensively, which means that this issue will no longer be regulated by a separate law, wherefore it contributes to reducing normativism in this field. Furthermore, it equates economic entities in terms of establishment and doing business.

The NARS in 2011 adopted the Law on Voluntary Corporate Financial Restructuring,¹³⁵ the Law on Public Private Partnerships and Concessions,¹³⁶ and amendments to the legislation on the registration of economic entities, which helps limit the role of the state in the economy, contributes to the formulation of the basic fair competition rules, contractual freedom and the creation of an environment conducive to efficient business operations and the elimination of inconsistencies and contradictions among specific systemic regulations governing the field of economy. All information on the legal statuses of economic entities has been located in one place since 1 January 2010, when the Register of Financial Statements and Solvency was launched into operation in the Business Registers Agency. This Register brings manifold benefits to the economic entities and simultaneously

¹³² *Ibid.*

¹³³ Chamber of Commerce and Industry of Serbia, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

¹³⁴ Official Gazette of the Republic of Serbia Nos. 36/11 and 99/11.

¹³⁵ Official Gazette of the Republic of Serbia No. 36/11.

¹³⁶ Official Gazette of the Republic of Serbia No. 88/11.

constitutes a prerequisite element for rendering business decisions, reducing business risks and for market research and analysis. State authorities and institutions also find the Register useful because it facilitates their statistical monitoring of the economy, analysis and diagnosis of the macroeconomic trends in the country, as well as economic, monetary and fiscal policy decision-making.¹³⁷

The CCIS in 2011 initiated numerous changes to law governing the economic system and the Government has already endorsed or is in the process of adopting a small number of the proposed measures. The definitions of small and medium-sized enterprises and entrepreneurship are not in line with the EU definitions and their legal status is defined in the Accounting and Auditing Law; amendments to this Law are currently being drafted. Furthermore, the CCIS submitted to the Ministry of Finance suggestions regarding the draft amendments to the Public Procurement Law, which the Ministry endorsed. It also initiated amendments to the Law on Companies moving the date it comes into effect from 1 February to 1 July 2012.¹³⁸

The International Finance Corporation and the World Bank Group publication Doing Business 2012, which compares regulations on entrepreneurship, ranked Serbia 92nd on the list of 183 countries with respect to ease of doing business (i.e. it slid from 88th place in 2011). Serbia was best ranked by Getting Credit (24th) and again recorded the poorest score in Dealing with Construction Permits (175th), which requires 19 procedures, 279 days and costs 1,603.8% of per capita income. To compare, these costs in East European and Central Asian Countries average 440.8% income per capita and 45.7% in the OECD countries. Serbia lags far behind the regional average (East Europe and Central Asia) in Dealing with Construction Permits, which ranks 126th.

Serbia made the greatest progress in Registering Property, where it rose from 98th to 39th place over 2011, most probably because the number of days needed to register property fell from 91 to 11 (Serbia was ranked 186th in this category in 2005). This is the only area in which Serbia was ranked better than the previous year; its ratings in all other areas slid over 2011. Serbia is also poorly ranked in the Paying Taxes Category (143rd), way below the regional average (99th). On average, firms make 66 tax payments a year, spend 279 hours a year filing, preparing and paying taxes and pay total taxes estimated at 34% of the profit. These indicators were the same as in 2011.

As far as enforcement of contracts is concerned, Serbia slid 10 places since 2011, down to 104th rank, again below the regional average (60th). According to the data in the Report, the enforcement of a contract requires 36 procedures, takes 635 days and costs 31.3% of the value of the claim.¹³⁹

Competition, Concentration and State Aid

Competition. – The United Nations Conference on Trade and Development lists the following problems as the main ones regarding Serbia's competition protection policy (**Recommendation 129**): (1) the limited impact of competition law enforcement due to lack of resources of the

¹³⁷ Ministry of Economy and Regional Development, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

¹³⁸ Chamber of Commerce and Industry of Serbia, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

¹³⁹ The World Bank and International Finance Corporation, "Doing Business 2012, Economy Profile: Serbia", 2011, available at <http://www.doingbusiness.org/~media/fpdkm/doing%20business/documents/profiles/country/SRB.pdf>.

Commission for Protection of Competition and problems with judicial control, (2) major problems in public procurement (bid rigging and market sharing affect in particular the health care and the construction sectors), (3) the close connections between regulatory issues, public procurement and corruption practices that call for close cooperation among authorities, (4) the need to strengthen competition culture of all economic agents, as well as the need to reinforce training and academic curricula for competition law and economics at Universities, for compliance programmes in the public administration and enterprises as well as in the judicial system.

The Commission for Protection of Competition (CPC) should be strengthened in order to be able to fully enforce the law and dispose of its functions. Creating a sustainable and predictable source of financing for the CPC is among the highest priorities. The CPC should also reinforce its human capital basis, endow the Authority with high level expertise in economics and expand its operational capacity in both law and economics. The CPC will still need technical assistance and training should also be extended to the Administrative Court that has recently been attributed the jurisdiction for judicial review of decisions of the CPC. The complementary areas of consumer protection and unfair competition need to be upgraded in institutional terms. Although respective laws have been enacted and approximate Serbian law in this respect with EU law, the present institutional framework is extremely weak. The enforcement system relies on consumer NGOs that do not have the required capacity to enforce the law or bring cases to courts. Unfair competition policy is also very incipient. Finally, competition policy should be given an equal status as industrial policies in the formulation of development policies of the country.¹⁴⁰

According to the Study on the Implementation of European Law in Serbia of the New Policy Centre, the Law on the Protection of Competition and its by-laws are optimally aligned with EU law and there are no major problems in its enforcement in practice. It is nevertheless necessary to analyse many other laws that cover the issue of sector-specific competition protection, immediately stop retroactively applying the new Law on Protection of Competition to cases which were initiated under the previous Law; establish a system of coordination between the CPC and other state bodies, as well as joint reporting, increase the capacity and level of activities in sectoral market analyses performed by the Commission, re-examine the system of financing the CPC which directs it towards concentration analyses and decrease the disproportions in the CPC's activities which, according to the Study, are presently to the detriment of cartel and dominant position abuse analyses.

The Commission for the Protection of the Competition is not financed from the budget of the Republic of Serbia, but from the fees paid upon concentration notifications, to limit the state's possibilities for influencing its work. The financial resources are allocated on the basis of the CPC's financial plan approved annually by the Government. Hence, according to the Study, it comes as no surprise that most of the cases the CPC reviews regard concentration notifications, which may also be considered as a kind of conflict of interest.¹⁴¹

In the section of its Analytical Report dealing with antitrust and mergers, the European Commission states that all fundamental aspects of the legal and institutional frameworks are aligned

¹⁴⁰ United Nations Conference on Trade and Development (UNCTAD) Peer review of Serbian competition law and policy, 2011, pp. 6-7, 80-85, available at http://archive.unctad.org/en/docs//ditcclp2011d2_en.pdf.

¹⁴¹ New Policy Centre, "Mind the Gap, A Study on the Implementation of European Legislation in Serbia", 2011, pp. 92, 104, available at: <http://www.cnp.rs/resources/files/eng.pdf>.

with the EU *acquis*. However, conflicting legislation limiting the scope and effectiveness of the competition law has been adopted without prior consultation of the Commission for the Protection of Competition and remains in force. Serbia needs to rectify these contradictory provisions in its legislation. Furthermore, to avoid this in future, the CPC should be consulted on all draft legislation which could have an impact on competition in Serbia.

The CPC needs to reinforce its capacity for economic analyses and in administrative and procedural law, as a series of its decisions have been overturned on appeal for procedural reasons. The European Commission also underlines that the capacity of the judiciary to assess complex legal and economic evidence in competition cases remains weak. Further efforts are needed to increase the consistent enforcement records of the CPC.¹⁴²

The Commission for the Protection of Competition in 2011 launched an initiative to be provided with the possibility of rendering its opinions on draft legislation that may affect the implementation of the Law on the Protection of Competition, i.e. on regulations which affect competition in a relevant market. This initiative is still in the pipeline.

The CPC issued a number of decisions in 2011 in which it found violations of the regulations on competition and issued specific competition protection measures, i.e. imposed fines. It also rendered a large number of rulings allowing concentration of market participants.

Although the bulk of its activities regards conducting procedures and penalising those who had already been found in violation of competition regulations, the CPC has also been implementing pro-active activities aimed at preventing violations of competition rules. These activities primarily involve raising public awareness of the importance of competition rules, preparation of sectoral analyses and filing initiatives with the Government and other institutions with the aim of improving the efficiency of competition policy enforcement in Serbia. For example, in its 2011 Sectoral Analysis of the Petroleum and Petroleum Products Market, the CPC identified specific deficiencies in this market and the potentially adverse effects of the regulations governing it. In late 2011, the Commission held a meeting with the representatives of specific public utility companies in Serbia to apprise them of the enforcement of competition rules and paved the way for preparing future activities focusing on training their staff.¹⁴³

The Ministry of Agriculture, Trade, Forestry and Water Management is charged with the issues of unfair competition, which gives rise to the following question: why has just this one segment of competition been entrusted to an entirely different public authority.

Mergers. – UNCTAD's Peer Review of the Serbian competition law and policy states that the Commission for the Protection of Competition has been flooded with merger notifications and with applications for individual exemptions from the prohibition of anti-competitive agreements, but that no merger has yet been effectively blocked and major remedies have not been imposed. As to the

¹⁴² European Commission, Analytical Report Accompanying the Document Communication from the Commission to the European Parliament and the Council Commission Opinion on Serbia's Application for Membership of the European Union, Brussels, 12 October 2011, p. 70, available at http://www.seio.gov.rs/upload/documents/eu_dokumenta/misljenje_kandidatura/sr_analytical_rapport_2011_en.pdf.

¹⁴³ Commission for the Protection of Competition, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

funding of the CPC, there is a dangerous reliance on merger fees. The financial sustainability of the CPC's budget requires a new system of financing.

In privatisation procedures, the role of the CPC has been limited to assessing mergers after the deal is consummated. However, this is too late for any significant structural remedy to be implemented. Competition concerns about each privatisation process should be taken into account right at the beginning of the process and be part of the overall decision of the Government.

The CPC is the only competition authority in Europe that is only financed by merger fees and this source of financing introduces important distortions in business decisions. The number and dimension of mergers cannot be predicted at the beginning of the year or of any business period, and fluctuates substantially with the business cycle and also with so-called waves of mergers. Consequently, the CPC has tended to hire staff very conservatively because it may lack the financial resources to pay them and has thus faced serious staffing problems. The position for the quality control of all economic work done within the authority requires a seasoned economist who holds an advanced university degree in economics with specialisation in industrial organisation. With only one economist, the respective CPC department is clearly understaffed. The amount of financial resources for the future is not adequate for the functions that the CPC has been entrusted with. The notification fees are clearly among the highest merger notification fees paid in Europe, considering the income levels of Serbia, and constitute an important barrier to business.¹⁴⁴

State Aid. – Apart from antitrust and mergers, the EU *acquis* on competition also covers state aid policies. It includes rules and procedures to prevent governments from granting state aid which distorts competition on the internal market.

In the view of the European Commission, the legal and institutional framework has been put in place in the field of state aid control. The Serbian Government adopted a State Aid Inventory in September 2011 in accordance with the Interim Agreement. Given the institutional set-up of the Serbian state aid authority, the *de facto* operational independence of the authority must be closely monitored. In this respect, it is crucial that the Commission for Control of State Aid (CCSA) demonstrates its ability to act independently of aid-granting institutions (in particular ministries) and establishes a solid track record of well-reasoned decisions. The CCSA must establish credible and consistent enforcement records. The operational independence of the CCSA needs to be demonstrated in practice.¹⁴⁵

According to the Study on the Implementation of European Legislation in Serbia, the fact that criteria under which state aid is allocated are enumerated in the Decree on the Rules for Granting State Aid rather than in the Law will pose a challenge in this area. Therefore, any other law dealing with any sort of state aid will have a higher legal standing than the Decree and the criteria listed in it must be included in the Law.

¹⁴⁴ United Nations Conference on Trade and Development (UNCTAD) Peer review of Serbian competition law and policy, 2011, pp. 23, 73, 81, 83, available at http://archive.unctad.org/en/docs//ditclp2011d2_en.pdf.

¹⁴⁵ European Commission, Analytical Report Accompanying the Document Communication from the Commission to the European Parliament and the Council Commission Opinion on Serbia's Application for Membership of the European Union, Brussels, 12 October 2011, pp 69-70, available at http://www.seio.gov.rs/upload/documents/eu_dokumenta/misljenje_kandidatura/sr_analytical_rapport_2011_en.pdf.

The Commission for Control of State Aid may decide whether state aid is allowed or not, it may initiate a review of whether state aid was granted or used in contravention of the Law, it may suspend allocation of state aid if it finds that such state aid might disrupt competition in the market, it may ask state aid grantors for any information regarding state aid it deems relevant, and finally, it may order the recovery of any state aid it finds to be unlawful. It remains to be seen whether the Commission will have the authority to suspend state aid granted under a law which has a higher legal standing than the Decree on the Rules for Granting State Aid.¹⁴⁶

Privatisation

According to the EC Analytical Report, privatisation is one of the areas still giving rise to concerns about corruption and it has been continuously affected by it. The Anti-Corruption Council identified a number of, mainly large, privatisation transactions in which there were suggestions of corruption, but only a few were investigated and even fewer were prosecuted.¹⁴⁷

External auditing of the business operations of a company for which a capital sale contract had been concluded is not within the remit of the Privatisation Agency (**Recommendation 126**). Under the Privatisation Law and the Privatisation Agency Law, the Agency is entrusted with overseeing the buyers' fulfilment of the obligations laid down in the contracts on the sale of socially-owned capital. Such supervision is conducted in the offices of the privatised companies and by insight in the documentation the privatised companies and buyers submit at the Agency's request. In 2011, the Privatisation Agency performed 912 field checks of the fulfilment of contractual obligations in the privatised companies. Furthermore, in the event a contract on the sale of socially-owned capital by public auction envisages an investment obligation exceeding 100,000 RSD, the buyer is under the obligation to submit to the Agency a report by a certified auditing company confirming that the buyer had fulfilled the investment obligation. The Agency performs oversight and renders a decision stating that the buyer fulfilled the contract obligations or that there are grounds for taking measures against the buyer pursuant to the contract and the law (it can set another deadline for fulfilling the contract obligations or terminate the contract on the sale of socially-owned capital). The Privatisation Agency in 2011 communicated over 800 notices setting new deadlines for the fulfilment of contract obligations and terminated a total of 39 capital sale contracts – 32 contracts on sale by public auction and 7 contracts on sale by public tender.¹⁴⁸

The Privatisation Agency communicates information on privatisation procedures, on performed checks and undertaken measures to the state authorities at their request and communicates information on the performed checks and undertaken measures to the trade unions, workers and minority share-holders at their request. The Agency also publishes the sales contracts, which comprise social programmes, on its website, on which it also publishes the main information about

¹⁴⁶ New Policy Centre, "Mind the Gap, A Study on the Implementation of European Legislation in Serbia", 2011, pp. 117, 122 - 123, available at: <http://www.cnp.rs/resources/files/eng.pdf>.

¹⁴⁷ European Commission, Analytical Report Accompanying the Document Communication from the Commission to the European Parliament and the Council Commission Opinion on Serbia's Application for Membership of the European Union, Brussels, 12 October 2011, pp 26, 27 и 48, available at http://www.seio.gov.rs/upload/documents/eu_dokumenta/misljenje_kandidatura/sr_analytical_rapport_2011_en.pdf.

¹⁴⁸ Ministry of Economy and Regional Development, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011, and Privatisation Agency, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

companies undergoing privatisation, contracts with consultants, all the laws and by-laws governing privatisation and the relevant press releases regarding the privatisation process (**Recommendation 128**).¹⁴⁹

Good Governance, Training, Oversight and Protection

The Chamber of Commerce and Industry of Serbia plans on conducting activities in the coming period aimed at introducing integrity plans for economic entities pursuant to the Guidelines enacted by the Anti-Corruption Agency (**Recommendation 140**). Every company or institution needs to fulfil its legal and economic obligations, adjust to the changed social circumstances and demonstrate corporate responsibility. The CCIS aims at ensuring that these standards are accepted by the private sector as beneficial to business and plans to establish an Integrity Office, which is to provide services to other economic entities in implementing the above-mentioned activities.

Compliance with the law and integrity are gaining increasing importance throughout the world and, consequently, ethical conduct has become a factor ensuring successful business. In addition to the above mentioned, the Anti-Corruption Working Group will in the coming period focus on the continued transfer of UN and EU expertise to 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 economic entities, and the improvement of the public procurement system from the viewpoint of enforcing anti-corruption measures. Back in 2009, the Working Group submitted to the Public Procurement Directorate and, subsequently, to the working group amending the Public Procurement Law its initiative on introducing integrity agreements between parties involved in public procurements in Serbia, a mechanism that has been applied in numerous states. The initiative was, unfortunately, not upheld.

In the view of the CCIS, the integrity pact is a very important tool for fighting corruption in the field of public contracting. The members of the Working Group are of the view that such a document should apply to procurements of greater value and that the professional unit of the Public Procurement Directorate, i.e. the Commission for the Protection of Rights should play the primary role of “independent monitor” in the experimental stage. They, however, do not exclude the possibility of involving other relevant actors and stakeholders as well, notably the State Audit Institution. Other countries also engage professional auditing companies in applying integrity agreements in public procurement procedures, but the CCIS is of the view that the approach involving the Commission would be sustainable in the Serbian circumstances and that the possibility of engaging an auditing company to act as an “independent monitor” should not be ruled out in case of procurements of greater value, in view of the financial legal supervision and verification of the entire procurement procedures and, subsequently, of the execution of the contracts.¹⁵⁰

The Anti-Corruption Agency has actively participated in the meetings of the UN Global Compact Anti-Corruption Working Group in Serbia, at which it promoted and publicly advocated that economic entities adopt integrity plans pursuant to the Agency Guidelines although they are not

¹⁴⁹ *Ibid.*

¹⁵⁰ Chamber of Commerce and Industry of Serbia, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

under the legal obligation to do so. It highlighted at the meetings that the economic entities' adoption of such integrity plans would facilitate good governance, the introduction of practices and standards that are still not mandatory under the law, because integrity plans would improve the efficiency, effectiveness and quality of the work of the economic entities i.e. improve their business operations. The Agency has designed a model integrity plan also for the economic system.

Pursuant to the enactments of the Chamber of Certified Auditors, continuous advanced professional training is one of the prerequisites for renewing the certified auditors' two-year licences for auditing financial statements (**Recommendation 132**). Licensed certified auditors are under the obligation to attend at least 45 hours of advanced professional training within a two-year period and the Chamber accordingly organised two 40-hour training cycles in 2011 that covered the practical implementation of international accounting and auditing standards, the code of conduct, money laundering regulations, taxation, et al. The Chamber in 2011 also implemented a number of international activities. In 2007, the Chamber rendered a decision on mandatory compliance with the Code of Ethics for Professional Accountants.¹⁵¹

Independent external auditing of quoted shareholding companies is governed by the Corporate Management Code. Its provisions on external audits aim at ensuring the independence and impartiality of external auditors. Since external auditors are selected by the shareholders assemblies, new additional requirements and a procedure for appointing an external auditor have been laid down. The Code limits the number of times one and the same company may be consecutively selected to perform the audits.¹⁵²

A National Strategy and Action Plan for Advancing Corporate Financial Reporting and new laws on accounting and auditing were drafted in 2011. The public debates on these drafts were held in the September-December 2011 period (**Recommendation 133**).

Although the law currently does not oblige accountants to attend advanced professional training, the legislators are considering including such an obligation in the new law on accounting.¹⁵³ The CCIS Training Centre held seminars on corporate management in economic entities throughout 2011.¹⁵⁴

The Rulebook on Common Criteria and Standards for the Establishment and Functioning of a Financial Management Control System in the Public Sector lays down the common criteria and standards for establishing a system for the financial management control of direct and indirect budget beneficiaries as a comprehensive system of internal audits implemented through policies, procedures and activities designed by the manager of the beneficiary of public funds with the aim of providing reasonable assurances that the goals of the beneficiary of public funds will be achieved through: 1) operations in accordance with the regulations, in-house enactments and contracts; 2) reality and integrity of financial and business reports; 3) good financial management; and 4)

¹⁵¹ Ministry of Finance, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

¹⁵² Chamber of Commerce and Industry of Serbia, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

¹⁵³ Ministry of Finance, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

¹⁵⁴ Chamber of Commerce and Industry of Serbia, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

protection of resources and data. The process of establishing the system began in 2010 and continued in 2011 by the adoption of in-house financial management control regulations laid down in internal enactments, rulebooks, procedures and by reporting to the Finance Minister on the adequacy and functioning of the established financial management control system. The established system is monitored, updated and improved in accordance with the recommendations of internal auditors and other assessments (**Recommendation 130**).

The CCIS Court of Honour is an institution serving to protect business ethics, oversee the implementation of the code and compliance with good business practices and business ethics. The Court pronounces social discipline measures against shareholding companies found in violation of good corporate governance whenever it establishes that a company's bodies did not act in the best interest of the company; such actions also include non-abidance by the prohibition of conflict of interest and unfair competition (**Recommendation 136**).¹⁵⁵

The Anti-Corruption Agency adopted a Rulebook on the Protection of Persons Reporting Suspicions of Corruption in July 2011. The Rulebook primarily governs the Agency's actions in case a person reports to it his or her suspicions of corruption but not protection itself, due to the lack of material provisions in general sources of law which would regulate the nature, content and scope of the protected right, types of public interest disclosures, as well the corresponding protection. A general legal framework 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**).

Implementation of the Other Strategy Recommendations

The Agency failed to obtain data on whether any activities were conducted in 2011 to amend the Law on Public Agencies and regulate the receipt of donations and the spending of donated funds (**Recommendation 139**).

2.5.3. Anti-Corruption Agency Recommendations

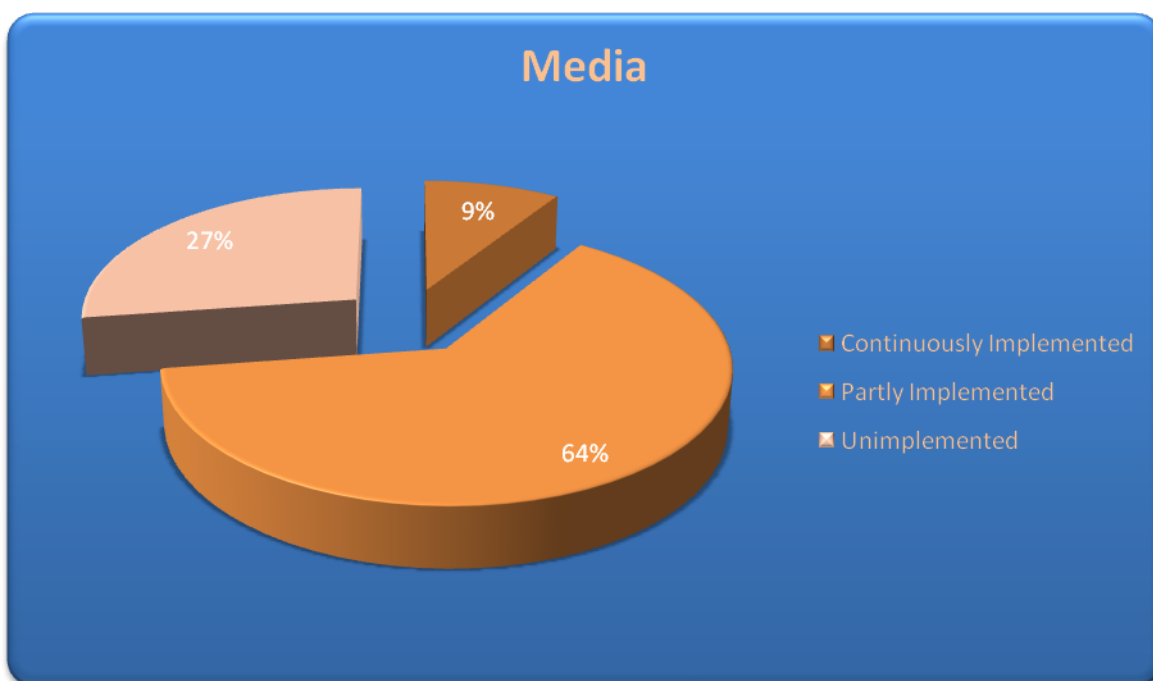
- Continue aligning economic regulations and eliminating unnecessary procedures and improve the system of enacting by-laws prerequisite for the enforcement of the laws.
- Empower the Commission for the Protection of Competition and eliminate all the shortcomings of the legal framework governing competition,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

¹⁵⁵ *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 eleven recommendations regarding the media system, the Anti-Corruption Agency concluded that one (9%) was continuously implemented, that seven (64%) were partly implemented but that additional improvements in those areas were possible, and that three recommendations were not implemented (27%).



2.6.1. General Overview

The results of the TNS Medium Gallup survey on corruption conducted for the UNDP in November 2011 show that around one half of the citizens think that there is a high level of corruption in the media. Like in the previous rounds of the survey, the respondents mostly got their information about corruption from the media (61%).¹⁵⁶

¹⁵⁶ UNDP Serbia and TNS Medium Gallup "Corruption Benchmarking in Serbia", Perception of Corruption at the Household Level, 4th Round, November 2011, pp. 19 and 25, available at <http://www.undp.org.rs/index.cfm?event=public.publicationsDetails&revid=0E60B769-EB6D-662E->

The Anti-Corruption Council published its Report on Pressures on and Control of Media in Serbia in September 2011. During its analysis of the extensive documentation, the Anti-Corruption Council identified the three main problems about media in Serbia: 1) lack of transparency of media ownership; 2) the state institutions' economic influence on the media through different types of budget allocations; and 3) the problem of RTS, which, instead of being a public service, has the role of the service of political parties and ruling elites. Consequently, the media are closed to the numerous problems plaguing Serbia, including the problem of corruption.¹⁵⁷

The media sector entered 2011 burdened by a large number of problems, accompanied by delays in the design of a Media Strategy, which was to have, as many believed, brought long-awaited solutions and media reforms. The Association of Independent Electronic Media (ANEM) listed the continued attacks, threats and various pressures on journalists and media, despite the legal provisions prohibiting or penalising them, as one of the main problems in the media sector in 2011. The situation was exacerbated by the existing legislation that prescribes mild penalties in such cases; obstruction of both the efforts to identify those threatening and attacking journalists and to establish their accountability; the courts' track record of inadequately punishing the perpetrators of these attacks and, in particular, their reluctance to shed full light on all the relevant facts and the background of the attacks. ANEM also highlights the discrepancies in the courts' views and case law, the duration of proceedings and questionable decisions in cases against journalists or media outlets. All this has resulted in greater media self-censorship.¹⁵⁸

The ongoing social transition in Serbia has rendered both the media and journalists much more vulnerable to the global crisis in journalism than their peers in the more developed liberal democratic systems. The survey "Profession at the Crossroads – Journalism at the Threshold of an Information Society" was conducted by the research team of the Centre for Media and Media Research of the Belgrade University College of Political Sciences in the July 2010-June 2011 period. According to this research, the analysis of the socio-economic context in which media and journalists in Serbia work clearly demonstrates that it is not conducive to media autonomy. Of course, there are no independent media in the full meaning of the word anywhere in the world, but the media freedom indicators can be objectivised and measured and the media systems in different states can be ranked by the degree of freedom they have won for themselves. On such a list drawn up by Freedom House in 2010 (Freedom of the Press), for instance, media in Serbia were rated more poorly than in the previous years and slipped to 78th place; Serbia was thus rated within the largest group of "partly free" states. According to the Reporters without Borders 2010 Report, Serbia was ranked the second to last country in the Western Balkans and ranked 85th in the worldwide index.¹⁵⁹

[C949956889479FCD](#).

¹⁵⁷ Anti-Corruption Council, Government of the Republic of Serbia, Report on Pressures on and Control of Media in Serbia, September 2011, p. 3, available at <http://www.antikorupcija-savet.gov.rs/Storage/Global/Documents/mediji/IZVESTAJ%20O%20MEDIJIMA%20PRECISCEN%20ENG..pdf>.

¹⁵⁸ Association of Independent Electronic Media, Legal Monitoring of the Media Scene in Serbia, September 2011 p. 22, available at

<http://www.anem.rs/en/aktivnostiAnema/monitoring/story/12699/THE+FIFTH+ANEM+MONITORING+PUBLICATION.html>.

¹⁵⁹ Centre for Media and Media Research, College of Political Sciences, University in Belgrade, "Profession at the Crossroads – Journalism at the Threshold of an Information Society", June 2011, pp. 51-52, available in Serbian at <http://centarzamedije.fpn.bg.ac.rs/content-files/Novinarstvo%20na%20pragu%20informacionog%20drustva.pdf>.

Opinions of Media Professionals

The Centre for Media and Media Research research shows that journalists single out the following as the gravest problems media in Serbia face: lack of quality journalism, domination of sensationalism and tabloid journalism, strong political pressures and lack of media autonomy, while only a few think that the technological gap is a problem. Media owners and managers consider these problems are not as grave as the economic difficulties accompanied by the global economic crisis, the incomplete transition, the inadequate legal framework in which the media operate, substandard media policies and the state's indifference to the fate of the media. The journalists list low salaries, a low degree of professionalism, and, above all, insufficient compliance with professional ethics and the poor reputation and status of the profession in society as the chief problems of their profession.

Both journalists and media owners and managers agree that the strongest pressures on the media come from the ruling coalition political parties, followed by major companies, local self-government officials and advertisers. Journalists are of the view that owners of private media exert greater pressure on the media than advertisers.

Journalists and media owners/managers have somewhat different perceptions of the most widespread forms of pressures exerted on the media in Serbia. Journalists think that they involve influencing the media staffing policy and corrupting journalists or editors into writing "commissioned articles", while the owners/managers think that they come from depriving the media of budget funding and undefined criteria for allocating assistance to the media. A number of respondents in both groups also perceive loss of advertising revenues and denied access to information the media are entitled to as forms of pressure.¹⁶⁰

2.6.2. Implementation of the Strategy Recommendations

Media Strategy

The Strategy for the Development of the Public Information System in the Republic of Serbia until 2016, which the Government of the Republic of Serbia adopted in September 2011, lists some of the problems in this sector. It underlines, for instance, that the outlets' poor economic status, financial dependence and unsuccessful privatisations have resulted in the existence of a large number of TV and radio stations with poor quality programmes, tabloidisation and self-censorship.

Under the Strategy, the key challenges in the upcoming period will be to improve the quality of the programmes, strengthen the civil sector and create conditions allowing regional broadcasters to produce in an economically sustainable manner editorially independent and professional content, encouraging active civil participation, as well as quality programmes for local communities, reflecting their rights to full freedom of expression and information. The Strategy highlights the need to continue developing and improving programme quality, pluralism and full editorial independence (**Recommendations 144 and 148**).

¹⁶⁰ *Ibid.*

Transparency of Media Ownership and Impermissible Media Concentration

Lack of media ownership transparency, which is closely related to the problem of impermissible media concentration, is often highlighted as one of the main problems plaguing the media sector in Serbia (**Recommendation 142**). These two problems are emphasised both in national and foreign reports and analyses and there is an indisputable link between them and reporting on corruption and the fight against corruption both in the public sector and within the media themselves.

The Anti-Corruption Council Report on Pressures on and Control of Media in Serbia published in September 2011 was the most relevant national analysis of the situation in the media in Serbia published in the year behind us. Lack of transparency of media ownership is one of the three chief problems the Council identified. The Council found that ownership of as many as 18 of the 30 leading outlets in Serbia it analysed (12 dailies, seven weeklies, six TV stations and five radio stations) was insufficiently transparent and that the Serbian public did not know who actually owned them. The ownership of nine of the 11 stations with national coverage was not transparent. On the other hand, the Business Registers Agency Media Register does not offer even a minimum of information about the real media owners, only which company formally publishes a newspaper or broadcasts a programme. The Republic Broadcasting Agency (RBA) in July published a graphic breakdown of the ownership of radio and TV stations with national coverage. However, besides the information already available on the Business Registers Agency website, the RBA provides only data on the owners of the foreign companies with stakes in Serbian media outlets, which does not increase the transparency of their ownership, because only the names of the lawyers representing these companies rather than the names of their real owners are published. Therefore, the citizens do not have full information about the media owners in Serbia, although both the national media laws and the relevant international recommendations and conventions envisage transparency of media ownership and highlight the need for media pluralism and the prevention of impermissible media concentration. Under Article 41 of the Broadcasting Law, a domestic legal person, whose founders are foreign legal persons registered in countries, the internal regulations of which do not allow or where it is impossible to determine the origin of the founding capital, may not take part in the public tender for a broadcasting licence. A number of media in Serbia are, however, owned by owners coming from precisely such countries.

Off-shore companies own shares in a number of Serbian media. The greatest problem is that the identity of their real owners cannot be established, which is in contravention of the Broadcasting Law, which applies to electronic media, and the Public Information Law. Therefore, a conclusion on who really owns an outlet is drawn mostly on the basis of its editorial concept.

Under the Broadcasting Law, the right to use a frequency constitutes the right to use a natural good, wherefore media with national coverage granted a licence to broadcast a programme are simultaneously granted the right to use a public good belonging to all the citizens of Serbia. However, non-transparency of ownership allows one owner to acquire ownership of a number of media outlets with national coverage, which is in contravention of the Law.¹⁶¹

The Media Strategy also devotes attention to the problems arising from non-transparency of media

¹⁶¹ Anti-Corruption Council, Government of the Republic of Serbia, Report on Pressures on and Control of Media in Serbia, September 2011, pp. 5, 6 and 8, available at <http://www.antikorupcija-savet.gov.rs/Storage/Global/Documents/mediji/IZVESTAJ%20O%20MEDIJIMA%20PRECISCEN%20ENG..pdf>.

ownership and impermissible media concentration. It states that the Public Information Law did not specify clearly and in sufficient detail how the Media Register should be kept, although it is prerequisite for establishing media ownership and for monitoring impermissible media concentration. Nor did the Law specify which data should be registered, wherefore it is practically impossible to establish the breakdown of ownership in the media. Furthermore, although the laws prohibit monopolies in the public information system to an extent, this issue has not been regulated systematically or comprehensively, which is also why it is impossible to establish who the real owners of the media are and whether there is impermissible media concentration. The lack of such regulations also undermines media pluralism. With the view to protect the principles of free competition and pluralism of ideas and opinions, the Public Information Law prohibits all forms of monopolies in the field of public information while the Broadcasting Law governs in greater detail media concentration in the field of electronic media, which is monitored by the Republican Broadcasting Agency.¹⁶²

In its Analytical Report, the European Commission underlines that the lack of transparency in media ownership hampers effective monitoring and creates a risk of hidden media concentration.¹⁶³ In its Resolution on the European Integration Process of the Serbia, the European Parliament also drew attention to the concentration of ownership and lack of transparency in the media sector.¹⁶⁴

Media Privatisation

As regards the privatisation of media, the Strategy emphasises that the Broadcasting Law provides only for the state ownership of RTS and RTV, as public broadcasting service institutions but specifies that they shall enjoy a specific status defined by the law. These and some other legal provisions have, however, never been consistently enforced and the privatisation of media outlets has not been completed yet. The process encountered objective legal obstacles caused by the subsequent adoption of laws that were not aligned with the Public Information Law. The provisions of this Law and the Broadcasting Law are in collision with the Laws on Local Self-Government and the Law on the Capital City as well as with the Law on the National Councils of National Minorities.

The Strategy states that the hitherto privatisation of the media has not yielded the expected results. The Privatisation Agency says that only 56 of the 109 outlets that should have been privatised have been sold to private owners and that the privatisation of 37 outlets was suspended because of the Law on Local Self-Government. The founders – local self governments – decided to shut seven outlets down and the sale of another nine media by auction was unsuccessful. Of the 56 privatised outlets, the contracts on the sale of 18 outlets have been terminated and they are to be reprivatised, while, apart from a few exceptions, the other 36 are teetering on the brink of economic

¹⁶² Government of the Republic of Serbia, Strategy for the Development of the Public Information System in the Republic of Serbia until 2016, 28 September 2011, available in Serbian at http://www.srbija.gov.rs/vesti/dokumenti_sekcija.php?id=45678.

¹⁶³ European Commission, Analytical Report Accompanying the Document Communication from the Commission to the European Parliament and the Council Commission Opinion on Serbia's Application for Membership of the European Union, Brussels, 12 October 2011, p. 31, available at http://www.seio.gov.rs/upload/documents/eu_dokumenta/misljenje_kandidatura/sr_analytical_rapport_2011_en.pdf.

¹⁶⁴ European Parliament Resolution on the European Integration Process of Serbia, 10 January 2011, paragraph 22, available at <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B7-2011-0021&format=XMI&language=EN>.

sustainability and their survival is uncertain.¹⁶⁵

The privatisation of media has not been completed although four years have passed since the legal deadline for their privatisation expired. The media are still divided over whether privatisation, or the opposite, incomplete privatisation, lies at the heart of many of their problems, primarily the non-functioning media market. State aid has thus become the main source of funding for many of them, which opens room for various forms of influence on the editorial policies of the media, both the unprivatised and private ones, due to the absence a legally regulated system in this area.¹⁶⁶

Political and Economic Influence on the Media

The state institutions' influence on the media through various forms of budget allocations is the second of the three main problems plaguing media in Serbia which the Anti-Corruption Council identified in its Report.

The Report says that state institutions in Serbia spend huge budget funds on advertising and promotion (which opens the possibility for personal and party promotion in the media). According to the data the Council collected from 50 leading institutions, these funds exceed 15 million EUR per annum. Add to this the funds officially allocated to media, one arrives at a sum of at least 36 million, even 40 million EUR that media get from state sources. This is why, in the Council's opinion, it is next to impossible to find an analytical text or an investigative approach by a journalist reporting on the work of the institutions, which are enumerated in the Report as those earmarking the most funding for the media. The authorities thus have considerable room for exerting financial influence on the media and, simultaneously, on their editorial policies.

Apart from these funds, the media in Serbia receive significant funding through public calls issued by state institutions. Furthermore, public relations agencies, marketing and production agencies, most of which are owned by party activists and persons related to them, play a special role in funding the media and thereby keeping them economically dependent and living in uncertainty. Some of these agencies provide services to most state institutions, some of them only have state authorities as their clients, and some state institutions and public companies have engaged external media relations or production agencies although they have their own departments charged with media relations.

Media draw revenue from public authorities in seven different ways, mainly advertising. They also draw funds from providing specialised information services, contracted information services, subscriptions to their services, cultural subsidies, grants for civil society projects, even for conducting research, although media are essentially not involved in scientific and research activities. Subscription to news agency wires is another important model of relations between media and state institutions although most of these institutions are already paying for press clipping services. Some

¹⁶⁵ Government of the Republic of Serbia, Strategy for the Development of the Public Information System in the Republic of Serbia until 2016, 28 September 2011, available in Serbian at http://www.srbija.gov.rs/vesti/dokumenti_sekcija.php?id=45678.

¹⁶⁶ Association of Independent Electronic Media, Legal Monitoring of the Media Scene in Serbia, September 2011 p. 23, available at <http://www.anem.rs/en/aktivnostiAnema/monitoring/story/12699/THE+FIFTH+ANEM+MONITORING+PUBLICATION.html>.

media have been contracted to cover the activities of specific state institutions wherefore, rather than impartially informing the citizens about their work, the journalists of these outlets have been acting as mouthpieces of these institutions and promoters of the work of the ministers and directors of the public companies or institutions.

The Anti-Corruption Council inter alia recommends that the services of providing information, producing RTV programmes and media relations services be subject to a regular public procurement procedure, because that is the only way to ensure the transparent selection of bidders. State institutions should consolidate all forms of cooperation with media in their regular reports and present them as advertising in media, and not as unspecified specialised services, research or under other categories which imply simulated jobs **(Recommendation 143)**.¹⁶⁷

The Media Strategy states that the state aid to the media sector in 2010 amounted to approximately 2,117,687 RSD (around 21 million EUR) and that circa 2,512,856.070 RSD (around 25 million EUR) were designated in 2011. It further concludes that there is no legally defined public interest in this field. Furthermore, there are no clearly defined criteria and procedures for allocating state aid through public calls so that general regulations and principles are applied, which may put the applicants in an unequal position. Another problem stems from the fact that the state does not keep a single registry of the spent funds either at the central, provincial or at the local level, wherefore it is nearly impossible to establish the exact volume and structure of the aid. Moreover, there is no efficient monitoring of the implementation of the aid, evaluation of its effects or adequate reporting.¹⁶⁸

In the above-mentioned Resolution adopted in January 2011, the European Parliament expressed concern regarding attempts to control and interfere in the media sector.¹⁶⁹ The European Commission, for its part, assesses in its Analytical Report that advertising access to media is under the influence of a few key players, which creates a significant risk of political and economic influence on the media and of increasing self-censorship. The Commission adds that, in line with the commitments under the Interim Agreement, the financing of certain media from the state budget will have to be brought into line with the EU *acquis* as it constitutes state aid. The lack of economic sustainability and financial strength of media outlets and the dominance of a few key players in the advertising market are matters for concern.¹⁷⁰

Because of their very nature, the advertising and information activities of the media are in principle implemented separately, particularly within larger national media outlets **(Recommendation 141)**.

¹⁶⁷ Anti-Corruption Council, Government of the Republic of Serbia, Report on Pressures on and Control of Media in Serbia, September 2011, pp. 4, 16, 18, 21, 25, 42, available at <http://www.antikorupcija-savet.gov.rs/Storage/Global/Documents/mediji/IZVESTAJ%20O%20MEDIJIMA%20PRECISCEN%20ENG..pdf>.

¹⁶⁸ Government of the Republic of Serbia, Strategy for the Development of the Public Information System in the Republic of Serbia until 2016, 28 September 2011, available in Serbian at http://www.srbija.gov.rs/vesti/dokumenti_sekcija.php?id=45678.

¹⁶⁹ European Parliament Resolution on the European Integration Process of Serbia, 10 January 2011, paragraph 22, available at <http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B7-2011-0021&format=XMI&language=EN>

¹⁷⁰ European Commission, Analytical Report Accompanying the Document Communication from the Commission to the European Parliament and the Council Commission Opinion on Serbia's Application for Membership of the European Union, Brussels, 12 October 2011, pp 26, 75 and 104, available at http://www.seio.gov.rs/upload/documents/eu_dokumenta/misljenje_kandidatura/sr_analytical_rapport_2011_en.pdf.

The marketing departments' influence on the newsrooms is actually the consequence of the economic crisis, the undeveloped advertising market, and the fact that the marketing mediation services are extremely concentrated in Serbia, which is why the dominant marketing agencies are in the position to dictate advertising conditions disregarding professional standards.¹⁷¹

Regulatory Authorities

As per providing the Republican Broadcasting Agency (RBA) and the Republican Telecommunication Agency (RATEL) with working conditions and ensuring their autonomy and independence (**Recommendation 145**), the Ministry of Culture, Information and Information Society states that an analysis of how the regulations affect the work of the RBA and RATEL has not been conducted because the two are independent regulatory authorities performing duties entrusted to them and because there was no special need for such an analysis. The Ministry notes that the Law on Electronic Communications and the Broadcasting Law provide for a clear separation of powers between RATEL, the Government and the relevant ministry, i.e. the RBA and the Government. RATEL is functionally and financially independent of the state authorities, organisations and persons performing electronic communication activities, while the RBA is an autonomous legal entity, functionally independent of all state authorities. The RBA Council is elected by the National Assembly at the proposal of authorised nominators and the RBA's financial plans are approved by the Government.¹⁷²

On the other hand, the EC Analytical Report states that the procedure by which the RBA members are appointed raises concerns about the independence of this body and creates a risk of politicisation. The Commission is of the view that the RBA needs to step up its activities and take action in cases of breaches of legislation. It assesses that RATEL and the RBA have relatively good capacity, but that their independence and enforcement powers need to be strengthened in order to give all market players a competitive level playing-field.¹⁷³

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

The Information of Public Importance and Personal Data Protection Commissioner received 69 complaints from journalists claiming violations of their right to access information from 1 January to mid-December 2011. The Commissioner completed the review of 35 complaints and the review of 34 complaints was under way. Only one of the 35 reviewed complaints was found to be groundless; in 33 cases, the authorities that had initially denied information provided subsequent access to it, while, in one case, the authorities even failed to act on the Commissioner's decision.

¹⁷¹ Association of Independent Electronic Media, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2012.

¹⁷² Ministry of Culture, Information and Information Society, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

¹⁷³ European Commission, Analytical Report Accompanying the Document Communication from the Commission to the European Parliament and the Council Commission Opinion on Serbia's Application for Membership of the European Union, Brussels, 12 October 2011, pp. 31 and 75, available at http://www.seio.gov.rs/upload/documents/eu_dokumenta/misljenje_kandidatura/sr_analytical_rapport_2011_en.pdf.

(Recommendation 152).

As opposed to the previous years, the Commissioner did not receive any reports of discrimination against the media in terms of the FOIA in 2011 (**Recommendation 149**). Some of the registered cases regarded discrimination against journalists with respect to public information, which falls under the scope of the Law on Public Information and the purview of the relevant ministry, wherefore the Commissioner advised the complainants to address their concerns with the ministry.

The Commissioner, on the other hand, initiated amendments to the FOIA to prevent public authorities from giving preference to media close to them by providing only them with specific (and thus exclusive) information and simultaneously undermining the legitimate interests of other media. According to the amendment to the Law suggested by the Commissioner, an authority would be under the obligation to simultaneously publish on its website information it is communicating to a journalist, who had not submitted a request to access such information, or communicate it without delay to any other journalist or media outlet that seeks access to it. This rule would not apply in cases in which a journalist who first received the information had submitted a request for it, because, in that case, “exclusivity” would be based on due diligence, not on a public authority privileging some journalists over others.¹⁷⁴

In response to the Agency question whether it received reports of discrimination against media by state authorities in 2011 and how it acted on them, the Ministry of Culture, Information and Information Society said that it had not received any reports alleging that state authorities had discriminated against media outlets.¹⁷⁵

Media Accountability

The Anti-Corruption Council stated in its Report that it had received a large number of complaints from citizens and organisations about the work of the media in Serbia, that they turned a blind eye to corruption problems and about their cronyism with the ruling political and economic elites. The Anti-Corruption Council has itself also encountered major problems in getting through to the public and presenting cases of major violations of the law by the state authorities and elected officials and of potential sources of systemic corruption.¹⁷⁶

The Media Strategy does not deal with the implementation of the principle of the incompatibility between the work of journalists and their political activities (**Recommendation 150**).¹⁷⁷

The respondents in a survey conducted within the above-mentioned research on journalism in Serbia listed as one of the problems that journalists had their political preferences and that that

¹⁷⁴ Commissioner for Information of Public Importance and Personal Data Protection, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

¹⁷⁵ Ministry of Culture, Information and Information Society, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

¹⁷⁶ Anti-Corruption Council, Government of the Republic of Serbia, Report on Pressures on and Control of Media in Serbia, September 2011, p. 2, available at <http://www.antikorupcija-savet.gov.rs/Storage/Global/Documents/mediji/IZVESTAJ%20O%20MEDIJIMA%20PRECISCEN%20ENG..pdf>.

¹⁷⁷ Ministry of Culture, Information and Information Society, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

these preferences were evident. Forty-five percent of the respondents think that the journalists are mostly aware of the principles of the press code of ethics but do not comply with them enough, while 23% think that they are aware of them but hardly ever apply them; 29% of the respondents think they are neither aware of them nor abide by them. Only 2% of the respondents thought that the journalists were well aware of the ethical principles and complied with them.¹⁷⁸

The Press Council, an independent self-regulatory authority comprising representatives of the media industry and professional press associations, was established pursuant to the Law on Associations in early 2010. It is charged with monitoring compliance with the Code of Journalists of Serbia by the print media and reviewing complaints by individuals and organisations against specific content in print media, mediating between the injured parties and the organisations and newsrooms and issuing public warnings against those violating the ethical standards in the Code, conducting training on compliance with the Code and strengthening the reputation of the media, and with publishing opinions and decisions in print media. The Council faces a major funding problem, because the funds raised from membership fees cannot cover the costs of its work. The electronic media do not have such a self-regulatory authority. The self-regulation system is underdeveloped. A large number of trials are under way in this area; the disputes would be resolved faster by in-house arbitration if the self-regulatory authorities were operational.¹⁷⁹

The Media Strategy does not cover the issue of laying down penalties for media influence peddling (**Recommendation 153**). In its replies to the Agency Questionnaire, the Ministry of Culture, Information and Information Society highlights that this does not mean that this issue will not be discussed during the drafting of a law governing the field of public information.¹⁸⁰

Training of Journalists

In its replies to the Agency Questionnaire, the Ministry of Culture, Information and Information Society said that no training for journalists on forms of undue pressures on their work, corruption, investigative journalism or on their protection was organised in 2011 (**Recommendation 151**).

The representatives of the Anti-Corruption Agency held meetings in 2011 with the Independent Association of Journalists of Serbia and the Association of Journalists of Serbia at which they agreed to cooperate directly and plan training together.

The Association of Independent Electronic Media has continuously organised training for journalists and media workers. One of the activities geared at improving the capacities of its members involves providing them with the opportunity to directly participate in the production of radio and TV serials produced by ANEM. ANEM last year produced and broadcast the TV serial

¹⁷⁸ Centre for Media and Media Research, College of Political Sciences, University in Belgrade, "Profession at the Crossroads – Journalism at the Threshold of an Information Society", June 2011, pp. 7, 26-27, available in Serbian at <http://centarzamedije.fpn.bg.ac.rs/content-files/Novinarstvo%20na%20pragu%20informacionog%20drustva.pdf>.

¹⁷⁹ Government of the Republic of Serbia, Strategy for the Development of the Public Information System in the Republic of Serbia until 2016, 28 September 2011, available in Serbian at http://www.srbija.gov.rs/vesti/dokumenti_sekcija.php?id=45678.

¹⁸⁰ Ministry of Culture, Information and Information Society, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

“Mirror of the Authorities” which focused on corruption as one of the key problems standing in the way of the democratisation of society and establishing rule of law. The serial won valuable awards at two media competitions.¹⁸¹ The Press Council organised panel discussions on the work of the Council and compliance with the Code in 14 Serbian towns and cities in 2011 and plans to hold such panel discussions in another 32 towns by June 2012.¹⁸²

II.6.3. Anti-Corruption Agency Recommendations

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

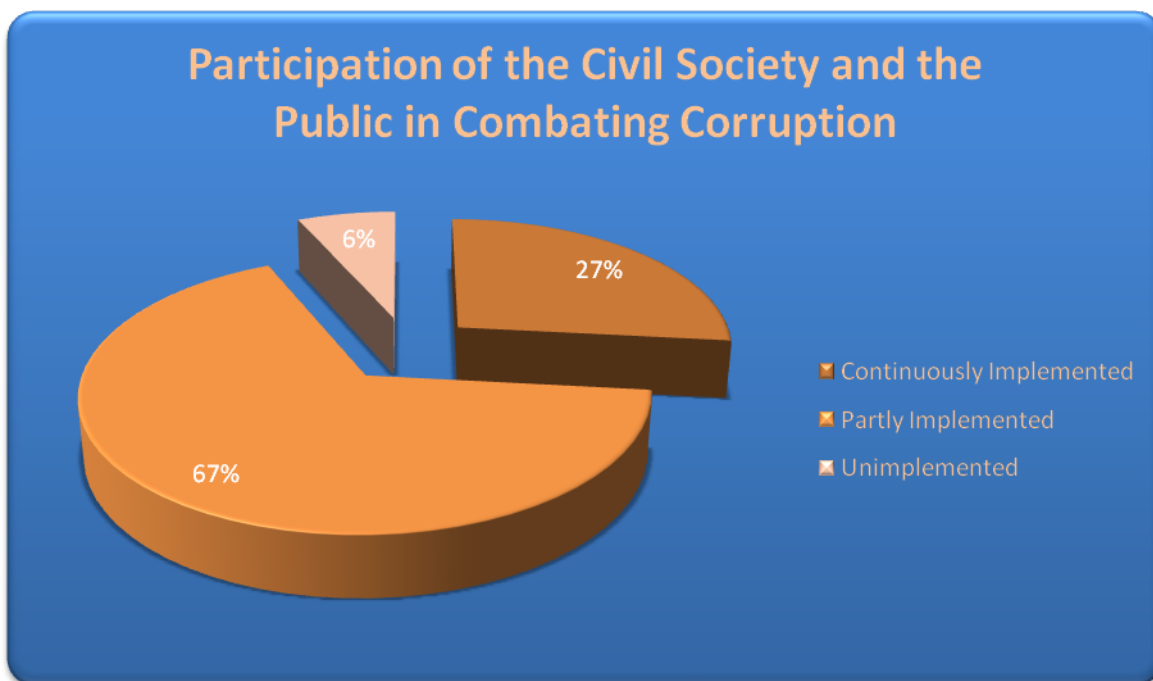
¹⁸¹ Association of Independent Electronic Media, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2012.

¹⁸² Press Council, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2012.

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 an environment intolerant of corruption. Non-governmental 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 10 (67%) were partly implemented but that additional improvements could be made in these areas and that one recommendation (6%) remained unimplemented.



II.7.1. General Overview

The Corruption Benchmarking Report the agency TNS Medium Gallup conducted for UNDP in November 2011 shows that the citizens have grown more aware of their own role in the fight against corruption since the previous round of the survey and, accordingly, needed to be provided with more avenues for reporting corruption. Their tolerance and acceptance of corruption has also fallen. Nearly 40% of the respondents said that someone from their immediate community had

given a bribe and 11% admitted that they had personally been involved in corruption. Most of the bribes went to doctors, and then to police officers and state administration staff. An average bribe stood at 178 EUR, less than in the previous round but more than in the first two rounds of the survey. More respondents than in October 2010 said that they noted an increase in corruption. Expectations that corruption would abate in the year ahead were lower than in any of the previous rounds. The respondents emphasise that harsher legal penalties are the most efficient instrument for countering corruption, although the number of them who attach importance to transparency has also grown considerably. Finally, the respondents expressed the view that it was necessary to strengthen the NGOs' oversight of the public administration and a greater number of them in this round recognised the role of the NGOs in the fight against corruption.¹⁸³

In its Analytical Report, the European Commission stated that civil society organisations were well developed and played an important role in the social, economic and political life of Serbia. On the other hand, it underlined that the Serbian Government Office for Cooperation with Civil Society, established in April 2010, was still not fully operational. In the view of the European Commission, cooperation between state bodies and civil society organisations remained on an ad hoc basis and was unevenly developed across Serbia, with civil society activities still predominantly Belgrade-centred.¹⁸⁴ The Report also stated that further efforts were needed in order to improve public consultation in the legislative process, particularly with regard to civil society.¹⁸⁵

The results of a survey conducted by the NGO Civic Initiatives in cooperation with the Office for Cooperation with Civil Society on the situation in the CSO sector in the July-September 2011 period show that CSOs are primarily involved in providing social services (27%) or deal with culture, media and recreation (23%) and environmental protection (16%). Ten percent focus on education and research and only 9% on legislation, public advocacy and politics. The CSOs' activities mostly comprise non-institutional education (seminars, training, etc) and local community campaigns, research and lobbying or public advocacy activities to a much lesser extent, while the fewest monitor laws, public policies and the work of institutions. The greatest number of CSOs are located in Vojvodina (37%) and Belgrade (30%) and most of them were set up after 2000 (52%). The CSOs' budgets in 2010 varied more among the individual organisations than among the fields they are active in. The vast majority had a budget under 20,000 EUR, while one out of ten had budgets exceeding 100,000 EUR. On average, the share of approved vs. submitted projects considerably decreased in 2011 over 2010. Around half of the CSOs were either unfamiliar or partly familiar with the legislation governing the work of CSOs and the CSOs were dissatisfied the most with the tax policy that applied to them. Over 40% of the CSOs said that the political climate in the country was not conducive to the development of this sector. Most of them rated the Government's cooperation with the CSOs with a 3 (on a scale of 1 to 5) – the number of poor grades exceeded the number of good grades. Most CSOs qualified the sector's influence on the design of state policies as much too small, particularly with respect to legislation, public advocacy and politics. Forty percent of the

¹⁸³ UNDP Serbia and TNS Medium Gallup "Corruption Benchmarking in Serbia", Perception of Corruption at the Household Level, 4th Round, November 2011, p. 3, available at <http://www.undp.org.rs/index.cfm?event=public.publicationsDetails&revid=0E60B769-EB6D-662E-C949956889479FCD>.

¹⁸⁴ European Commission, Analytical Report Accompanying the Document Communication from the Commission to the European Parliament and the Council Commission Opinion on Serbia's Application for Membership of the European Union, Brussels, 12 October 2011, p. 27, available at http://www.seio.gov.rs/upload/documents/eu_dokumenta/misljenje_kandidatura/sr_analytical_rapport_2011_en.pdf.

¹⁸⁵ *Ibid*, p. 17.

CSOs said that the state's attitude towards CSOs was one of indifference, but just as many thought that the state had a positive attitude towards CSOs, either because it facilitated their development (22%) or even recognised them as partners (19%). As far as addressing the sustainability problems they face, CSOs attach the most importance to state support and relations with donors and the local authorities.¹⁸⁶

II.7.2. Implementation of the Strategy Recommendations

Campaigns, Information and Education of Citizens

Public authorities inform the public of their anti-corruption activities predominantly via their websites and press releases (**Recommendation 156**).

Pursuant to the powers entrusted to it and the implementation plan, the Anti-Corruption Agency involves the public in its work and notifies it about it in various ways. Organisation of conferences (to mark International Anti-Corruption Day), public debates and round tables (to present the new Law on the Financing of Political Activities and the Rulebook on the Protection of Persons Reporting Suspicions of Corruption), seminars and direct contacts with all interested citizens and local officials are just a part of its outreach activities. Its officials have simultaneously promoted the results it has achieved in the media, by giving interviews, appearing on radio and TV, giving statements, issuing press releases, and holding news conferences. The public awareness of the Agency's powers has increased compared to the first year of its work. Citizens have turned to the Agency asking it for advice on what they should do in specific situations, the context in which specific decisions are taken and their potential effects on the broader community. Given the Agency's broad scope of powers, it is sometimes quite challenging to respond to all public inquiries regarding diverse areas. In most cases, all the stakeholders have benefited from cooperation.

For the second year in a row, the Anti-Corruption Agency in 2011 conducted a competition for primary, secondary and university students to activate the youngest categories of the population in preventing and increasing awareness of corruption. The participants in the competition entitled "Take the right course, say it isn't fair" were, inter alia, tasked with describing the negative phenomena they had noticed in their communities and why they thought changes were needed in those areas. Around 700 works of students of over 100 educational institutions were submitted during the competition (600 works of students of 40 institutions were submitted in 2010). An Agency internship programme is being implemented with the support of the Embassy of the Kingdom of Norway and the Agency is also preparing a manual for training in ethics and personal and institutional integrity. The manual will be completed and published in 2012 (**Recommendation 154**).

The Information of Public Importance and Personal Data Protection Commissioner and his Office organised in the previous period a large number of seminars, workshops and other events across Serbia targeting citizens, journalists, NGOs and state and other public administration staff at all government levels. The training was supported also by international organisations, state authorities, administrative districts, chambers of commerce, press associations and others (**Recommendation**

¹⁸⁶ Civic Initiatives and the Republic of Serbia Government Office for Cooperation with Civil Society, "Situation in the Civil Society Sector", December 2011, available in Serbian at <http://www.civilnodrustvo.gov.rs/?p=232>.

157).¹⁸⁷

The annual work plan of the Anti-Corruption Agency's Department for Training, Campaigns and Cooperation with the Civil Society Sector envisages specific stages of introducing training on corruption in the school curricula. They involve initiating a meeting of the Agency Council and senior management with the competent ministry and the establishment of expert groups to analyse the curricula and find "room" to fit this topic in. In 2011, the Anti-Corruption Agency organised three-day seminars on "Anti-Corruption Mechanisms" which were attended by 125 students and a two-day training of 15 representatives of primary and secondary school student parliaments on this topic in Indjija. By implementing the competition on corruption, ethics and integrity, the Agency succeeded in raising awareness among the schools, notably the students and teaching staff, of this issue (**Recommendation 155**).

Legal Protection

The Information of Public Importance and Personal Data Protection Commissioner monitors the public authorities' compliance with their obligations under the FOIA in a number of ways and learns about how these obligations are fulfilled from the complaints and submissions alleging denial of access to information, from the annual reports public authorities submit to his Office once a year and from other sources in the field of free access to information (**Recommendation 158**).

In the last quarter of 2011, the Commissioner initiated changes to the FOIA, inter alia to provide the Commissioner with the power to file motions for initiating misdemeanour proceedings. The Commissioner also proposed that the fines for misdemeanours be increased. The Ministry for Human and Minority Rights, State Administration and Local Self-Government upheld the initiative and forwarded it to the Government to draft the amendments, but the draft was not finalised by the time the Commissioner submitted his replies to the Agency questionnaire.

Furthermore, with the aim of improving the transparency of the work of public authorities, the Commissioner submitted an initiative with the competent ministry in early November to amend the State Administration Law and impose an obligation on the public authorities to have websites and lay down penalties for non-compliance with this obligation.

The Commissioner's Office received 25% more complaints in 2011 than in 2010 and established that 91% of the ones it reviewed by mid-December were justified. The Commissioner imposed 50 fines against authorities that had failed to enforce his rulings. The Commissioner filed 16 motions to the Government asking it to ensure the enforcement of his rulings, but had not received any feedback on whether the Government had acted on any of his motions by mid-December.

The Administrative Court reviewed 20 of the 31 lawsuits against the Commissioner's decisions filed in the same period; 311 of the 329 submissions the Commissioner received in this period were reviewed. The Commissioner will be apprised of the number of lawsuits submitted against the six public authorities, which the FOIA explicitly lists as those the citizens cannot complain against with

¹⁸⁷ Information of Public Importance and Personal Data Protection Commissioner, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

the Commissioner, after the Administrative Court publishes its annual report on the enforcement of this Law.¹⁸⁸

All public authorities in the sample gave affirmative answers to the Agency question on whether they had introduced reliable complaints mechanisms and the obligation to reply to the complaints within the legal deadlines (**Recommendation 159**). Some stated that complaints were reviewed in urgent procedures, that the received information was checked in the same manner regardless of whether the complaints came from anonymous persons or the identity of the client was known, that complaints could be filed electronically and via the hotlines. In its replies to the questionnaire, the Ministry of Economic and Regional Development said that the National Regional Development Agency also conducted analyses of the causes of the grievances and that it established a register of grievances and complaints.¹⁸⁹

Participation of Citizens' and Professional Associations

Ministries involve citizens' associations in fighting corruption and other activities in various ways (**Recommendation 160**). They mostly involve them in the development of laws or strategies, either during the drafting process or in public debates, by holding workshops, round tables or working meetings attended by the representatives of the associations. Only a few ministries said that they had not included citizens' associations in their anti-corruption activities in 2011.

In their replies to the Agency question on how many anti-corruption legislative and other initiatives the ministries received from professional and citizens' associations, whether they acted on them and what the results of their activities were (**Recommendation 161**), over half of the ministries replied that they had received no such initiatives. Different conclusions can be drawn on the basis of these replies. On the one hand, it is possible that no such initiatives had been submitted because the vast majority of citizens' or professional associations are not dealing with corruption issues, or because they are of the opinion that submitting them to the ministries would be ineffective for various reasons. On the other hand, these replies may indicate that such initiatives had been submitted to the ministries but that the ministries did not recognise them as relevant to corruption because they did not explicitly mention corruption or anti-corruption. In either case, there is a problem – either the associations are not focusing on this topic, even in sectors identified as particularly susceptible to corruption, or the organisations that would submit them depart from a justified or unjustified assumption that ministries do not respond to such initiatives; or the ministries do not have the capacity to recognise that an initiative relevant to fighting corruption is at issue because they do not mention corruption explicitly (such, as e.g. initiatives for increasing transparency or limiting discretionary decision-making powers). Only the Ministry of Justice highlighted a specific initiative for amending the Law on Misdemeanours launched by the organisation Transparency Serbia, which suggested the extension of the statute of limitations on corruption-related misdemeanours vis-à-vis the general statute of limitations. The Ministry states that this initiative will be reviewed by the working group drafting the amendments to the Law on Misdemeanours.¹⁹⁰

¹⁸⁸ *Ibid.*

¹⁸⁹ Ministry of Economy and Regional Development, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

¹⁹⁰ Ministry of Justice, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, February 2012.

Legal Framework

The Law Amending the Property Tax Law,¹⁹¹ which came into force on 1 January 2011, exempted associations established to achieve a goal of general interest from paying tax on inherited or donated assets to be used solely for the purposes for which the association was established. The same exemption applies to endowments and foundations (**Recommendation 162**).¹⁹²

The Decree on Funds for Encouraging Programmes or Covering Lack of Funding for Programmes of Public Interest Implemented by Associations,¹⁹³ which the Government of Serbia adopted on 27 January 2012, introduces transparency in procedures for funding such programmes by laying down the obligations of the competent authorities and of the grantee associations. The Decree governs the publication of open calls for proposals, the evaluation and ranking of the applications and of the decisions on the selected applications. The Decree imposes upon the associations the obligation to publish reports on their work and the amount and sources of funding at least once a year and to submit quarterly and final reports on the implementation of the programmes to the competent authorities.¹⁹⁴

The Government Office for Cooperation with Civil Society has began preparing a Consolidated Annual Report on state budget funds allocated and paid to citizens' associations and other CSOs to support their programme activities. The analysis, which comprises collection of data from the ministries and other government institutions, the publication of data on funding, the procedures by which budget funds are granted and how they are spent, aims at boosting the transparency of budgeting and allocating funds from the Republic of Serbia budget for programme and project activities of citizens' associations and CSOs.¹⁹⁵

In their replies to the Agency question whether and how they notified the citizens' associations about the opportunities to apply for budget funds in a timely fashion (**Recommendation 167**), all ministries granting funds replied that they notified the associations of the opportunities to apply for funds by publishing calls on their websites, in newspapers with nationwide coverage, on the Public Procurement Portal and in the Official Gazette.

With the exception of the few ministries that stated that they had not allocated any funding to citizens' associations, most of the ministries that did allocate such funding said in their replies to the Agency question on whether they had set criteria for allocating budget funds to citizens' associations and how they ensured that the procedures were transparent (**Recommendation 163**) that they had set such criteria and laid them down in specific ministry programmes or by-laws, that they published the calls for proposals and that they ensured the transparency of the procedures by publishing the entire relevant documentation on their websites.

¹⁹¹ Official Gazette of the Republic of Serbia No. 101/10.

¹⁹² Ministry of Finance, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

¹⁹³ Official Gazette of the Republic of Serbia No. 8/12.

¹⁹⁴ Republic of Serbia Government Office for Cooperation with Civil Society, Decree on Funding of Associations from the State Budget Presented, available in Serbian at <http://www.civilnodrustvo.gov.rs/?p=849#more-849>.

¹⁹⁵ Republic of Serbia Government Office for Cooperation with Civil Society, Preparation of the Annual Consolidated Report on Funding, 6 February 2012, available in Serbian at <http://www.civilnodrustvo.gov.rs/?p=867#more-867>.

The Anti-Corruption Agency published a call for proposals for CSO projects devoted to strengthening the society's capacities for fighting corruption in September 2011. The project proposals were reviewed in accordance with a methodology that included: a) eligibility criteria for beneficiaries, b) eligibility criteria for activities, c) rules on eligibility of costs, d) assessment criteria, and e) rules on the procedure for assessing and selecting project proposals to be granted funding for implementing the envisaged activities. The criteria were published within the call for proposals on the Agency website and the list of the selected project proposals and the transcript of the assessments of the project proposals were published after the project selection procedure was completed.

One of the challenges the Agency faced during this activity was the difficulty to incorporate programme-oriented budgets of non-profit organisations in the "account structure" of the state, provincial or local self government budgets. The account structure of the public budgets makes it impossible to ensure the transparency of the granted allocations, how they are spent and the objectives they are to achieve, which simultaneously reduces the effectiveness and expediency of the disposition of public funding and renders the entire system of public resource management "porous" to various forms of abuse.

In their replies to the Agency question about whether they required of the citizens' associations granted budget funds to submit reports on the implementation of activities and financial reports and whether they submitted such reports in practice in any case (**Recommendation 164**), all ministries granting budget funds to citizens' associations emphasised that the citizens' associations were under the obligation to submit narrative and financial reports and even opinions of certified auditors, that the fulfilment of the reporting obligation was prerequisite if the associations wanted to apply for or receive grants in the future and that the associations that had defaulted on the reporting obligations had to repay the grants.

According to its Report on the Financial Audit of the Draft Law on the Annual Statement of Accounts of the 2010 Republic of Serbia Budget, which the State Audit Institution presented publicly in December 2011, only one of the five tested ministries with expenses under budget line 481 (subsidies to NGOs) was found to have properly presented the expenses, while the SAI found irregularities in the statements of the other four ministries (**Recommendation 165**).¹⁹⁶

The Ethical Code of Civil Society Organisations in Serbia was signed at an event organised by Civic Initiatives on 29 June 2011 (**Recommendation 166**). According to the data on the Civic Initiatives website, the Code has been signed by 106 CSOs to date. The document lays down the values and principles the signatory organisations will uphold in their work and pursuit of their goals, by which they aspire to establish a community of organisations that have identified their main values, their meaning, and have voluntarily agreed to abide by them. The community is not formal and does not entail associations, networks or coalitions and is based on the clear and voluntary acceptance the same values and principles of work. The Code is available on the Civic Initiatives website and associations may electronically accede to the Code by filling the application form on the website.¹⁹⁷

¹⁹⁶ State Audit Institution, Report on the Financial Audit of the Draft Law on the Annual Statement of Accounts of the 2010 Republic of Serbia Budget, December 2011, p. 169, available at <http://www.dri.rs/images/pdf/revizija2011/izv-zrrs2010.pdf>.

¹⁹⁷ Civic Initiatives "Code of Ethics of CSOs in Serbia", 1 July 2011, available in Serbian at <http://www.gradjanske.org/page/news/sr.html?view=story&id=3633§ionId=1>.

In its guidelines for applicants in the above-mentioned call for proposals, the Anti-Corruption Agency stated that preference would be given to applicants, which had adopted and applied either its own ethical rules or had endorsed and applied ethical rules adopted by a group and/or network of organisations.

Implementation of the Other Recommendations within the System

The Law on Sports came into force on 12 April 2011, but all the by-laws needed for its full enforcement have not been enacted yet. Eleven by-laws were adopted by the end of the reporting period; the areas which are not governed by the new by-laws are regulated by the old by-laws provided that they are not in contravention of the new Law. The Ministry of Youth and Sports was of the view that it was still premature to expect its results in combating corruption due to the short period of time it has been applied (**Recommendation 168**).¹⁹⁸

II.7.3. Anti-Corruption Agency Recommendations

- 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.
- 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 funded from public funds.

¹⁹⁸ Ministry of Youth and Sports, Replies to the Questionnaire on the Implementation of the Strategy and Action Plan, December 2011.

ADDENDUM

New National Anti-Corruption Strategy for the 2012-2016 Period

In its previous Annual Report on the Implementation of the Strategy and Action Plan, the Anti-Corruption Agency concluded that, despite the general impression that the Strategy and Action Plan had for the most part not been or were merely partly implemented, the five-year period for implementing the Strategy and the four-year period for implementing the Action Plan appeared to be a reasonable timeframe, which should be followed by their review on the basis of the evaluation and assessment of their implementation and in accordance with the changed socio-political and economic context in which corruption is combated in Serbia today. The need to update the two strategic documents was also recommended by monitors of its progress in EU integration.

A working group tasked with drafting an anti-corruption strategic framework for the 2012-2016 period was established pursuant to a Ministry of Justice decision of 14 June 2011. It comprises representatives of the Ministry of Justice, Ministry of Internal Affairs, the Anti-Corruption Agency, the Anti-Corruption Council, the Serbian Chamber of Commerce and Industry, the media and CSOs (Transparency Serbia and the Social Research Bureau). This core working group was charged with drafting the new Strategy and Action Plan and forwarding it to a broader working group rallying representatives of all Serbian ministries, regulatory authorities, leading scientific institutions, NGOs, professional associations and judicial authorities. The broader working group is to complete the drafting of the strategic documents together with the core working group and submit them to the Ministry of Justice of the Republic of Serbia.

NEEDS ANALYSIS

The working group decided at the start that a needs analysis had to be conducted to identify the elements of the future Strategy before it began designing the structure of the text, the Strategy concept and the elements it would focus on.

International reports on Serbia's headway in the EU accession process have also noted the need for conducting such an analysis.

The conclusion that the listed risks lie at the heart of the fundamental causes of corruption in Serbia, which mostly regard the issue of good or, rather, bad governance, was corroborated by the findings arrived at during the one-year process in which the Anti-Corruption Agency drafted integrity plans in cooperation with 109 representatives of representative institutions and during which they identified the main corruption risks within the institutions. These risks fully correspond to the findings of the needs analysis.¹⁹⁹ These conclusions were verified and elaborated in an additional survey conducted in 47 institutions, within which the representatives of these institutions assessed

¹⁹⁹ See the Anti-Corruption Agency 2011 Annual Report, Chapter 9, Integrity Plans.

which processes posed a risk to the integrity of their institutions.²⁰⁰ The survey findings are extremely valuable as they were made in a broad participatory process, i.e. they were drawn from information about the corruption risk points the institutions identified in the processes they apply in their everyday work.

STRATEGY CONCEPT

The working group members agreed with the author of the needs analysis on the following key anti-corruption measures in the public sector – elimination of unnecessary procedures, restriction of discretionary powers, improvement of transparency and oversight, consistent enforcement of regulations on accountability and penalties for the non-fulfilment or violation of the prescribed obligations, an effective penal policy and development of corruption prevention mechanisms – and has accordingly formulated the relevant key goals of the Strategy.

This holistic Strategy concept provides a systemic approach to addressing the main causes of corruption. It horizontally covers all public authorities and actively involves them in the fight against corruption, allowing them to reform themselves from within and strengthening the resistance of the entire system to corruption, as well as its capacities to fight corruption. The authors of the Strategy aspired to achieve the following: to ensure that goals they set can realistically be achieved in five years' time and that the strategic documents can be applied to all processes within both the public sector and the part of the private sector which uses public resources and exercises public powers.

The key goals and measures in the new Strategy are not categorised by individual systems like in the 2005 Strategy, wherefore its authors have avoided the risk of failing to include a specific system or give it due attention. The authors of the new Strategy also outlined the mechanisms for monitoring the implementation of the Strategy and reporting on the fulfilment of its goals.

The holistic Strategy concept also calls for the design of sectoral action plans, which will ensue immediately upon the adoption of the Strategy and its Action Plan. The applicability of the measures in these two documents to all procedures that are non-resistant or poorly resistant to corruption will thus gain a more specific and visible form. Sectoral action plans will ensure the enforcement of the measures in all sectors by simultaneously taking into account their specific features. They will make sure that use is made of all the advantages of the sectoral approach to the design of the Strategy, which may not have necessarily been availed of due to the application of the holistic approach.

INVOLVEMENT IN STRATEGY DESIGN

The entire Strategy and Action Plan drafting process was open to observers and international partners and the representatives of UNDP Serbia, the Delegation of the European Union to Serbia, the OSCE and the US Embassy in Belgrade took part in the work of the working group as well. Their support has greatly contributed to the transparency and quality of the process.

The first draft of the Strategy met with the following criticisms: that the set goals were too general,

²⁰⁰ See the Anti-Corruption Agency 2011 Annual Report, Chapter 10, Research.

that the way they were formulated led to the impression that they had more to do with the reform of the state administration than with combating corruption, but, above all, that the priorities of the Republic of Serbia in this area in the upcoming period were not visible in the Strategy text. The text was also criticised because it did not explicitly demonstrate how the Strategy dealt with areas qualified as particularly corruption-prone in international reports on Serbia's headway in the process of EU integration.

The broader working group was presented the first draft of the Strategy at a meeting in November. The members shared their comments and suggestions about the text at that meeting and subsequently, in pre-designed forms.

The draft of the Strategy was presented to the members of the Anti-Corruption Agency Committee in the same period and they also voiced their objections and numerous suggestions about the concept and content of the document.

The priority objectives of the Strategy were set on the basis of the comments to the Strategy concept, a new consultative process and the needs analysis.

The measures and activities requisite for fulfilling the Strategy priority goals will be applied directly and in accordance with the Action Plan, i.e. their enforcement will not require the adoption of sectoral action plans. There is thus no risk that the process of adopting these documents will slow down the fulfilment of the priority goals.

The Working Group identified the following priority areas: (1) political corruption; (2) public resource management (internal auditing and financial management control; public procurement; privatisation; status of staff working in public authorities, management and oversight of the spending of funds provided by international institutions, organisations and states); (3) effective prosecution of corruption-related crimes; (4) public company sector; (5) urban and spatial planning; (6) protection of whistle-blowers; (7) the judiciary; (8) the police; (9) the health sector; (10) the education sector; (11) strengthening the capacities of independent regulatory authorities; (12) media; and (13) integrity in sports.

The Strategy's horizontal approach has been applied in the chapter entitled *Good Governance – General Corruption Prevention Mechanisms*.