



SIGMA Country Assessment Reports 2012/02

Serbia Assessment Report  
2012

OECD

<https://dx.doi.org/10.1787/5jz2rqnf9p6g-en>



**Support for Improvement in Governance and Management**

A joint initiative of the OECD and the EU, principally financed by the EU

# ASSESSMENT

## SERBIA

**MARCH 2012**

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## SUMMARY

The Constitution is aligned, for the most part, with European standards of parliamentary democracy, but some important departures from those standards remain, as was pointed out by the Venice Commission (Opinion No. 495/2006 of 16-17 March 2007). Despite the constitutional division of powers, the Parliament is unable to properly control the executive. To be able to do so, the National Assembly would need to have its capacities reinforced.

The state, de facto, concentrates power in the hands of the executive, which hinders the development of institutions to strengthen checks and balances, thereby undermining the public accountability mechanisms. An appropriate balance is still to be attained between the protection of the privacy of individuals, state secrets and transparency. In this environment, democratic values and the protection of individual rights are at risk.

The operation of a state governed by law in Serbia remains problematic, as procedures are easily ignored or circumvented, and the realisation of substantive rights faces many hurdles, including a certain degree of arbitrariness in public decision-making. The generally poor quality of legislation leads to further difficulties for consolidating the rule of law.

It is encouraging, however, that during the period assessed, some steps have been taken in the right direction to strengthen the capacity of Parliament to control the executive and to reinforce the independent institutions (the Ombudsman, Commissioner for Access to Information, Anti-corruption Agency and Supreme Audit Institution).

The Government's capacity for policy co-ordination is weak. Since 2000, Governments have been coalitions, which have distributed institutional and administrative power among coalition members (*lottizzazione*). This affects staffing in ministries and agencies, while further disrupting policy coherence. The central policy system is under-resourced and the quality of policy development in ministries is poor. Overall, the General Secretariat of the Government is too weak institutionally to be able to drive the policy system towards greater effectiveness and output quality.

### **Public Administration**

One characteristic of the public administration is the excessive concentration of decision-making powers in the hands of politicians, who do not delegate to the administration. This impedes the professionalisation of management.

The current legal framework does not require a merit system in the civil service. Recruitment and promotion are based on executive discretion, even if vacancies are regularly publicly announced.

Although public bodies are bound by law in their decisions and activities, practice has shown that the respect of legality and equality before the law in administrative decision-making and administrative action needs to be upgraded in order to attain better alignment with European principles of administrative decision-making, especially in terms of stronger legal certainty and predictability.

The constant proliferation of public bodies since 2000 has become a major problem. A kind of parallel state administration, without clear accountability, has developed, further complicating the management of the state administrative organisation and the attainment of accountability and efficiency in governance arrangements.

This lack of clarity can also be found in the public procurement system, and, in particular, in concessions and public-private partnerships. The public procurement system needs to be legally and institutionally reformed. The implementation of already adopted laws needs to be improved, to comply with European standards and to provide effective services. In addition, public procurement is a major source of corruption in the country.

The public expenditure management system, including public internal financial control, is based on a comprehensive budget system law, but the analytical capacity and conceptual understanding of key elements of effective public expenditure management are still weak. Managerial capabilities are very low in the state administration, meaning that managerial accountability remains a goal for the future rather than today's reality. However, the State Audit Institution is starting to work effectively and is gaining public recognition.

### **Administrative Justice**

A Law on Administrative Disputes was passed in December 2010, but it was prepared without the necessary consultation and consideration of basic rule of law tenets that a democratic state should respect and guarantee, and it should be reviewed. Nevertheless, it established an administrative court, which, despite its limitations, is starting to show results.

Administrative procedures are still regulated by non-democratic legislation, which is being revised. It is expected that a new Law on Administrative Procedures will be adopted by the new parliament following the upcoming May 2012 elections.

### **Reform Capacity**

The Government's capacity to set priorities and adequate sequencing for reforms is limited. This is, perhaps, one of the consequences of the excessive fragmentation of the coalition Government and of its lack of ability to carry out meaningful political negotiations conducive to effective reform.

Moreover, managerial capabilities to implement reforms are very low. Poor policy making and management capabilities are additional difficulties for reform.

Reform is generally understood as a set of law-making operations, undertaken with little consideration of how to effectively implement new or amended laws and little analysis of the impact of the legislation being passed for those being regulated. In addition, reforms are largely driven by pressure from outside the country, especially from the EU and other international organisations, such as the IMF. This raises concerns about the medium-term sustainability of these reforms.

Furthermore, a national consensus on the direction of the reforms has not been fully achieved. A better understanding of the issues at stake is needed if Serbia is to follow resolutely the path of reforms required by membership of Euro-Atlantic institutions.

The business community and other civil society organisations may be reform drivers. Pressure from the business community, especially small and medium-sized enterprises, is already creating demand for reform. The same is true concerning some major NGOs, who could add weight to the demand for the main political parties to tackle seriously the reforms needed.

Within the current system, the Serbian European Integration Office (SEIO) is a major reform engine. However, anchoring public governance reforms in the SEIO risks associating reforms too closely with the European integration agenda. Without diminishing the SEIO's capacities and its central role in promoting the European integration agenda, it is necessary to strengthen the engines of state and administrative reform that are less linked to the European agenda and whose more resolute

involvement could reduce the perception that the reform thrust is driven from abroad. Overall, the national ownership of the reforms needs to be strengthened.

## **Recommendations**

### **To Serbia**

- Revise the Constitution and better align it with European democratic and rule of law standards. Ideally, a reform of the Constitution should take place before other major reforms, as it should lay the foundations for further reforms. Two main constitutional reform thrusts should be contemplated from a public governance perspective:
  - strengthen the Parliament and all other institutions and mechanisms exercising checks and balances, especially the so-called independent institutions (the Ombudsman, Commissioners, Supreme Audit Institution and Anti-corruption Agency), by granting constitutional standing to those still lacking it;
  - strengthen the judicial system, especially the administrative justice and penal systems, including the independence of the judges while ensuring their continuing accountability.
- Introduce policies and actions aimed at improving the quality of public services and financial accountability so that citizens may perceive better the changes in deeper governance structures. This would give more public visibility to change processes which, in turn, will increase societal demand for reform.

## CIVIL SERVICE AND ADMINISTRATIVE LAW

### Main Developments Since the Last Assessment (May 2011)

Some ongoing reforms concerning the Ombudsman and the Commissioner for Access to Information would contribute to a better system of checks and balances within the administrative system if they are eventually adopted.

The Ministry of Human and Minority Rights, Public Administration and Local Self-Governments (henceforth the Ministry of PA), together with the Conference of Towns and Municipalities, has been working on a draft law on local officials, currently under inter-ministerial consultation. A draft Law on Salaries to reform the current Law on Pay in State Organs is pending in the Ministry of Finance.

The introduction of a merit system is proving to be difficult. By the end of 2011, the Government had completed competitive recruitment for 192 senior civil service positions (the total number of vacant positions was 330 in 2005 when the Law on Civil Service entered into force). This process has still to be completed. The Government's reshuffle, combined with downsizing the number of ministries from 24 to 17 in March 2011, led to the restructuring of some institutions and to the dismissal of some senior officials. The downsizing did not affect ordinary rank and file civil servants or public employees in any significant way.

In July 2011, the Government adopted the 2011-2013 Strategy on Professional Development of Civil Servants with the aim of creating a new system of professional development through the establishment of a central institution in charge of the implementation of training programmes. The strategy also shifts the current responsibilities of preparing, establishing and monitoring professional development from the **Human Resources Management Service** (HRMS) to the Ministry of PA, which will also co-ordinate specialised training programmes developed by individual institutions. The HRMS is to be the main instrument for the implementation of training programmes, while a full-fledged institute of public administration may be created in the future. In this regard, amendments to the existing Law on Civil Service are being prepared by the Ministry of PA.

The general legal administrative framework remained unchanged in 2011. The Office of the Commissioner for the Protection of Equality has been reinforced in terms of staff and premises and the number of complaints lodged with the Commissioner has increased fivefold, reaching 500. They mostly deal with matters related to illicit discrimination in labour relations.

The Ombudsman is becoming a central figure in the defence of citizens' rights in relation to the public administration. The number of complaints increased by 40 % in 2011 and the institution proposed a considerable number of amendments (35 in 2011) to existing laws that impede the full realisation of citizens' fundamental rights. Most complaints refer to the public administration's inefficient decision-making in various fields of administrative activities. Yet the Ombudsman still lacks sufficient staff; it currently has 70, which is inadequate to deal with the increasing number of complaints. The Ombudsman's powers and independence will be reinforced by the draft law amending its statute adopted by the Government in February 2012, which gives it more financial autonomy. The amendments will also reinforce the protection of whistleblowers, guaranteeing anonymity to those who lodge a complaint with the Ombudsman. The amendments also create a new category of staff in the Ombudsman Office (called "authorised persons") who have access to the

premises and documents of any public body. These investigators will represent a maximum of 30% of total staff and they will receive a 30% salary top up. For the first time ever in 2011, Parliament held a hearing to discuss the Ombudsman's annual report, which resulted in parliamentary support, albeit general, for the Ombudsman's work.

The Commissioner for Information of Public Importance and Personal Data Protection (henceforth the Commissioner) has also seen his status and legal powers strengthened by the amendments to its statute adopted by the Government in January 2012. The staff (currently 42) and premises continue to be insufficient. The Commissioner was re-elected for a second seven-year term in December 2011. Nevertheless, one major problem still remains: the unbalanced regulation of the Laws on Classified Information (also known as the Law on State Secrets or Classified Data), setting out the right to access to information. This imbalance makes access to information uncertain and dependent on haphazard legal interpretations by those loath to disclose information. There is also a draft on the right to access public archives, which could improve the situation, but that remains to be seen. As with the Ombudsman, the Parliament for the first time ever in 2011 heard the Commissioner's annual report. In it, the Commissioner called for more consistency and balance in the legal framework regulating access to information and the confidentiality of certain information, and for more coherence with the Serbian Constitution, especially on personal data protection.

The Parliament passed the Law on Administrative Inspection in November 2011. This law partly replaced the obsolete 1995 Law on Public Administration. In order to ensure consistency, the Ministry of PA has temporarily suspended the drafting of a new Law on Inspection Supervision until the new Law on Administrative Procedures is adopted. The difference between the two laws is that the Law on Administrative Inspection of November 2011 regulates the general procedures for all inspections, either internal or external, whereas the Law on Inspection Supervision regulates inspections on labour, taxation, education and so forth. The Law on Administrative Inspection regulates the supervision of administrative bodies' compliance with administrative law, which could be considered redundant if administrative inspectors are not given more competences such as, for example, examining the efficiency and effectiveness of public institutions and programmes. If administrative inspection is confined to monitoring the legality, it is redundant in relation to internal hierarchical administrative recourses and with the appeal to external bodies such as the Administrative Court, the Ombudsman, etc.

The reform of the inspection system as a whole has been identified by the business community as a crucial one to improve the business environment and boost competitiveness and fair economic competition. At the state level, there are 31 inspection services falling under 11 different ministries, which frequently ask for the same information from companies and pay uncoordinated visits to businesses. The problem of inspections is worsened by the larger problem of overproduction of legislation, which is adopted without proper prior consultation, some mechanically translated from EC Directives without proper impact analysis on the current domestic economic actors. Poor and unclear legislation leaves a lot of leeway for arbitrary interpretation of the rules by inspectors, which frequently happens. In addition, laws are often incoherent and contradict each other. Some regulations are not implementable and so are simply ignored, to the further detriment of the rule of law principle.

## **Main Characteristics**

The merit system in Serbia's civil service is not guaranteed and the professionalism of the state administration is limited. Recruitment to the civil service system is still largely based on political affiliation and patronage. The impartiality mechanism embedded in the recruitment system is not difficult to circumvent as it is relatively weak, and recruitment decisions are still based excessively on discretion. There is persistent confusion between the notion of the public advertisement of vacancies



and that of merit-based recruitment. Publicity is necessary, but it is not sufficient to guarantee a merit-based recruitment system.

The division of responsibilities between policy making, attributed to the Ministry of PA, and implementation, attributed in part to HRMS in the Secretariat General of the Government, is now operational. The disaggregation of policy making and implementation to two separate institutions means that the relationship between the two needs to be well managed and closely coordinated. The HRMS should be subordinated to the Ministry of PA, not to the Secretary General of the Government.

The implementation of the performance appraisal scheme is a formalistic exercise in which around 80 % of marks are excellent or very good, and 20% are good or satisfactory. However, a positive development is that most institutions have started establishing organisational and sectoral objectives to which individual objectives can be related, which could add coherence to the whole performance appraisal management scheme.

Accountability, transparency and predictability in administrative decision-making are weak. Accountability of managers is virtually non-existent as decision-making is limited to political decisions taken by ministers and politicians. There is no widespread practice of delegation of decision-making powers. As such, delegation is not used as a regular management tool. One of the results of this concentration of power in the hands of politicians is the extreme difficulty of implementing laws and policies because excessive political pressure inhibits the development of managerial skills in public administration organisations.

There seems to be a gap between the existing system of liability for damages caused by the public administration in Serbia and the common standards set in EU member states, which include an obligation for the state to compensate damages or loss of property caused in the case of lawful and regular operation of public services (objective or strict liability without tort). In Serbia, state liability is confined to compensating for damages or lost of property in the case of wrongdoing or ill-functioning of public services, *i.e.* no strict liability exists.

Major problems still exist for implementing the Law on Classified Information as no secondary legislation has been adopted since its promulgation two years ago. The Government has yet to adopt the Decree on Protection of Particularly Sensitive Personal Information, the regulation on protection of biometric data, the supervision of operation of private detective agencies, and so forth. The current legal framework is thus ambiguous in defining criteria for determining what is a "state secret", "classified information" or "internal information".

Administrative institutional fragmentation remains a problem. The reshuffle and downsizing of the Government from 24 to 17 ministries in March 2011 did not bring about clarification of competences or a more coherent division of labour between ministries, as the downsizing was a rather mechanical exercise without any meaningful analysis of functions and responsibilities. Administrative fragmentation reveals a lack of organisational policy in the state administration, which results in confusion and weakened accountability of state bodies, especially of so-called "arm's-length agencies" where the remuneration of employees (as they are outside the scope of civil service legislation) is arbitrary ("flexible") and decision-making procedures are unpredictable and haphazard. There is no rational ground for the overly high number of existing parallel administrative agencies.

Administrative procedures are still governed by the 1997 Law on General Administrative Procedures, as amended in 2001 and 2010, but the Government is drafting a new and modernised procedural law that is better aligned with European principles of democratic public administration. It is expected to be passed by Parliament in September or October 2012, after the general elections due to take place in May 2012.

The judicial review of administrative acts is slowly improving. The Administrative Court, which started operating in 2010, has been able to significantly reduce the backlog of cases it “inherited” from the Supreme Court. It has also kept pace in resolving new cases, despite the current low number of administrative judges (32) and the still low capabilities of judges in certain matters such as consumer protection, state subsidies and competition. Training is required in these areas. But what is most required is a certain degree of specialisation of administrative judges. The current 2009 Law on Administrative Disputes has defective design-related issues that need to be addressed in the near future, such as generalised mandatory public hearings (which should cease to be mandatory in all cases) and the impossibility to accumulate cases with the same characteristics into a single process, which would contribute to procedural economy. In addition, a major shortcoming in the current law is that it does not allow for a second instance of judicial review, bar for extraordinary cases. This flaw makes the Law depart from the established jurisprudence of the European Court of Human Rights.

The organisation of the public administration is excessively complex and confusing, which is detrimental to administrative transparency and efficiency. In this regard, the passage of the Law on State Administration and the Law on State Agencies was a missed opportunity to increase transparency in the organisational set-up of the state administration. These Laws do not provide sufficient clarity concerning the distribution of administrative competencies between public authorities and the establishment of accountability lines between them.

The typology of the various categories of existing public agencies is confusing, and despite the efforts so far by the Ombudsman and the Commissioner to promote more transparency, this situation contributes to creating a rather opaque administrative environment. In addition, in practice these agencies are not properly accountable to the Government, as the accountability mechanisms established by law are rarely applied.

Administrative control (see above as the Law on Administrative Inspection was amended in November 2011) based on administrative inspectorates seems to be rather formalistic and less concerned with results. Inspectors only focus on legality and regularity, which in itself is positive, but legality is protected by the courts and other external control bodies so, to add real value, they could be legally empowered to also assess the efficiency and effectiveness of public organisations.

Public enterprises are frequently used to finance political parties and to sustain patronage networks, which fall outside the scope of the civil service legislation and were not controlled by the state audit institution before 2011, when it included them in its audit plans. The lack of clear and precise legislation regarding the salaries and bonuses of officials in public enterprises and other public agencies leads to unmonitored spending and to the partisan increase of salaries and financial bonuses for top management, which are usually incommensurate with the results achieved.

## **Reform Capacity**

The current competences of the Ministry of PA should enable it to be the main reform steering instrument, in close co-operation with the Ministry of Finance. However, the Ministry of PA still has shortfalls in the area of public administration reform. It needs more financial resources and staff, and a better internal distribution of responsibilities. In addition, the limitations on supervision imposed by Article 46-3 (“a ministry cannot be supervised by another ministry”) of the Law on State Administration should be removed.

The current administrative and political fragmentation adds to the difficulties of a reform that needs to cut horizontally across the whole state administration. Furthermore, the concentration of decision-making powers in politicians impedes the emergence of professional management in the public service. These factors represent serious obstacles for the reform, together with relatively high staff turnover and shortages in key areas.

The currently weak managerial capabilities in state administration institutions represent a major obstacle to the design and implementation of the reforms. This managerial weakness cannot be replaced by international technical assistance. Instead, effective managerial capabilities specifically adapted to the Serbian politico-administrative context should be strongly developed.

More work is needed to ensure that Serbia resolutely follows the path of reforms required for membership of Euro-Atlantic institutions. Nevertheless, pressure from the business community, especially small and medium-sized enterprises, and other social actors, could represent an effective reform driver for achieving a more rational and professional public administration.

## Recommendations

### To Serbia

#### *On Administrative Legal Framework*

- The General Law on Administrative Procedures currently under preparation should be adopted in 2012. Its implementation should be carefully managed and monitored, as it will introduce an important cultural shift in administrative decision-making processes, including the delegation of powers, increased e-administration, and a different pattern of relations between the public administration and citizens.
- The 2009 Law on Administrative Disputes should be revised in light of the experience of the Administrative Court and the legal profession in applying it, and it should be made consistent with the General Law on Administrative Procedures now under preparation. The introduction of the second instance is necessary to align the judicial review with European standards. This revision should take place in 2013 or 2014 at the latest, provided that the Law on Administrative Procedures is previously effectively enacted.
- The policy and regulation on state liability for damages and loss of property should be revised so as to provide for objective liability without tort, in compliance with European standards, and to introduce additional accountability mechanisms into the state administration.
- The monitoring of the administration should be streamlined in order to introduce better accountability mechanisms for civil servants, public managers and administrative bodies. Consideration should be given to the reform of the current administrative inspectorates in the context of designing a better policy for managerial and institutional accountability and improving the quality of services delivered to the public.
- Legislation on official state secrets and open access to information should be revised in order to strike a sound balance between the two and to adapt them to emerging European standards on administrative transparency, so that the “right to know” becomes the general rule and the denial of access to information the exception. The protection of private data should be improved and the unbridled access to an individual’s privacy by state bodies restricted to information that is really indispensable.
- The current organisational policy of the Serbian state and administration should be streamlined in order to reduce its current fragmentation, increase its efficiency, ensure more effectiveness in applying the *acquis communautaire*, and ultimately improve the capacity to govern the country. This streamlining would imply a thorough revision of a package of laws, including the Law on State Administration, Law on Agencies, Law on Ministries, and Law on Public Enterprises. The current fiscal strain argues in favour of the acceleration of these reforms.

*On Civil Service and Public Employment*

- The weakness of the merit system in recruitment should be addressed as quickly as possible by amending the Law on Civil Service.
- The legal framework for public employment should be revised in order to enlarge the scope of the civil service, with the necessary adaptations, to include local self-Governments and the security services. The legislation on public service employees needs to be modernised in order to guarantee equal access to public employment, fair working conditions, and increased capability and capacity to ensure high quality in the services delivered to the public.
- A better set-up for civil service policy preparation, implementation and management is necessary. The Ministry of PA should ensure homogeneous management standards across all state administrative settings and preserve the unity of the civil service system (for this, the cancellation of article 46-3 of the Law on State Administration, which prohibits a ministry to supervise another one, may be necessary). Human resources management units in ministries and agencies should also be reinforced.
- The Human Resources Management Service should be placed under the aegis of the Ministry of PA and progressively become an institute or school of public administration with civil service development responsibilities through training and other means, as well as serve as the main repository of policy-oriented knowledge on public administration and public management.

# PUBLIC EXPENDITURE MANAGEMENT AND CONTROL

## Main Developments Since the Last Assessment (May 2011)

Prior to 2011, Serbia had achieved its short-term fiscal targets in difficult circumstances by introducing recruitment restrictions, limiting salary increases, and reforming the pension system. However, this progress now has ground to a halt. The public finances are on an unsustainable path, with the 45% maximum debt to GDP ratio of the Budget System Law (BSL) being breached in 2011. Although the deficit as a percentage of GDP has broadly been on target in recent years, deficits of 4.7% in 2010, 4.6% in 2011 and a 4.25% target for 2012 suggest that the fiscal rule of a deficit of not more than 1% over the medium-term is also off-target.

In the context of negotiating a new IMF Standby Agreement, the BSL has been amended to improve the **Public Expenditure Management (PEM)** system in accordance with IMF requirements. The main amendments were the introduction of: *i)* a rule that requires a budget beneficiary who is proposing a new policy initiative to fund the additional cost through off-setting savings and/or additional revenues; *ii)* new rules to strengthen the capital budgeting process; and *iii)* a requirement that the Government must agree the Fiscal Strategy Report before presenting it to Parliament. Despite agreeing on an early Fiscal Strategy Report, the Government failed to agree on the more up to date, and therefore more relevant, Revised Fiscal Strategy for 2012 and public finances for 2012 are already off target.

For **Public International Financial Control (PIFC)**, 2011 was a year of continuity and consolidation rather than of major new developments. The capacity of the MoF's Central Harmonisation Unit has been increased with four additional staff recruited in 2011 and three early 2012.

Revised financial management and control (FMC) and internal audit rulebooks have been published. Ninety-eight internal auditors completed the certification examination following theoretical and practical training, both delivered by the CHU. A PIFC technical assistance project is under way, mainly focusing on FMC, but key staffing changes will cause a delay in its completion. Public internal auditors have established the Association of Certified Public Sector Internal Auditors as a non-governmental and non-profit organisation for public internal audit professionals.

The Budget Inspection Department has been established, with eight staff. Twenty-six inspections have been undertaken over the last 12 months. Systematic contacts are being developed with the Supreme Audit Institution (SAI) and with the prosecutors. An "intelligence" database is being developed, which is a commendable development.

Progress has been made in the preparations for **decentralised management of IPA funds (DIS)**. Serbia has finalised the preparation of all procedures and the accreditation package. The compliance assessment phase started in January 2012 and the compliance assessment report is due in May 2012. The Audit Authority (AA) was formally established in 2011; its head has been appointed and one administrative staff recruited.

The main developments in the area of **external audit** since the last assessment relate to a significant increase in audit capacity, which has translated into a three-fold increase in audit coverage, with

47 audit reports published in 2011 compared to 11 in 2010. These audits covered around 71% of the budget. The audit reports were submitted to the National Assembly in December 2011.

A strategic development plan for 2011-2015 has been adopted. The financial audit methodology and financial audit manual are about to be finalised. Forty auditors have been certified. A new complement (systematisation) was adopted, allowing for 201 posts (previously only 159). A vacancy was created in February to hire up to 51 additional staff in 2012. Additional premises have already been found in Belgrade to host the additional staff.

The SAI has created two additional sectors, one for auditing local self-Governments and one for auditing mandatory social insurance organisations. Regional units responsible for auditing local self-Governments and public enterprises were established in Novi Sad (10 staff) and Nis (14 staff) in 2011.

## Main Characteristics

Regarding **PEM**, the BSL provides for many of the essential components of a sound budget system. The law, which was drafted in 2002, has since been amended on several occasions including in 2009, 2010 and 2011. The amendments have usually been made in the context of IMF Standby Agreements and have been driven by IMF priorities rather than those of the Serbian Government.

The Fiscal Council, established in 2011 as an independent body with the aim of improving the culture of fiscal accountability in Serbia by allowing for independent analysis and expert debate on the government's fiscal policy, has started working but its effect on the budget or on accountability has so far only been minor. Parliament's role remains weak: it does not discuss the Fiscal Strategy Report and the Budget Committee does not have any technical support to conduct analysis.

The Government's failure to agree on the latest fiscal strategy proposal for 2012 makes it clear that the importance of such a strategy is not understood. Yet without one, there is no budgetary framework within which services can be delivered in a planned and controlled manner.

The state Budget does not include all donor funding, although EU funding is shown separately in the published budget documentation, as is the Serbian co-financing element. The budget documentation is of insufficient quality and lacks transparency, and the structure of the budget is too detailed to be monitored effectively, given the limited number of staff with the capacity to carry out such a role.

Five ministries have been developing programme budgeting since 2008. Quantitative indicators are included but there is no assessment of results against objectives. Insufficient knowledge and management's incapacity to execute a programme budget in accordance with pre-defined objectives mean that after four years, progress has been negligible. Nevertheless, programme budgeting remains one of the main priorities for 2012 since, according to the BSL, programme budgeting should be fully introduced by 2015. There is a risk that concentrating on this issue will divert resources from the more important short-term goal of improving basic financial management principles within line ministries and budget beneficiaries.

The budget execution phase has been strengthened with the introduction of a logical control process whereby budget beneficiaries update the Financial Management Information System themselves, which minimises errors and enhances control far better than a manual payment system. Budget beneficiaries do not maintain a record of commitments for the Treasury or Liquidity Commission, which is a continuing weakness.

The Medium-Term Expenditure Framework introduced for the 2010 Budget exists in name only, with the latter years representing only indicative allocations. There is no medium-term strategic approach

and the budget remains a one-year bottom-up process, with budget beneficiaries' budget requests ignoring top-down expenditure ceilings approved by the Government. Budget users should respect the expenditure ceilings and, to secure control over budget allocations, their own revenues should be treated in the budget discussions as part of their agreed budget ceilings.

The capital budget is not underpinned by any form of analysis due to both insufficient capacity and a lack of political will. The shifting of the responsibility for capital investment planning from the Ministry of Economy to the Ministry of Finance, to prevent poorly considered projects going to the Government for approval, is planned. However, poorly costed proposals continue to go to Government at the current time.

The planning framework for EU funds provides a more analytical approach to multi-annual planning, but these activities are not linked to the budget process and the Ministry of Finance has no significant role in the planning process for EU funds.

**PIFC** is still at an early stage of development. The BSL now provides a comprehensive legal framework for the development of PIFC, complemented by the revised rulebooks on FMC and internal audit. However, the text of the law still lacks clarity, especially on financial management and control. The revision has improved the rulebooks and they have been welcomed by users such as the Treasury.

Budgetary control is exercised through a well-functioning treasury system. The understanding and implementation of financial management and control principles are weak at budget beneficiary level and there is no real appreciation of the concept of "managerial accountability" in terms of what is to be achieved with budget funds and whether or not this is being achieved efficiently and effectively. Financial management still appears to be understood as financial control and, besides the appointment of persons with specific FMC responsibilities; there hasn't been generally any changes in organisational management structures to accommodate the requirements of "managerial accountability" and "financial management".

Thirty-one internal audit units had been established until by the end of 2010, both in direct and indirect budget beneficiaries<sup>1</sup>. Overall, there are approximately 130 internal auditors in the Serbian public sector, 98 of which have now acquired the title of "certified public internal auditor" (although they are still awaiting their certificates). The training and certification scheme requires that internal auditors have at least three years of experience, have taken part in basic internal audit and FMC training provided by the CHU, and have carried out at least two internal audits during which they were coached by the CHU. The CHU also takes part in the Certification Commission and proposes all members of this Commission, who are then appointed by the Minister of Finance for a period of five years. The fact that the CHU is so prominently involved in the training and certification does not only bind a lot of its resources, it may also expose it to questions about impartiality with regard to certification decisions.

Internal audit units report that they function independently. They work on the basis of annual and strategic audit programmes. The development of an Association of Certified Public Sector Internal Auditors can be regarded as important, as it displays a commitment by the internal auditors themselves to increasing professionalism and the creation of an *esprit de corps*.

The CHU has two units, with a current total of 12 staff equally divided between internal audit and FMC. Progress on FMC and internal audit is monitored by the CHU through an annual report based on a questionnaire. The CHU does provide advice where requested, but it focuses primarily on training and certification activities. In the future, it will have to adapt a more proactive approach to

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<sup>1</sup> Updated data on internal audit for 2011 will only be available with the next annual report in April 2012.

networking and promoting PIFC through presence in the field and discussions with other stakeholders (such as with the Budget Department of the Ministry of Finance or the ministry responsible for public administration reform).

The current technical assistance project, which represents the third phase of technical assistance for PIFC, has not been completely integrated into the CHU's activities.

Budget inspection has been established as a separate department of the MoF. It has become operational with eight staff and is establishing a work programme focused on major fraud and corruption.

**External Audit (EA)** is still at an early stage of development as the SAI has only been operating for four years. The Constitution (article 96) provides the SAI with sufficient overall independence. The SAI Law is broadly in line with international requirements for the independence of SAIs and the SAI has a sufficiently broad mandate to audit state and EU funds. Some regulations have proven to be problematic in their practical application. An increasing concern is the unusual organisational set-up of the SAI, a combination of auditor general and collegiate model, characterised by unclear responsibilities of the members of the council of the SAI.

The SAI has elaborated and adopted rules of procedure, a code of ethics, a staff certification programme, and a strategic development plan and is preparing an audit methodology and audit manual, both for financial audit. Progress in these areas will need to continue together with a review of the legal framework, to ensure that the framework is sufficiently robust, to ensure the constitutional independence of the SAI in practice, and is effective in all respects. The SAI is organised in five different sectors and currently has 102 staff, 78 of which are auditors.

The SAI has audited the execution of the Serbian state budget for the third time and is gaining in experience and profile. The (legally required) responses of auditees on the elimination of detected irregularities or inappropriateness indicate that auditees have started to take compliance audit reports seriously. Although the Finance Committee of the National Assembly has started discussing these reports, the Parliament's capacity to fulfill its budgetary oversight role remains very weak.

In accordance with the law, a specific responsibility of the SAI is to pay attention to whether certain activities of the audited entity display features of misdemeanour or criminal offences. Should this be the case, the SAI shall promptly submit a request for filing misdemeanour and/or criminal charges to the competent authority. During the last two years, the SAI filed 122 requests for initiating misdemeanour proceedings against 176 persons to competent misdemeanour courts, 24 commercial offense charges against 40 persons to the competent prosecutor, and 3 criminal charges. The names of the people charged are published on the SAI's website.

These procedures are using SAI resources that could instead be used for additional audit work. Furthermore, this responsibility and reporting on it have increased the general public's impression of the general public – fostered by media coverage – that the SAI's main role is to ensure that persons responsible for irregularities and mismanagement are prosecuted and punished.

When comparing the number of posts filled with the number of posts planned in the complement (systematisation), the SAI remains under-resourced, which has a detrimental effect on the level of audit achieved. The SAI will need to address these shortcomings in order to become a modern and effective institution.



## Reform Capacity

The capacity for reform has been hindered in recent years by a lack of political will. This is unlikely to improve in 2012 as it is an election year.

There is recognition among staff at all levels of the administration that staff numbers are insufficient and analytical capacity among existing staff inadequate to develop a strong **PEM** process. However, there is a lack of political will to address these issues, despite the fact that there is sufficient capacity within the administration to begin improving the system. For instance, the Public Debt Administration function well and the Treasury applies a strong control over all transactions to ensure that the detailed line-item classification of the budget is complied with and that monthly cash apportionments are not exceeded. Overall, the capacity for dealing with EU funds is relatively good but still depends on the capacity provided by technical assistance projects.

The development of **PIFC** in Serbia requires a better understanding, in the CHU and at political and senior managerial levels, of what managerial accountability means and requires. Activities should focus on developing this understanding and require a change in the approach to the delivery of public services. This links with the wider developments needed in public expenditure management. The current PIFC training processes are resource intensive, both for the CHU and managers as well as the technical staff concerned, which risks delaying the implementation of PIFC across the public administration. The CHU needs to increase its capacity for standard setting, harmonising and facilitating, and could use the current technical assistance project much more to this regard.

Regarding **external audit**, the SAI continues to steadily improve. The SAI has benefitted considerably from its bilateral co-operation with the Office of the Auditor-General of Norway (OAGN). A Twinning project is planned to start in 2012. After operating for only four years, Serbia's SAI seems to be in a good position to build on its experience so far and to further develop into a professional institution.

## Recommendations

Currently, expenditure is not properly planned and significant reforms are made only in response to pressure from donors. A new plan consisting of a number of basic steps and objectives for reforming the Serbian **PEM** system is urgently needed. It cannot be imposed by donors - the Government as a whole must be committed to such a plan, and a strong minister will have to champion it if it is to succeed.

Reform of the organisation and culture of the civil service is fundamental for the successful implementation of **PIFC**, to allow for the introduction of the notion of managerial accountability. In undertaking this reform, a greater separation of political and managerial responsibilities should be established, with ministers focusing on strategy and policy, and managers on the delivery of services. Focusing only on PIFC as a technical control issue without also addressing this wider context will not produce results. The responsibility of the CHU is to recognise and support the introduction of these wider contextual reforms. The same applies in principle to the DIS preparations. Focusing only on formal procedures and on the training of a narrow group of staff will not significantly improve the general management and control environment, and certain risks will remain.

### To Serbia

#### *For Public Expenditure Management*

Develop a plan for reforming the public expenditure management, with a strong minister to champion it. This plan should focus on implementing reforms that have already been agreed and launched, and concentrate on the following actions:

- Strengthen the BSL. The fact that the BSL is amended every year shows that it is weak in several respects and fails to put the budget on a sound legal footing. A fundamental redrafting should be considered with the objective for the BSL of establishing the essential principles and providing sufficient scope for the introduction of administrative changes without the need for ongoing amendments, which gives the false impression of progress and diverts attention from initiatives to generate genuine progress.
- Take the fiscal strategy seriously. The fiscal strategy should cover not only macroeconomic issues and expenditure ceilings but also the long-term costs of new policies and the impact of the current expenditure costs of new investment projects on future budgetary resources as well as on long-term financing of major funds, such as pension funds and disability funds.
- Concentrate on strengthening basic requirements. The ambitions for programme budgeting and performance budgeting should be reconsidered and brought in line with the administration's limited analytical capacities. Programme budgeting is complex and time-consuming and it will divert attention from the more important short-term goal of improving basic financial management capacities within line ministries and budget beneficiaries, such as the active management of commitments so that payments are not delayed.
- Focus on capacity development. Staff both in the Ministry for Finance and the budget beneficiaries must be trained to develop the technical and analytical capacities needed to prepare baseline estimates, discuss budget proposals, and understand the necessity of controlling expenditure.
- Take financial impact assessment seriously. The Government must refuse to approve any proposal that has not been agreed with the MoF, and allocations for agreed initiatives must be limited to the agreed costs.

#### *For Public Internal Financial Control*

Include the PIFC reform into the overall plan for reforming the public expenditure management and review the current strategic plan in the PIFC policy paper to consider where it needs amending and updating, and focus on the following actions:

- Raise the profile of the CHU so that it can actively engage with all possible organisations, whether private or public, that may have an interest in or could contribute to the development of PIFC. Systematic networking arrangements should be developed.
- Prepare a new training strategy, especially for internal audit, on the basis of a training needs analysis and a review of how training is provided and by whom. The CHU should not be the main provider of training in the future, in order to be able to concentrate on its harmonisation and co-ordination functions.
- Support top management in understanding the significance of PIFC and its impact on the management of public expenditure. This would then enable managers to become involved in improving the efficiency and effectiveness of public expenditure.

Once the appropriate conditions have been created and there is a high level of support for PIFC, consider a pilot project to define exactly how FMC should be implemented in an organisation and the impact that this would have on managerial structures, budgets, information requirements and reporting arrangements. This would then provide a practical Serbian model that could then be followed throughout the public sector. A Twinning arrangement would be appropriate, with the

identity of the Twinning partner depending on the Serbian organisation selected as the pilot organisation.

The SAI should implement the strategic development plan, and focus on the following actions:

- ensure the formal adoption of the audit methodology and manuals and making sure that management and staff are dedicated to its implementation.
- further implement the Staff Certification Training Programme for existing and new audit staff.
- further recruit staff, especially in view of the upcoming Twinning project, so that maximum benefit is made from this support.
- foster the SAI's positive relations with the Budget and Finance Committee of the National Assembly, and develop a clear procedure for the Parliament's handling of audit reports in order to strengthen its general oversight function.
- review the role of the SAI council and its members to minimise the potential impact of political interference with the SAI's activities.
- review the role of the SAI with regard to misdemeanor and criminal offences to make sure that it can concentrate on its main audit function and will not be seen as a law enforcement institution.

## PUBLIC PROCUREMENT

### Main Developments Since the Last Assessment (May 2011)

Substantive changes have taken place since the last assessment (May 2011). Significant amendments to the Public Procurement Law 2008 (PPL) were approved by the Government on 30 December 2011 and have been submitted to Parliament for adoption. If the amendments are adopted, the amended PPL will be, for the most part, in line with the *acquis*. A new PPP and Concessions Law (PPP Law) adopted on 22 November 2011 came into force early December 2011 and repeals the previous Concessions Law 2003. A new advisory body, the PPP Commission, is being set up and will be based within the Ministry of Economy.

On 9 September 2011 the Government adopted a Procurement Strategy and Action Plan that set out a number of objectives and actions for the period 2011-2014 for the improvement of the public procurement system as a whole. Measures to increase transparency and reduce corrupt practices, including improving internal and external controls, have been proposed. The Procurement Strategy includes propositions aimed at improving and updating the PPL and the legislation covering concessions and PPPs, institutional changes including the setting up of a new centralised procurement purchasing body and improved co-ordination between institutions, capacity building and professionalisation, e-procurement, frameworks, social and environmental issues. A number of the activities identified in the action plan are underway.

There have also been changes in institutional set up and capacity. The Ministry of Finance, which remains the competent ministry for the PPL, has increased the number of staff working on the PPL and related issues from two to six. The Ministry of Finance has taken on the lead role in the preparation and preparation of the amendments to the PPL and has shown proactive leadership and sector co-ordination in this context. This may contribute to improving co-operation between institutions.

If the amendments to the PPL are adopted by Parliament in the form proposed by the Government, the staff and most of the functions of the Public Procurement Office (PPO), currently a stand-alone organisation, will be transferred to the Ministry of Finance. The PPO has been instrumental in the implementation of the certification of procurement officers as well as in organising and providing training for contracting authorities, bidders and other stakeholders.

The number of staff at the competent procurement review body, the Republic Commission for the Protection of Rights in Public Procurement Procedures (the Republic Commission), has increased dramatically. The Republic Commission has moved to new, well-equipped premises. Steps have been taken to ensure that decision-making by the Republic Commission becomes more transparent and efforts are now being made by the Republic Commission to monitor and enforce its decisions. A new Republic Commission website has been set-up ([www.kjn.gov.rs](http://www.kjn.gov.rs)).

The PPL amendments will set up a new Office for Centralized Procurement to procure central Government requirements.

## Main Characteristics

The core legal framework applying to public procurement comprises the Public Procurement Law 2008 (PPL) and the Public-Private Partnership and Concessions Law 2011 (PPP Law) together with the related by-laws and standard documents and manuals. Non-civilian defence procurement is not subject to the PPL.

The key procurement institutions are the Ministry of Finance responsible for the PPL, the Ministry of Economy responsible for the PPP Law, the Public Procurement Office which undertakes a range of monitoring, reporting, advisory and support activities including maintaining the Procurement Portal, and the Republic Commission for the Protection of Rights in Public Procurement Procedures, the independent procurement review body.

### *Legal framework*

**Public Procurement Law** - The amendments to the PPL were prepared by the Ministry of Finance with input from a number of stakeholders. The proposals were also subject to a public consultation process. A number of stakeholders have expressed concern that the process was rushed, and others have reservations regarding the degree to which the full range of stakeholders were engaged in the process and whether participating stakeholders' concerns were fully taken on board.

The amended PPL will be for the most part, but not fully, aligned with the *acquis*. Areas not aligned include the restricted procedure (which fails to adopt the EU model), exemptions from the PPL, and domestic preference provisions. Consequential amendments to existing by-laws are being drafted, as well as a number of new by-laws including the introduction of Common Procurement Vocabulary (CPV) codes.

The amendments proposed by the Government generally strengthen the legal framework in order to tackle a number of weaknesses in the PPL identified in previous SIGMA reports, particularly in relation to the over complexity of the procurement process and lack of transparency. They include, for example, simplification of the qualification process and increased transparency through electronic publication of procurement notices. There are new obligations to use the negotiated procedure with prior publication of a notice on the Procurement Portal in cases of urgency and to publish full procurement documents for all procurements, except for very low-value contracts, as well on the Procurement Portal. The Procurement Portal is openly accessible and free of charge. The amendments permit the establishment and operation of framework arrangements and set up a new centralised purchasing body for Government purchasing. Both measures are in line with the *acquis*. If the PPL amendments are adopted, proactive implementation, particularly in the roll-out of the changes across all contracting authorities, will be critical.

**PPP and Concessions Law** - The drafting of the new law is based on a number of sources and not only the *acquis*. By-laws have been prepared for approval within one month of the adoption by Parliament of the amendments to the Public Procurement Law. The PPP Law distinguishes between PPP type contracts for works and services, with the more traditional "grant of a concession" being the exploitation of natural resources or assets in general use. The PPL procedures apply to the appointment of contractors for public works concessions. There are also provisions permitting "self-initiated procedures" by third parties. A different procurement procedure, which is set out in the PPP and Concessions Law, applies to the granting of concessions and the award of service concessions.

A number of PPP projects are foreseen in the short to medium-term and the idea of conducting pilot projects is being discussed. The Ministry of Economy acknowledges its current lack of experience in the award of PPP contracts, which could potentially hinder the success of future PPP projects. The Ministry of Economy is seeking assistance for capacity building in this context (and may receive

support from the EBRD). The PPP Law is not fully in line with the EU *acquis*, although this lack of alignment is technical and mainly concerns definitions (*e.g.* exemptions). It is also overly detailed and may prove difficult to apply in practice, particularly in the context of complex PPP arrangements.

A nine-member PPP Commission based within the Ministry of Economy is being established. The role of the PPP Commission is to provide a range of technical assistance to contracting authorities on PPP and concession projects. It will also provide opinions on proposed projects and on the preparation and publication of annual reports on projects implemented under the PPP and Concessions Law. The establishment of an appropriately expert specialist PPP body would support better implementation of PPP projects. The Republic Commission for the Protection of Bidders Rights has competence to decide complaints in relation to the award of **both PPP and concessions**.

Co-operation between the Ministry of Finance and Ministry of Economy will be essential to ensure consistency of approach and co-ordination in the field of public procurement, concessions and PPPs.

**Defence and security** - Eighty-five per cent of the Ministry of Defence's purchasing turnover is for civilian requirements and subject to the procedures of the PPL, of which 95 % uses the open procedure. The remaining 15% of the Ministry of Defence's purchasing turnover is classified as military and confidential and is procured in accordance with the Decree on the Special Purpose Funds (Official Gazette of RS no. 82/08 and 47/10) through competition between contractors drawn from a list maintained by the Ministry of Economy. The Public Procurement Strategy notes that the provisions of the new Defence and Security Directive will be adopted by Serbia two years prior to EU accession.

### ***Institutions***

The lack of co-operation between institutions is a weakness of the public procurement system. There is some evidence that co-operation between institutions has improved with, for example, new protocols being agreed and input from a number of institutions on the amendments to the PPL. The **Ministry of Finance** is playing an active role in co-ordinating the implementation of the strategy for the new PPL and by-laws. Staff numbers at the Ministry of Finance to support this role have increased from two to six. The Secretary of State takes a proactive interest in public procurement and is seeking to foster greater co-ordination and co-operation within the Ministry and between institutions.

If the amendments to the PPL are adopted by Parliament in the form proposed by the Government, the **Public Procurement Office (PPO)**, currently a stand-alone organisation, will be integrated into the Ministry of Finance, along with its current staff (whose number remained unchanged in 2011), assets and most of its functions (including maintaining the Procurement Portal, monitoring public procurement procedures, submitting requests for the protection of rights in cases of public interest violation, initiating the budget inspection infringement procedure, providing consulting services to procuring entities and bidders, collecting statistical data, and undertaking administrative and technical activities related to the certification of procurement officers).

The change in the PPO's institutional location is due to take place one month after the amendments to the PPL come into force. The *acquis* does not require the existence of a PPO or similar organisation and does not regulate the nature, structure or location of such an organisation.

The PPO has continued its activities including running the Procurement Portal, collecting procurement data and producing reports. It prepared 243 reports on use of the negotiated procedure due to urgency and unforeseen events, and identified irregularities in 25 urgent procedures. With the assistance of the Twinning project, the PPO has prepared a range of user tools, including manuals, aimed at facilitating the work of public procurement practitioners. It has, together with a UNDP Project, developed software for the electronic management of public procurement

notices and run a number of related training courses. The PPO played a key role in the development and roll out of the certification process of 1,045 procurement officers, which represents a critical step in professionalisation. It has also been involved in organising a number of training sessions for contracting authorities, bidders and other stakeholders. Serbia is also participating in the EC's regional IPA training project. The full *Public Procurement Training Manual* has been translated into Serbian and additions and changes made to localise it to make it Serbia-specific. Final versions of the modules are being prepared and will be used for training both procurement officials and bidders. The Procurement Strategy identified staff levels at the PPO as an issue but they remained unchanged in 2011.

**Republic Commission for Protection of Rights in Public Procurement Procedures** - The Republic Commission was previously identified as a weak link in the procurement system, with particular concerns about the length of time needed to take decisions, the lack of transparency of decision-making, and failure to monitor enforcement of decisions. The number of complaints dealt with by the Republic Commission continued to increase, rising from 1,150 in 2010 to 1,400 in 2011. In 2011, 1,069 cases concerned requests for protection of rights; 350 decisions resulted in partial annulment of the procedure and 242 in total annulment. 2011 also saw some positive changes resulting from increased Government funding, the effects of which are beginning to be seen. Staffing levels have increased significantly, from 7 to 36, of which 25 are legal experts. Decisions are taken and parties are, in general, notified within the specified statutory timescales. Full decisions are now published on the Republic Commission's website. Statistics on the average duration of proceedings are not currently available but provision of this type of data is a requirement of the amended PPL and as such is planned. Fees charged to complainants in relation to low-value contracts may prove a disincentive for challenge by bidders. The Republic Commission has recently started a paper-based review of the implementation of its decisions. In December 2011, it referred 36 failures to implement its decisions to the Ministry of Finance, the Budget Inspectorate and Parliament. The Ministry of Finance is responsible for initiating court proceedings in this context and data on the number of court proceedings and/or fines was not obtained. There is still a need to further build public confidence in the work of the Republic Commission.

If the PPL amendments are adopted by the Parliament in the form proposed by the Government, a new **Office for Centralised Procurement** will be established to procure central Government requirements. Central government bodies will be obliged to use it for the purchasing categories identified. There are provisions in the amended PPL permitting other authorities (*e.g.* at regional and local level) to set up offices for centralised procurement.

Other key institutions include the State Audit Institution, Ministry of Finance's Budget Inspectorate and the anti-corruption and competition authorities. Continuing and improved proactive co-operation between all institutions is essential.

### **Implementation**

At ministry level, the focus of activities in 2011 was on top level changes *i.e.* amendments to the law. The practical effects of these changes on the procurement system, which has been criticised as overly complex and lacking transparency, remain to be seen. The average number of bidders participating in procurement processes fell from 7.5 in 2002 to 3.17 in the first half of 2011. The reasons for this decline are unclear but it may reflect a general lack of confidence in the system as a whole. The changes to the PPL simplifying the qualification process should help reduce unnecessary bureaucracy and complexity during the early stages of the procurement process and may encourage bidder participation. Increased transparency should also result from additional requirements to publish contract notices and tender documents on the Procurement Portal.

Practical implementation at the level of contracting authorities, of which there are several thousand, remains a concern. The sheer number of authorities creates a challenge for those involved in implementation and training. Practical implementation will need to be a priority.

### ***Corruption***

Corruption is acknowledged to be a significant and systematic problem in public procurement in Serbia. The common perception – expressed by representatives of civil society, the business community and confirmed by all institutions responsible for monitoring the public procurement system – is that corruption is present across all sectors of public procurement. A new anti-corruption strategy, which includes a section on public procurement, is being prepared. A significant number of anti-corruption measures, including developing internal and external control measures, are set out in the Procurement Strategy dealing with corruption in procurement planning, procedures and contract implementation. It is essential that priority be given to the implementation of these potentially wide-ranging measures and it would be helpful to publish a detailed action plan that clearly defines how and when such measures are to be implemented. If all of these measures are fully implemented and enforced proactively at all levels, with full political support and inter-institutional co-operation, they will make a difference.

### ***Electronic procurement***

Contracting authorities are required to advertise all but the lowest value contracts on the Procurement Portal. Tender documents must now also be made available on the Portal. The use of CPV codes is being introduced. Software for the electronic management of procurement procedures has been developed and training on using it was provided on a limited basis in 2011. The roll out of end-to-end e-procurement processes is at an early stage. E-auctions are not currently used.

### **Reform Capacity**

The implementation of the ambitious Procurement Strategy and development of a procurement system in line with EU standards will require considerable capacity, leadership and full political support. Co-operation between institutions will be critical. There is a clear demand from within institutions and by civil society organisations and business for ongoing improvements, in particular in relation to anti-corruption measures in the field of public procurement.

The six-person staff in the Ministry of Finance under the leadership of the State Secretary is providing a strong lead in the development of the system at the top level, but it is likely that this capacity will be stretched. Co-ordination and implementation will require further capacity and efforts.

### **Recommendations**

These generally positive developments address a number of areas of concern raised in previous SIGMA reports. However, it is too early to assess the impact of these very recent changes on the implementation of the PPL and PPP Law in day-to-day practice. Implementation at the local level remains a challenge due, in particular because of the very large number of contracting authorities. Some progress can be noted in the development and roll out of formal certification and training of procurement officials at the contracting authority level, the training of bidders and the new association of procurement officials set up very recently. Corruption in public procurement remains an acknowledged and significant problem and is a major weakness of the system.



**To Serbia**

- Serbia should continue to fully implement and support the Procurement Strategy with a particular focus on implementation and anti-corruption measures, and adopt the amendments to the Public Procurement Law prepared by the Government.
- The Public Procurement Office should continue and strengthen its efforts to maintain and develop the Public Procurement Portal and intensify activities aimed at improving the professionalisation of procurement officers. A major challenge is the implementation at the local level of the current and planned changes in the procurement system. Professional, well-trained procurement officers are critical to this success. The certification system, the ongoing training programme for certified procurement officers, and the new professional association should be supported.
- The Ministry of Economy needs to ensure the effective management and implementation of the new PPP and Concessions Law by recruiting staff with a basic understanding of the subject matter and a background in law, economics or one of the major technical disciplines required to deal with PPPs/concessions. The Ministry could also do so by identifying officials in the state's main ministries and in the larger entities of local Government who could serve as "lead officials" on the subject.

PROCUREMENT/CONCESSIONS STATISTICS for 2011<sup>1</sup>

<b>Number of contracting entities<sup>2</sup></b>		
Central government (government authorities and judiciary)		296
Regional and local authorities		625
Other (bodies governed by public law) (healthcare, culture, education)		1768
Utilities		590
Total number of contracting entities		3278
<b>Awarded<sup>3</sup> public contracts/Contracting entities</b>	<b>Total (estimated) value (EURO)</b>	<b>Total number<sup>4</sup></b>
Central government	431.269.980	26.276
Regional and local authorities	338.819.696	7.262
Other (bodies governed by public law)	458.250.147	42.461
Utilities	1.647.393.607	35.250
Total public contracts awarded	2.875.733.430	111.249
<b>Awarded concessions/Contracting entities</b>		
Central government	/	/
Regional and local authorities	/	/
Other (bodies governed by public law)	/	/
Utilities	/	/
Total concessions awarded	/	/
<b>Awarded public contracts above the EU thresholds<sup>5</sup></b>		
Works <sup>6</sup>	281.500.873	33
Services <sup>7</sup>	207.504.058	138
Goods <sup>8</sup>	450.638.294	637
Mixed contracts	/	/
Total public contracts above the EU thresholds	939.643.225	808
<b>Awarded concessions above the EU thresholds</b>		
Works <sup>9</sup>	/	/
Services <sup>10</sup>	/	/
Other	/	/
Total concessions above the EU thresholds	/	/
<b>Procurement methods used<sup>11</sup> (above the national thresholds<sup>12</sup>)</b>		
Open procedure	1.332.060.275	20.042
Restricted procedure	399.915.912	6.084
Negotiated procedure with prior publication of a notice	625.759.961	7.350
Negotiated procedure without prior publication of a notice <sup>13</sup>	114.435.539	1.782
Other procedures (competitive dialogue, etc.)	16.471	8
<b>Low- value procurement (estimated)</b>	403.545.274	75.983
<b>Participation rate(average number of submitted tenders)</b>		
Works		
Services		
Goods		
<b>Review procedures</b>		
Number of complaint received	/	/
Number of complaint treated	/	/
Number appealed to the Court	/	/
Number of decisions with interim measures	/	/

Note: Data delivered by the Public Procurement Office

A list of the 10 biggest procuring entities (name, main activity, (estimated) annual procurement budget):

1. JP "Elektroprivreda Srbije", Beograd
2. Građevinska direkcija Srbije, Beograd
3. Grad Beograd – gradska uprava
4. Republički zavod za zdravstveno osiguranje
5. JP "Termoelektrane i kopovi Kostolac"
6. JP "Termoelektrane Nikola Tesla" Obrenovac
7. JP "Rudarski basen Kolubara" Lazarevac
8. JKP "Beograd – put" Beograd
9. JP za vodosnabdevanje "Rzav", Arilje
10. JP "Elektrovojdovina" Novi Sad

A list of the 10 biggest public contracts/concessions awarded and/or advertised in 2011 (subject of the contract, name of the contracting authority and contractor (if selected), (estimated) value, time of execution):

1. JP za vodosnabdevanje "Rzav" Arilje / "Hidrotehnika-hidroenergetika", Beograd – 56.604.715 €
2. Javno gradsko saobraćajno preduzeće Beograd / Naftna industrija Srbije – 28.216.941 €
3. JKP „Beogradske elektrane” / NIS AD Novi Sad – 15.847.564 €
4. JP "Srbijagas" Novi Sad / "Port Technobau", Beograd – 15.485.072 €
5. JP "Termoelektrane ikopovi Kostolac" / "Alstom Power", "Elbagu", Poland-15.090.431 €
6. JP "Elektroprivreda Srbije", Beograd / "Banca Intesa", Beograd-14.705.882 €
7. JP "Elektroprivreda Srbije", Beograd / "Banca Intesa", Beograd-14.705.882 €
8. Grad Beograd-Gradska uprava / "Banca Intesa" Beograd – 13.287.872 €
9. JP „Putevi Srbije” / „Putevi” Užice – 12.392.636 €
10. Republička direkcija za robne rezerve / "Sunoko", Novi sad-11.764.705 €

<sup>1</sup> Statistics should cover contracts awarded in the period 1 January 2011 – 31 December 2011

<sup>2</sup> As of 31 December 2011

<sup>3</sup> Statistics should refer to contracts awarded (based on contract award notices), if not available, please give the data on contracts advertised (based on contract notices)

<sup>4</sup> Please indicate whether the data include the low value contracts

<sup>5</sup> Please indicate whether the data include contracts awarded by the utilities sector

<sup>6</sup> Above €4,845,000

<sup>7</sup> Above €125,000 for public institutions, €387,000 for utilities

<sup>8</sup> Above €125,000 for public institutions, €387,000 for utilities

<sup>9</sup> Above €4,845,000

<sup>10</sup> Above €125.000

- 
- <sup>11</sup> Both for public contracts and concessions
- <sup>12</sup> Including contracts above EU thresholds
- <sup>13</sup> Including single-source procurement

## POLICY MAKING AND CO-ORDINATION

### Main Developments Since the Last Assessment (May 2011)

Although the General Secretariat of the Government developed a new overall approach to planning in 2011, at the time of writing (March 2012), it had not yet been formally adopted by the government.

There appears to have been improved monitoring by the General Secretariat of the Government (GSG) of the annual work programme. These improvements have been facilitated by the use of an electronic planning system.

The capacity of the Department of Planning, Monitoring and Policy Co-ordination (DPMPC) has been increased. It transferred three project staff to civil service posts within the department during 2011, raising its complement to nine full-time civil service staff. It hopes to transfer a further three consultants before the donor project ends in June 2012.

The Serbian European Integration Office (SEIO) developed a needs assessment document for international assistance (2011-2013). It applies a sector approach. Eight sector-specific inter-ministerial working groups have been established to develop ideas on programming and co-ordination of international assistance.

The Government established the Office for Co-operation with Civil Society on 21 January 2011. It reports to the Prime Minister and is part of the civil service structure in a position analogous to a ministry. The Office was established to: (1) establish a permanent dialogue between the state and civil society in matters of general and common interests; (2) strengthen inter-sectoral co-operation in those areas where civil society organisations (CSOs) have an important role in formulating and implementing public policies (human rights, gender equality, social protection, employment, poverty reduction, social inclusion, education, culture, amateur sports, sustainable development, environmental protection, Euro-Atlantic integration process, etc.); (3) build civil society capacities.

The main focus of the work of the Office during 2011 was on raising awareness across ministries of the importance of consulting with CSOs. Ministries now appear to recognise the Office and CSOs as important partners in policy formulation. The Office recruited two staff in 2011, and is in the process of recruiting a further ten. It has sanction to employ up to a maximum of 15 staff (including the Director and Deputy Director).

The Government Office for Legislation has developed a draft law to amend the 2005 Law on Government. If enacted it should help rationalise the work of Government and strengthen rules to improve the functioning of coalition Governments.

A baseline measurement of administrative burdens was completed during 2011 through a donor-funded project. The Regulatory Reform Strategy 2008-2011 has come to an end and a new Strategy is currently being developed and prepared for public consultation.

## Main Characteristics

The Centre of Government in Serbia includes a number of different focal points for co-ordination and capacity development. The General Secretariat provides administrative and secretarial support to the Government and its four committees. Within the General Secretariat two departments are concerned with the policy making and co-ordination system. The Section for Expert Work compiles and circulates documents prior to meetings and records and circulates decisions. The Department for Planning Monitoring and Policy Co-ordination (DPMPC) is intended to develop into a focal point for policy making and co-ordination. Their role has been effective, primarily, in working on the compilation and monitoring of the Government's Annual Work Plan.

The Prime Minister's Cabinet is staffed with political appointees (not civil servants) and has its own Regulation. It is not formally part of the General Secretariat of the Government. The Secretariat of Legislation plays an influential role as a legal adviser to the Government and both the Office of Regulatory Reform and the Office for Co-operation with Civil Society are developing their respective roles.

Co-ordination and co-operation between different Government organisations (and between departments within organizations) is generally limited. This has an adverse effect on the capacity to develop policies. The role of the Secretary-General under the Rules of Procedure is potentially influential, but in practice it is dealing primarily with procedural issues and facilitating the resolution of disputes.

A number of different documents determine the priorities for planning purposes. The Prime Minister's *Exposé*<sup>2</sup> outlines the main political priorities of the Government (agreed between coalition partners) during its term of office. Parliament votes on and approves it. The General Secretariat prepares the Government's annual work plan, which outlines all of the materials that will be submitted to Government (the Council of Ministers) for approval during the coming year. This currently is in excess of 1,100 pages and consists of five tables for each ministry:

- a rough description of the role and function of the ministry (or office);
- the laws that they propose to send to the national assembly ;
- the secondary legislation the Government will adopt;
- the secondary legislation the ministry will adopt which Government may be interested in; and
- a description of the projects and programmes within the ministry.

The priorities for inclusion in the annual work plan draw on the Prime Minister's speech to Parliament, as well as on other sectoral strategy documents (there are currently in the region of 80 such strategy documents). Ministries are also required to establish medium-term strategies but this process is not being tied into the budget preparation process.

The Law on Government (2005) and the Rules of Procedure of the Government of Serbia (2006) provide a good basis for the development of a policy development, decision-making system and effective co-ordination at the Centre of Government. However, much work remains to be done to ensure implementation of the Law and Procedures. The new e-government system appears to be improving the process of the distribution of documents to the Government. In principle, the system ensures that issues for which materials are received after the deadline are postponed to the

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2. Following a general election, the Prime Minister designate makes a speech to Parliament (the *Exposé*) outlining the priorities of the Government during its term of office. Parliament approves this plan. Following a shuffle or revision in the composition of the cabinet/function of ministries, the Prime Minister delivers another speech (*Exposé*) to Parliament for approval.

following Government meeting. Challenges remain, however, for controlling the number of items on the agenda for Government meetings that do not appear in the government annual work plan. Reports provided by the General Secretariat indicate that several times since the last assessment, some 70% of the items considered at the Government meetings were not in the annual work plan. The annual report prepared by the General Secretariat does not currently include information on which objectives of the annual work plan were not achieved, the number of unplanned versus planned elements considered by the Government, or a list of the number of Government sessions held broken down by type (planned, unplanned, irregular, etc.). The electronic database developed by the General Secretariat could facilitate the inclusion of this type of information in future annual reports.

However, concerns remain regarding the capacity to develop strategies and coordinate across Government effectively, and improvements are needed in order to develop and maintain an effective policy making process in Serbia.

The Serbian European Integration Office (SEIO) is the Government's expert body for co-ordination of the EU integration process. It is responsible for a range of activities including: co-ordination and monitoring of the implementation of the Stabilisation and Association Agreement; co-ordination, monitoring and reporting on the harmonisation of national legislation with the *acquis*; co-ordination of the EU Instrument for Pre-Accession, as well as overall co-ordination of international financial assistance; co-ordination of EU accession negotiations; co-ordination of training needs assessment with regards to administrative capacity building in the process of EU accession; co-ordination of the translation and creation of Serbian versions of the *acquis*. The SEIO prepares the National Programme for Integration of Serbia into the EU (NPI), which is a multi-annual (2008-2012) legislative roadmap for harmonising national legislation with the *acquis*. The NPI is revised on an annual basis and as such represents an integral part of the Annual Program of the Government. The SEIO reports quarterly on the implementation of the NPI.

EU integration policy/co-ordination units exist in most ministries. There is a planning framework for EU funds. This provides a strategic and analytical approach to multi-annual planning. There is also a close working relationship with ministries for proposed legislation that has a European dimension. However, apart from matters concerning European integration, there appears to be a need for more consultation between (and within) ministries when policies are being formulated and laws drafted.

The main mechanisms for resolving disagreements between ministers are the meetings of the Government and of its committees. As, very little consultation occurs between ministries (and sometimes within ministries) when policies are being formulated and laws drafted, there is also little chance for identifying or resolving inter-ministerial disagreements at an earlier stage of the process.

The Rules of Procedure require consultation on draft laws "that substantially alter the way in which a specific issue is regulated or that govern an issue of particular relevance for the public." All draft legislation requires an "explanation", which is a statement on whether all stakeholders have been consulted during the drafting process. Arrangements for public consultation and for the provision of information to the public on the work of the Government are slowly improving but are still underdeveloped. Practice varies greatly between ministries. Consultation is seen as something that happens once a decision has already been taken on the regulatory or policy approach (*e.g.* once a decision to regulate has been taken and a draft has been developed) rather than as a process that could help to decide if regulation is needed and, if so, on what basis. Where consultation does occur, the common complaint is that very little time is allowed for comment.

Informing the administration, as well as external organisations (NGOs, CSOs), of the value of consultation, of when consultation should take place, and of the different approaches or methodologies for consultation would be beneficial.

Public access to the texts of legislation through the *Official Gazette* is satisfactory.

A Regulatory Reform Council has responsibility for reviewing the quality of Regulatory Impact Assessments. This also has the advantage of ensuring a review of the quality of proposals submitted to Government. Between 1 June and end 2011, 148 draft laws were adopted. Of these, 105 were ratifications. Of the remaining 43, the Regulatory Reform Council judged 12 positively, 8 negatively and the remainder as neutral or conditionally acceptable. The Office for Regulatory Reform considers that greater efforts are needed to improve the number of laws considered positive as opposed to neutral/conditionally acceptable. Improving the use and quality of RIAs could assist with this objective.

Regarding fiscal impact assessment, rules are in place that proposals should not be submitted to the Government without an opinion by the Ministry of Finance. In practice, the Ministry of Finance reviews around 95% of draft legislation as part of the inter-ministerial consultation. The Ministry of Finance has limited capacity to monitor the linkages between the priorities set out by the Government in the Prime Minister's *Exposé*, the priorities submitted to the Ministry of Finance for budgetary approval, and the priorities subsequently listed by ministries and government bodies in the annual work plan.

The Government Office for Legislation continues to have an influential role in the policy cycle. It reports directly to the Government. The Secretariat is the legal adviser of the Government; the rules require that drafts of all legal acts be reviewed by the Secretariat in terms of their constitutionality, legal conformity and drafting style. Its work is confined to essentially legal matters; it does not comment on the adequacy of policy proposals. Work is still needed to develop policy making and legislative drafting capacities.

## **Reform Capacity**

The effectiveness of the Centre of Government is reduced by the fragmented organizational arrangements. There are too many different centres for co-ordination, which, in turn, mean that co-ordination of any reform process is more difficult. In addition, there is not enough co-operation between other institutions, such as the Ministry of Finance and the Ministry of Human and Minority Rights, Public Administration and Local Self-Government.

The European integration units in ministries have the potential to "professionalise" policy making in areas related to European integration. The sector-specific inter-ministerial working groups established by SEIO to develop ideas on programming and co-ordination of international assistance also have the potential to support reforms in the area of policy planning.

The GSG has been supported by SIDA to develop new procedures and to perform a few core activities of the DPMPC but this support is ending in the middle of 2012. In the second half of 2012 a new project, financed by the EU, is expected to start. This new project is planned to address all of the most significant shortcomings identified during the past years and therefore further technical assistance is not needed. Additional momentum for developing the capacities of medium-term planning in line ministries may be found from the fact that the Ministry of Finance has committed itself to move towards a more programmatic approach in budgeting by 2015. Providing that the GSG and the Ministry of Finance can work together, this may lead to more tangible incentives for the ministries to increase their capacities for medium-term policy planning.



## Recommendations

### To Serbia

- The main recommendation is to implement what is currently in place rather than propose a fresh round of reforms.
- Make more explicit the requirement for ministries to follow the priorities set out by the Government in the Prime Minister's *Exposé*, to encourage a more coherent and consistent approach to the annual programme of work.
- Consider revising the format and structure of the annual work plan and the report on the annual work plan, so as to better enable Government, the General Secretariat, the Ministry of Finance and ministries generally, to ensure work is advancing in the Government's key priority areas of interest.
- Develop guidelines on public consultation and establish a policy to build awareness of the value added by public consultation. This policy should target the political and official level as well as participants in civil society organisations. The Office for Co-operation with Civil Society could play a lead role in this.
- To assist with implementation, ministries should clearly indicate, when drafting a law, who has responsibility for implementing it and under which provisions of the draft, or other existing law, this responsibility lies. In line with provisions proposed by the Ministry of Finance, relevant by-laws should be drafted in tandem with primary laws.
- The capacity at the Centre of Government to think strategically, set reform priorities, transform them into policies and administrative actions, and monitor their implementation is developing but should be developed further. In addition, there should be a focus on improving the policy making process and the quality of legislation at the Centre of Government and also in ministries, which is one of the most obvious weaknesses in the current system of governance.