

***National Strategy Of Serbia For The
Serbia And Montenegro's Accession To
The European Union***

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Introductory **Notes**

Association with and accession to the European Union is **Serbia's strategic orientation** based upon wide political and social consensus. The road towards the EU is viewed as the road towards a modern society with stable democracy and developed economy. Political and economic requirements imposed by the EU, being compatible with preconditions for successful political and economic transformation, are perceived as a development means instead of its goal. In this way, the association with the EU implies the accomplishment of own development and stability prerequisites along with the expansion of European area of peace and democracy.

This document has both the status and significance of strategic **state document**. It defines the long-term government policy in relation to the European Union. The general aim of such policy and ultimate goal of strategy in cooperation with the European Union is the accession of Serbia/Serbia-Montenegro to the European Union.

This paper represents national strategy for association with and accession to the EU. The presumed basis of this strategy is general social and political agreement on European future for Serbia/Serbia-Montenegro. The prevailing European atmosphere at present, which was also confirmed by Serbian Parliament's adoption of the Resolution on European Union association in October 2004, is largely abstract. The discrepancy between great will to accede to the EU and low level of knowledge on the substance of this process and social consequences thereof are typical for the inception phase of European integrations in every country. Therefore, the strategy is aimed at translating the general determination of our public and political actors in favour of European integrations into concrete expectations of all social levels and realistic tasks for all political players and institutions. National strategy is expected to establish a common ground for all social objectives, the preparedness for changes and political activity directed towards the realisation of such objectives and changes, as well as to recommend the sequence of actions and indicate alternatives where possible.

In order for Serbia/SCG to enter into supranational community such as the EU, which is based on a network of international agreements, practices that have to be respected and institutions controlling the behaviour of EU, Member States, natural and legal persons, the country has to be carefully prepared. The guidelines for such preparations are criteria established by the *Stabilisation and Association Process (SAP)*, «Copenhagen criteria» and *acquis communautaire* (European Union law).

At the same time, Serbia/SCG has to overcome both political and systemic obstacles. Accession to the EU is more significant than entry into a classical international organisation. Beside the regular Treaty obligations acquired at the point of accession, the EU Members have to be prepared for participation in the EU institutions' functioning, as well as to abide by the decisions of these institutions. Thus the Serbian National Strategy for EU accession represents both harmonisation of existing regulations and adaptation of state subjects' behaviour to the EU rules. It also represents a road towards the sustainable changes that will enable Serbia/SCG for undisturbed accession to the EU.

The process of creation of Serbia's National Strategy has been accompanied by several difficulties:

1. **Uncertainty related to State Union functioning.** Serbia will independently formulate and enforce major part of accession activity and minor part thereof will be done in cooperation with Montenegro. Strategy elements are defined in such a manner so that Serbia shall bear full responsibility for their enforcement. However, it should be noted that Serbia's state framework is not finalised yet and that this Strategy is traced in a significantly uncertain environment. Two possible outcomes should be kept in mind related to the mentioned uncertainties. The first outcome is for the State Union to evolve towards the functional state structure and thus assume from the Republics a segment of association and accession policy. The second possible outcome is for the State Union to devolve towards two internationally recognized states, meaning that Serbia would assume the entire responsibility regarding the formulation and full implementation of this policy.

2. Second difficulty is contained in the existing **wide political fragmentation** that exacerbates a coherent and unique formulation of national goals. In spite of political changes, social crisis has not yet diminished. The drafting of this strategy is performed in the period when the disintegrative trend is still present in the society. Beside the absence of necessary political and social agreement on constitutional arrangement, there is no consensus on dynamics and socially-bearable price of the reforms. Painful characteristics of **society in transition** are still present: internal political divisions regarding the essential state issues, corruption and organised crime are not eradicated and economic crisis is not yet overcome. On the other hand, the association prospects are more distant, EU support to the State Union is ambivalent, economic assistance is insufficient and the conditioning policy contributes to further destabilization of internal scene.

The Strategy is aimed at formulating rational responses within the abovementioned environment which will contribute to enhancement of internal preconditions for inclusion in European trends and thus enable the harmonisation of defined priorities and EU requirements with the specific features of social reality, instead of their simple takeover. The means for realizing this objective is to mobilize all available political and social subjects for a **common goal – accession to the European Union**, which ensures a necessary consensus for upcoming and necessary reforms.

In this sense, the Strategy will strive to provide the answer to one of the most complex issues that we are facing: how to meet the obligations for accession to and association with the EU without jeopardizing the dynamics of initiated reforms and social agreement necessary for their implementation?

3. Strategy for EU accession is drafted **in the absence of state strategy for social-economic development**. Without such national development strategy the proactive directive for social and economic reforms cannot be discerned, therefore the changes are excessively linked with the EU accession process. The necessary economic and political changes are the precondition for successful realization of initiated transition process and not only the EU's request.

In the absence of national strategy for social-economic development, this strategy has to supersede it partly. This can be done by combining a profound knowledge of own society with criteria and conditions defined by the EU. The latter implies the existence of **space for autonomous establishment of own national goals and priorities**, instead of passive adoption of externally defined agenda.

The proclaimed principles and insights of the EU may serve as key arguments speaking in favour of defining own national accession strategy. For instance, the EU emphasized that it will respect the specific character of each society in defining its requirements. The internal determination of specific features is indispensable, hence it is necessary from the aspect of feasibility of EU's requirements to indicate when and where these

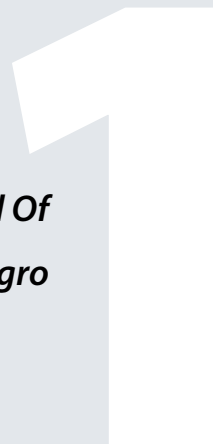
features are ignored or underestimated. Furthermore, the EU is aware that the weak and dysfunctional states are sources of trans-national instability and that it will be necessary to rebuild the Balkans states to this end. This also leaves the room for indicating the aspects of EU policy that aggravate, hinder or prevent the necessary state strengthening.

Finally, the EU wants a united and peaceful continent and an active role in the world scene. This implies Balkans as a region with stability and democracy. According to the very EU, its credibility in the foreign policy sphere depends on successful resolution of the Balkans “knot”. This immense stake at the same time represents the space for establishment of wider SCG-EU partnership that will make the European agenda a realistic and cohesive factor in Serbia/SCG.

The aims of Strategy creation are as follows:

- In order to establish the requirements for fulfillment of accession terms on basis of ***Copenhagen criteria***, criteria defined by SAP and other conditions for membership established by the EU.
- Providing all political decision-makers, economic policy creators and legislative authority with ***necessary elements for adoption of regulations and measures*** whose implementation may contribute to realization of goals acceptable from the EU perspective for conclusion of SAA and subsequently for accession of Serbia and Montenegro into the European Union.
- From the aspect of internal requirements, the measures and activities proposed within this Strategy should enable the ***implementation of internal reforms*** in the area of functioning of political institutions, implementation of economic reforms and the reform of Serbian legal system, which would be fully harmonised with the European Union law.
- To provide ***basic goals, guidelines and instruments of economic development*** of Serbia in future conditions that accompany the Stabilisation and Association Agreement i.e. gradual market liberalisation.

*1. Chapter | European Union As A Strategic Goal Of
Serbia And Montenegro*



1.1. | *EU as a strategic goal*

European integration in the form of creation of European communities and European Union represents an unprecedented process in the recent history and modern times. States and nations living in this continent have willingly opted for mutual cooperation and association, which helps resolve the daily problems of citizens in a safer and more efficient manner. Such orientation, which initially included six West European countries, gradually became the orientation of almost all European states. The European Union presently counts twenty five Member States with the enlargement prospects.

Why is this form of integration so appealing to European states and nations and why does Serbia see its future within this consistent supranational union of states? The answer to this question comprises of the following elements:

- European Union represents a peacetime and growing integration process, which only sets out the states as «masters of the treaty», but basically includes a number of actors and beneficiaries such as – economic entities, professional associations, political organisations, regions, civil society, public, individual citizens etc.
- This is a process which successfully meets the globalisation requests, providing a rational, efficient and legitimate response for this type of historical challenge. Such response is contained in a developed legal system, democratic institutionalisation and generally accepted process of decision-making and enforcement of European decisions.
- This type of overall integration is neither forced nor imposed (it does not have an imperial character). It is voluntary from the aspect of democratic legitimacy within each present and potential EU Member State.
- The integration is realised gradually, on basis of well-examined and carefully considered steps, bearing in mind the interests of all participants. Such a method enabled a constant expansion and extension of integration processes.
- The ultimate aim of integration is to meet the interests of Member State citizens, who are gradually becoming the citizens of Europe. On such a basis, Europe is obtaining its historically new internal and external identity.
- The entire process is realised within the framework of legal rules, procedures and institutions which affirm the idea of supranational legal order and well arranged political community.

For Serbia (Serbia-Montenegro), as for any other European state, the European Union represents an attractive environment with possibility for development and peaceful future existence. Special interests that determine Serbia in favour of European integrations may be justified by political, economic and social arguments:

- Through participation in the European integration processes, it resolves a number of key long-term issues, both as a state and as a society. The formula of internal integration through gradual association with the EU is appealing both from the aspect of existing internal relations in Serbia and the relations between Serbia and Montenegro.
- Entry into the supernational political community such as the EU reduces the possibility for political instability which may be caused by external factors, since a Member State has the capacity to influence the decisions which have impact on that State.
- The peacetime and growing character of EU is favourable for Serbia because it intends to resolve all issues and disputes with its neighbours through cooperation and interest-based association. Serbia favours regional approach to overcoming the existing unresolved issues in the entire Balkans area.
- Mutual market liberalisation between Serbia and the EU will lead to undisturbed and unlimited exchange of goods, services, capital and labour, and the concept of exporting Serbian goods into the EU will be replaced by the concept of participation in the EU's common market.
- As an EU Member State, Serbia would have access to significant development and structural funds which are necessary for further economic development.
- Serbia has neither reason nor strategic aim which would keep it away or aside from the current European integration processes. Its full acceptance and prompt entry into this process represent its long-term and strategic state and social orientation.
- The most important argument in favour of improving the relation with the EU certainly lies in the fact that the very process of association, as well as membership, would create the conditions for both economic and general social development. In this sense, the logical outcome of Serbian efforts to reform its economy, political and legal system is the EU membership, just like the EU is its logical partner and support in the reform realisation.

1.1.2. Strategic orientation of Serbia towards the EU as a key element of internal transformation

Present situation

Serbia falls within the group of European countries which are clearly resolved to associate with and access to the European Union (West Balkan states), but which are faced with huge systemic and development problems and unresolved mutual relations. All these factors create the obstacles for their association policy, which ought to be overcome through a versatile pro-European policy.

An additional problem for Serbia lies in its incomplete state framework (relations with Montenegro and the Kosovo and Metohia issue). This is not only the substantial difficulty for its association policy, but also a formal obstacle for strategy formulation, bearing in mind the fact that European Union concludes the association and accession agreements only with the internationally recognized states. Serbia expects the EU's participation in creating the preconditions for mutually acceptable and sustainable solutions, both regarding the relations between Serbia and Montenegro and the resolution of Kosovo and Metohia issue.

The inclusion into the European integration processes, association with and accession to the European Union represent the strategic orientation of Serbia and enjoy high political and social support, although this support is not based on understanding and awareness of the requirements necessary for improving the relations with the EU. Therefore, the political leaders of the association process are facing the need to adopt a clear strategy for meeting the conditions for EU accession and association, along with the request for permanent public information and creation of political and professional support to the necessary steps.

Expectations

The European Union expects that Serbia (Serbia-Montenegro) meets all requirements contained in its association and accession policy. In relation to Serbia (SCG), it will apply the principles and standards which were applied to the countries of Central and East Europe and which are now applicable to all West Balkan states, but also the additional criteria (conditions) based on the specific features of the State Union.

In this sense, Serbia should strive for a stable democratic establishment founded on the rule of law, market economy, high standards of human and minority rights' protection, legislation harmonised with the EU *acquis* and the efficient public administration. It goes without saying that Serbia must have good relations with its neighbours and developed regional cooperation on the state and sub-state level. Furthermore, Serbia ought to meet the requirements stemming from the peace agreements that it accepted and which relate to the constructive approach to maintaining Bosnia and Herzegovina in light of the Dayton/Paris Agreement, respecting the UN Security Council Resolution 1244 on Kosovo and Metohia and the full cooperation with the International Criminal Tribunal for the former Yugoslavia.

Measures and procedures

Serbia should closely connect the EU association and accession strategy with the reform policy directed to political, economic and social transformation. This implies the following and urgent activities:

- To overcome the internal political obstacles which hamper the establishment of a harmonised political will on objectives, directions and means of overall reform and systemic transformation. This is the most important internal condition for realising the EU association and accession strategy.
- As a particular supplement to the previous request, Serbia should pass a new constitution as soon as possible. This constitution would, among other, contain a provision foreseeing the necessary assignments or a shared sovereignty i.e. legislative, executive and judicial power with the European Union institutions.
- Alongside the establishment of internal political concord on the new constitution, Serbia needs to intensify the initiated reforms. It has to reform the institutional skeleton of the system – democratic strengthening of political institutions, reform of public administration and judiciary – as well as macro- and microeconomic systems and sectoral policies. The reform of legislation has to go along with the reform of mechanisms for public policy enforcement.
- Within the reform process, Serbia has to immediately initiate the legal harmonisation with the European Union *acquis*. This harmonisation shall not be mechanical and formal, but in line with the concrete development needs of Serbia and with realistic enforcement possibilities of the new legislation. That is why the institutional alignment with this requirement is of special importance. Both legal and institutional harmonisation should serve the internal reform. This would enable the synchronization of two parallel courses:

change of the social and state structure and the fulfillment of obligations arising from cooperation with the European Union (Stabilisation and Association Process).

1.2. | *The criterias for EU accession*

In order to realise its strategic determination – inclusion into European integration processes, association and subsequently the accession to the EU – Serbia (Serbia-Montenegro) has to meet numerous, complex and inter-related conditions formulated by the EU more than a decade ago. The core of this complex system of criteria, standards and principles which ought to be met is represented by the criteria defined by the European Council of the EU in 1993 at the Copenhagen summit. These criteria were later on concretized, specialised, developed and supplemented by new criteria throughout the association process of Central and East European states and Stabilisation and Association Process of West Balkan countries by the decisions of relevant EU institutions.

On basis of criteria contained in the Treaty establishing the EU (European state that respects the basic principles of the EU), the European Council has, in 1993, defined three main «Copenhagen» criteria for EU association:

- political,
- economic
- adoption of the EU legislation (*acquis communautaire*).

Political criteria are defined as the existence of stable institutions which ensure the democracy, rule of law, respecting and protection of human and minority rights. Secondly, the economic criteria require the existence of efficient market economy and the ability of candidate country's economy to cope with the pressure of competition and market forces within the EU. Finally, the adoption of legislation is envisaged as an ability to assume the obligations arising from the membership, including the devotion to objectives of political, economic and monetary union.

In the later activities of EU institutions, primarily through the reports of the Commission on the progress realised by the candidate countries from Central and East Europe, these criteria became more concrete as to their content and two more conditions crystallized. The first is related to the EU and concerns the ability of its institutions to meet the requirements of the enlarged membership. The second condition requests that the candidate countries possess the administrative mechanism capable of ensuring the enforcement of legislation. Finally, one of the conditions which is contained in the European Council resolutions implies the obligation for candidates to resolve their mutual disputes in a peaceful manner prior to the EU accession, and if necessary to address the international judiciary authorities.

The second process of evolution of the condition system is connected with the Stabilisation and Association Process. In the second half of the 1990's, the EU institutions have started to define the common and individual criteria for West Balkan states, trying to contribute to the stability and progress of the region as a whole. These conditions actually represent the concretization of already existing ones, but they are especially insisted upon due to their significance in stabilisation of political, security and economic situation in the region. They are primarily related to the obligation of regional cooperation and nourishing the good neighbourly relations with

the South-East European countries, but also to the respecting of obligations arising from the concluded peace agreements, including the full and unconditional cooperation with the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia.

What is especially important for Serbia (Serbia-Montenegro) in its process of approaching, association and ultimately accession to the EU, and primarily for the enforcement of Serbia's National Strategy for SCG's association with the EU, is the Decision of the EU Council of Ministers on the principles, priorities and conditions contained in the European Partnership with Serbia-Montenegro including Kosovo, in compliance with the UN Security Council Resolution 1244 (14 June 2004). Although the Decision does not enlist the conditions put before Serbia (Serbia-Montenegro), it reaffirms the request that the enlisted conditions (from the «Copenhagen criteria» to conditions defined in the SAP) be fulfilled timely and wholly. Furthermore, the Decision establishes the principles, priorities and conditions within the European Partnership for Serbia-Montenegro (Annex to the Decision). And finally, but not least important, the Decision lays down the procedure for implementation of the enlisted principles, priorities and conditions.

It is noteworthy that, although the EU accession requires the fulfillment of conditions based on all three basic criteria, in the current stage of enhancing the relations with the EU the political criteria are of utmost importance. The progress in its realisation represents a precondition for assistance that the EU grants through the Stabilisation and Association Process to the West Balkan countries included in the European Partnership.

1.3. | *The development of relations between Serbia and Montenegro and the European Union*

The relations between SCG and the EU, which were during the 1990's marked by sanctions and mediating role of the EU institutions and representatives towards the Federal Republic of Yugoslavia, changed their character completely in October 2000. The Framework Agreement between EU and FRY on implementation of the EU programme of assistance and support was signed already in November 2000; FRY became a participant in the Stabilisation and Association Process and, together with other countries in the region, it became the beneficiary of autonomous trade measures for goods imported into the EU market.

The Consultative Task Force for FRY, as a mixed technical working group of key significance for the initial stage of SAP, started to operate in July 2001. From July 2001 to July 2002, five meetings of this working group were held with the aim of determining the situation in various sectors of economy, law and politics of the FRY. The outcomes of the Consultative Task Force meetings are joint recommendations of European Commission representatives and FRY authorities, which represent the instructions for future reforming activities. This mechanism for progress monitoring resumed its work a year later in the form of Enhanced Permanent Dialogue meetings, which have been organised since July 2003. April 2003 sees the establishment of a specific form of SAA implementation for Kosovo, the so-called "**tracking mechanism**", which also represents a significant change relative to previous manner of inclusion that implied the participation of UNMIK representatives in the work of the Consultative Task Force. The new meetings have the same form and content as the Consultative Task Force ones and represent one of the key instruments through which the Commission (and indirectly the European Union)

keeps updated on the results of the transition process of Serbia-Montenegro towards market economy and democratic society.

From the very outset of FRY/SCG and EU relations, several issues have been placing a burden on this process: one of them is the issue of mutual relations of Serbia and Montenegro within the common state. Namely, the relations between Serbia and Montenegro, as federal units of the FR Yugoslavia, were especially disturbed during 1998 and 1999 and culminated by the adoption of the Amendment to the Constitution of FRY on 6 July 2000. Since the changes in October 2000, the situation in mutual relations has not been improved, it rather deteriorated to a large extent. This is why, under the auspices of the EU and with its guarantees, Serbian and Montenegrin Government representatives signed the Agreement on relations between Serbia and Montenegro (Belgrade Agreement) in March 2002, which related to the determination of framework for establishing their mutual relations.

The content of the relations was precisely defined within the Constitutional Charter of the State Union Serbia-Montenegro, which was adopted in February 2003. Pursuant to the Charter and the Law on its implementation, Serbia-Montenegro represents a State Union, whose aim is, among other, the membership in the European Union. In this domain, the responsibility for developing the relations with the European Union and conclusion of the Stabilisation and Association Agreement falls within the competence of the Minister for International Economic Relations of the State Union, and he shall realise this task from his competence in accordance with the Governments of the State Union Republics. Regarding the economic relations between the Republics, the Constitutional Charter envisages as one of the aims the creation of the common market between Serbia and Montenegro, which is a precondition for entering into agreements with the EU. The accomplishment of this aim required the negotiations on internal harmonisation of Serbian and Montenegrin economic and customs systems, in order to bring them close together. The negotiations resulted in the adoption of Action plan for harmonisation of economic systems of Serbia and Montenegro in September 2003. Nevertheless, this plan failed to envisage the harmonisation of tariffs for 56 products, which have, therefore, remained a barrier to creation of common market in SCG as well as obstacle for progress towards conclusion of the Stabilisation and Association Agreement.

The Stabilisation and Association Process for all countries in the region was encouraged by the Thessaloniki Summit from June 2003, held between the West Balkan states and the EU. This Summit launched the possibility for countries in the region to use the pre-accession strategy instruments, which were available to Central and East European countries in their preparation for EU membership. These instruments include the introduction of European Partnerships, the use of *TAIEX* programmes (Technical Assistance and Information Exchange Unit) and *twinning* programme (the programme of 'twinning' the administrations from new EU Member States for the purpose of civil servant education and institutional building), harmonisation of foreign policy positions, cooperation of Member State parliaments and parliaments of associated members etc. Based on the European Council Guidelines, the EU Council of Ministers has, in June 2004, adopted the European Partnership for Serbia-Montenegro including Kosovo, in compliance with the UN Security Council Resolution 1244. On its side, Serbian Government adopted the Serbian Action plan for implementation of this Partnership (November 2004). European Partnership for SCG defines short- and mid-term priorities that the State Union, as well as Serbia and Montenegro individually, have to meet in order to achieve a positive development of relations leading ultimately to their European Union accession.

The work on the Feasibility Study, the last necessary step before starting the negotiation of Stabilisation and Association Agreement, began in September 2003. This document, whose drafting was the responsibility of the

European Commission, contains final comprehensive analysis of general political and economic issues, as well as situations in each particular economic and social sector in SCG. Due to incomplete internal harmonisation, which prevents the progress of SCG in the Stabilisation and Association Process, the European Commission has, in September 2004, suggested to the Council of Ministers to accept the simultaneous integration process (*twin-track approach*) for Serbia and Montenegro, so that the technical part of harmonisation could be practically realised at the Republican levels without jeopardising the survival of the State Union. According to the European Commission's idea, accepted by the Council of Ministers at the Summit in Luxembourg (October 2004), the existence of twin-tracks should enable the conclusion of one Stabilisation and Association Agreement with two separate trade Annexes, one for Serbia and another one for Montenegro. The essence of this approach is separate cooperation with each of the republics in the areas that they regulate on their own – trade, economic and sectoral policy – and the continued activity with the State Union in the areas within its competence, especially international political obligations and human rights. In this sense, it is necessary to observe the activities of Serbia in the association process through operation at the State Union level (formerly FRY).

The Agreement would contain general principles of association process, it would define the association agencies, fields of cooperation and the issues that fall within the competence of the State Union; the Annexes for each Republic would precisely establish the individual levels of trade liberalisation and the duration of stages of such liberalisation. One of the first results of such approach is the conclusion of the Textile Agreement between Serbia and EU in March 2005.

The realisation of its strategic goal – EU accession, Serbia has initiated through institutional changes and by adapting the work of its administration to such needs. In the year 2002, the Department for European Integrations was established within the Ministry of International Economic Relations. This Department grew into the Office for European Integrations of the Government of the Republic of Serbia in 2004. The main task of this Office, as a professional body, is to coordinate the process of Serbian accession to the EU. By the Decision of the Serbian Government, the Council for European Integrations was established on 4 September 2002, as a government's advisory body for strategic issues in the integration process. At its constitutional session, the Council passed the decision on establishing the Committee for Coordinating the EU Accession, which proposes the measures for improving the cooperation between republican agencies and organisations responsible for passing and implementing the EU association policy. Furthermore, the Committee shall establish the priorities and most favourable manners of harmonising Serbian regulations with the EU standards.

1.4. | *Communication strategy for EU accession*

Although the majority of Serbian citizens support the European Union accession, most of them admit that they are vaguely informed on this subject and not too interested in it. Such a gap between high determination in favour of this goal and insufficient knowledge on the matter characterise the initial stage of European integration process in every country, when only government authorities and experts are familiar with the overall social impacts and the particulars of EU association. The very issue of European integration also influences such situation: even educated people have difficulty understanding these subjects; media view them as merely attractive, which is why they fail to present them in a systematic and serious manner. Insufficient level of citizen information is less important for the success of integration process than strong support for it. On such basis, a well-designed communication strategy in this field may significantly contribute to fast and adequate integration of this country into the EU.

Communication Strategy of the Serbian Government was drafted so as to respond to such challenges and provide carefully designed activities for systematic public information on most important aims and practical aspects of association, explanation of possibility for public participation in this process and thus it contributes to the widest social consensus related to the EU accession.

Communication Strategy will be modified and adapted over time, especially with regard to the accomplished level of integration of this country and the related change in public opinion, as well as regarding the specific activities required for different population groups.

In each phase of EU integration and every year until the accession, the Communication Strategy will, beside the general and permanent aims, have special priorities and target groups, thus being diverse and multilayered in every moment and adapted to appropriate beneficiaries.

The conclusions of the recent public opinion research show that there are great differences in the level of information and determination for European integration between different population groups. One type of difference exists between the older and younger population, town and country, sexes; another difference is expressed among those who definitely support the EU integration, those who oppose it and the indeterminate ones. For each group, the Communication Strategy will envisage special and detailed multiannual and annual programmes.

Alike general public, civil servants, politicians, MP's and other members of political and economic elite, journalists i.e. creators of public opinion also lack in knowledge on the European integrations. This is a much more acute problem, because these people will have to prepare and pass the most important political and legal decisions related to integration, to enforce them or to express their opinion in public, thus influencing others. Special attention should be attached to these groups at the very outset of strategy implementation, especially in the period prior to signing the Stabilisation and Association Agreement.

The interests of Serbia and requirements of the European Union are identical in this area: the level information should rise along the Serbian approaching the EU membership, while mere association will be successful and fast providing that the public is capable of understanding this process, support it and participate therein. One of the conditions for the abovementioned is to understand the country's and population's interest in European accession, as well as the understanding of relation between this goal and the means that lead towards its realization.

One of the key requirements of the EU in this area is permanent communication and dialogue between the government and the public, as well as free and easy access of citizens to all decisions and documents of state bodies. Information and winning the population's support in favour of European integration should be conducted in the most appropriate manner for the target groups, without imposing the opinions and hiding the problems, in a clear manner and with the implementation of various instruments.

All types of media have the utmost significance in this process, being the bearers of information, education and mobilization service. Education system is the second most important channel and it ought to be enriched at all levels by training plans in the area of European integration. This might make the youth - as especially determined in favour of European integrations, yet insufficiently informed on the subject - the most important promoter of future Serbian EU membership. Serious analysis of European integrations should be supplemented by

special system of domestic and foreign scholarships, which would provide the state institutions and economy with personnel for various jobs in this area.

The professional staff of new profile will be necessary for public administration, various economic entities and the society in general. Possible lack of experts in the European integration matters (law, economy, political sciences) will be manifested through direct damage that e.g. companies might endure due to human resource problems and the mismanagement in the new regulation environment. That is why all state faculties are expected to introduce new subjects in order to contribute to greater information on the EU and EU accession process, as well as to creation of professional human resources which would participate in the integration processes.

Positive results will require well-designed information campaigns and popular education (lectures, seminars), so as to enable the state bodies for productive cooperation with domestic and foreign non-governmental organizations experienced in these activities as well as for issuing various publications at the topic of European integrations for different target readers.

The existing Communication Strategy of the Serbian Government is a very good framework for further activities in this area, which should be – as already envisaged – expanded by more concrete annual action plans and cooperation with other non-governmental organizations, media, education institutions and professional associations. Serbia will thus obtain a coherent programme of activities in this area, with detailed work plans and dynamics of the entire programme system realization.

Although the citizen information and winning their support for the European integration process is not and cannot be solely within the competence of the state bodies, the key coordination role must be performed by the government and its ministries, especially the Integration Office, as a focal point for collecting the information and designing the concrete plans related to the integration. In the Communication Strategy realization, the Office also has to coordinate the information on European integration within the system of state institutions.

The pace and success of Serbia/SCG's European integration will also depend on the communication with foreign target groups, primarily with EU officials and the officials of EU Member States, as well as with diplomatic missions, press and other instances that influence the government positions and public opinions of all influential states, both in Europe and elsewhere. They have to be presented with carefully prepared and constant source of information on positions and interests of Serbia in the European integration process, which requires the close cooperation between Serbian European Integration Office, Government of the Republic of Serbia and the SCG Ministry of Foreign Affairs. This would strengthen the support to Serbian application for EU membership, facilitate and speed up the process of EU association and accession.

2. Chapter | ***Political Criteria***

2

2. 1 Democracy and the rule of law

2.1.1. Current situation

Efforts aimed at approximation of political and legal system to the EU standards even after the changes in 2000 have considerably transformed the political system in Serbia in the direction of stabilisation and democratisation. Democratic political system set in after the fall of Milosevic's regime, whose political heritage, in addition to the problems with the functioning of the state union and Kosovo-Metohia issue, was the greatest problem in ensuring political stability. However, Serbia did enter a new period of civil democracy, rule of law and respect of institutions, although there is still room for making progress in achieving this complex and probably the most important segment of the political criterion for joining the EU.

Shortcomings and problems reflect both in the sphere of building adequate legislation and in the sphere of functioning of the political system as a whole. In the field of law, what is most visible is the absence of adequate constitutional framework of the Republic of Serbia. Failure to adopt new constitution largely reflects the absence of political consensus not only on concrete solutions that should be incorporated in a supreme state document but also on how this act should be adopted. In addition to this, under the Constitutional Charter, Serbia, as a constituent republic of the state union of Serbia-Montenegro, has taken the obligation to harmonise its own constitution with the stipulations of Constitutional Charter. All state institutions have been formed and are functioning although some of them have been long waited for, such as the Court of Serbia-Montenegro. Thanks to the Agreement on the Revision of Constitutional Charter, the Parliament of Serbia-Montenegro has kept its legitimacy despite not having general elections at the state union level.

One of the key priorities in the democratisation of society is the reform of security policy, where a clear determination to have it done in line with the domestic political changes and transition processes, changes in the international environment and reduced threats to the national security, as well as with the changed character of the threats themselves. This reform has to be performed in line with the prerequisites of Euro-Atlantic integration. With this aim, initial steps have been taken towards the establishment of civil, above all, parliamentary control over the army through the parliament's Security Committee, appointing a civilian Defence Minister, giving the Army Headquarters a role it should have and under direct control of the Ministry, as well as by abolishing military courts and transferring their cases to civil courts.

A particularly important segment of democracy and the rule of law is surely the **army reform**. Although the Defence Strategy was adopted in November 2004, determining and producing a legal base of the defence system reform did not take place. Besides, there were still a number of outstanding issues, such as creating a proper legal framework for solving the problems of military ownership, as well as continuing work on adjusting the armed forces structures, meaning their reduction and training for the new security challenges of primarily non-military nature – terrorism, organised crime and corruption. Social effects of such reform should always be born in mind.

As regards political participation and representation of citizens, it can be said that free and fair elections to the greatest possible extent have been provided. This situation partly stems from the **reform of electoral legislation**. Although drafts of several laws regulating this area have been finalised (Law on Electing Members of Parliament, Law on Electoral Campaign) and the Law on Electing Members of the SCG Parliament has been adopted (which will definitely have to be aligned with the amended Constitutional Charter), a number of other activities which will round up the work in this extremely important field are waiting to be implemented.

In order to fully respect the will of voters, it is necessary to provide conditions for **continuous and reinforced parliamentary control over the government work**. Unfortunately, some important mechanisms that would enable this, above all the **interpellation** procedure, are still lacking.

A very important parameter in measuring the level of democracy in a society is the **independence of justice**. Although some steps have been taken to raise the level of independence of justice system, the results achieved, as the EU assessments show, are still unsatisfactory. The steps being taken now in the direction of reducing the influence of executive power, and professionalisation and rationalisation of justice, will therefore intensify in the forthcoming period.

One of the gravest problems that almost all countries face, especially those in the transition process, is definitely **corruption**. Despite the fact that some progress has been made in this area, such as the adoption of the Law on the Conflict of Interests, production of the Anti-Corruption Strategy, production of the Law on Prevention of Money-Laundering, drafting the Law on Police, it is necessary to make additional efforts in order to round up the legal coverage of this problem, and then consistently and efficiently implement the laws that have been passed.

2.1.2. Requirements

Although, from a theoretical aspect, democracy and the rule of law are regarded as two separate concepts, from the point of view of the EU association, they are an undivided whole whose foundations lay in parliamentary democracy and the principle of power distribution. With this regard, Candidate Countries are required to possess a coherent and functional constitutional framework and legislation that is aligned with this framework. In Serbia's case, this requirement is seen as a requirement to act towards creating efficient and effective state union based on the Constitutional Charter on the one hand, and to harmonise its constitution with the Constitutional Charter, on the other.

Within the reform of security sector, it is necessary to create a core control of democratically elected institutions and bodies in all sections of this sector. As regards the **army reform**, apart from the already adopted Defence Strategy, the adoption of the Military Doctrine in line with democratic principles is expected. What is particularly insisted on is the preparation and adoption of a transparent and appropriate legal framework for solving a very important outstanding issue of military property. As regards security services, establishment of full democratic and parliamentary control of the work of still a high number of these services is aggravated by the fact that they "triplicate" (at the levels of Serbia, Montenegro and Serbia-Montenegro) and that they are not organised in the same way.

Special attention is paid to meeting the requirements that will enable decision making in "as openly and as closely to the citizens as possible". The first precondition is surely holding **free and fair conditions** at all levels of authority. In order to fully meet this condition, finalisation of the current reform of electoral legislation is required (including poll books) in order to harmonise the electoral system with international standards, primarily

by reviewing all electoral laws, in line with the recommendations of the Office for Democratic Institutions and Human Rights (ODIHR) and full implementation of the Law on Financing Political Parties.

Directly linked to the previous one is the requirement for efficient functioning of **legislative authorities (national parliaments)**, which implies clear distinction in relation to other subdivisions of authority, clear procedure and its respect. Furthermore, it is necessary to provide careful review of bills and their efficient adoption. Important preconditions are always the undisturbed work of opposition and publicity of work.

In order to successfully implement the adopted laws, it is necessary to provide **efficient functioning of executive power**. Bearing this in mind, creating a single system of public services and a legal framework that would regulate all issues relating to their efficient and effective work is required too.

As regards **the functioning of justice**, modernisation and better efficiency and independence of court system, especially of commercial courts, is expected. In addition, providing operational independence of war crime prosecutor and performing preparations for the establishment of administrative and appellate courts is insisted on.

As regards the application of **anti-corruption measures**, especially in customs services, local authorities, health service, police and justice, a comprehensive Anti-Corruption National Strategy in line with the Council of Europe's standards has been passed.

2.1.3. Measures and acts to be adopted

Adoption of the constitutional act of the Republic of Serbia that complies with the Constitutional Charter and prescribes European standards in the domain of constitutional organisation of a state is undoubtedly one of the key priorities. The same counts for numerous measures and procedures that should provide the unperturbed functioning of the state union and that should be ranging from measures and procedures providing the easy functioning of the existing institutional framework (provision of funds) to the agreed review of parts of the Constitutional Charter. These measures can be classified as a short-term priority, which implies a deadline of 1-2 years for their implementation.

In spite of the fact that the possibility of reviewing the Constitutional Charter after three years is quite an obstacle to the comprehensive **army reform**, it is necessary that this work be tackled with more determination. Passing a Defence Strategy is undoubtedly an important, but not a sufficient step on the road of radical changes in the army. The starting step on this road is the legal reform of the defence system of Serbia-Montenegro. The main aim of the legal reform of military is to create a comprehensive and functional legislation as a foundation of a modern security system and a factor that would enable international security integration. This reform is based on the following:

- Promotion of good neighbourly relations, stability and development of the Western Balkans,
- Prevention of conflicts and finding solutions to the problems by peaceful means,
- Working out strategic goals set out in the Defence Strategy,
- Security integration of Serbia-Montenegro,
- Provision of democratic and civilian control of the defence system,
- Transparent process of planning the budgetary financing of the defence system,
- Clear distribution of institutional responsibilities of Serbia-Montenegro regarding the army, security services and other relevant institutions,

- More efficient and more rational management of physical and financial resources, including transformation of capital ownership in military and income-generating institutions and military industry;

The aforementioned legal reforms of the defence system are only the principles whose implementation is necessary with the aim of meeting the criteria set out by NATO, Partnership for Peace and the European Union.

The army reform would greatly benefit from the new Defence Law, which would regulate the fundamentals of the country's defence. In other fields relating to the functioning of defence, it is necessary to pass special laws whose starting points will be contemporary standards for the protection of human rights and international obligations of Serbia-Montenegro.

Another important issue that needs to be solved is the production and adoption of a transparent and adequate legal framework for solving the outstanding issue of military property.

All mentioned priorities can be classified as short-term, meaning that they should be implemented within 1-2 years.

Continued process of restructuring of armed forces, including the appropriate transformation of the army and reduction of armed forces (taking into consideration social effects too) can be classified as mid-term priorities, with the implementation deadline of 3-4 years.

Reforms of traditional security services and intelligence, which started with the establishment of the Security Information Agency (SIA), should continue.

Certain reforms have taken place in the Ministry of the Interior in the past years. Their aim was to improve the control of the police service, especially those parts that showed a tendency to oppose to the control of civil authorities and acted outside their jurisdiction (by abolishing the Unit for Special Operations and establishing Gendarmerie).

It is also important to reform the legislation regulating security in line with the OSCE, Council of Europe, NATO and EU standards, as well as in line with new security challenges (meaning a more comprehensive anti-corruption strategy, strategy for the fight against organised crime and especially for clamping down drug and human trafficking, considering its high presence in Europe). The EU believes that it is necessary to apply the EU Code of Conduct in the field of arms export, i.e. respect of the ban on arms export to the countries under the embargo or those that are likely to use them for mass violation of human rights. It is also necessary to pass a law on military property at the level of state union.

As regards the **reform of electoral legislation** it is necessary to intensify work on its completion, in order to align the electoral system with international standards. These standards envisage the obligation to regulate election by comprehensive electoral legislation that is consistently implemented, without any ambiguities or shortcomings. It is especially emphasised that no changes should be made to the electoral legislation just before elections and especially not should those changes jeopardise the rights and obligations, political parties or candidates in the electoral process.

During the reform of electoral legislation we should start from the European electoral standards, which have two aspects. The first one is permanent, comprising constitutional principles of electoral law, such as general, equal, free, secret and direct right to vote. The second one – truly democratic elections – can take place only if

all fundamental requirements of democratic state have been met, which are based on the rule of law implying basic human rights and freedoms, stability of electoral law and efficient procedural guarantees. By doing so, we should aim at establishing a fixed core of electoral principles that have to be strictly respected rather and set by the Constitution rather than left to the legislative procedure.

Further reform of this area means that the following laws need to be passed: the Law on Electing Members of Parliament, the Poll Book Law, and the Law on Electoral Campaign. Besides, it is necessary to completely implement the Law on Financing Political Parties.

All the priorities listed above are short-term and can therefore be implemented within 1 to 2 years.

With a view to **improving the work of republican parliament** it is necessary to constantly work on developing and adjusting the Operating Procedure, as well as on improving human resources and technical equipment of services and staff permanently employed in the Assembly. Organised education of Members of Parliament should start, especially on issues relating to the EU association process. With this regard, it is of particular importance to extend responsibilities and intensify the work of the Committee for European Integration. These measures require continuous work.

As regards the **parliamentary control of the government work** as a whole and every minister individually, the Operating Procedure should envisage the **interpellation** procedure. It is also necessary to reinforce the institution of MPs' questions and form polling committees for all issues important for wider public more often.

As regards **justice reform** it is necessary to improve the existing justice laws, and pay special attention to defining and respecting the procedure of electing judges, where the key criterion should be expertise. The previous period was marked by a number of legislative activities that will improve the independence and functionality of justice; the following laws have been adopted: Law on the High Council of Justice, Law on Judges, Law on Courts of Law, Law on Public Prosecutor's Office, Execution Law, Law on Legal Proceedings, Mediation Law, etc. In addition to this, it is necessary to work the national justice capacity building, which would enable the processing of persons indicted of war crimes.

With a view to **strengthening the control of constitutionality and legality**, conditions should be created for the full respect and implementation of decisions of Constitutional Court. In doing so, the criteria and procedures for the appointment of judges of Constitutional Court should be reviewed.

All the proposed measures are possible to apply in a relatively short period of time.

As regards the **fight against corruption** it is necessary to speed up the work on passing the Law on the Prevention of Money Laundry and the Law on Police. Consistent implementation and application of the Law on the Conflict of Interests is also imperative. In addition to these short-term priorities, it is necessary to start preparing for the implementation of mid-term priorities in this area, as well as provide full compliance of our law with the UN Convention on Fighting Corruption and relevant conventions of the Council of Europe.

All the proposed measures are aimed at meeting the set requirement in the EU association process, which is to provide stable institutions that guarantee democracy, rule of law, human rights and respect and protection of the rights of minorities.

2.2 | Court system

2.2.1. Judiciary in general

The key elements of judges' and judiciary independence are: legal definition of court and judicial institutions as independent and autonomous state institutions; foundation of the court and other judicial institutions involved in trial, and the trial itself, on the acts of highest rank (Constitution and laws); institutional independence of the judge and public prosecutor, i.e. independence from political subdivisions of the state authority and powerful individuals and social groups; personal independence of the judge and public prosecutor (which depends on legal regulation of acquiring and losing position as well as on the permanency of the position, and is achieved by the crucial impact of the role of justice authorities in the procedure of acquiring and losing position); making a competent decision within a reasonable deadline; impartiality (achieved by establishing the institution of exemption and rules on preventing the conflict of interest); the outward appearance of independence; way of electing judges and public prosecutors in a concrete legal matter.

A. Current situation

1. Result assessment

1.1. In Serbia's recent history justice was not characterised by the level of independence, impartiality and adequate procedural warranties that would make it independent and autonomous from the state authority. In a single-party system, justice used to be under the political pressure and the influence of a party legislative and executive power for decades, which greatly reflected in the appointment of judges and their work.

1.2. In comparison to the previous period, some progress has been made regarding the independence of justice system. However, it still has not reached the necessary level of independence, which is typical of all transition societies, in which justice has long been existentially and directly dependent on the executive and party power.

1.3. Citizens' trust in justice is not at the highest possible level for the reasons of its inefficiency, which immediately questions a person's right to a fair trial.

2. Strategies

2.1. In April 2004, the Serbian Government established a body – a Commission for the Reform of Justice – whose document Basic Points of Justice Reform has been adopted by the Government. The said document determines strategic goals of justice reform, but they still have to be worked out in detail, which is the task of the said Commission.

2.2. A strategic goal of justice reform is restoring the citizens' trust in judicial institutions in general. Methods that should be used in achieving this goal are: reforms of constitutional and legal regulations, judicial organisational regulations, process regulations, regulations relating to judicial professions, as well as normative improvement of relations between justice and citizens.

2.3. In addition to the general judicial strategy that the state institutions and their officials worked on, Basic Points of the Justice Reform Strategy by the Serbian Association of Judges was published in 2004. The general goal that should be achieved is an independent, impartial, efficient and responsible judiciary, as a warranty of the rule of law. Some of the specific goals are the following: production of a good constitutional and legal framework; establishment of disciplinary responsibility of judges; reorganisation of justice network in

order to achieve easier access to the court of law; establishment of a framework for a modern and efficient justice management; determining an optimum number of judges and other court staff and their permanent education; improving working conditions; accelerating and reducing the cost of court procedures and improving public relations.

B. Requirements and measures

1. To achieve the generally accepted international standards for the independence of justice

This aim cannot be achieved only at the level of the state's legislative function. It is necessary to change the *modus operandi* of judges and public prosecutors, as well as the modus operandi and organisation of courts of law and public prosecutors' offices.

1.1. When it comes to the changes and innovations in **legislation**, these are the priorities: extension of responsibilities and strengthening the role of the High Council of Justice; extension of the impact of judicial authorities on the part of budget intended for justice; establishment of legal aid service in order to improve the accessibility of courts and public prosecutors' offices; different internal organisation and daily management of courts and public prosecutors' offices and organisation of daily management.

1.2. As regards the impact on the change of modus operandi of courts, the priorities are: changing the way of recruitment and promotion of judges and public prosecutors in order to open these professions to all who meet the conditions; achieving real transparency in the procedure of recommending and electing judges and public prosecutors; establishing permanent education as an obligation for judges and public prosecutors; developing assistant judicial professions and their education (court executives, public notaries, bankruptcy managers, court summonses, etc.).

2. Constitutional definition of the position of justice authority as a state authority by transferring constitutional responsibilities from political bodies to judicial council.

Constitutional definition of the position of justice authority as a state authority subdivision must not stop at the proclamation that the authority is divided into three subdivisions. The principle of power distribution into three subdivisions will remain just a constitutional declaration, if a constitutional mechanism is not provided for the realisation of the equality of court (justice) authority and other subdivisions of authority, independence of court (justice) authority in the domain of its responsibilities in relation to other divisions of state authority, as well as powerful individuals and social groups, and fundamental control of executive power by court (justice) authority; a relevant measure for achieving such an aim is to transfer the responsibilities for the appointment of judges to the justice council, which has to be defined as a constitutional category, rather than a legal one, like it is today.

3. Provision of constitutional and legal guarantee for real exercise of human right to an independent judge and independent and fair trial.

3.1. As regards the constitutional definition of the human right to an independent judge, as well as to an independent and fair trial, we should find inspiration in the standards and formulations contained in international documents, especially in the International Pact on Civil and Political Rights and European Convention on Human Rights. It is worth emphasising that this approach has been applied in the Charter on Human and Minority Rights of the State Union Serbia-Montenegro.

3.2. It is necessary to introduce constitutional appeal in the new constitution, as a law devised by the Constitutional Court of Serbia, according to the Mid-European model of this legal tool.

3.3. Responsibility of the state, judge and public prosecutor for unfair trial or participation in a procedure, as well as for an unreasonably long-lasting procedure, has to be defined by the Constitution and the law, and its application in practice explicitly guaranteed.

2.2.2. Special measures in the judicial area

I. High Council of Justice

The key international documents referring to the issue of the council of justice or, rather, a body independent from the executive or legislative power that has a role in the appointment and dismissal of judges, their promotion and disciplinary responsibility, are the *Recommendation of the Committee of the Council of Europe P(94)12 on the Independence, Efficiency and the Role of Judges* and the *European Charter on the Statute for Judges 98/23*. The council of justice does not have to have the same name, structure or position within the state authority – differences stem from the characteristics of national justice systems – but certain principles have to be respected: the constitution of this body is such that at least a half of its members are judges, elected by other judges, in a way that guarantees the widest representation of courts (the council should comprise judges of all instances, from the lowest-ranking to the supreme court); council of justice passes and adopts its rule book; when it decides on appointing judges, the council of justice does so only on the basis of objective criteria, without any other influences, bearing in mind the qualifications, integrity, capacity and efficiency of the candidate; a judge who believes that their right has been violated or their autonomy jeopardised has a right to appeal to the council. The council has to be authorised for fixing such problems.

A. Current situation

The institution of the High Council of Justice (SCJ) was introduced in Serbian legislation in 2001. It is a fact that proposals for candidates for judges since 2001 has not been the responsibility of the parliamentary committee responsible for justice – and a committee reflects the position of the Parliament – but is now the responsibility of the High Council of Justice, indicates that there is political will in the Republic of Serbia to harmonise the legislation in this area with European standards. However, the concept of an independent and autonomous working judicial body in charge of the appointment, promotion and dismissal of judges has not yet been implemented fully. Since its first introduction until today, rules on its membership and responsibilities have been changed both by the amendments to the Law on the High Council of Justice and by the frequent amendments to the Law on Judges (the latest one being in April 2004). By the Decisions of the Constitutional Court of the Republic of Serbia, some stipulations of the Law on Judges have been invalidated.

The composition of the Supreme Council of Justice does not entirely comply with the requirement that at least half of its members responsible for the appointment, promotion and dismissal of judges should be judges, elected by their colleagues, in a way that guarantees the representation of judges of all instances. This body does not make final and bounding decisions on the issues of appointment, promotion and dismissal of judges. It has an advisory role and is limited to giving proposals.

B. Requirements and measures

The composition and responsibilities of the High Council of Justice must be determined by the Constitution, whose stipulations have to be compatible with the mentioned European regulations. With this regard, it is necessary to carry out the necessary constitutional reforms.

II. Public Prosecutor

As regards the responsibilities and appointment, disciplinary proceeding and dismissal of public prosecutors, the generally accepted legal standards, which should be a guarantee of their autonomy similar to the autonomy of judges, could be worked out indirectly from the recommendations of the Ministerial Committee of the Council of Europe and the European Statute for Judges. In some European countries (Bulgaria, France, Italy, Portugal, Romania) and some countries formed on the territory of former SFRY (Bosnia-Herzegovina, Republic of Srpska), the same body (Council of Justice) is responsible for appointing or proposing appointments of judges and public prosecutors. It is responsible for investigating disciplinary responsibilities of judges and public prosecutors and their promotion, for proposing their release from duty or the release itself. It could be argued that in the countries listed above there are the same institutional guarantees of the autonomy of judges and public prosecutors, at least when it comes to their election.

A. Current situation

According to Serbian law, public prosecutor is a state institution, responsible primarily for the judicial function of criminal prosecution for the crime prosecuted by official duty, but also for some other activities, such as the pronouncement of extraordinary legal remedy (request for protection of legality) not only in criminal proceedings but also in civil court proceedings, as well as for the participation in civil court proceeding in the capacity of lawsuit prosecutor or intervenient in general interest. In addition to general public prosecutors, there are two types of specialised ones.

General rules for general public prosecutors and their deputies – Public prosecutors and their deputies are elected by the National Parliament, at the proposal of the High Council of Justice. Special rules apply to special prosecutors for organised crime and special prosecutors for war crimes.

Special Public Prosecutor's Office – For procedures relating to criminal cases of organised crime, legal concentration of responsibilities has been made in the Law on Organisation and Responsibility of State Institutions in Clamping Down on Organised Crime (Article 4), and District Attorney's Office in Belgrade is responsible for the territory of the Republic of Serbia. In this office in Belgrade, a special department for clamping down on organised crime is being formed (Special Prosecutor's Office). Special Prosecutor's Office is managed by a special prosecutor for clamping down on organised crime, represented by a republican public prosecutor from the line of public prosecutors and deputy public prosecutors who are eligible for the position of district attorney with the written agreement of the person being appointed.

War Crimes Prosecutor's Office – For procedures relating to war crime cases, the War Crimes Prosecutor's Office for the territory of the Republic of Serbia, whose headquarters are in Belgrade, was established by the Law on Organisation and Responsibility of State Institutions. War crimes prosecutor is elected by the National Parliament, and the deputy is appointed and released by the war crimes prosecutor for the period of four years, with the possibility of re-appointment.

B. Requirements and measures

It is necessary to reinforce the responsibility of public prosecutors and their deputies for bringing legal action, conducting and results of investigations. In addition to this, it is necessary to give incentives to better cooperation between the police and public prosecutors, but exclusively under professional criteria, with the provision of mechanisms for the control of police responses to public prosecutors' requests during criminal prosecution.

Laws referring to the general rules on Public Prosecutor's Office should contain guarantees of autonomy and independence of prosecutors. Bearing this in mind it is necessary to examine whether deputy public prosecutors should be appointed for a limited period of time, whether legal guarantees for the obligation to bring criminal prosecution are adequate or they still leave a chance to non-prosecution authorities or individuals to decide whether the action should be brought or not; condition for permanent education and promotion to higher positions of public prosecutors and their deputies.

Both types of special prosecutors and their deputies should be equalised regarding the responsibilities referring to their appointment, term of office and their relations with their deputies.

2.2.3. Efficiency of judiciary

A. Current situation

The right to fair trial is the key element of any democratic society and the rule of law, which is applied when a person is charged with a crime or when a person's civil rights and obligations are contested. It implies the obligation of the state to organise legal system in such a way that its courts of law are able to guarantee everybody's right to receive a final decision within a reasonable period of time.

Probably the greatest problem of Serbian judiciary is that courts are overloaded with cases, which, in turn, results in inefficiency. This is primarily caused by the unadjusted regulations on the structure and the way Serbian courts operate. According to the Basic Points of the Strategy for Judicial Reform in Serbia, the main problems of Serbian courts of law are the following:

1. courts are overloaded with cases,
2. slow handling due to the inefficient court proceedings and frequent delays
3. inefficient delivery of court summons
4. inefficient administration of cases
5. slowness in reaching court decisions
6. slow execution of court decision
7. inadequate coordination with other institution of justice system
8. bad working conditions and low salaries
9. outflow of qualified staff from courts of law and their inadequate substitution

The network of Serbian courts of law is organised in line with the rules set out by the Law on Courts of Law (1991), whose provisions on organisation and responsibility of courts will apply until the end of 2006. Provisions of the Law on the Organisation of Courts of Law of 2001 (Official Gazette of RS, No. 125/04), referring to the organisation of courts, should come into force as of 1 January 2007. According to the existing organisation, there are two types of courts of law in Serbia: courts of original jurisdiction and specialised courts of law. On the bottom of the court hierarchy are municipal courts, directly above them are district courts, and the highest one is the Supreme Court of Serbia, which mostly decides on extraordinary legal remedies, as well as appeals against secondary decisions in criminal matters. Specialised courts are commercial courts and Higher Commercial Court. Such a network of courts of law, in which they are not arranged rationally, is inadequate in relation to the existing needs and it results in their unequal share of work.

These shortcomings should be overcome by the establishment of new court organisation and new allocation of responsibilities in line with the Law on the Organisation of Courts of Law of 2001, which envisages decen-

tralisation of court system as well as more modern, more rational and more adequate network of courts of law. The said law re-allocates responsibilities among municipal and district courts as courts of original jurisdiction, it envisages the establishment of special departments in courts of original jurisdiction, the establishment of Appellate Court as a court of appeals, and the establishment of Administrative Court, which will be solving administrative disputes. Supreme Court should become a court of cassation, i.e. it should rule exclusively upon extraordinary legal remedies.

The efficiency of courts of law is not only affected by their organisational scheme but also by the process laws. The new Law on Legal Action simplifies lawsuit and considerably renders abuse of process laws in the lawsuit. It also envisages changes that should contribute to resolving other, current problems, such as the slow handling, slow production of court decisions and the problem of delivery. In addition, the new Law on Enforcement and the amendments to the Law on Criminal Proceedings should contribute to improving efficiency in court proceedings.

The competence of judges is another necessary condition for a successful and efficient judiciary. This means that judges, apart from their expertise, should possess certain special skills (such as communication, listening and organisational skills) as well as social awareness, so that their decisions would promote and impact maintaining the highest values in society.

Successful administrative operation of courts, which should result in the respect of citizens time and expenses that address courts with their requests, is also of crucial importance in the work of courts and judges. Efficiency of courts directly depends on the daily management of court activities and on the equipment courts have at their disposal. Special training for judges and other persons dealing with the management and organisation of everyday work in the courts of law does not exist, which way these operations are not handled properly. When we add the fact that our courts have very bad equipment, it is clear that, according to international standards, conditions for successful administration have not been met yet in Serbian courts.

B. Requirements and measures

In order to prepare successful re-organisation of the court network in line with the Law on the Organisation of Judges in the envisaged period (by 1 January 2007), it is necessary to take all organisational measures and provide funds.

In addition to the measures envisaged by the Strategy for Justice Reform, it is important to set apart measures that should help reduce the overload of courts. Main measures are about changes in material and process laws regulating all sorts of court proceedings. With this regard, simplification of proceedings encompasses criminal proceedings, lawsuits, execution, the procedure of registration in court registers etc.

Measures for the reduction of outstanding court cases that should be taken are, for example:

1. Set a general working standard for judges;
2. Introduce compulsory periodical evaluation of judges, based on the facts that can be checked, and pass a rule book on this matter;
3. Enable temporary engagement of judges in other, overloaded courts, which a superior court should directly decide on;

4. Authorise the president of Supreme Court to delegate certain types of cases (under the prescribed procedure) to another court of the same responsibility, if the responsible court is overloaded with outstanding court cases and cannot process them within reasonable period of time;
5. Enable overtime work and work in shifts in courts that have delayed cases at the level of half-annual inflow of new cases;
6. Determine deadlines for the reduction of the number of delayed cases, so that within three years, the number of old cases is at the level of average quarterly inflow of new cases;
7. Introduce modern information technologies with common data bases of regulations, court practices, administration, statistics and a common software. Provide network connections at the level of republican district courts.

Parallel to all this, the state should provide stable and sufficient funds in order to organise institutional and permanent training of judges through appropriate training programmes, which will enable the maintaining and improvement of the reached level of professional competence of judges, as well as of their other necessary skills. The programmes should vary depending on whether they are training programmes for judges who have just started practicing or those with experience. At the same time, adequate training of assistant staff – an integral part of the overall justice system, should be organised. By institutionalising permanent training of judges and periodical assessments of their competence, the condition of personal competence should be met. It is advisable to organise these assessments before the rationalisation of Serbian courts takes place.

As regards the daily management of court activities, it is necessary to envisage special training in this matter for court presidents and other staff. However, even the best management cannot give good results unless it has adequate support in equipment, which is why it is necessary to modernise office work and data processing capacities.

Besides, it is necessary to provide computers for courts, public prosecutors' offices and attorneys' offices, to standardise the software and ensure its compatibility, data protection and connection within a common network of republican justice system. The functioning of single information system in judiciary should be regulated by a special law.

With a view to improving efficiency of court activities and relieving them of extra load, appropriate process laws should create preconditions for reaching standards of trials within reasonable period of time. Passing a special law on arbitration and a special law on mediation in disputes should contribute to this as well.

2.2.3.1. The impact of judges on judicial budget

A. Current situation

Courts of law are still funded from the single republican budget – responsible executive authorities determine and allocate funds for their work. If we bear in mind that the Government prescribes conditions, amount and way court fees are used, it is obvious that executive authorities have the key role in the financing of courts.

Considering that the judicial budget is formed without the influence of judicial authorities, it is no wonder that a tendency of low income has been present in judiciary for over ten years. This has caused the outflow of experienced and quality staff on the one hand, and on the other, competition has dropped and penetration of incompetent staff has been enabled.

Since the court system depends on the funds from the central budget, it often happens that courts, due to the failed transfers from the budget, cannot provide the necessary material for work and employees' salaries, which hinders their work.

B. Requirements and measures

It is necessary to provide real and decisive impact of courts on the budget allocated to judiciary, which can be achieved by giving some authority to the High Council of Justice. It is necessary to establish a special way of creating judicial budget based on real needs, which is a precondition for overcoming negative tendencies in the work of courts of law as a result of failure to distribute sufficient funds for their work from the central budget. Court budget formed on the basis of their estimates and needs, whose allocation will be impacted by the courts themselves, is a precondition for making working conditions, training, judges' salaries and salaries of assistant staff, independent of current needs and motives of executive power.

2.2.3.2. Fight against the corruption

In order to perceive the international standards in this field, we need to take a look at several important international documents: the UN Declaration against Corruption and Bribery in International Business Transactions E/1996/L.26/Rev.2, 15.11.1996; Action of the UN General Assembly against Corruption A/PEC/51/59 of 28 January 1997, the UN Convention on the Fight against Organised Crime (Palermo, 2000), recommendations of the Council of Europe no. R (2000) 10 and annex to the recommendations adopted by the Committee of Ministers at the 106th session on 11 May 2000 in the form of a Model Code of Conduct of Civil Servants; recommendations of the Council of Europe R (2003) 4 regarding basic directions in fighting corruption in electoral campaigns and financing political parties; Council of Europe's Criminal law convention on Corruption, which entered force on 1 July 2002; Council of Europe's Civil Law Convention, which entered force on 1 November 2003 and OECD's guidelines for solving conflict of interests in civil service of June 2003.

A. Current situation

Serbian Government formed the Council for Fighting Corruption in 2002, which comprises eminent representatives of scientific and public life, which has since indicated a number of current problems in the fight against corruption, sometimes even openly criticising the Government itself.

In September 2001, a Law on the Prevention of Money Laundry was passed at the level of the then SFRY. The law complied with international standards and solutions of the UN Palermo Convention of 2000. In 2002, the Penal Law of Serbia was amended and ten new criminal acts were included in a special chapter (XXI – Criminal Acts of Corruption). Each of the ten criminal acts is a special form of criminal act of giving (Art. 255) and receiving bribe (Art. 254), i.e. abuse of public office (Art. 242).

Public Procurement Law and the Law on Financing Political Parties have been passed, and the Law on Prevention of Conflict of Interests when Performing Public Duty was adopted in 2004. When the latter law was passed it was a sign of moving forward. The Law on the Conflict of Interests itself, in Articles 2 and 3, reads that special laws will be passed that will regulate the conflict of interests when performing the duties of a judge, Supreme Court judge, public prosecutors and other officials appointed in the institution or organisation bodies founded

by the Republic of Serbia, autonomous province, municipality, town, and the city of Belgrade. These special laws will be passed in the immediate future.

In late 2004, a Law on Free Access to Information was adopted, but there are serious technical and normative problems regarding the failure to enforce this law in practice.

In March 2005, Serbian Government announced that a National Strategy for Fighting Corruption was to be passed. It is supposed to be before the Serbian Government by summer and before the Parliament by autumn. In the framework of this Strategy, several laws should be passed, the most important one being the Law on the Establishment of the Agency for Fighting Corruption, which is not going to be a kind of new police force or prosecutor's office but will monitor the implementation of the Strategy and the Action Plan, which should realise the tasks set out in the Strategy. The Strategy also envisages a number of measures to be implemented in the political system, justice, police, public administration, public finances, the media and economy. The Strategy will be further elaborated by the Ministry of Justice.

Generally speaking, the Strategy is based on the internationally accepted model for the fight against corruption – simultaneous repression, prevention and education, i.e. application of anti-corruption laws, removing possibilities for corruption and raising awareness and education of the public.

B. Requirements and measures

Effective measures should be taken in order to prevent corruption followed by raising public awareness and promoting ethical conduct, providing coordinated and uniform criminalisation of corruption both at the national and at the international levels (the so-called norm identity), providing conditions that those in charge of prevention, investigation and judging in corruption matters are independent and autonomous appropriate to their functions, providing adequate measures for seizure and confiscation of profit gained by criminal activities relating to corruption, by introducing criminal responsibility of legal entities, i.e. by providing adequate measures for the prevention of criminal acts of corruption by legal entities. It is also necessary to promote the specialisation of individuals and bodies in charge of corruption, by providing the necessary funding for their permanent education and training, insisting on constant scientific research of the phenomenon of corruption, creating conditions under which the media will have total freedom of reporting on the cases of corruption bearing in mind only those limitations that are necessary in every democratic society, as well as by introducing the institution of ombudsman in our legal system.

For the majority of measures that need to be taken in the forthcoming period in order to meet the set requirements, prior legislative reform is not necessary. A great number of anti-corruption measures are not connected with the legislative activity, but with a wider social activity on promotion and further building of democratic social relations, independence of judges, public prosecutors' offices and especially police, on a wider educational plan, i.e. plan of construction and promotion of positive moral values.

2.3 | Human rights and minority protection

2.3.1. Human rights

A. Present situation

General assessment of conformity of Serbian legislation with international standards in human rights protection

Serbian legislation is greatly in conformity with international standards for human rights protection. As a result of social democratisation and reforms undertaken in 2000, there is no systematic violation of human rights in Serbia any more. Nevertheless, the greatest problem still lies in practical realisation of prescribed rights i.e. enforcement of the adopted laws. Legislation, as a primary protection of rights of all people living in Serbia, is not efficient enough in this matter.

Constitutional protection of human and minority rights

The Charter on Human and Minority Rights and Civil Liberties (hereinafter: the Charter) was adopted at the State Union level. It is binding on the Republican institutions and contains comprehensive catalogue of human rights. The Charter represents a huge progress in view of normative regulation of human rights. Venice Commission for Democracy through Law ('Venice Commission') estimated the content of this Charter as excellent¹. The Serbian Constitution from 1990, whose human rights provisions are rather scarce, is still in force. The adoption of the Law on the Protection of National Minority Rights and Liberties, which embodies the provisions of the Charter, represents an especially important step in legal protection of minorities.

International protection of human rights

As one of the successors of SFRY, the State Union of Serbia-Montenegro is a member of both international United Nations Pacts on human rights, as well as of 30 other agreements on other rights. It has recently ratified the European Convention on Protection of Human Rights and Fundamental Liberties ('European Convention') including thirteen protocols thereof. For the purpose of protecting their human rights, Serbian citizens have the right to individually address the European Court of Human Rights, Human Rights Committee, and Committee against Torture and the UN Committee for Elimination of Racial Discrimination. Pursuant to Article 16 of the SCG Constitutional Charter and Article 7 of the Charter on Human and Minority Rights, the provisions of international agreements on human rights have been directly implemented in the Serbian territory and they have priority in relation to the SCG and Republican laws. This ensures the direct protection of human rights in Serbian courts, which may and have to directly implement the international regulations. However, the international agreements are rarely directly implemented in practice.

B. General recommendations

Adoption of the new Serbian Constitution

The new Constitution of Serbia, harmonised with the European Convention and other international instruments and standards, SCG Charter on Human and Minority Rights and the EU Charter on Fundamental Rights, represents a key precondition to enjoy and efficiently protect human and minority rights. The Constitution has to de-

¹ See: Venice Commission for Democracy Through Law, Jan E. Helgesen, *Comments on the draft Charter on Human and Minority Rights and Civil Liberties* (Opinion No. 234/2003), from 2 April 2003 at [www.venice.coe.int/docs/2003/CDL\(2003\)010fin-e.html](http://www.venice.coe.int/docs/2003/CDL(2003)010fin-e.html)

fine fundamental and firm standards of protection, especially regarding the derogation of human rights in the state of emergency due to general threat to state and society.

Institution and efficient administration of criminal proceedings against the perpetrators of war crimes

The energetic political and material support for the work of Serbian special authorities in charge of war crime proceedings is of fundamental importance, as well as full and timely cooperation with the International Criminal Tribunal for Former Yugoslavia. In its observation of regular SCG report on enforcement of the Pact on Civil and Political Rights, the UN Human Rights Committee has underlined the need for efficient investigations and criminal prosecution of war crime perpetrators². It is necessary to legally regulate future cooperation with permanent International Criminal Court and harmonise the criminal legislation with the provisions of the Rome Statute of International Criminal Court.

Strengthening of human rights culture

The efficient protection and enjoying of the human rights requires that the citizens are aware of their rights as well as public control of operation of all state institutions. In this sense, state institutions have to inform the citizens on their rights, especially on the right to address responsible domestic and international institutions for protection of their rights. Furthermore, the education programmes on human rights have to be significantly improved, primarily through introduction of mandatory subject on human rights into the secondary school schedules. The mandatory subject «Human rights» should also be introduced in all law faculties and faculties of political sciences.

C. Special recommendations

Right to fair trial (Article 17 of the Charter, Article 6 of European Convention)

Threat to the judiciary independence also implies the threat to citizens' right to fair trial. Thus the legislative and executive authorities have to withhold from any activity that may politicize the judiciary.

In Serbia, the right to free trial is primarily violated by failure to respect the right to timely trial, which has become a regular trend and which is elaborated in the above text. Beside the systemic judiciary reform, which will resolve this problem on the long run, it is necessary to take urgent steps so as to avoid the state responsibility for mass violation of this right before the European Court for Human Rights. In addition to the existing mechanisms for supervising the work of judges, it is necessary to introduce a special legal remedy for eliminating the violations of right to timely trial³. In accordance with the practice of the European Court for Human Rights⁴, this legal remedy has to be quick and efficient and it has to ensure the fair damage compensation for untimely judicial operation⁵. The only current law containing the timely trial provision is the Law on Civil Procedure, while other procedural laws have to be amended to that end.

² See: *Concluding Observations of the Human Rights Committee: Serbia and Montenegro*, 12.8.2004, CCPR/CO/81/SEMO ('Final observations'), paragraphs 9-12.

³ As it was realised by e.g. Italy by so-called Pinto Law (*Legge no. 89/2001*)

⁴ See *Kudla versus Poland*, judgment from 26 October 2000, App. No. 30210/96.

⁵ In this sense it is necessary to respect the practice of European Court in relation to the amount of damage compensation; see special judgment in case *Apicella against Italy* from 10 November 2004, App. №. 6489%1.

Freedom of expression and freedom of media

(Articles 29 and 30 of the Charter, Article 10 of the European Convention)

For the purpose of ensuring the independent and free functioning of media, it is necessary to decriminalise, depenalise or otherwise restrict the criminal act of slander. It is unacceptable that the inaccurate journalist reporting may be subject to prison sentence⁶, especially regarding the existing civil procedure, unless there is a proven intention to cause serious damage to the subject of slander. This is why the draft Criminal Code (which will soon be adopted) provides for depenalization of slander and insult. It is also necessary to conduct a more energetic criminal prosecution of persons causing or inciting national, religious, racial or other kind of hatred and intolerance.

For ensuring the independence of electronic media and their fair market position, it is necessary to revise and fully enforce the Broadcasting Law i.e. to ensure full independence of the Republican Broadcasting Agency. It is also necessary to practically enforce the Law on Free Access to Information of Public Importance.

Right to property (Article 26 of the Charter, Article 1 of Protocol no. 1 with the European Convention)

The Law on restitution of property seized by the totalitarian regime should be passed for ensuring full legal and property security and for fulfilling the fairness principles.

Freedom of assembly and of association (Articles 31 and 32 of the Charter, Article 11 of the European Convention)

Regarding the freedom of assembly and association, the laws enforced in Serbia date back in the era of one-party system (except for the Law on Political Organisations). It is necessary to pass the Law on Non-governmental Organisations which would finally regulate the area of freedom of association.

Right to efficient legal remedy (Article 9 of the Charter, Article 13 of the European Convention)

Serbian central legal institution which protects human rights at the last instance and whose decisions would be subject to citizen appeals before international institutions is the Supreme Court of Serbia. Due to the inadequate present constitutional solutions, Supreme Court very rarely decides on this matter, although there have been significant improvements in the recent period. An efficient system of human rights protection has to be put in place from the aspect of state's responsibility before European Court of Human Rights.

Beside that, the Serbian citizens in Kosovo and Metohia are not in a position to use international legal remedies for human rights protection, due to the fact that this part of SCG territory is not within its authority. In order to eliminate these deficiencies, it is necessary to take the following steps:

- the new Serbian Constitution should extend the responsibilities of the Constitution Court of Serbia by enabling it to receive citizens' constitutional complaints, providing they claim that their human rights were violated by an institution of the Republic of Serbia. The competence of Constitutional Court should also include the assessment of conformity of general and individual legal enactments with international agreements on human rights and not only with the Serbian Constitution. The terms for filing a constitutional complaint have to be liberal i.e. shall not be subject to restrictions as those from the FRY Constitution and which currently exist in relation to submitting the complaints to the Court of SCG.

⁶ See judgment of the European Court of Human Rights in case *Dalban versus Romania*, App. No. 28144/95 (1999).

⁷ See recommendation of Venice Commission - Opinion on Human Rights in Kosovo: Possible Establishment of Review Mechanisms, from 11 October 2004 - <http://venice.coe.int/default.asp?l=E>

- use the diplomatic assistance for establishing a special international human rights court for Kosovo and Metohia, so as to enable the citizens to protect their rights in relation to international institutions in Kosovo or Kosovo temporary institutions⁷.

Prohibition against discrimination (Article 3 of the Charter, Article 14 of the European Convention, Protocol no. 12 to the European Convention)

It is necessary to pass a general anti-discrimination act with an efficient legal remedy for victims of discrimination. General anti-discrimination Act should be accompanied by laws against discrimination of especially endangered groups, such as people with disability problems, so as to prescribe the positive state obligations towards these population groups. These laws might also include the measures of positive discrimination i.e. affirmative activities related to endangered groups, in political institutions, education and employment relations, especially the rights of Roma population, refugees, internally displaced and persons in exile. It is necessary to establish special protection of gender equality, with adequate measures of positive discrimination.

D. Protection of personal data

Existing situation

The right to personal data protection in the SCG legal system is characterised by constitutionally guaranteed rights (see Article 24, para. 4 of Charter on Human and Minority Rights, Article 31 of Serbian Constitution and Article 31 of Montenegrin Constitution). Among other things, the significance of these provisions lies in the fact that they do not contain obligation for legislator to entirely regulate the area of personal data protection by passing a special law.

In May 1998, the Law on Personal Data Protection was passed at the level of Federal Republic of Yugoslavia as the first law regulating this area in the country. Although the 1998 Law on Personal Data Protection can generally be viewed as the first step towards the solutions of the 1981 Council of Europe Convention on Protection of Individuals related to automatic data processing, the analysis certain legal solutions (primarily in comparison with the solutions from the EU Council Directive 46/95) undoubtedly shows that this legal act is lacking i.e. full of omissions and deficiencies and that it is inefficient in personal data protection. The main deficiency of this Law is certainly the fact that its provisions were never implemented; there is no record of any individual request for protection on basis of this Law or the evidence that such protection was ever granted for processing of individual data.

Requirements and measures

It is necessary to pass a new legal document in Serbia which would be entirely in compliance with modern legal solutions in this area.

The legal regime establishing the rules of allowable personal data processing shall contain the following elements: it is primarily required to formulate general rules on cases when data processing is allowed; it is subsequently necessary to define the rules that enable the differentiation between cases of data protection with consent of persons that the data relate to from cases when the data processing is allowed without his/her previous consent; along with that, it is required to determine the cases when a state body i.e. government authority is allowed to process personal data. The next group of rules relates to collection of personal data and the rules on prior information of persons whose data will be processed. Finally, this legal regime also includes the rules on allowable processing of especially sensitive personal data.

A part of legal document regulating the rights of persons that the personal data relate to is probably the most complex, particularly having in mind that the efficient personal protection largely depends on properly defined provisions on personal rights. In this sense, the new law should contain the rules on three special rights – right to information on data processing, right to insight into the document containing personal data and right to obtain a copy of such document. On the other hand, after these three special rights have been defined, there is a need to define another group of rights related to the rights of persons after the insight into the document containing personal data.

E. Property rights

The uniform proprietary law cannot be the subject of discussion due to the obvious differences in the manner of regulation of property rights in the European countries. However, we can talk about the existence of European standard for respect and protection of property and other property rights which are reflected in undisturbed use of property and other rights that the legal owner may be deprived of or which may be limited under prescribed terms; the content of international standards for protection of property rights is best depicted in the First Protocol of European Human Rights Convention.

Existing situation

Current regulation of property right in Serbia is not satisfactory, since this is the least regulated area of positive civil law. Property law is not codified in Serbia as it is the case in certain ex-Yugoslav Republics (e.g. Republic of Slovenia). There are numerous legal and legislative gaps. Certain property rights are ***not at all*** regulated: private easement, real encumbrance, building right, while other rights are ***insufficiently*** regulated: lien, mortgage, leasing right, abutting rights, tenure. Since the responsibility issue is resolved i.e. Republic of Serbia has regained the responsibility for regulation of civil law, there is a possibility for property law codification.

Another obstacle for regulation of property right in Serbia is Serbian Constitution which fails to define a unique term for property; the Law prescribes that all forms of property enjoy equal protection, including socially-owned ones.

Furthermore, denationalisation has not been finalised in the Republic of Serbia.

Requirements and measures

For achieving international standards for respecting and protection of property and other property rights, it is necessary to perform the property law codification and adopt the Code on Property Rights to that end. Codification will contribute to realising the missing legal certainty and to elimination of existing legislative gaps.

Denationalisation and indemnification of owners who have been deprived of their property rights, mostly through nationalisation, confiscation and expropriation, represent the terms for establishment of elementary fairness within legal order. A step in that direction is recent adoption of the Law on Reporting and Registration of Confiscated Property, which will serve as a basis for detailed and sustainable method and plan for denationalisation.

During the constitutional reform it is also necessary to abolish the category of state property and to return to the unique property term.

The main preconditions for practical protection of property rights include the improved regulation of land registers, harmonisation of domestic court practice and decisions of other state institutions with the European Con-

vention standards. To that end, it is necessary to train the judges and introduce them to the practice of European Court for Human Rights, especially regarding the Protocol 1 to the Council of Europe's European Convention on Human Rights and Fundamental Liberties.

2.3.2. Minority protection

A. Existing situation

General assessment

According to the European Commission⁸ there is a steady progress in minority protection in SCG, despite the problems observed as to the fulfillment of certain State Union's international obligations.

Legal solutions

SCG has ratified the key universal and regional instruments that directly or indirectly guarantee the minority rights, including the International Pact on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention against Genocide, European Convention on Human Rights and Framework Convention on National Minority Protection. The accession to the European Charter for Regional or Minority Languages is underway, as well as the process of negotiation with neighbouring countries on conclusion of bilateral agreements on minority protection. These agreements have been concluded with Hungary, Romania and Croatia and the signing with Albania is due.

Constitutional Charter prescribes that the Republics shall regulate, secure and protect human and minority rights and liberties in their territories, and the State Union is obliged to monitor the realisation of these rights and liberties and to ensure the protection if the Republics fail to provide it. By adopting the Law on determining the responsibility of Vojvodina Autonomous Province (so-called Omnibus law) and the new Law on Local Self-government, the Autonomous Province and local self-government have been given greater authority for ensuring the minority rights. More than 200 administrative competences in more than 20 areas of social life have been transferred to the AP Vojvodina responsibility; a large number thereof relates to the areas significant for maintaining national and cultural identity of minorities.

The adoption of Charter on Human and Minority Rights and the Law on Protection of Rights and Liberties of National Minorities in SCG represents an especially important step. At the level of the Republic of Serbia it was decided that no special law on minority rights protection should be adopted for the time being, but that the SCG Law should be a legal framework⁹ and that the particular minority protection areas should be more specifically regulated by a set of specific laws. The Charter guarantees direct application of all minority rights prescribed therein, as well as those prescribed by international agreements, so that the problem of incompliance of other laws and by-laws with the Charter and international standards is temporarily avoided. The Charter and Law guarantee many rights important for preserving the identity of minorities.

Language and script of national minority is officially used in local self-government unit where the participation of minority in total population in the area exceeds 15%, according to official census; minority language may be

⁸ Commission Staff Working Paper, SERBIA AND MONTENEGRO, Stabilisation and Association Report 2004 (Com (2004) 206 final), page. 17 - 18.

⁹ Pursuant to Article 64 of the Constitutional Charter, the laws of FRY(SCG) are applied as Republican laws until the Republics adopt new laws, except for those which are declared inapplicable by the Republican Parliaments. FRY by-laws imply the Federal legislation of FRY, which ceased to exist by the adoption of Constitutional Charter in 2003.

officially used in local self-government units where the participation of national minority in total population is lower, at the request of local self-government units. In accordance with the principle of attained rights, guaranteed by the Charter, there is an obligation to maintain the existing official use of language and script in the local self-government units where the national minority language was officially used at the time of adoption of the Law on Protection of Rights and Liberties of National Minorities. Furthermore, it is possible to introduce the language and script of national minority into the official use in the complex or local community in the territory of local self-government unit, providing that the percentage of certain national minority in this complex or local community reaches 25% according to the recent census (Art. 8, para. 3). Beside the Serbian language, which is the official language in the entire territory of Serbia, one or more national minority languages are officially used in 36 Vojvodina municipalities (out of 44) and the city of Novi Sad, while two municipalities in South Serbia and two in East Serbia introduced Albanian and Bulgarian as official languages. Legal solutions are fully respected in the areas of primary and secondary education.

Practical implementation of regulations

Good legal solutions are sometimes not implemented in efficient and comprehensive manner. In case of certain regulations it is not clear which institution is responsible for their implementation, and in other cases the envisaged funds are not sufficient. For instance, in two-thirds of Vojvodina municipalities the members of Hungarian minority are granted the right to communicate in their language with authorities at all levels, but due to the lack of material and human resources in municipalities, this right has not been fully realised. Various factors impede the implementation of regulations, for instance the incompliance between the Republican and State Union regulations, unpreparedness for direct application of international agreements and constitutional enactments, as well as the insufficiently efficient mechanism for minority rights protection.

The work on integration of Roma population is continuous, as well as constant support to this community. In spite of these efforts, this population is still jeopardised in numerous areas¹⁰. Police maltreatment of Roma has been reduced, but there are concerns about the widespread discrimination against this national minority, their forced displacement from settlements due to violence and constant disturbance by racist groups and inadequate police protection in such cases, difficult social and economic situation, including the access to health services, social benefits, education and employment¹¹.

National Minority Councils have been introduced in Serbian legal system in 2002, as new cultural autonomy institutions with certain public authorisations. By 2005, the National Councils have been established by Hungarians, Croats, Ruthenians, Romanians, Slovaks, Roma, Bunjevci, Ukrainians, Bulgarians, Bosnians, Greeks and Macedonians. Representatives of National Councils are still included in creation of programmes for school subject of native language with the elements of national culture. Government of AP Vojvodina has transferred certain concrete authorities to National Councils. National Councils are primarily responsible for establishing the traditional names of towns in their languages; the right to establish media in the national minority language is also transferred from Vojvodina Parliament to National Councils.

For preserving, promoting and protecting the national, ethnical, religious and cultural characteristics of national minorities, the Serbian Government has established the Council for National Minorities of the Republic of Serbia in September 2004.

¹⁰ Ibid.

¹¹ See Final conclusions of the Human Rights Committee, page 24 –25.

For financial assistance to societies established for protection and promotion of national minority cultures, the legislation envisages the establishment of Fund for promotion of social, economic, cultural and general progress of national minorities.

B. Recommendations

General recommendations

Republican regulations should be harmonised with the guarantees under the Charter and international standards. The competence for implementation of particular regulations should be reviewed and appropriate budget funds should be foreseen for realisation of the prescribed rights. It is necessary to establish institutions and instruments for efficient implementation of appropriate regulations when such institutions are missing. Cooperation of the SCG Ministry for Human and Minority Rights with the Republican ministries is of utmost importance for full legal harmonisation and enforcement. In certain areas it is necessary to pass the by-laws in relation to responsibilities of state institutions for realisation of the guaranteed rights.

There is a need for urgent initiative related to SCG's ratification of European Charter on Regional and Minority Languages, which has now become the obligation towards the Council of Europe.¹² It is necessary to ensure the execution of decisions of international judicial and quasi-judicial bodies, as well as realisation of recommendations pronounced by international organisations. For instance, the definition of national minority should be amended, as well as the principle of prohibition of discrimination so as not to include exclusively the citizens of SCG¹³.

Use of minority languages

In relation to the official use of languages and scripts of national minorities, municipalities should be enhanced by material and human resources to fully ensure the realisation of this right. What should be kept in mind at funding of local self-government activities are additional costs of municipalities related to the use of several official languages in their territory.

Under the Law on Protection of National Minority Rights and Liberties, the names of public authorities, local self-government units, towns, squares and streets as well as other toponyms in the areas where languages and scripts of national minorities are in official use shall also be written in the officially used national minority languages, according to their tradition and language rules. To that end, the Law on Official Use of Language and Script of Serbia should be harmonised with the Law on Minority Protection.

Protection of Roma

Bearing in mind the indicators of serious level of jeopardy to the Roma, the effectiveness of current state strategy and problems of Roma integration should be reconsidered; the state has to show more understanding for their specific economic, social and cultural position. In the light of *The Decade of Roma protection*, the government ought to take more decisive and efficient steps for improving the position of this national minority, especially regarding the fight against discrimination and harassment by racist groups, to ensure appropriate standards in the area of housing, health, employment, social benefits and education, with implementation of positive discrimination measures.

¹² Recommendations of Council of Europe Parliament on FRY obligations for accession to the CE, July 2002.

¹³ Opinions of Advisory Committee, page 23.

¹⁴ Opinions of Advisory Committee, remark 3, page 50.

Other measures for minority integration

In order to perform an efficient allocation of assistance to cultural initiatives of national minorities, during the adoption of by-laws on the operation of Fund for improvement of social, economic, cultural and general progress of national minorities, the authorities should foresee the participation of a number of national minority representatives in this Fund¹⁴.

For achieving the efficient participation of all communities in political process, it is necessary to amend the provision prescribing the minimum of 10.000 certified voters' signatures for nomination of one MP candidate in the Serbian Parliament, which significantly complicates the participation of national minority parties in the elections.

For affirmation of multiculturalism and interculturalism in Serbia it is necessary to establish a clear government strategy and measures for its implementation, including the promotion of mutual information on culture and languages and affirmation of multiculturalism as a specific value in schools and media. The education programmes should provide for extended knowledge of history and culture of various communities in Serbia, and the learning of community languages should also be supported and adequately awarded.

2.4 | Ombudsman

The introduction of ombudsman as an independent and autonomous institution into the legal system of the Republic of Serbia will contribute to greater awareness of significance and necessity for respecting human rights and liberties and legality of state institutions' work. This body will be responsible for examination of individual cases of violation of human rights and liberties caused by illegal and inappropriate work of administration bodies and proposal of manners for elimination of these violations. Its main tasks will include the following: protection of human rights and liberties guaranteed by the Constitution; ensuring the awareness and environment for fulfilling the rule of law principle; enhancing the responsibility of democratic institutions; influencing the creation of citizens' legal certainty, legality and impartiality in the work of state institutions responsible for realisation of citizens' rights, liberties, obligations and legal interests.

A. Existing situation

Following several law proposals which have not passed through parliamentary procedure for some reasons, Serbian government drafted the Law on Ombudsman of the Republic of Serbia at the end of 2004. After public debates and due respect to the comments of the Council of Europe and other international institutions, Serbian government is expected to adopt the Draft Law on Ombudsman in form of proposal and consequently submit it to Serbian Parliament for adoption in 2005.

On 23 December 2002, the Parliament of Vojvodina Autonomous Province has passed the Decision on Province Ombudsman and on 24 September 2003 the first Vojvodina Ombudsman was elected by two-thirds majority for the 6-year mandate.

All public polls indicate that citizens' confidence in justice is extremely low so that the introduction of ombudsman might change this situation in a positive manner.

B. Requirements and measures

1. Constitutional definition of ombudsman position

New Serbian Constitution should provide the definition of ombudsman position. The Draft Constitution created by Serbian Government (Art. 136 and 137) and the model of Serbian Constitution drafted by expert group at the request of Serbian President (Art. 149 to 155) also include the constitutional definition of responsibility and position of ombudsman as a new institution in our legal system. The existing differences in the mentioned drafts mostly relate to the level of precision in constitutional regulation and there is a definite need for constitutional regulation of ombudsman's position.

2. Ensuring legal regulation on ombudsman's work in the Republic of Serbia

The adoption of Serbian Law on Ombudsman is a necessary precondition for introducing this institution in Serbian legal system. Serbian Law on Ombudsman has to ensure that the nomination and dissolving of Ombudsman is performed by qualified majority in the Serbian National Parliament (unless the issue of ombudsman election is defined by Constitution), that the ombudsman's protection is provided for all persons under the jurisdiction of the Republic of Serbia, regardless of whether they are Serbian citizens or not and that the introduction of ombudsman provides for protection of good governance principle.

3. Establish the Ombudsman office in Serbia and realise the defined and generally accepted international standards

This objective cannot be realised only by defining the basis and legal regulation. It is necessary to ensure the efficient enforcement of adopted legal solutions. Measures which can ensure the adequate functioning of ombudsman institution are the following: allocation of appropriate budget for the functioning of ombudsman institution; selection of adequate professional staff for ombudsman office; protection of ombudsman and prevention of its arbitrary dissolving; ensuring that the executive authority respects and implements the reports and recommendations of ombudsman; provide the complaining parties with easy access to ombudsman; and finally enable the complainants to lodge anonymous complaints in cases when they might suffer from certain consequences if their identity was revealed.

2.5 | Foreign Policy

1. Existing situation

After the democratic political changes in Serbia in 2000, the main goal of FRY/Serbia's foreign and security policy was the normalisation of relations with international institutions and influential countries, especially with the neighbouring countries. Such commitment also implied the adequate approach based on respecting the principles accepted in modern international relations, especially the principles of peaceful dispute settlement, good neighborly relations and border integrity. In our foreign policy, these political principles are most reflected in orientation towards Euro-Atlantic integrations, bilateral and regional cooperation and tendency to re-establish good neighborly relations and define them through conclusion of free trade agreements, in efforts and positive results in the return of refugees and internally displaced persons and full cooperation with the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (hereinafter: the International Criminal Tribunal in the Hague).

Significant results have been accomplished in normalisation of relations with international community: FRY/SCG has re-entered numerous universal and European international organisations, it has initiated the process of EU association for accession to full membership, the relations with the newly-independent states of former SFRY have been normalised to a great extent and FRY/SCG has taken an active part in a number of regional initiatives.

As regards the sensitive issues of internal security in Serbia, such as the conflicts in South Serbia (2000) and in Kosovo and Metohia, these are also the cases in which Serbia accepted the cooperation with international actors and demonstrated the inclination towards peaceful dispute settlement relying on diplomatic and political measures, which was rewarded internationally. Special prudence and expediency as well as inclination towards peaceful dispute settlement were demonstrated during the ethnic violence over non-Albanian population in Kosovo and Metohia in March 2004. However, it has to be noted that UNMIK and local authorities in Kosovo and Metohia did not take sufficient action to eliminate the consequences of March escalation of violence. Little has been done to provide for the return of non-Albanian population and to ensure the basic conditions for normal life of those remaining in Kosovo and Metohia, primarily in view of free movement and realisation of right to work, health protection and education. The abovementioned has altogether aggravated the inter-ethnic dialogue in Kosovo and Metohia and postponed the direct dialogue between the Belgrade authorities and temporary authorities in Pristina.

The adopted Defence Strategy of Serbia-Montenegro State Union confirms the orientation towards the participation in Partnership for Peace programme, while the membership in NATO alliance will be ultimately decided in a democratic referendum, which is also the practice in other states. Although the accession to the Partnership has not been realised due to the problems in cooperation with the International Criminal Tribunal in the Hague, the army reform has been actively embarked upon according to the NATO standards.

2. Expectations

The EU and other relevant international actors expect from Serbia to totally and adequately fulfill the international obligations arising from the UN Charter, UN Security Council Resolutions, Council of Europe documents and CSCE/OSCE enactments, especially those under the Peace Agreement on Bosnia and Herzegovina (Dayton/Paris Peace Agreement from 1995) and Kumanovo Agreement from June 1999.

In the foreign policy area, this implies the following: full cooperation with the Hague Tribunal, especially the extradition of all indictees, respecting of the UN Security Council Resolution 1244 and resolution of the status problem of Kosovo and Metohia as well as improvement in the position of Serbian and other non-Albanian population in the Province, through negotiations and political instruments. The EU expects from Belgrade authorities to overcome the setback and resume the dialogue with the temporary authorities in Pristina.

Furthermore, the EU also insists on strengthening of regional cooperation (primarily in the area of trade, transport and establishing of the regional energy market) and continuing the process of full normalisation of relations with the countries in the region.

3. What needs to be done

SCG/Serbia is fully oriented towards the fulfillment of its international obligations, since this provides the pre-conditions for a more active foreign policy and approaching the major goal – integration into the Euro-Atlantic structures, along with preserving and promoting of national interests. This means that Serbia will tend to align its foreign policy as much as possible with the principles of the Common Foreign and Security Policy of the EU (CFSP). Serbia needs to continue the resolution of its internal contradictions and problems on basis of Europe-

an democratic values and principles and develop a multilateral cooperation with neighbouring countries, since this will contribute to the main goal of CFSP – peace and security in Europe. Beside that, Serbia needs to take part in realisation of long-term development goals of the EU formulated in the Lisbon Declaration (2000) and UN Millennium development goals that EU strongly supports. By investing into human resources, education, research and innovations, employment, free trade and developing the national programme for realisation of UN Millennium goals (in view of elimination of poverty, AIDS, ensuring elementary education, equal work opportunities and ecological welfare) Serbia may improve its prospects for EU accession and strengthen its position at the world stage by demonstrating the readiness to join the global partnership for development.

Beside the intensification of international cooperation with the EU and its Member States, Serbia has to ensure stable relations with other international actors. This implies the promotion of relations with the US and further development of bilateral cooperation with Russia and China, as well as continued history of good political and economic relations with countries in development.

Serbia has to continue with improvement of relations with neighbouring and other countries in the region by creating a more favourable political climate, simplifying and intensifying the movement of people, capital, goods and services, well-designed cultural and scientific cooperation, joint projects for resolving the infrastructural problems.

In relation to Bosnia and Herzegovina, Serbia recognises its full sovereignty but supports the gradual transfer of control over political processes to its citizens, with full respect to all Dayton Agreement provisions.

As regards Kosovo and Metohia, it is necessary to respect the provisions of UN Security Council Resolution 1244. The position of Serbia on this issue is defined within the Serbian Government Plan for Kosovo and Metohia, which sets out political principles for probably the most important issue for this country at the moment. SCG and the Republic of Serbia insist on preserving the multiethnic character of Kosovo and Metohia, realistic observation and assessment of achievement of standards and the realisation of such Kosovo and Metohia status as would not endanger the stability in the region and which would be sustainable on the long run. In line with these principles, Serbia will actively participate in the process of negotiation on the future status of Kosovo and Metohia.

The minimum of interests that Serbia has to realise in the near future compiles of real security and fundamental human rights of non-Albanian communities in Kosovo and Metohia. Having in mind the EU's invitation to resume the process of privatisation in Kosovo and Metohia, the Government will have to prepare a precise balance of previous Serbian investment into Kosovo and Metohia economy and to show readiness to protect its legitimate economic interests and property rights.

In relation to cooperation with the International Criminal Tribunal in the Hague, it is necessary to fully realise this international obligation with sensible intentions of ensuring functional political stability of the country, whose disorder may slow down the entire process of transition and European integrations.

Within the policy of good neighbourly relations and on basis of respecting the international standards for protection of minority rights adopted by the State Union through the Charter on Human and Minority Rights, it is necessary to enhance the measures which would prevent conflicts between different nationalities and their misuse, and to react in a timely and adequate manner to possible individual incidents which might grow into a severe crisis.

In realisation of its foreign policy priorities, Serbia supports the reform, modernisation and enhancement of human resources of diplomatic service with a view to realise full affirmation of policy led by Serbian Government and the SCG Council of Ministers.

On the other hand, Serbia is aware that the best way to promote the interests of its citizens is an active approach, initiative and creativity in the area of foreign and security policy, which will also contribute to the EU's efforts for strengthening its global position. This primarily indicates the ability to resolve the crises and problems according to the adopted principles in order to reduce its own security risks and become an affirmed regional and global actor. This principle will become especially evident in the regional dimension, where Serbia will confirm its position as a factor of the West Balkan stability and fortify its position as European Union's strategic partner in the region. If SCG/Serbia manages to include all these priorities in its foreign policy and security strategy and applies them in practice, there will be enough room for the development of European Partnership as optimum strategy of Serbia's development and its approaching the EU.

2.6 | *Regional cooperation and the policy of good neighbourly relations*

1. Existing situation

Regional cooperation and good neighbourly relations in the region of South East Europe are still suffering from the impact of legacy from past decades: undeveloped infrastructure in the region, as an important cause of economic lagging and still an unsatisfactory level of political, economic, cultural, justice and other forms of cooperation. Most countries are burdened with consequences of civil war in former SFRY and its disintegration that resulted in unresolved territorial issues, as well as problems that characterise the countries in transition. However, it is of utmost importance that all countries in the region strengthen their democratic potential and strive for the same goal – improvement of relations with the European Union. Due to the abovementioned and although the security and political stability in the region still largely depend on international actors, the states are increasingly cooperating in resolution of outstanding issues and thus lead a policy which promotes stability in the South East Europe.

The EU accession, as a common goal of all countries in the region regardless of certain differences in other foreign policy priorities, may contribute to the development of mutual cooperation and good neighbourly relations even in cases where bilateral relations are still burdened with certain unresolved issues, including those of ethnic and territorial character. Progress achieved by the whole region in terms of approaching the EU is still not sufficient to ensure the foreseeable responses to challenges in the economy, policy and security areas. That is why the EU membership perspective and progress of all South-East European countries towards the EU are the best driving force and parameter of development, as well as a guarantee for sustainable political and economic reforms of each country, regional cooperation and good neighbourly relations between them.

Since the end of 2000, significant progress has been achieved in relations with the neighbouring and other South-East European countries. Numerous multilateral agreements have been concluded with most countries in the neighbourhood (the Agreement on SFRY Succession being especially important) and a set of significant bilateral agreements regulating intergovernmental relations (e.g. establishing the diplomatic relations) and some issues related to status, movement and material interests of natural and legal persons such as: the agreements on return of refugees, readmission agreements, agreements on various forms of traffic, agreements on regional energy and gas network, free trade agreements, agreements on protection and promotion of invest-

ment, agreements on prevention of double taxation, agreements on cultural, education, scientific and technical cooperation, agreements on social insurance, agreements on fight against organised crime etc. Unfortunately, a significant part of these intergovernmental agreements is still in the process of ratification. Beside that, with the so-called old neighbours (Hungary, Romania, Bulgaria and Albania) the process of agreement consolidation is still ongoing.

In May 2001, the Intergovernmental Cooperation Council has been established with Bosnia and Herzegovina, which has had regular sessions ever since and reviewed the current issues of bilateral relations. The Agreement on Dual Citizenship was also concluded and is practically enforced, simplifying the process of resolving the status of numerous persons affected by disintegration of the common state and the war in Bosnia and Herzegovina. The agreement concluded with Croatia relates the temporary regime along the South part of the border (i.e. near Prevlaka), which provided for resolution of a sensitive issue and temporarily liberalised the visa regime. The agreement on status and rights of national minorities was recently signed with Croatia and Macedonia. This agreement recognizes the ultimate European standards related to national minority rights, which is of exquisite importance for the entire region. In relations between SCG/Serbia and Croatia i.e. Bosnia and Herzegovina, certain progress was also made regarding the overcoming of conflict after the disintegration of SFRY, both through bilateral statements of top government officials and through joint statement of President of FRY, President of RC and BiH Presidency (in July 2002). Furthermore, a trilateral agreement on return of refugees was signed in January 2005 between these countries. However, the relations with the said countries are burdened with the need for definite establishment of mutual borders, as well as individual appeals against SCG before the International Court of Justice.

The greatest concrete results since the democratic changes in 2000 to date have been accomplished in the area of regional cooperation. This cooperation is manifested through active participation of SCG/Serbia and other countries in the region in a number of regional initiatives and processes such as the Stability Pact for South-East Europe, Process of cooperation among the countries of South-East Europe, Central and East Europe, South-East and Central Europe, Adriatic-Ionian initiative etc.

Especially important initiatives are the ones developed in line with the principle of «regional property», such as MARRI or the Sava Commission, whose main idea is to make countries in the region take full responsibility in the area of regional cooperation. This best indicates the preparedness of countries in the region for further inclusion in Euro-Atlantic integration processes.

2. Expectations

Diverse and developed cooperation and good neighbourly relations represent the priorities of SCG's foreign policy and its policy for EU accession and as such they will be further implemented by our country. Alike other countries participating in the Stabilisation and Association Process (SAP), SCG has assumed the obligation of giving full support to the development of regional cooperation and good neighbourly relations, having in mind that the "approaching the European Union goes hand in hand with the development of regional cooperation", which was emphasised by the heads of state and government of the West Balkan and EU countries in their statement at the European Summit in Thessalonica in June 2003.

Political orientations arising from such attitudes will become additional contractual obligations of Serbia and SCG towards the EU (which was confirmed by Croatian and Macedonian experiences, whose introductory chapters within the Stabilisation and Association Agreements clearly underline the obligations of various engage-

ments in regional cooperation and promotion of good neighbourly relations). Future agreement with SCG will surely prescribe the conclusion of bilateral agreements on regional cooperation with other participants in SAP and it will particularly underline the cooperation in following areas: political dialogue, free trade, free movement of people, goods and capital, free establishment, close cooperation in the area of justice and home affairs. Because of the present low level of cooperation and undeveloped distribution of work in the region, it is in Serbia's interest to promote bilateral and multilateral cooperation in all areas through the activities of government and non-governmental entities.

3. Measures and procedures

With the intention to develop and intensify the relations with its neighbours and to approach the European Union as quickly as possible, Serbia will actively work on eliminating all barriers to that end. It will fulfill its obligations in relation to regional cooperation and employ all efforts for its enhancement by various additional contents in order to overcome the burden of the past and to bring the South-East European region closer to the European Union standards and practice. Together with other SAP participants Serbia will use the existing forums (especially the Forum EU-West Balkans) for improving the relations with neighbours and especially in the context of European Union accession.

Even before its accession to the EU, Serbia will use the opportunity to join all major European Union initiatives in the areas of foreign and security policy, especially but not exclusively in relation to the South-East Europe. Serbia will strongly support the increasing security role of the Union in this region. In relation to that, Serbia will take an active part in the regional initiatives which already gave certain results e.g. fight against crime and strengthened various forms of cooperation in justice and home affairs (such as SPOK, SPAI, SEECF and SEEPAG).

At the same time, it will exploit the possibility for regional cooperation provided by other international organisations, initiatives and programmes. Stability Pact for South-East Europe has a very important role in this sense, since the essence of its work is to improve regional cooperation in this region and because the round tables organised within this Pact are increasingly complementary to the SAP. Serbia will further develop recent positive experiences in creation and implementation of the Process of cooperation in South-East Europe, especially those achieved by SCG during its presidency, with the aim of strengthening and extending the regional cooperation. Serbia will also support the activities within Adriatic-Ionian Initiative (AII), and actively participate in the activities which also serve its interests. Together with Slovenia, Croatia and BiH, Serbia will intensify the concrete cooperation in the region of the Sava River Basin, bearing in mind that the contractual basis is already established but little has been done in practice, especially regarding the interests of all riparian countries. Similarly, Serbia will actively participate with its neighbours in realisation of an integrated energy market and regional transport network in the South-East Europe. Furthermore, Serbia will continue to cooperate in the forms of regional cooperation including wider regions (such as CEI, Black Sea economic cooperation or the Danube-related cooperation).

Beside the multilateral, special attention will be paid to bilateral cooperation with neighbours in all areas, including security, policy, economy, culture and cross-border cooperation. Whenever it is possible and necessary, Serbia will conclude bilateral agreements for additional support and regulation of cooperation in certain areas. It will use all opportunities for direct cooperation of so-called non-governmental entities – political, economic and other: political parties, non-governmental organisations, chambers of commerce, trade unions, science and cultural institutions etc, with active measures of state institutions for establishing this cooperation when it is missing and strengthening the existing one.

Serbia will also support further development of cross-border cooperation in the region, such as the already existing cooperation in the North-East part of the country (DKMT Euroregion), extending it to the areas where such forms of cooperation have only begun (for instance the “triangles”: Novi Sad–Osijek–Tuzla and Nis–Sofia–Skoplje). With the intention to develop and improve the relations with its neighbours and to approach the European Union as quickly as possible, Serbia will take active steps for eliminating any obstacles that poor neighbourly relations might impose to realisation of its goals.

By various activities in their respective fields, state institutions should primarily contribute to the following:

- respecting of Dayton/Paris Peace Agreement,
- quick establishment of conditions for return and reintegration of refugees and displaced persons,
- implementation of the Agreement on SFRY Succession,
- quick and adequate realisation of decisions from all regional initiatives related to extension and intensification of cooperation in various areas,
- free and intensive movement of people, capital, goods and services in the region,
- ample economic exchange and diverse cooperation between the South-East European states,
- elimination of tariff and non-tariff protection and full cooperation of all measures envisaged by bilateral free trade agreements, in order to establish a network of bilateral agreements which would practically become a multilateral agreement on free trade area in this region,
- functioning of the agreed regional energy market, regional transport network in South-East Europe with the centre in Belgrade and other similar initiatives and projects,
- promotion of joint acting before the EU on the issues of regional interest,
- establishing the cooperation in the environmental protection,
- fight against organised crime, control and suppression of illegal migrations, cooperation in border management and other forms of regional cooperation in justice and home affairs, for eradicating these common problems in the entire region,
- improvement of status of minorities (aimed at preventing the tensions and crisis),
- promotion of cooperation and exchange in culture and education, especially youth programmes.

2.7 | *Development of civil society*

A. Existing situation

According to the European Commission observations from 2004, “civil society in Serbia-Montenegro has developed quickly over the past decade”¹⁵. This statement is only partly correct and relates to the increased number of non-governmental organisations, which were founded at the beginning of the 1990’s and multiplied after 2000.

The type of association that first comes to mind when non-governmental organisations in Serbia are mentioned are those supporting peace, tolerance, human rights and establishment of democratic order. Control of elections by non-governmental organisations contributed to the fall of Slobodan Milosevic’s regime and restoring of citizen confidence into the fair democratic process. Thanks to these organisations, the election results have been very rarely disputed since 2000.

¹⁵ Commission Staff Working Paper, SERBIA AND MONTENEGRO, Stabilisation and Association Report 2004 (Com (2004) 206 final), ctp. 6-7.

The scope of work of these organisations has flourished recently, primarily regarding the support to economic and social reforms and overall social development. Non-governmental organisations in certain segments contribute to mobilisation of public awareness, especially in cases when political parties fail to tackle the issues of social importance within the Parliament and other decision-making institutions. A positive example for cooperation between non-governmental sector and legislative authority is the initiation and the manner of drafting of the Resolution on European Union Association adopted on 13 October 2005 in the National Parliament with the assistance of the European Movement in Serbia.

The existence and efficiency of civil society may however be reduced to operation of one type of non-governmental organisations. Civil society implies mechanisms which exist along with the state and its institutions for meeting the citizen needs which cannot be otherwise articulated and realised. In this sense, the civil society in Serbia is still underdeveloped and its operation is not clearly regulated by law.

The concept of citizen association from the period of SFRY left the mark on *professional associations* of citizens intended for professional promotion and meeting specific professional interests. Only a few associations thereof took the stand on wide social issues and treated the ethical aspects of respective profession. Except for several attempts within the association of journalists, ethical professional codes do not exist or do not have necessary weight.

An important form of civil society inclusion in major social and state activities may be realised through participation of members of non-governmental sectors and eminent citizens in state institutions and the process of nomination of their members. In this sense, a certain progress has been made, although it was accompanied by difficulties and delays. The Law on Conflict of Interest entitles non-governmental institutions with the right to propose certain members of supervisory body for enforcement of this law, although this right was only entitled to the Serbian Academy of Arts and Sciences, which is not a non-governmental organisation in the conventional sense.

Civil society may take part in supervision over the state institutions' work by appointing its members into the institutions that are tasked with establishing the facts in complex and important cases and situations. This may be realised by nomination of eminent individuals or by inclusion of members of association that already have appropriate reputation.

Civil initiatives are not taken often, thus they ought to be encouraged by state institutions both through financial support and by their institutionalisation.

The establishment of foundations, which was of great importance before the WWII, is not encouraged enough. Past foundations are mostly ruined by the process of nationalisation, while new ones are not established because their status is not regulated.

The entire area of humanitarian work and provision of humanitarian aid is not clear and distinct. There are speculations that the distribution of aid from abroad is accompanied by corruption. Humanitarian aid funded from domestic sources is not extensive and shows the tendency for discrimination regarding the beneficiaries (limitation as to the nationality, religious and political beliefs).

In a poor society, the funds which may be collected for maintenance of civil initiatives are extremely low; wealthy citizens and profitable companies (public and private) are not stimulated enough and they usually do not re-

gard the financial support to the civil sector as their civil obligation for something that contributes to their reputation. It is necessary to create a government strategy for more significant funding of non-governmental sector from the budget.

Media represent an important part of civil society. Previous attempts to regulate the area of electronic media, especially those which are foreseen as public services, have been unsuccessful so far because the Broadcasting Agency was incomplete. Social responsibility of printed media is only regulated by the Law on Information and Criminal Codes. Ownership in this area is still insufficiently transparent.

B. Recommendations

It is necessary to adopt new, modern laws on citizen associations in accordance with the SCG Charter on Human and Minority Rights. Civil initiatives ought to be encouraged and simplified by appropriate regulations. Citizens must be convinced that their proposals will be seriously considered and that they will be informed on the process of consideration and its outcome. This is particularly important at the local level: municipalities would thus create mixed institutions which would recruit the volunteers for assisting the citizens in communication with local authorities.

Certain normative functions should be delegated to professional associations on basis of subsidiarity principle. Such activities may be assumed by doctors' association, bar associations, journalist associations, translators' associations, associations of architects, engineers etc. The associations might be authorised for issuing the licences (under court supervision) for performance of certain professions and to impose sanctions for ethical misconducts.

For promotion of foundation establishment, the Law on Foundations should be passed for guaranteeing the founders' rights at work as well as protection of their property.

A special law or Law on Non-governmental Organisations should more clearly and liberally regulate the position of international foundations and international non-governmental organisations and ensure more favourable terms for establishment of their offices in Serbia.

Economic entities should be stimulated by tax laws to render assistance to the civil sector and citizen initiatives. The same remark stands for introduction of tax reliefs for contributors to humanitarian funds.

Beside other forms of financing, non-governmental organisations should be granted reliable minimum budget sources depending on the possibility. Instead of occasional grants and selective donations, a fund should be established on the Serbian level which would impartially and transparently finance the projects of non-governmental organisations on basis of annual contests, whose propositions would clearly state the criteria for fund awarding.

Humanitarian and donorship activities should be normatively regulated and self-regulation stimulated in order to avoid corruption and discrimination. In this sense, it is necessary to revive the activities of Serbian Red Cross organisation.



3. Chapter | Strategy For Economic And Social Development

3

3.1 | *Main goals and strategic directions of Serbian development*

Firm determination of Serbia for quick association with the EU requires the definition of key strategic directions for economic and social development aimed at creation of «stable and efficient market economy system and competitive economy capable of facing the pressure of competition in the EU» (Copenhagen criteria) i.e. the creation of maximum «competitive, knowledge-based economy capable of ensuring the economic growth including new and better paid jobs and larger social cohesion» (Lisbon criteria).

The fulfillment of these criteria in fact corresponds to the key transition tasks of Serbia. With a view to accomplishing a higher economic growth rates as a basis for macroeconomic and social stability, it is necessary to finalise the creation of market economy as well as systemic bases for its smooth functioning. What follows are the harmonisation processes of economic and legal systems, as well as processes of infrastructural harmonisation with EU standards, whose ultimate aim is the accession to the EU and to the European Monetary Union¹. At that point, it will be of utmost importance for Serbia to formally meet the Maastricht criteria requested from the candidate countries – low inflation rate, low interest rates, low participation of budget deficit in the GDP, sustainable participation of public debt in the GDP, stable foreign exchange rate – although these objectives should even now serve as an orientation for sustaining the macroeconomic stability.

The basis for development strategy leading to accelerated EU association is the increase of general competitiveness of Serbian economy. This implies the determined implementation of all transition and reform processes which may activate the growth potentials of the country – human, material and natural – and make Serbia more attractive for foreign capital investments and contribute to quicker development of domestic economy. The main task for the country is therefore to establish a healthy market environment and, with the aim of maintaining internal and external macroeconomic stability (price and balance of payment stability), to manage the main aggregates of social production – investments and expenditure. Only in such conditions can Serbia realise the average GDP growth rate of 5% over the next few years and by 2010 reach the GDP level of around USD 4300 per capita, thus reducing the gap in the level of development relative to the EU.

In implementation of the development strategy of key transition processes, Serbia must bravely face with the heavy burden from the past: economic structure established twenty five years ago and dominated by energy, raw materials and food and the additional consequence of large foreign debt; numerous non-market behaviours of economic actors as a result of several decades long self-management etatist model of market operation; and finally, deep economic and social crisis expressed through dramatic drop in social production and living standard during the 1990's, due to the disintegration of former SFRY, international sanctions, wars and numerous failures of economic and overall policy.

Radical political changes in October 2000 provided the room for substantial changes in economic and social system and for the new development strategy. In the period 2001 – 2004, a number of positive results have

¹ Based on the "Serbian Poverty Reduction Strategy", Government of the Republic of Serbia, Belgrade, 2003, page xii-xiv

been accomplished: average annual GDP growth rate was close to 5%; there was significant real increase of wages and earnings (around EUR 200); internal convertibility of dinar was realised; annual inflation was reduced (although still higher than 10%); international economic relations have been liberalised; new model of privatisation raised the economic productivity and ensured significant budget revenues; majority of reform laws have been adopted which regulate fiscal, monetary and banking system, foreign exchange and foreign trade system, labour and capital markets, pension system and the social insurance area.

However, these initial results have numerous institutional weaknesses and structural problems that came to the fore when it became necessary to ensure practical and efficient functioning of market economy institutions and the rule of law, to provide a consensus for more determined changes and economic structure modernisation, and to clearly define a new pro-European development strategy.

It should be noted that, at the beginning of its EU association, Serbia has:

- Quite low GDP per capita (around USD 3000)
- Extremely high official unemployment rate (almost 30%)
- Particularly bad rank in the list of countries according to the level of competitiveness
- Internal and external imbalances were manifested through inflation pressures and extensive deficit of payment balance
- Technological lagging (in certain sectors even 30 years)
- High percentage of poor population (around 20%)

The main objective of Serbian development strategy is the increase of GDP growth rate and its maintenance at the level necessary for reducing the existing gap in *per capita* income between Serbia and the European Union countries, as well as successful transitional states. This would consequently lead to poverty reduction and the increase of living standard.

In order to realise the abovementioned, Serbia needs a comprehensive development strategy, whose priority elements include the attraction of foreign capital, primarily in form of foreign direct investments. Beside the capital, this implies the introduction of modern technology and management into the country, ensuring the export markets and activating the processes that improve the operation of domestic companies. Additional investments into human resources (knowledge, education, vocational training etc.) and research and development will ensure both high GDP growth rates and the increase of economic competitiveness.

At the same time, Serbia has to **build its development on basis of sustainable development principles** – economic development that is harmonised and in concord with the environmental policy, social and other policies, and in compliance with the main directions of the Poverty Reduction Strategy – dynamic economic growth and creation of new jobs, prevention of new poverty as a consequence of transition processes and better targeting of social policy towards the most vulnerable population groups.

3.1.1. Strategy elements and forecast of economic growth

Serbia has to create a modern material and informational infrastructure, to modernise the companies so as to increase the additional value per employee. The process of harmonising Serbian gross domestic product *per capita* with the EU product is possible only through constant growth of productivity and competitiveness, except in extraordinary circumstances and on the short run.

The issue of raising the competitiveness and enabling the country to integrate into the EU market is essentially based on the development strategy starting from the real market foreign exchange rate and the liberalisation of foreign trade. This principle directs the investments towards the creation of new, modern economic structure, competitive both in domestic and international market. The said requires an open economy and healthy market environment, suitable for foreign investment and initiation of domestic saving aimed at creation of critical mass of small and medium-sized enterprises to take over the work force from the unprofitable ones. Furthermore, it is necessary to create strong social programmes which would replace the subsidies for companies which cannot survive economically.

Investments into equipment and production process modernisation are key preconditions for improving the competitiveness and increasing the export. The increase of export earnings is the first condition for foreign debt servicing and ensuring the funds for import of equipment and technology, in other words the condition for future economic development. In order to increase the economic growth rate and realise constant increase of gross domestic product and standard of employees, Serbia has to accomplish global competitiveness, primarily in the European Union markets, since most of its foreign trade and capital flows are realised with the EU states. Furthermore, the largest portion of Serbian foreign debt is related to these countries. The essence of development strategy implies that the economic policy has to develop *competitive advantages* of the overall economy in Serbia, and not only the *comparative advantages* of certain export-oriented activities.

The creation of favourable climate for foreign investments exceeds the »standard« macroeconomic preconditions. Foreign direct investments require that the development policy be enforced without the interference of bureaucratic institutions, and certainly without administrative delays at registration, employment, export, profit repatriation, ensuring the required legal protection etc. Furthermore, the transparent and fair legal regulation is a precondition, as well as the efficient banking i.e. financial system. The state has to promote and support all changes that lead to strengthening of production basis and real export competitiveness.

Priority support should be given to non-material investments based on knowledge, contemporary *know-how*, innovations and new production techniques. Serbia has to embark on production and development association with neighbouring countries with a view to create synergy effects in certain branches and industries. Accordingly, it would be useful to define potential production nucleus including the private and state-owned companies which would consequently offer their assistance in penetration to regional markets which the domestic actors cannot realise on their own. In cooperation with international partners, it will be necessary to promote the regional development of concentrated economic areas that the foreign investors are interested in (clusters).

Economic growth forecast

Despite the positive changes in the period 2001-2004, it appears that the macroeconomic stability is not yet assured, that the process of economic restructuring is in its initial phase, domestic accumulation is minimal and pressures on personal and public expenditure are far above the production capacity of the economy.

This implies that the development strategy ought to be based on: change in the GDP allocation structure in favour of investments into fixed funds; realisation of dynamic and sustainable economic growth; reduction of public expenditure participation in the GDP; reducing the current payment balance deficit to such a measure so as not to disturb the foreign debt sustainability; maintaining price stability – all these are possible in conditions of liberalised foreign trade and increasing degree of price liberalisation (monopoly elimination).

This is a framework (selected among several variants) that provides for forecasted economic growth of 5% per year until 2010 (**Table 1**). Strategic goals that are related to the realisation of the main goal – annual economic growth rate of 5% – are as follows:

- Increase the investment participation in GDP from 15.8% in 2004 to 25% in 2010;
- Increase the participation of export of goods and services in GDP, from 24% in 2004 to 28% in 2005 and 36% in 2010;
- Reduce the participation of deficit in goods and services in GDP, from 29.2% in 2004 to 19% in 2010;
- Reduce the participation of collective expenditure from 26% in 2004 to 17% in 2010;
- Decrease the inflation rate to 5% in 2007 and maintain that level.

One of the preconditions is the stable rate policy, based on moderate real depreciation of dinar relative to euro in the first stage, its neutral status in 2007, with sufficient foreign exchange reserves to cover 4 - 5 months of import of goods and services.

GROSS DOMESTIC PRODUCT AND ITS ALLOCATION
– scenario with reduced expenditure –

	2004	2005	2006	2007	2008	2009	2010
GDP in million USD current rate	22082	23598	24628	26019	27823	29921	32163
GDP real growth	8,0	4,6	5	5	5	5	5
GDP allocation (participation)							
Domestic demand:	129.2	124.5	122.5	120.5	118	116	115
Expenditure :	110,7	106,5	102,5	98,5	94,5	91,0	89,5
Personal expenditure	84,7	82,5	80,5	78,5	75,4	72,8	72,1
Collective expenditure	26,0	24,0	22,0	20,0	19,1	18,2	17,4
Investment, participation in GDP	18,5	18,0	20,0	22,0	23,5	25,0	25,5
Trade deficit, participation in GDP	-29,2	-24,5	-22,5	-20,5	-18,0	-16,0	-15,0
Deficit of current payment balance, part. in GDP	-14,5	-10,6	-9,25	-7,5	-4,9	-3,5	-2,4
Real investments, growth rate	27,4	-0,4	16,3	15,8	12,8	12,4	7,7
Inflation (retail prices)	13,7	10,1	7,2	5,9	5,0	5,0	5,0

In order to realise the envisaged economic growth dynamics, it is necessary to accomplish each of the enlisted goals, which represents a difficult task and great challenge for economic and overall development policy. However, Serbia has a potential to realise these objectives, for following reasons²:

In general sense, there was a certain progress in creating a favourable environment for the increase of savings and investments

- Citizens' savings in banks have increased from EUR 20 million in 2001 to around EUR 2 billion in 2004. The remaining citizens' savings amounting to around EUR 3 billion, which are currently outside the banking system, will be gradually activated by creating a healthy and competitive banking system and through the development of capital market.
- Savings in the real sector are gradually starting to increase by a faster development of profitable sector and initiated restructuring of large socially- and state-owned companies and reducing of their loss. Privatisation and stricter financial discipline (through enforcement of the Bankruptcy Law) will additionally reduce the economic losses and increase the profit.
- By establishing a Guarantee fund and through other incentive measures, the access to loans for faster development of small and medium-sized enterprises is facilitated.
- As a result of diminishing the systemic risks and increasing the competition among the commercial banks, there is a possibility to decrease otherwise high interest rates.
- In the mid-term, the increase of public investments is envisaged (from current 2% of GDP to 4% of GDP)
- It is estimated that in the following three years, around 1/3 of total investments will be invested in modernisation of infrastructure (transport, energy, telecommunications, utility infrastructure, irrigation) with numerous positive impacts on the development of economy as a whole.
- Great inflow of foreign direct investments (FDI) is of key importance for realisation of the desired economic growth rate. The necessary inflow for the following years is around USD 1.5 - 2 billion per year. These are huge funds (realised in 2003, mostly from privatisation revenues) whose inflow may be anticipated providing that the period after the Feasibility Study is used for creation of positive environment with legal and overall safety of foreign investments, including the determined fight against corruption, reduction of grey economy and fast harmonisation of business norms and standards with EU requirements.

In the following five years, Serbian economy has to increase its annual export value from around USD 3.8 billion at present to over USD 10 billion. Such shoot in the export of goods and services is possible only alongside the significant increase of competitiveness of Serbian economy through implementation of all benefits related to EU and WTO accession processes, more efficient implementation of free trade agreements and economic co-operation with neighbouring countries and Russia.

Keeping the inflation at a low level (3-5% annually) is possible only through rigid financial discipline and putting all expenditures into realistic framework. At the same time, it is necessary to stabilise the relation between de-

² Poverty Reduction Strategy, Government of the Republic of Serbia, 2002

mand and supply by enforcing the competition and preventing monopoly behaviours, and thus stabilise the overall price level.

In order for investment participation in GDP to realise the growth necessary for realisation of the targeted economic growth of 5% per year, and at the same time for total consumption to realise at least minimum real growth, it is necessary that the deficit of current payment balance remains in the zone above 10% of GDP until 2007. Due to the present extensive indebtedness of the country, the issue of its funding has become critical. In such situation, the solution for the strategy for sustainable payment balance and economic growth should be sought in quicker decrease of deficit in goods and services, and consequently the reduction of current payment balance in GDP.

3.1.2. Macroeconomic policies

Monetary policy

Monetary policy should build upon the policy of neutral money, strengthen the market elements of monetary regulation and influence the modernization of financial system. Monetary policy problems are the following: few available measures for monetary management, the mandatory reserves being the dominant ones; insufficient restrictiveness of fiscal policy and finally the "euroisation" (part of trade in the market is conducted in euros and this money is not managed by the central bank).

In the years to come,

- Monetary policy should be based on the policy of neutral money i.e. to maintain the monetary balance as a precondition for price stability and balanced domestic currency rate;
- Monetary policy should rely as much as possible on open market operations and as little as possible on manipulation with mandatory reserves and credit limit policy;
- Enhance the elements of sterilization of primary money created on basis of capital inflows from abroad;
- Develop as much as possible the control function of the central bank and protect the financial system from any influence of state agencies or stakeholders.
- Introduce the restrictions for commercial banks in relation to purchase of government bonds for covering the budget deficit.

As in other transition countries, the selection of currency regime is of special importance for economic growth and stability of Serbia. There is no predetermined »best« scenario for currency regime which would provide constant advantage or represent the optimum solution for all countries. At the same time, it is not necessary to opt between the entirely fixed or entirely fluctuating currency system, but rather among the different degrees of flexibility.

Successful foreign exchange rate policy has to be connected with consistent and appropriate fiscal, monetary and financial environment, instead to treat the foreign exchange rate as the key instrument of economic policy.

Fiscal policy

Since 2000, the situation in fiscal system has significantly improved. Fiscal deficit is relatively low – in 2000 it was around 3% of GDP, and in 2004 it fell to 2.5%, which is also acceptable from the aspect of Maastricht criteria. Nevertheless, the fiscal sustainability is still a challenge.

Public expenditure is high – around 46% of GDP in 2004 and it is burdened with enormous transfers from budget into the social funds. Privatisation funds are still used to cover the budget deficit – in other words, the capital flows over into the expenditure. Since there is practically no room for real expenditure reduction, it has to be resolved through GDP increase. However, it is necessary to change the structure of public expenditure – reduce subsidies, transfers from the budget and the salary expenditure aimed at increasing the investment and debt servicing, and functionally it is necessary to increase the share of education expenditures and decrease the defence ones. Furthermore, it is necessary to tackle the issue of general public expenditure management from the aspect of relations between republican and local governments. A higher degree of decentralization is at the European rate, but there is an outstanding problem of consistent public expenditure policy in this country.

Consolidated public revenues are around 42-43% of GDP. Participation of public revenue in GDP is somewhat overestimated because of underestimated GDP and due to the weaker inclusion of private sector. Hence, we can conclude that the tax duty in Serbia is moderate in relation to EU countries and the states in transition³. This conclusion can also be reached by comparing most important tax rates in Serbia with those in the EU and countries in the region.

Consequently, the main strategic direction from the revenue aspect should focus on the increase of revenue collection by including the grey economy in the formal trends, and from the expenditure aspect on the change of expenditure structure.

The mid-term definition of fiscal policy is a key issue. Since the first signals following the introduction of VAT indicate that the tax revenues might be increased due to the reduction of tax evasion, there is a possibility of reducing the tax burdens on economy and/or population. The alternative is to leave the rates of fiscal charges unchanged and thus form a budget surplus. In our opinion, this solution acts in favour of stabilisation. Immobilisation of this surplus reduces the demand pressure on import and pressure on the foreign exchange rate, but also provides additional budget funds for costs of restructuring and labour surplus.

Recommendations related to changes in fiscal policy in the next period:

- Continue the reforms through enlargement of tax base, strengthening and modernisation of Public Revenue Administration, with special emphasis on collection and control of revenues aimed at reduction of tax evasion i.e. inclusion of grey economy in formal trends.
- Design a development budget i.e. gradually redirects a part of public expenditure from spending to investments.
- Initiate the transfer of one part of social protection burden from the state to the private sector (which will directly influence the development of financial market). Develop private pension insurance.

Foreign trade policy

Serbian foreign trade strategy and policy are, among other, determined by following factors:

- **Availability of production resources.** At the beginning of the 21st century, Serbian economy is one of the least competitive economies in Europe in technological sense. The production technology used in its factories is outdated, which necessarily leads to low quality of production and the decline in export competitiveness. The result of such situation is visible in dramatic increase of foreign trade deficit. ***This is why a successful strategy for Serbian foreign trade development*** has to presume that the market should be based

³ Find more details on the development of SMEs and entrepreneurship in part 3.6.1

on competition relations instead of monopoly. Regarding the fragmentation of domestic economy and financial incapacity, it is necessary to support foreign investments and joint investments leading to technological growth which complement domestic economy and where domestic producers can supply foreign companies;

- **Prevailing local economic and political environment.** This is certainly a basis for every economic strategy, including the strategy of foreign trade. Free trade between the countries, free of restrictions, represents an optimum trade model. Nevertheless, economic policy, especially in the period before reaching at least the average level of development of major foreign trade partners, implements the measures which depreciate or alleviate the effects of liberalised trade, especially in the areas which realise short-term competitive advantages in international markets;
- **Reintegration in international trade, investment and financial trends, through international institutions such as: WTO, WB and IMF.** Serbia has initiated the process of accession to the World Trade Organisation. Consequently, its foreign trade strategy and policy are defined by a framework which is imposed by this international institution. Foreign trade liberalisation is the first condition for WTO membership. On the other hand, Serbia also wishes to become a member of the European Union, so that the rules of this institution will introduce additional framework for defining the foreign trade policy.

Foreign exchange and foreign trade system are relatively well regulated. The Law on Foreign Exchange Operations contains a problem of convertibility in current and restrictions in capital transactions. This leaves the possibility for capital transfer through unrealistic customs declarations, which should be prevented by strict control. What remains are the issues related to archaic Law on Foreign Credit Transactions. In the process of harmonisation with Montenegro, certain reductions and increases of protection have been performed as a result of the political agreement instead of requirements of Serbian economy, which again resulted in negative protection for a number of products. This is the reason for revision of customs tariff, which was conducted after the introduction of «twin track» and in agreement with the European Union Commission; furthermore, a new Law proposal on customs tariff was created, which foresees the reduction i.e. increase of tariff protection for certain positions. In relation to liberalisation, there is a problem of monopolies (import of oil etc.).

The issue of foreign trade deficit is imposed in relation to its scope and structure i.e. relation between the import dedicated to investment and the import dedicated to consumption, which determines future export and capacity to reduce the deficit. In relation to the amount of deficit, it is induced by the scope of domestic demand; its covering by new loans or foreign investments dictates the sustainability of foreign debt servicing.

It appears that the resolution of foreign trade deficit implies the management of scope and structure of demand, reduction of price and risk of investment – instead of degree of liberalisation and exchange rate policy, which may only be the corrective factor.

3.1.3. Microeconomic policies

Development of private sector

Development of competitive company sector is a precondition for sustainable economic growth, export increase and ultimately the EU accession. Economic criteria from Copenhagen require the existence of competitive companies capable of sustaining the common market pressure. In 2004, according to the The Global Com-

petitiveness report, Serbia holds the 85th position out of 104 countries. Therefore, it is necessary to improve the business environment and make it favourable for building the efficient and competitive economy.

Key role in this process is successful privatisation and restructuring of companies, development of entrepreneurship and the sector of small and medium-sized enterprises⁴, as well as the overall improvement of investment and business environment.

Privatisation and restructuring

The main strategy of Serbian company sector reform in the past three years was based on the programme of privatisation of socially-owned enterprises pursuant to the Privatisation Law adopted in June 2001.

So far, significant progress was made in privatisation through tenders and especially auctions. There was less progress in restructuring of large problematic socially-/state-owned and particularly public enterprises.

Seventy-three companies have so far been identified for restructuring before sale. If we take into account the daughter companies, we might say that around 600 companies are in the process of restructuring. The workforce of these companies counts more than 200.000 employees

Public enterprises represent a special problem. These enterprises employ around 130.000 persons (12% of the total number of employees in the country) and their total debt is around 17% of GDP. In spite of the adoption of individual strategic development plans, this process is still in its initial phase. The main problems that these enterprises face are the following: extremely high internal and external debts⁵; outdated techniques and technology in use, as well as production structure; great labour surplus; unregulated property and legal documentation.

Despite a certain progress over the past three years, private sector contribution to the GDP in 2003 were still rather low – only 45%. As regards the employment, even with the significant increase in the number of employees of private sector in 2003 relative to 2000 – from around 10% of the total number of employees in 2000 to around 21% in 2003 – it is still extremely low.

Private sector development, as well as the competitive company sector requires an integrated approach. It is of key importance to continue and step up the overall privatization process. An integral part of this process is restructuring, privatization and/or liquidation of large socially- and state-owned companies by their scission into several parts or liquidation of companies which cannot be sold, as well as introduction of stricter budget restrictions, in order to use their assets in a productive manner.

Furthermore, it is necessary to accelerate the restructuring of large public enterprises:

- An efficient bankruptcy mechanism has to be established in order to simplify the reallocation of capital and human resources from unstructured and unprofitable companies into the market prospective areas. Although the new Law on Bankruptcy Procedure establishes a basis for improvement of creditor's rights by

⁴ In relation to companies in restructuring process, the book value of debt in 63 companies at the end of 2003 was over EUR 2 billion. In a number of these companies, the amount of accumulated debts is sometimes several times higher than the book value of their capital. Out of the total, company debts towards the state are 75.3%

⁵ «Report on type and scope of state aid in the Republic of Serbia», Ministry of Finance, 2004.

simplifying and accelerating the bankruptcy, it cannot be enforced until necessary institutions are established and unless there is a strong political will for its implementation. Pursuant to the new law, the court shall pass more judicial and less operational rulings, while bankruptcy administrators will have a more active role. This is why it is necessary to strengthen the Agency for licencing of the bankruptcy administrators.

- In case of favourable privatisation bids, it is necessary for the state to play an active role – to restructure the company's public debt, including the write-off of fiscal liabilities etc.
- Establish adequate legal environment for restructuring of public enterprises. The Energy Law was adopted in July 2004 and the Law on Railway in February 2005.
- It is necessary to allocate sufficient funds for costs of restructuring and labour surplus, including the preparation of adequate labour market programmes and programmes for the development of small and medium enterprises
- Transparent sale of minority shares which remain state property in most companies privatized before 2001 and according to previously valid laws, with the aim of improving corporate governance.
- Protection of property rights

Investment climate

The attraction of foreign investments that represent a significant source for economic growth is one of the Serbian Government priorities. The significance of foreign investments is reflected in the possibility for transfer of new knowledge and technology, new job creation, promotion of productivity, competitiveness and entrepreneurship and poverty reduction. For improvement of investment climate, it is necessary to remove administrative barriers to foreign investments through amendment of the existing regulations, establishment and enhancement of appropriate institutions and further development of infrastructure.

The essence of all these measures and activities is the improvement of investment and business environment which will be adequate for the development of private sector, employment in competitive markets and enables the access to funds through the development of financial sector. In order to realize the enlisted, it is necessary to establish political, institutional and macroeconomic stability, to create modern and efficient public administration, simplify the administrative procedures, and strengthen legal certainty and efficiency of judiciary.

Certain progress has been realised so far. New Law on Registration of Economic Entities will additionally simplify and step up the registration procedure in the following period and reduce the administrative costs. One novelty is introduced i.e. entry of economic entities into the Register shall be performed by the Agency for Commercial Registers (instead of commercial courts and municipalities). A unique database shall thus be created. The simplification of registration system represents an important step in the process of harmonisation with EU standards.

The new Law on Business Organisations prescribes significant reduction of the initial capital (the initial capital for establishing a limited liability company is EUR 500), so that certain improvement is expected in this area as well.

With a view to facilitate the purchase of land and improve the access to development and utilisation of construction land, the new Law on Urban Planning and Building has been adopted in 2003.

The Ministry for International Economic Relations has, in cooperation with other ministries, domestic and foreign organisations, drafted the Action Plan for Elimination of Administrative Barriers for Foreign Investments, which was adopted by the Serbian Government on 27 May 2004. This document establishes the measures, responsible institutions and the periods for implementation of particular measures and its updating and upgrading shall be carried out once a year. The Commission for Promotion of Investment in Serbia has been established with the aim of Action Plan enforcement. The Commission members are representatives from 17 ministries and government institutions. Due to the abovementioned significance of foreign investment for the reform and development of Serbian economy, it is necessary to establish the main strategic directions for attraction of foreign investment and promotion of domestic export. Hence the Ministry for International Economic Relations initiated the creation of Strategy for promotion of foreign investment into Serbian economy. One priority goal of the Strategy is to ensure the conditions for the increased inflow of foreign direct investments.

Despite the described progress, the business climate in Serbia is characterized by remaining weaknesses:

- When it comes to the efficiency of agreement execution through courts (dispute settlement), the situation in Serbia is alarming.
- The access to funds still represents one of the key problems. Despite certain activities, there is still a lack of institutions (although several have been established) which are of key importance for creditors (Central Collateral Registry, Credit Registry, Guarantee fund). The indicators relating to loan approval show that crediting in Serbia is both difficult and expensive.
- High costs of transactions at changing the land ownership represent an obstacle for transfer of property and keeping the appropriate land registry.

In order to eliminate these deficiencies, the following is necessary:

- Court reform. Adoption of the new Law on Executive Proceedings is an important step towards the accomplishment of this goal, but it is also necessary to establish institutional capacities for improving the contract realisation – improve the work of personnel and increase the court resources (education, court statistics, and information exchange).
- Adoption of the Restitution Law.
- Achieve stable and functional land property/real estate market. Adopt and enforce the Law on Land Registry.
- Improve the current lack of human and physical potentials in various parts of land management system, such as land registry, mortgages and other institutional services.
- Adopt the Law on Mortgage which would improve the access to funds.

Corporate management

Corporate management in Serbia is not yet satisfactory and Serbian economy is lagging behind other, especially developed countries. A large number of companies has not been privatized yet, including the extremely unprofitable companies; privatized and originally private companies are not relieved of corporate management problems i.e. difficulties due to the problems of separating management from ownership function in private companies, based on different interests of owners and managers; cultural problem, which is mostly the consequence of tradition i.e. domination of one form of management in the past and the difficulty to get rid of

this old habit; economic regulation is not well reformed in all its parts and sends negative impulses to the legal framework for company functioning.

The main regulatory solutions for corporate governance are prescribed by the Law on Business Organisations, adopted in November 2004:

- Competences of the Parliament are rather wide-ranging,
- Managing board, as the owner's body, is envisaged as an essential authority of the company,
- The Law envisages the obligation to elect the non-executives from the listed stock companies as the managing board majority and at least two independent members,
- Supervision over the management and management board is envisaged as a joint responsibility of external auditor and the shareholders meeting,
- Determination of the manager's income is deregulated
- By fiduciary provisions management is bound to fair attitude towards the company,
- Protection of minority shareholders is developed, which is of great importance for Serbia, having in mind that there is a distinct threat of domination of one owner over the small shareholders in privatized Serbian companies.

An important way to limit the willfulness of the manager is to unite otherwise dispersed shares, which currently exist in companies privatized under previous laws.

Strategic directions for the development of corporate governance

In a strict sense, corporate governance was only recently directly covered by harmonisation process at the Union level. It appeared that the differences among the Member States could not be easily eliminated and that further harmonisation would probably be more flexible and more oriented towards the adoption of principles that would be additionally elaborated within national legislations.

The important progress in the development of corporate governance in the EU is represented by recommendations for the development of company law, which are largely accepted by the European Commission and incorporated in its **Action Plan** for 2003. The main orientation of the Action Plan is the enhancing of transparency and strengthening of the role of managing board members. Beside the company law, two more areas are important for corporate governance regulation: European Company Regulation (*Societas Europaea*) and Financial Services Regulation, as well as voluntary regulation – there are numerous codes on corporate governance in the EU countries that are voluntarily adopted by various institutions, professional agencies and associations.

Well-managed and competitive companies are of special importance for Serbia's sustainable and long-term economic development.

The first step in promotion of corporate governance in Serbia is the continuation and finalization of privatization process, in order to privatize the remaining companies in social and mixed ownership and thus provide them with a better management system.

Second step is further improvement of legislation in the area of company law and finances. The Law on Business Organisations was recently adopted, but certain weaknesses are already visible, e.g. the possibility for the managing board of the company, whose shares have been subject to public tender, to take actions that disturb the acceptance of tender for the reason of maintaining their position contrary to the shareholders' interest.

In future, it will be necessary to operate in all three areas of corporate governance from the EU's Action Plan, which are anyway the most logical and important fields: publishing information on companies and corporate governance, protection of shareholders' rights and the character of managing board.

The changes of domestic legislation ought to be implemented having in mind the EU regulations. The following calls for special attention during this process:

- In order to become EU Member State, Serbia will have to harmonise its regulations in the corporate governance area with the EU regulations (the sole option for loosening possibly unfavourable provisions in the corporate governance domain is to negotiate a transitional period, although the countries that acquired full EU membership did not use this option),
- However, there is no need for full harmonisation of domestic legislation with the *acquis* – quick adoption will not have significant positive results (the dynamics of Serbian EU accession will be affected by other factors) and quick harmonisation is not even technically feasible regarding the restrictions of domestic administrative capacity,
- During the further reform of relevant domestic legislation and following the identification of major weaknesses that need to be corrected, it is necessary to respect the EU regulations and incorporate them in order to simplify and shorten the harmonisation process;

Simplified harmonisation of corporate governance with the EU will also result in elimination of long-lasting tradition in these areas in Serbia – one permanent system and the fact that business people are accustomed to frequent, fundamental environmental changes and company management regulations, which makes the company law and governance system changes easy to implement i.e. with no distinct resistance of business society.

Third step should encompass the justice improvement. A good justice system discourages potential violators, managers in this case, from misusing their current authority and jeopardizing the rights of other parties, shareholders in this case. Furthermore, some important elements from Anglo-Saxon tradition have been recently introduced into the new Law on Business Organisations – emphasized fiduciary responsibility of the Director General towards the company and shareholders, derivative claim etc. The main idea is to stimulate managers to act in favour of company's i.e. shareholders' interest. In order to make this new corporate governance system functional, the judges have to be capable of its appropriate implementation, which is a difficult task insomuch as their rulings relate to the sensitive assessments of managers' business decisions. This would contribute to enhancement of the rule of law, which is also one of the Copenhagen criteria for European Union accession.

State Aid and Competition Policy

Formulation of state aid and competition policy and its efficient implementation is one of the preconditions for EU accession. Having in mind the importance attached to this area by the EU, it will be one of central points in negotiations of Stabilisation and Association Agreement. Serbia has formal legal regulations on competition and institutions responsible for their implementation. However, the existing institutions are not functional, the regulation is hardly applicable and it is not in line with the EU regulations.

Strategic goals of Serbia in the field of state aid and competition policy should be the following:

- Creation of environment that will maximize the economic efficiency,

- Adoption and implementation of new regulations,
- Demonopolisation of public sector,
- Legal regulation of state subsidies and their gradual reduction and
- Creation of an efficient and independent institution for competition supervision.

1. The issue of state aids will certainly be one of the central topics during the negotiation of Stabilisation and Association Agreement. The level of state aid in Serbia has the declining tendency, and its estimated level in 2004 was 5.8% of GDP (in 2003 it was 6.3% of GDP)⁶, but it is significantly higher than the EU-15 level (around 1% of GDP).

State aid control system in EU does not prohibit all types of state aids. It is unconditionally approved in case it has social character and it is allocated to individual consumers, in case of natural disasters and extraordinary events, public institutions which do not have the capacity of economic entities (hospitals, education institutions etc.), assistance to supranational institutions etc. In other cases, the European Commission approves the allocation of state aids in line with the adopted Directives. Countries in the process of EU accession have the right to retain certain degree of state aids, but they are expected to gradually reduce their levels.

As an underdeveloped country, Serbia will be able to retain certain degree of state aids in the period to come, but it is of special importance that the economic policy creators opt for necessary forms of state aid, because the uncontrolled approvals will not be possible. It is also necessary to gradually reduce the state aid levels.

In this area, Serbia has only made the initial step i.e. the inventory of state aids approved in 2004. Therefore, the following measures are necessary:

- Determine an institution responsible for creation of regular annual reports on state aids,
- Pass a special law for unique regulation of state aid issue in line with the EU regulations,
- Establish a special agency for supervision and control over the state aid system,
- Establish mandatory annual reporting to the European Commission.
- It is necessary to create a plan for rationalization of subsidies in order to optimally allocate the limited resources into the industrial branches and companies, according to economic instead of political criteria.

For the abovementioned reasons it is necessary to establish a working group within the Ministry of Finance for drafting the State Aid Law, and to appoint a department within the Ministry of Finance responsible for updating the current report and providing the information on scope and types of state aids until this law steps into force (Public Payment Administration or Treasury system). After the law has stepped into force, this role will be assumed by the State Aid Agency, which will also be authorized to require the refund of illegally acquired state aids. The Agency will closely cooperate with the Ministry of Finance, but it will be an independent body.

2. Competition protection policy is one of the crucial areas of European Union law and it is the exclusive responsibility of the European Union. Without the rules on competition protection, the single market of the EU would not be possible, since it would be divided along national borders and imply different benefits for domestic companies and discrimination of companies from other EU Member States. The Law on Competition Protection, as one of the key laws regulating the behaviour of market participants, should have been adopted at the

⁶ The main Directive 2000/12/EC amended by Directive 2000/28/EC.

Inventory of state aids in the Republic of Serbia (year 2003 and first three quarters of 2004)
in YUM millions

	Type of aid	2003.		2004.	
		Amount	Share in %	Amount	Share in %
1	2	3	4	5	6
1.	Horizontal state aid	8.224	11,9	6.001	11,1
2.	Sectoral state aid	30.241	43,9	26.360	48,6
3.	Regional state aid and local-level state aid	18.680	27,2	5.418	10,0
4.	Tax and customs reliefs and export incentives	11.734	17,0	16.495	30,3
	Total:	68.879	100,0	54.274	100,0

beginning of privatization process in 2001. This is why the adoption of this law is one of the priorities in the area of Serbian legal harmonisation with EU regulations. Serbian Government adopted the Draft Law on Competition Protection, at the proposal of the Ministry of Trade, Tourism and Services in October 2003 and its adoption is due in the second quarter of 2005. At the time this Strategy is published, the Proposal of Law on Competition is at the Parliamentary procedure.

The Law on Competition Protection has to incorporate the same definitions, terms and scope of application as those in the EU law. This will imply the prohibition of any agreements between the companies, decisions of company associations and agreed practices which might affect trade and which are aimed at prevention, restriction or distortion of competence in the common market. The exceptions to this prohibition also have to be accepted in cases and under the conditions recognized by the EU law. Furthermore, the abuse of dominant position in the market or significant part thereof will be prohibited according to the same principles as those prescribed by the EU law.

State monopolies, public companies and companies with special and exclusive rights represent the threat to competition policy, which is why they are subject to special regulation. Article 37 of the EC Treaty prescribes that the national commercial monopolies should be gradually subjected to harmonisation and that after the expiration of transition period there be no discrimination among the EU citizens regarding the conditions for provision and trade in goods.

Public enterprises represent a wide-spread category within Serbian economy, not only in the areas which are a natural monopoly but also in possibly competitive branches. A large number thereof is at the local level and under the control of the local government, which often imposes barriers or restricts the entry of other companies into the market. There was not sufficient activity so far related to public company demonopolisation, and it is especially important to gradually introduce the competition in the area of telecommunications, certain forms of

traffic and production of electrical energy. Demonopolisation of certain sectors would have positive impact on the rest of economy, primarily related to the price reduction and quality of services, so that it ought to represent the strategic goal in the period to come.

It is necessary therefore to identify public services of general interest which will be exempted from competition rules. All other companies (commercial monopolies) shall be subject to competition protection regulation after a certain transition period. In the sectors with vertical company integration (such as electrical energy, oil etc.) it is necessary to make the difference in accounting between the activities they perform (production, transmission etc.).

In order to establish an efficient competition policy, it is necessary to make the envisaged Antimonopoly Commission (Competition Protection Commission) a fully independent institution and to ensure the efficient judiciary system. In the recent practice and regulation, these preconditions have not been met, since the Antimonopoly Commission did not have full institutional independence and its members were regularly selected among the «eminent business people», which resulted in conflict of interest. The proposal of the Law on Competition Protection envisages the creation of competent and institutionally independent Commission, as well as quick and efficient court settlement of possible disputes in this field. The Commission should be fully authorized for conducting the investigation and deciding on penalties, without the executive authority participation. Furthermore, it is necessary to envisage the passing of a single decision on recording the violation of competition protection rules, which would prescribe the appropriate penalty. Administrative procedure against such decision should also be foreseen in order to guarantee the rights of companies deeming that the Commission's decision has impeded their rights. In order to enable the efficient functioning of competent courts, it is necessary to perform the training of judges in the area of competition law as soon as possible.

3.2 | *Reform and structural changes*

3.2.1. *Economic system reform*

3.2.1.1. *Capital market reform*

Banking

A. Present situation

After the radical structural changes (bankruptcy of large banks, entry of foreign banks, temporary nationalization of certain banks under the Law on Paris and London Club of Creditors), the reconstruction of banking system has begun. Credit activities of banks have intensified. Interest rates are decreasing, although they are still relatively high.

In the period from the year 2000, around 25 insolvent banks have been closed. The balance amount of these banks was almost 2/3 of the entire banking system assets. The main reason for such radical decision was a profound banking crisis and low budget capacity for recapitalization of insolvent banks. Through the procedures of bankruptcy, mergers and integrations, the number of banks in Serbia has decreased from 83 in 2001 to 46 in the year 2004.

Pursuant to a special Law, Serbian Government has initiated the conversion of bank debt towards the London and Paris Club in July 2002. This process has resulted in temporary nationalization of a significant part of banking system. This measure was inevitable for the following two reasons: firstly because the banks, being the original debtors, were not in capacity to settle their liabilities and secondly because the corporate structure of banks, as a past inheritance, did not enable the efficient management.

At the end of 2004, the banking system consisted of state-owned banks, domestic privately-owned banks and foreign banks. At the end of 2003, domestic banks were in possession of almost 80% of total assets and 87% of capital. Fast expansion of deposits and loans in foreign banks changes the configuration; after successful bank privatization in 2005, the banking system would not be dominantly in domestic i.e. state ownership.

Deposit potential of banking system is increasing. Foreign exchange savings of the citizens have increased from an insignificant level in 2000 to more than EUR 2 billion in 2004. Participation of dinar deposits in the total deposit amount is low, which indicates the low confidence in national currency and the need to establish a system of insurance i.e. protection of deposit.

Credit activity of banks is also improving. Total amount of credits granted to non-government sector (including citizens) has increased from EUR 1.6 billion at the end of 2001 to almost EUR 3.0 billion by the end of 2003. The dynamics of quick credit growth has continued in 2004 and especially in the population sector. Total bank assets, which make for more than 90% of the overall financial system, amounted to USD 6.9 billion i.e. 35.8% of GDP at the end of 2003.

The main problems of Serbian banking system are relatively low capacity (measured by the credit amount relative to GDP value, low efficiency and instability. The main cause for the mentioned problems is low confidence in the banking system.

Major concept for regulation of banking activity is well established but it needs further elaboration. The Law on Banks and Other Financial Organisations was adopted in 1993 and it was subsequently adjusted to key EU Directives through a series of amendments and supplements⁷. The most recent amendments of this type in Serbia were introduced in mid-2003. Regarding its main solutions (licencing, capital assets, supervision), this Law is in line with the EU standards. There has been significant progress in the reform of legislation and regulatory systems, especially in relation to harmonisation of national regulations with international standards, including the standards of the EU. Under the Law on Accounting, banks are required to adopt the International Accounting Standards (IAS) as of 2004. Payment operations have been rather smoothly transferred to commercial banks at the beginning of 2003.

B. Some elements of the strategy for harmonisation with the European banking system

The key strategic goal of additional changes in the banking sector is the increase of its capacity (credit offer) and efficiency (reduction of mediation costs). The mid-term realisation of this goal requires a consistent resolution of the status of euro in the domestic monetary system and the increase of deposit insurance by adopting a new Deposit Insurance Law.

⁷ Directive 86/635/EEC on annual and consolidated financial reports of banks and other financial institutions and Directive 93/6/EEC regulating the area of capital adequacy;

It is of key importance to develop the banking sector, which is feasible in medium term having in mind that the Serbian banking sector has large growth potential. The maintenance of savings growth trend is significant not only for efficiency, quality and capacity of the banking sector, but also for the increase of real sector activities.

In order to sustain the dynamics of banking sector rehabilitation, it is necessary to sustain the high dynamics of savings increase. The solution for this is to activate the system of protection (insurance) of foreign exchange savings. The delay in growth dynamics and low level of utilisation of the existing foreign exchange savings are probable reasons for the slowdown in rehabilitation dynamics of banks' credit activity. With a view to restoring the previous savings increase it is necessary to replace the existing «deposit insurance» system and resolve the fundamental issues of monetary regulation strategy: status and utilisation of foreign exchange savings and reserve currency in general.

Second task implies the increase of banking efficiency i.e. reduction of financial mediation costs. Costs, profit and other parameters of bank efficiency in Serbia are particularly unfavourable.

The increase of bank efficiency is a precondition for the increase of financial mediation efficiency in Serbia. For realising this task in the short period it is necessary to create the conditions of full competition in which the more efficient banks (domestic and foreign) would gradually start collecting the deposits and establishing credits. Hence, it is necessary to consolidate this activity by gradually connecting small banks with larger systems. The structural changes in the banking sector may imply either the liquidation of inefficient and small banks or their fast recapitalisation and expansion through new strategic investments. Since the majority of such banks are state-owned, it is necessary and desirable to resolve the problem of banks which cannot be privatised.

The increase of banking and financial system safety i.e. reduction of its risk level should ensure easier integration into the European processes and reduced costs of transfer. The supervision over operation of banks and other financial institutions requires modernisation both in institutional and technical sense. The increase of NBS supervision capacity can be realised by implementing the development plan for the control function and by establishing and maintaining special supervision over state-owned banks. A specific task of bank supervision implies the monitoring of banks which realise the fast growth in balance amount.

Having in mind the degree of interrelation among the banks, insurance companies and broker activity, it would be useful to take into account the experiences of certain EU countries that possess a single supervision institution for all financial activities.

After reaching the desired level of bank system security, it is possible to activate a new channel for financial mediation – non-banking financial institutions, savings and credit cooperatives and micro-credit institutions. Activation of this system may contribute to the increase of system efficiency and increase of competitiveness in credit and deposit markets. It is possible to build a foundation for the development of sector of non-banking financial institutions by introducing a supervision capacity in the insurance sector and adopting the mid-term development strategy therefore.

High internal debts hinder the normal functioning of financial system. One part of these debts is concentrated in relations between the companies and bankrupt banks. The new law which regulates the bankruptcy and liquidation of banks should resolve the status of such debts and the status of institution responsible for their management. Furthermore, it is necessary to improve the legal and institutional framework for bank liquidation, including the revision of status and granting more power to the Agency for Bank Rehabilitation.

With a view to harmonise this area with the EU regulation, it is necessary to:

- Pass a new law for regulation of bankruptcy and liquidation of banks
- Pass the Deposit Insurance Law
- Amend the existing Law or adopt a new Republican law to regulate the activity of savings banks and micro-credit institutions;
- Harmonise the by-laws on supervision and financial reporting in banks with appropriate Directives⁸.

Financial markets

A. Present situation

Over the past three years, the activity of financial market was mostly based on shares issued in the privatisation process pursuant to the Law from 1997 and to a less extent on bonds of the Republic of Serbia issued for settling the old foreign currency savings. In March 2004, market capitalisation reached YUM 203 billion. This level is relatively high (in comparison with comparable countries) and represents 28 percent of the GDP.

Belgrade Stock Market is the main capital market in Serbia. Market participants are mostly brokerage companies, while its owners are banks and the state.

The market of corporate securities (shares and bonds) is in expansion, but it is still characterised by low liquidity and intransparency. In the period until 2003, this market primarily traded in short-term commercial documents of companies. The Stock Market has none of these securities in its official listing yet. The main corporate securities in trade are privatisation shares. Dominant sellers are from the sector of population who have obtained these shares free-of-charge during the process of mass privatisation. Dominant buyers are from the company sector. Therefore, the capital market in Serbia has not yet become a significant mechanism for financing the company sector. It is predominantly a redistribution (concentration) mechanism for shares distributed in the mass privatisation process.

Foreign currency savings bonds are liquid and according to return they are highly attractive. Although not directly convertible, they may be used for purchasing shares of companies in privatisation process. Their introduction in Stock Market operations (September 2002) has greatly influenced the level of market capitalisation and its liquidity. This kind of document will represent a significant part of the overall trade in a long period to come, because the issuance value is relatively high (EUR 4.2 billion) and the liquidity satisfactory. These bonds are in continuous trade. In the beginning of the market functioning, the returns were rather high; over time, they have gradually normalised in the interval between 7-10% at the annual level.

Money market in Serbia is still weak and undeveloped. The key problems for its operation are relatively high interest rates and high compulsory reserves of the National Bank of Serbia. The interest rates for short-term loans are rather high.

Market for corporate control (takeover market) was activated in October 2003. The activating of this market in the conditions of poor protection of minority shareholders leads to its anticipated deformation. The best com-

⁸ The initial strict implementation of supervision measures already gave positive results – the revoking of work permits for 12 insurance companies (followed by liquidation procedure), while three companies have willingly ceased to operate; at the moment there are 22 insurance companies in the market.

panies are exposed to greatest takeover risk. This process in Serbia is characterised by all features of early transition: accelerated ownership concentration and low level of protection of minority owners.

B. Strategy for market development, existing regulation and possibility for its upgrading

The main goal of financial market development lies in its gradual transformation from currently dominant mechanism of redistribution of property rights to the mechanism of real sector financing. This is possible within the strategy for the development of overall financial sector. Stabilisation and market liquidity will gradually lead to changes in its primary functions.

The second major problem of Serbian financial market is reflected in large systemic risks (which cannot be avoided). Reduction of risks related to investment into real sector can be realised by substantial structural (legal) and regulatory reform, including the reform of certain existing laws and adoption of new ones.

The establishment of single legal framework for all participants in financial markets primarily implies the comprehensive revision of the Law on Securities and Other Financial Instruments. This Law was adopted at the federal level in November 2002. Although partly harmonised with certain EU Directives, it does not provide for harmonisation of this entire area with the EU standards.

This Law is also in conflict with the Law on Privatisation. Its provisions jeopardise the basic principles of shareholding. It is necessary to amend this Law so as to eliminate this conflict and ensure the normal functioning of "privatised shares" market. There is an additional set of regulation deficiencies related to trade in shares of open (public) and closed stock companies.

This Law has failed to resolve the problem of company opening and contains an archaic solution for prospectus content liability. Instead of divided liability prescribed by this Law, it is desirable and even necessary in our conditions to define the undeniable liability of issuer for the content of this document. This Law does not recognise the term of related persons. Unless eliminated, this lack may result in the market collapse. Namely, pairs or groups of related persons (issuers, banks, auditors, and brokers) may cause a series of market distortions, from price deformation of individual stock market transaction to manipulations with public placing of securities.

Second set of necessary and desirable changes relates to the area of takeover. The laws in this area fail to define precisely the procedure, supervision and obligation of the takeover company. The need to regulate this area is undisputable, whether by a special Takeover Law or through revision of the Law on Securities Market. However, it would be desirable to pass a new Law on Takeover.

At the end of 2004, the Law on Business Organisations was passed. This Law is especially focused on public corporations i.e. open stock companies. The implementation of these solutions is expected to reduce the investment risk in the real sector and in mid-term to enable the real sector to obtain additional capital, not only through banking system but also through financial market. The accomplishment of this goal depend both on provisions of this Law and the laws regulating financial markets. The development of capital market requires an improvement in the stock company management and especially the improved protection of minority shareholders.

Along with the risk reduction, which can be realised through revision of basic laws, it is possible to activate the new sources of demand in the financial market. Simultaneous progress of these processes ensures the market extension and the increase of its liquidity. With no institutional and portfolio investors, there can be no quick development of capital market. This is why it is necessary to adopt the Law on Investment Funds i.e. Investment Companies as soon as possible.

Beside the fundamental laws, it is necessary to adopt a special Law on Mortgage Securities. This Law would provide for issuance of low-risk securities based on mortgage.

Strengthening of supervision function in the financial markets may also be considered a strategically important goal. The competence of Securities Commission ought to be redefined and its real regulatory and supervision capacity should be increased by defining it as definitely independent regulatory body. The Commission may have real capacity for enforcing its competence, especially in the area of efficient supervision over market participants and processes. Second important area which requires the improved supervision of the Commission is introduction of adequate reporting based on IFRS and IOSCO principles. Furthermore, the procedure of company opening at the issuance of securities in the primary market and protection of minority shareholders should be greatly improved.

The realisation of these goals is possible either by strengthening of the existing institution (Securities Commission) or by establishing a new institution for supervision of all financial operations (banking, insurance, financial market). Having in mind the experiences of other countries, it might be useful to consider the establishment of a new supervision institution for all types of financial activities, which would be actually and institutionally independent from executive authority and market participants.

In the area of international and regional cooperation, it is possible to enhance national financial market by re-suming and intensifying the cooperation within IOSCO. Serbia is a full member of this international organisation of regulatory bodies for securities. This cooperation may increase the quality of national regulation and enhance the supervision capacity of the national regulatory body.

The following important goal is strengthening of self-regulatory bodies and professional associations that provide stricter market discipline and promotion of ethical professional standards, increase the level of professional knowledge and skills in establishing confidence of investors and general public in institutions.

Insurance

A. Analysis of present situation

According to the level of development, insurance sector is far behind the practice of the EU and other developed countries. In the domestic insurance market, only 3.5% of total insurance is represented by life insurance, and this rate in more developed countries is around 60%. Data such as the amount of gross premium per capita (USD 40.4) or participation of collected insurance premiums in the GDP (2.25%) clearly indicate the low level of domestic insurance sector development.

The new Insurance Law, which is greatly in line with the relevant EU Directives and international standards in the insurance area, establishes the systemic conditions for the development of this field. The main contribution of this Law is a remarkable increase of the state supervision role which is given to the National Bank of Serbia. NBS has thus acquired the authority to issue licences for performance of operations in the insurance area and to adopt regulations thereon⁹:

⁹ With the aim of preventing the capital outflow into foreign countries, it is envisaged that the foreign insurance companies have to operate pursuant to domestic legislation and to establish the main office in the territory of the Republic of Serbia (the presence of branches is not admitted). Regulatory body has thus obtained the discretion right to grant the permits.

Another novelty relates to the organisational changes in terms of classification into life and non-life insurance. One insurance company will no longer be allowed to perform both types of insurance, nor will it be able to perform reinsurance, act as intermediary or insurance agency, since these operations will be separately regulated. The establishment of internal auditing department is also obligatory.

The new Law has prescribed significant increase in monetary part of nominal capital. The access of foreign capital to the domestic insurance market was additionally liberalised – foreign insurance company is not allowed to establish the 100% foreign capital company in the domestic market and register it as domestic entity¹⁰.

B. Strategic directions of development

The implementation of the new Insurance Law is expected to contribute to significant regulation of disturbed market relations, elimination of unfair competition, and reduction of the number of insurers to an optimum level, bearing in mind the domestic market capacity. However, the development of domestic insurance sector and its harmonisation with the business principles in this area within the European Union requires an additional set of measures.

Legal regulation in this area has to be finalised as soon as possible through adoption of appropriate by-laws, as well as the Law on Compulsory Insurance in Traffic.

With a view to ensure financial stability of the sector, it is necessary to establish the rules for assessment of the solvency margin, technical reserves, manner of estimating the maximum retention, maximum potential damage, liquidity quotient etc, taking into account the EU Directives on life and non-life insurance as well as paying due attention to the degree of economic capacity of domestic insurers¹¹.

In order to create an efficient and competitive insurance sector, ready to get exposed and face the international competition, it is necessary to perform the process of consolidation (actively employing the recapitalisation method, mergers and acquisitions, on the model of process already realised in the banking sector), finalise the restructuring process and initiate the privatisation of insurance companies.

For expansion of insurance portfolio (introduction of missing forms of insurance), it is necessary to adopt the regulation on health insurance and subsequently on voluntary pension insurance¹².

Investment strategy will play one of the key roles in the successful development of insurance activity and it will be implemented by insurance companies. Each investment of insurance companies will have to meet two conditions: to ensure a high degree of risk protection of its insurers and enable maximum return on invested funds. The investment in Serbia is largely limited by the development of domestic financial market. Without all conditions necessary for functioning of a quality capital market, insurance companies will not be able to defend their liquidity or provide adequate investment insurance and profitability. The law envisages the investments abroad amounting up to 20% of the nominal assets, with the prior approval of the NBS, but only from 1 January 2007. As

¹⁰ If the amounts envisaged by the mentioned Directives were directly applied in our country, it could imply the unrealistically high amounts and affect the functioning of domestic insurance organisations.

¹¹ The Law on Voluntary Pension Funds is in preparation; in the following period, this law is expected to limit the accumulation phase of pension contributions to funds exclusively. At a later stage, through the development of this system, the insurance companies should be allowed to participate in accumulation phase and the regulation on voluntary pension insurance should also be adopted.

¹² As the most recent data that we possess on the EU relate to 2002, for comparison purposes the data for Serbia also reflect situation from 2002.

the domestic investment market is underdeveloped, insufficiently liquid and with small offer of securities, the possibility to liberalise capital investments should be envisaged even before the established period.

In relation to opposite direction of investment liberalisation, it should be taken into account that sudden and extensive entry of foreign insurance companies may jeopardise the operation of domestic insurers. Therefore, the domestic insurance sector should be stabilised in the near future and subsequently (desireably) allow the entry of foreign insurance companies.

For the purpose of developing the domestic insurance sector, it is essential to regulate the obligation to estimate real premiums (tariffs) in insurance and establish appropriate insurance statistics. It is also necessary to more substantially regulate the position and powers of actuary, and establish stricter criteria for obtaining the certified actuary title. It is equally important to ensure continuous education of employees in the insurance sector and citizens as potential consumers of insurance services.

3.2.1.2. Reform of tax system

A. Analysis of present situation

Tax system of the 1990s was characterised by high level of centralisation, instability, intransparency, unfairness and widespread grey economy. After the radical changes in 2001, tax system was primarily simplified and significantly unburdened. The institutions of tax system were also reformed – budgeted system, Treasury was formed within the Ministry of Finance with the main aim to optimise the financial planning, management and control of state (local) funds, the Law on Local Self-government introduced significant decentralisation of public finances, the reform of tax administration was initiated.

Average tax burden of around 42% of GDP is not much higher than that in EU15 (in EU15 it is 40.5% of GDP). Significant difference is related to the tax structure in the total tax revenues – fiscal burden in Serbia is primarily imposed on consumption – around 49% of public revenues (in EU15 around 30%), while least burden is imposed on capital, its revenue participation being only 7.5% (in EU15 it represents 20% of total revenue)¹³.

Beside the significant tax unburdening and initiated reform of tax administration, the participation of grey economy is still considerable. In spite of significant progress of tax administration realised over the past four years, it is still insufficiently efficient and lacks in qualified personnel.

B. Strategic goals of development

After the year 2000, tax reform has contributed to greater tax system transparency, its decentralisation and adjustment to the requirements of market-oriented economy. This process has to continue in the first place to ensure the efficient tax collection.

¹³ The issue which domestic legislation failed to foresee and which is largely insisted upon by the EU practice, relates to the regime of VAT exemption and exemption from other taxes on personal property of natural persons permanently imported from another country (Council Directive 83/183/EEC). Certain goods and services which are subject to reduced VAT rate in domestic system (e.g. utility services, fire wood, natural gas supply) are not enlisted in Annex X of the Sixth EU Directive, hence their further harmonisation with the EU law will be necessary at a later stage. EU recommendation implies that unless these departures are immediately eliminated, they have to be limited by a certain deadline, with ultimate expiration date on 1 January 2010.

Consumption taxation – On 1 January 2005, the Value Added Tax (VAT) stepped into force. The standard rate of VAT is 18% and reduced rate 8%. The adopted Law on VAT is principally in conformity with the «European model» and basic solutions contained in the Sixth EU Directive, with the need for minor harmonisations which will be relevant in the later association phase¹⁴. Initial results of the VAT introduction (in combination with introduction of fiscal cash registers) indicate significant increase in budget revenues and consequently the reduction of grey economy.

The concept of excise system in Serbia is also largely in compliance with the EU. The list of excise products is reduced and a long-term strategy for excises on cigarettes has been adopted (until 2010). Accordingly, there is no special need to change the excise system before the signing of SAA. Only after the SAA is signed, there will be a need for further harmonisation with the EU¹⁵.

Individual income tax in Serbia is of mixed type – all citizens receiving income are liable to a series of taxes (different incomes are separately taxed), and a number of taxpayers is liable to complementary annual individual income tax of 10%. Such system should be replaced by a global (synthetical) individual income tax, which is applied in most EU Member States. As the transfer to global system primarily requires the preparation of tax administration, the existing system should be improved before its introduction.

Tax base for incomes from independent activity is largely underestimated and more than 60% of taxpayers from this group are taxed according to a lump-sum tax scheme. It is therefore necessary to make the legal criteria for approval of lump-sum taxation stricter, especially relating to services creating a significant added value.

Individual farmers' income is usually subject to cadastral income tax. Since the cadastral income was last determined in 1994 and has not been amended since, its real value is extremely low and results in a low level of tax revenues. It is thus necessary to perform a revaluation of cadastral incomes, and the mid-term measure implies complete innovation of taxation of agricultural incomes by introducing tax on estimated producer's income.

With a view to avoid double taxation of capital income, the existing tax system ought to be reformed. In relation to dividend tax, the best possible solution is either to fully exempt dividends from the individual income tax or application of final tax deduction at a much lower rate than the currently effective 10% rate. Similar solution should be applied to interest incomes.

Contributions for mandatory social insurance – Collective burden (gross) on income was greatly reduced in 2001 and it currently amounts 35.8%. Bearing in mind extremely high deficit in the Fund for pension insurance of employed persons (around 6% of GDP) and the fact that this rate is lowest in the region (and in line with the EU average), further reduction of rates is not realistic.

Corporate income tax – Corporate income tax rate is 10% and represents one of the lowest rates in the world. It has been amended twice in the recent period (from 20% to 14% as of 1 January 2003 and from 14% to 10% as of 1 August 2004), which had significant impact on budget revenues. The profit tax revenues have thus nomi-

¹⁴ The regime of deferred excise payment should be regulated in more detail and harmonised with the EU rules. Excise rates for oil derivatives and alcoholic beverages should be reconsidered and their level should be harmonised with the corresponding levels in most EU Member States, respecting the minimum rates prescribed by Directives 92/82/EEC and 92/84/EEC.

¹⁵ The part on tax administration was taken over from the final report of the Forum on key measures and obstacles for employment increase, CLDS 2005

nally increased for 27% in 2003 relative to 2002, and for 59% in the period January-May 2005 relative to the same period last year. In a later stage of preparation for EU accession, it will be necessary to slightly harmonise this tax form with the prevailing European system of enterprise taxation.

Property tax – Tax on property (immovable property) is most widespread form of direct taxes judging by the scope of taxpayers, but the revenues are extremely low (around 0.9% of total revenues).

The key problem with this tax form is the determination of tax base, which needs complete innovation relying on modern world principles in its definition: to be based on the entire and capital value of immovable property. The estimation of entire value (including the value of building land) will be possible only after privatisation of the urban construction land in Serbia (which requires the adoption of the new Republican Constitution). Capital value of real estate can be estimated by using the established procedures for real estate evaluation in case of tax on transfer of absolute rights (location, quality, building fittings etc.).

Key element of tax reform is actually the **reform of tax administration**. Among crucial reasons for inefficient tax system and large extent of grey economy are institutional weaknesses – inefficient and undeveloped control mechanisms (tax administration, inspection services...) ¹⁶.

The data indicate that inspection services have increased their efficiency, but there are still numerous problems: insufficient information technology equipment, inadequate field inspection equipment, lack of connections with other inspection services, absence of cooperation with tax authorities, insufficient personnel, low salaries of inspectors, inadequate and outdated organisation ... There is a distinct need for education of employees in the areas of public finances as well as taxpayers.

Hence, it is necessary to:

- Reform inspection services
- Improve equipment, qualification, vocational training
- Upgrade information system
- Review the number of employees
- Review the penal policy
- Determine the employment criteria
- Improve the quality of inspectors' work
- Connect the databases of different services

3.2.1.3. Foreign trade

A. Existing situation and problems

As a small-scale economy, which is yet to face comprehensive and substantial systemic activities in transition towards market economy and with an environment consisted of countries which are already significantly integrated in relevant European processes, the development of foreign trade is imposed on Serbia as an imperative, since its small market represents an obstacle for ensuring a long-term and stable growth.

¹⁶ According to the data collected in the 2002 Census, 61.9% of Roma in Serbia did not have elementary education, 29% had finished primary school, only 7.8% had secondary education, and 0.3% higher education or university degree.

The time factor, indicating that Serbia is simultaneously in the WTO accession process and about to initiate the negotiation on Stabilisation and Association with the EU, clearly illustrates that both processes have to be closely coordinated and utilised in an optimum manner so as to establish a stable and applicable legal framework for trade policy and appropriate system institutions with qualified personnel.

The reforms initiated by Serbian Government in 2001 represented a significant step towards foreign trade liberalisation (elimination of quantitative restrictions, licences and approvals, reduction of average tariff protection rate etc.) and simultaneously brought Serbia into the period of macroeconomic stability and stable foreign exchange rate. The negotiation process has been started and finalised by conclusion of bilateral free trade agreements with the countries in the region (within the Stability Pact for South East Europe), and the access to EU market has been improved through the system of autonomous trade measures (ATMs).

The greatest burden of Serbian economy is high foreign trade deficit. The fact that the largest percentage of foreign trade deficit is generated in the trade with the EU (over 50%) with which free and customs-free exchange will step into force in near future through the Stabilisation and Association Agreement (reciprocal free trade area after the transitional period for Serbia and Montenegro), presumes that the export orientation is based on a powerful role of companies with foreign investment. Foreign direct investments are hence the first step towards the development of a stable nucleus of competitive segment of economy.

Serbia has concluded the free trade agreements with the South-East European countries (SEE) and with the Russian Federation (RF). All countries in the SEE region, with the exception of BiH and Albania, have concluded the Stabilisation and Association Agreements (SAA) with the EU, which qualifies them as highly competitive partners. Therefore, as viewed from the foreign trade aspect, Serbia is closely related to the region with the trade behaviour rules that leave little room for discretion policies.

After the year 2000, Serbia has embarked upon the reforms of foreign trade policy with a view to strengthen the export-oriented development strategy. Nevertheless, despite the significant foreign trade liberalisation which has taken place in the past 4 years, this process was not accompanied by other economic policies and measures which would ensure the creation of competitive production.

1. In spite of relatively low salaries in comparison with developed countries and new members of the EU, Serbian companies are characterised by extremely slow introduction of new products due to the lack of innovative activities in companies and relatively low level of foreign direct investments.
2. Technological level of the major part of Serbian export is not adjusted to strong competition in the world market, and the influence of non-price elements (examination of sales markets, implementation of quality standards) has not yet become a significant factor of export success.
3. Complex forms of international economic cooperation have insignificant participation in Serbian international economic relations. In this manner, the development of international economic relations is being diminished.
4. Service support to the export of goods is rather weak and underdeveloped, and the export financing as a form of penetration into the foreign markets is disregarded (primarily due to the lack of capital).
5. In the Serbian export structure, the participation of services is insignificant, its main reliance being on traditional services such as transport.

Beside the enlisted, the increase of economic openness was not followed by sufficient coordination among a number of policies within a single strategic framework (creation and time period for implementation of eco-

conomic development strategy, export strategy and competition strategy). In such circumstances the positive impacts of extensive liberalisation could not come to the fore, since they required the existence of high competitiveness of the entire economy i.e. individual sectors.

The appropriate strategy of foreign trade policy thus requires the adoption of an optimum combination of measures and instruments in the areas of customs policy, non-tariff protection policy, industrial and development policy, as well as close coordination of the abovementioned with other relevant policies – development, privatisation, monetary, taxation, and social policy.

The first step in strategy creation is the reform of economic legislation in line with the WTO rules and the EU's *acquis communautaire*, but in such a manner so as to ensure that this legal framework is accompanied by the forecast of overall impacts of the adopted legislation, which would provide for efficient reforms and establishment of relevant functioning institutions.

B. Goals and strategic directions

Two simultaneous processes – accession to the World Trade Organisation and accession to the EU represent a framework for development and maintenance of export-oriented concept of Serbian development. The fact that the EU is currently major foreign trade partner of Serbia and that this process will be strengthened in the years to come alongside the process of EU accession, requires that Serbia possesses a competitive economy as one of the preconditions for facing the pressure of competition and market forces within the EU. This is especially important with regard to the EU enlargement to 25 states and its further expansion to include Romania and Bulgaria. Such development in the close neighbourhood imposes the need to identify the niches in the EU market, which requires greater competitiveness of domestic production aimed at the development of global quality of goods and services, which contributes to the import progress.

Foreign trade policy will have to be primarily defined by requirements imposed by introduction of free trade area with the EU in the context of Stabilisation and Association Agreement.

- Assymmetric opening of EU market for Serbian products will imply large benefits and profit only if restructuring and privatisation are simultaneously performed, which is expected to ensure the development of a stable entrepreneurship sector and the arrival of foreign investors who will bring along new technologies and standards of global quality recognizable in the EU market.
- Legislative environment has to be established in compliance with the EU *acquis*, while the priority laws to be adopted, amended or supplemented in this area are the Law on Foreign Trade, Customs Law, Law on Customs Tariff, legal framework which will regulate the state aids in line with the rules of the WTO and appropriate EU Directives, as well as legal framework that will regulate the implementation of technical regulations and standards also in conformity with the WTO rules and the so-called New Approach Directives of the EU.
- Legislative reform has to be followed by establishment of efficient institutions for law enforcement, especially relating to implementation of protection mechanisms along the border in compliance with the WTO rules. A special task within this framework is to ensure institutional and professional capacities in the given institutions for appropriate econometric analyses and statistical monitorings.
- Stable development of export activities requires a stable and competitive real foreign exchange rate.

- It is necessary to develop efficient customs and tax refund mechanisms, having in mind that input tax amount, in case of import inputs with high added value, may significantly increase the costs and reduce the exporting competitiveness of the product with similar quality.
- Significant export support has to be developed through establishment of an efficient financing mechanism and insurance of export activities; within this framework it is necessary to strengthen the personnel and financial aspects of the Serbian Investment and Export Promotion Agency and provide it with a more visible and active role in inter-ministerial coordination of policies that influence the export development. Furthermore, it is necessary to enhance the personnel and financial potential of the Agency for insuring the export activities.
- It is necessary to enforce the restructuring of traffic infrastructure through amendment of certain policies and laws and by exploiting the benefits of EU-supported projects in traffic corridors E-7 and E-10.

Having in mind this set of necessary activities, further strategic directions of Serbian policy for international economic relations are as follows:

- Adjustment of the Serbian economy export structure to the requirements of the EU countries' import demand.
- Development of new comparative advantages in export, based on technological modernisation of economy and improving the capacity of education, management and organisational knowledge and experience.
- Initiate the work on export strategy for the following ten years, which will identify the sectors and products with comparative advantage in the EU market, bearing in mind the real export capacity primarily created by companies with foreign investment and the visible development of EU's import demand serving the realisation of Lisbon agenda for development if this integration. Special emphasis of export development Serbia has to place on sector of products with high added value and the service sector.

3.2.2. Human resources

3.2.2.1. Labour market and employment

A. Current situation and problems

Formal labour market in Serbia is characterised by high level of unemployment, great latent unemployment, low level of employment in private sector and a very low mobility of labour force.

Unemployment in Serbia primarily has a long-term, structural and transitional character. There are two unemployment rates, based on different sources – the internationally comparable Labour Force Poll (LFP) of the Republican Statistics Bureau (RSB) and the records of the National Employment Service (NES). According to the Labour Force Poll, the unemployment in Serbia is relatively low – in 2003, it was 14.6%, i.e. close to the unemployment rates in the countries that joined the EU in 2004, whose average was 10% in 2003. However, if we look at the official data, i.e. registered unemployment of around 30% or nearly a million people registered as unemployed on the labour market, unemployment becomes a problem with dramatic proportions.

High rate of registered unemployment, high level of latent unemployment (surplus of the employed) as well as the discrepancy between the official unemployment rate and the rate according to the LFP, and above all structural unemployment and its long-term character as well as the rigidity of the labour market and widespread presence of grey economy – they all imply a rather unfavourable situation on the labour market. In addition, we can expect that the increase of the number of the unemployed due to the process of restructuring of state and socially owned firms and public enterprises as well as the rationalisation of social activities and state bodies.

The structure of the unemployed is also rather unfavourable – the youngest age group (15-25) dominates the total unemployment with the unemployment rate of 44.83 %, which is three times the average unemployment rate of this age group in the EU countries (about 15 %). Furthermore, the participation of the low education level (below secondary school education) is relatively high. The unemployed with the education level lower than secondary school made 24.1% of the total number of the unemployed in 2003. The highest participation in total unemployment is of the persons with secondary school education, who make around two thirds of the total number of the unemployed (66%).

B. Recommendations

A short-term goal of the European Partnership in the area of employment policy is a need to develop and implement an overall strategy on promoting the employment in the fight against the unemployment, especially as regards the reforms in vocational training and labour market, including all relevant actors.

Adoption of the Serbian National Employment Strategy is in its final stage. Basic principles and aims adopted as a starting point of this document originate from the European Employment Strategy. The National Employment Strategy expresses a clear idea of converging with the European Employment Strategy, inevitably putting different emphases due to different issues on the labour market and relatively early stage of the country's EU association. The Strategy, however, does take into consideration the three general aims of the European Employment Strategy:

1. full employment,
2. labour quality and productivity, and
3. social cohesion and entering the labour market.

The starting point in meeting these goals is the reality of our labour market. In other words, the National Employment Strategy accepts the ten priorities of action, defined by the guidelines of the European Commission in April 2003, but it bears in mind specific issues and needs of Serbian labour market and it adds two more priorities. The priorities are:

- to provide assistance in job search and prevention of long-term unemployment,
- to support entrepreneurship and improve the climate for business start-ups,
- to promote the adaptability to changes of workers and enterprises,
- to provide higher and better quality investment in human capital,
- to increase job opportunities,
- to support gender equality regarding employment and salaries,
- to fight discrimination against vulnerable groups,
- to improve financial incentives in order to make labour more lucrative,
- to reduce considerably the informal labour,

- to support professional and geographical mobility,
- to support foreign direct investment and to activate investment of domestic savings towards maintaining and creating employment, and
- to reduce differences between regional labour markets.

The Strategy accepts the integrative approach that exists in the method of open coordination of the European Strategy, meaning that strategic employment recommendations are not limited to the active labour market policies, but extend to social, educational, tax, corporate, regional and other relevant policies.

In order to establish a stable and sustainable **employment growth** it is necessary to increase, above all, the economic activity. With this regard, it is necessary to support direct foreign investment, investment activation of domestic savings, entrepreneurship and to improve financial incentives to make labour more profitable.

As regards the labour market policies, the labour policy reform should be based on giving priority to active instead of passive measures. This is a big challenge especially considering that with the process of restructuring unfolding, there is a general tendency of increasing costs of passive measures in the labour market policy (currently, these costs take more than 90% of total costs). Employment vouchers are recommended as one of the instruments of transformation of passive into active measures. These vouchers would enable a transfer of the remuneration right (severance pay) of the unemployed person to their employer.

Special attention should be paid to the **self-employment programmes** (i.e. to direct provision of credits and technical assistance in providing access to the credit market, and less to grants). In cooperation with the Ministry of Labour, Employment and Social Policy and the Ministry of Economy, the Ministry of Finance has envisaged a programme of providing micro-credits for the unemployed. Though, when it comes to such programmes, it is usually pointed out that a small fraction of workers have entrepreneurial skills, in the situation when great firms are being restructured, the self-employment programmes may be the only practical solution. Therefore, more attention should be paid to developing new modalities for self-employment programmes in the years to come.

An important active measure for adapting labour offer to the employers' demands – vocational training – requires serious funding and involvement of employers, the unemployed and employment services in order to be successful.

In order to prevent long-term unemployment it is necessary to set a goal for the National Employment Service. The goal should be to develop individual employment plan for the unemployed within a certain period of time (say, 6 months) starting from the day the person registered with the employment service. On-the-job practice, i.e. internship is one of the very important activities aimed at the prevention of long-term unemployment.

In order to reduce unemployment and raise the level of labour activity of young people and their successful entering the labour market immediately after they have finished education, career guidance and counselling should be widely applied at all education levels. This includes providing information about the labour market situation and prospects, and current and expected opportunities for specific professions.

An important precondition for successful implementation of the Employment Strategy is the reform of the National Employment Service. In order to do this it is necessary to employ enough staff and allocate sufficient funds, and decentralise the service in order to achieve client-orientated service as one of the basic instruments for successful application of an active employment policy. In addition to this, it is necessary to provide a unique

information system to monitor the situation and activities on the labour market. Improved employment service is one of the short-term priorities defined in the European Partnership, but there is lack of funds for this goal.

3.2.2.2. Education

Modernisation and transformation of education is a precondition for an overall social and economic development of Serbia. In this context, investing in education, i.e. human capital, assumes the character of an investment venture. This means that the education policy is not merely a policy designed to create human capital but it is also a part of a total development policy of a society. What makes it specific is its exceptionally long strategic character. Conceptual mistakes in education policy have postponed, yet very serious consequences. They first become apparent on the labour market in the form of misbalance in demand and supply of certain professions, and eventually manifest themselves in the general economic lagging behind. Therefore, further development of education in Serbia and its place in the development of European education requires its different positioning in the overall social and economic development of Serbia.

A. Current situation and issues

Modernisation and development of Serbian education system started in 2001. Its aim was to raise the quality of education management, financing (including all interested parties and social partners), and full respect of ethnic, cultural, and language differences. Main aims of the reform of education system included modernisation in order to contribute more efficiently to the economic recovery of the country, support to the development of democracy in Serbia and support to the future European integration of the country.

Education system has been changing in several directions:

- decentralisation and democratisation, i.e. transfer of some responsibilities for the education system to the local self-government, school management, bureaus (for the development of education and upbringing and quality assessment), national and regional centres, academic institutions, expert institutions and schools;
- enabling schools for self-assessment;
- school development planning has been introduced in 750 schools (strengthening the school autonomy and connecting the school with the local community, and reinforcing school management);
- raising the quality of teaching process and learning, education content and educational achievements. Modernisation of curricula, marking system, teacher training, abolishing facultative and introducing optional-compulsory subjects;
- improving the educational structure and equipping educational institutions. Reconstruction and building parts of schools, equipping gyms, acquiring school furniture, modernisation of teaching aids and teaching material;
- connecting schools in a unique information system and setting up a data base of teaching staff;
- improving education of children with special needs;

- introducing two compulsory foreign languages from the first and the fifth grade of primary school. Monitoring and expanding the bi-lingual teaching project;
- introducing new educational profiles in secondary schools (according to the needs of the labour market). Twenty-seven new profiles have been introduced in ninety-nine vocational secondary schools;
- starting the standardisation of education process;
- application of a comprehensive programme of children safety in schools – *Safe School – School Policeman* project;
- modernisation of school libraries in Serbia;
- joining the new cycle of PISA study;
- joining the CEEPUS Programme (Central European Exchange Programme of University Students).

The process of modernisation and development of vocational secondary education was supported in 2003 by the *Reform Programme of Vocational Secondary Education* project, which is realised by the European Union under the CARDS programme. A complex structure of the programme has encompassed almost all segments of vocational secondary education and is implemented as an experimental programme in 55 vocational secondary schools in Serbia.

B. Development policy directions and measures

Taking into consideration basic educational reform principles in Serbia and education development principles in Europe for 2010, further revision and modernisation of education in Serbia should include *its positioning among the factors of technical, technological, social, economic and individual development*. The first step in this process is to conceptualise education development and harmonisation of the overall education system with the social and individual needs and capacities. In other words, further educational development in Serbia should be brought in line with the following goals of education in Europe by 2010:

1. Raising the quality of education and training in line with the new social demands based on knowledge, and modernising teaching and learning processes;
2. Provision of easier access to the education and training systems for all and in line with the principles of lifelong learning; faster employment, career development, equal opportunities and social cohesion;
3. Opening education and training towards wider world in the light of making better connections between labour and society and responding to the challenges born out of the process of globalisation.

The processes of harmonisation and approximation with the European goals for 2010 require amending legal and by-legal acts in the area of education. This process of harmonisation should encompass the existing legal framework as well as initiate the passing of new framework laws and by-laws. In this view, it is necessary to harmonise and update legal and by-legal acts, especially in the area of financing education, education of children with special needs, vocational training, accreditation and certification of vocational training and education, providing quality. In this process, it is necessary to harmonise legal and by-legal acts with already adopted strategic and conceptual documents, such as the Strategy for Poverty Reduction, National Action Plan for Children,

Concept of Vocational Secondary Education (Belgrade 2004), Serbian Vocational Training Policy and Development Strategy (draft, 2005).

Major social, economic, technical, technological, and demographic changes that Serbia is facing impose a need to create an open and flexible **system of vocational training**. It would combine all levels, forms and ways of learning, from elementary to university education, initial and continual, formal and informal, opening up possibilities for lifelong learning, development of human potential and successful integration of Serbia in the European cultural and economic space.

One of the fundamental goals of further development of vocational education is its base in the **lifelong learning concept**. In order to achieve the necessary social and economic changes, Serbia needs to restructure its human capital, provide it with the new knowledge, skills and value system, behaviour and attitudes. In other words, adult education is the fundament of Serbian social and economic transformation.

The system of establishing standards is a basis for setting up a **system of quality provision**, which has a crucial role in the functioning and developing of education. The system must be efficient, effective and cost-effective; it must contain the component of openness, it should be public and available to all interested parties – both to the participants in the education process and to the social partners and wider public. A special issue is the area of teacher training, which requires special regulations and systemic set up in the framework of harmonisation with the strategic goals of education development in Europe.

Existing legal solutions in the field of education envisage equal access to upbringing and education for **children with special needs and children from ethnic minorities**.

Bearing in mind the recommendations of the Strategy for Poverty Reduction, the National Action Plan for Children and the results of experimental programmes in this area, the following should be done: first, to prepare and adopt a strategy for the upbringing and education of children with special needs, and second, to prepare a special law on children with special needs to regulate this entire area.

As regards the **education of minorities**, good legal solutions from former regulations have been kept as they give full guarantee and equal opportunities for education to the members of all national minorities, teacher training in the languages of minorities and publishing textbooks in the minorities' languages. What is necessary in this area is the review of by-legal regulations, especially as regards teacher education and training, financing, standards, etc.

The Development Strategy for the Education of Roma is in the adoption stage as a priority area. From the aspect of equality, education of this ethnic minority is the greatest challenge for Serbian education system¹⁷. The basic goals of the Strategy are to include Roma in the education system and to provide continuity of schooling as well as to provide quality education, develop tolerance and respect of differences and cherish cultural identity.

As regards **university education**, passing a new Law on University Education represents the beginning of the process of harmonisation with the Bologna Declaration and the start of reforms. By signing the Bologna Declaration, our country has joined the group of European countries that have committed to coordinate their policies in the area of university education in order to enable the establishment of the European Zone of University Education by 2010, having kept cultural, language and national characteristics of every country. Accordingly, a Draft

¹⁷ Projections show that for a pensioners' income of around 60% of an average salary, 16% of GDP will be spent in 2052, if the average salary grows at the same pace as GDP (Development of the Social and Economic Situation of Senior Citizens in Serbia, Economics Institute, 2004).

Law on University Education has been prepared. It regulates and redefines the system of university education in line with the principles set within the framework of European integration, determines conditions and ways of the functioning and financing of the system. The Draft Law determines the goals and principles of university education by applying fundamental principles of basic European documents. In this view, further approximation and harmonisation in the area of university education should incorporate the continuation of the process of approximation with the Bologna Declaration and the modernisation of university education.

3.2.2.3. Research and development

A. Research in Serbia

Around 8.500 scientists are involved in various researches in about 100 registered scientific research organisations (SRO) and over 80 colleges. The Republic of Serbia founded around 35 SROs and the rest of them are research units within enterprises.

The financing of scientific research organisations in Serbia is done in line with the Law on Scientific Research. The law envisages budgetary funding of research exclusively through scientific research and development projects, while the financing of other expenses in the field of science is done under various programmes listed in the law. Unlike other countries, budgetary funds earmarked for scientific research can be allocated only to scientific organisations registered with the Ministry of Science and Environmental Protection, provided they meet the necessary conditions. Such a strict requirement exists because of the limited budget, whose growth will cause relaxation of the financing conditions.

With a view to building a society based on knowledge and active joining in the European Research Zone, a process of revitalisation of scientific research capacities, development of innovative society and basic innovative infrastructure for fast and sustainable development started in Serbia in 2001. Special attention has been paid to providing preconditions for the introduction of information society (e-Europe).

Significant progress has been made in the process of legalisation of the software used in public institutions and academic institutions, which resulted in taking SCG off the "black list" and every year, great budgetary funds are earmarked for the development of conditions necessary for scientific research. Research groups have been included in programmes of cooperation with the EU (since 2001, COST programme, as the Fifth Framework Programme of the EU and since 2002, the Sixth Framework Programme, including the compatibility programme). Our country became a member of the European Initiative for the Competition Advance programme (EURECA) in June 2002.

In late 2003, Serbian Government passed a decision on including Lisbon recommendations of 2000 as well as the "3% goal" of budgetary allocations for research and development by 2010, set in Barcelona in 2002. The decision envisages setting aside 1% of GDP for scientific research in 2007. Now, 0.4% of GDP is earmarked for scientific research, but contributions from the economy are rather low (under 0.1% of GNI). We have to point out that the appropriation, although rather limited at this moment, has increased four times in comparison to 2001. However, although the investment has increased since 2001, in absolute amounts (per capita) they have not reached the level of the countries that have recently joined the European Union (20-25 EUR per capita per year).

B. Scientific development and Information Technology goals

In order to overcome a long-time isolation, division and outdated equipment of scientific research community in Serbia, as well as a number of negative results that this situation has had, it is necessary to work on achieving the following goals:

1. Serbia should reach, as soon as possible, the level of investment in the development that most transitional countries in Europe had in 2002 and that became candidates for the EU membership, i.e. minimum 20 EUR per capita, or appropriation of 150 million EUR.
2. Bearing in mind the EU Lisbon Declaration on reaching the investment level in science and development of 3% GDP in 2010, its contribution to science and development should increase significantly.

In addition to the increased investment in science and development, their influence on economic growth should be enabled too and the best way to do this is to raise the interest of economy in bringing in new technologies. This could be done by not only substituting old technologies with the new ones and investing in innovations in small and medium enterprises, but also by allowing the domination of human knowledge, creative research and expert work and creating opportunities for the development and production of goods that are internationally competitive. The to-date analyses and assessments show that Information Technologies do meet these conditions (development of applicable software, bio-information) as well as biotechnology (agro-bio-technology) and genomics (molecular and biomedicine).

When research requires great investment, research staff should be trained to master the knowledge of new technologies, so that they could carry out their application in industry. Such technologies are nanotechnologies, especially nanomaterials, as well as technologies that use renewable sources of energy.

The proposed Law on Innovative Work encourages the establishment of an innovative system that incorporates education, scientific and development research, as well as development and work of innovative enterprises. National innovative system should enable the transfer of knowledge to the economy and society, development of technological innovations in industry, and the development and work of new innovative enterprises. It is necessary to develop an innovative chain to link all the relevant links in the creation of new and internationally competitive and innovative products and services. It has to enable the realisation of creative ideas with as little as possible material losses.

In order to achieve the set goals and the planned level of investment in the scientific research it is necessary to:

- Determine the dynamics of growth of appropriation for science;
- Define complementary measures to enable greater investment in research on the part of industry and private sector;
- Determine incentive measures for innovative research;
- Determine measures to increase the number and mobility of researchers;
- Determine procedures for mutual recognition of researcher titles;
- Establish excellence centres with a critical mass of researchers;
- Determine incentives for the development and application of Information Technologies;
- Harmonise the legislation in the area of Information Technologies with the EU legislation.

3.2.3. Social security

The EU devotes special attention to the social policy and modernisation of the social sector. With the Lisbon Strategy, the EU aspires to a greater social cohesion, among other things. In order to come closer to this goal, one of the key strategic directions for the EU is the modernisation of the "European social model". At the summit in Nice in 2000, the EU's 2000-2005 Social Policy Agenda was adopted, while the European Commission has already announced its intention to formulate a new agenda for the period 2006-2010. The goals of the new agenda would be the following: modernisation of the social security system, promoting social cohesion and fighting

poverty, promoting equal opportunities etc. At the same time, these aims should be the basic guidelines and some of them are the priorities of the reforms in Serbia.

Generally speaking, the system of social security and protection in Serbia is comparable with the EU one, both by the concept and the way it is organised and by high costs, but the contribution of the private sector in financing is still rather insignificant.

3.2.3.1 Pension system

A. Current situation and problems

The pension system in Serbia is compulsory (public) system, based on the principle of inter-generation solidarity and pay-as-you-go financing. It covers the employed, self-employed (including free-lancers) and farmers and it is therefore organised in three separate funds: the Republican PDI Fund for the Employed, the Republican PDI Fund for the Self-Employed and the Republican PDI Fund for Farmers.

Pension system has been experiencing a long period of crisis. In spite of significant reforms that took place in 2001 and 2003, the pension system is characterised by the adverse ratio of pensioners/insurees, a high ratio between the average pay and pension and inherited debts to pensioners. Contributions do not suffice for the financing of pensions – around 40% of the pension fund's income is subsidised from the budget (the pension fund's annual deficit is around 6% of GDP).

Because of the short-term problems caused by the way the pension system has been managed in the past decades (primarily in the nineties), it is quite certain that this concept of pension system will be facing even bigger financial problems in the future¹⁸.

The reform of the public pension insurance started in 2001 when in just one move (rather than gradually, as it was done in other countries), the retirement age limit changed to 58 for women and 63 for men. The contribution rate was reduced – it is currently 22 per cent¹⁹. The Swiss model of adjustment of pension growth was introduced, according to which the growth of pensions equally follows the income growth and the growth of the costs of living. In this way, the growth of pensions has considerably slowed down²⁰. Furthermore, the reform continued in March 2003 with a new Law on Pension and Disability Insurance, under which the retiring allowance is determined by the income made during the whole employment period. Thus, a more direct link between the contributions and the amount of retiring allowance was established. In addition, paying contributions on all types of income (royalties, temporary service contract, and work through the youth cooperative for all except students), minimum age limit for all was raised to 53 years of age, considerable changes in the area of disability pensions, etc.

B. Recommendations

According to the existing EU regulations, the pension system is regulated at the level of Member States, individually. Most of the EU Member States also faces reform and modernisation of their pension system. At the sum-

¹⁸ First, in June 2001, the pension contribution was reduced from 32% to 19.6%. By the Decision on the contribution rates for pension and disability insurance of 1 May 2003 (Official Journal of RS, No. 42/33), the collective contribution rate was raised from 19.6% to 20.6%, to go up again to 22% in July.

¹⁹ Effects of these changes are visible already – the ration between an average retirement allowance and an average salary (the so-called replacement rate) was reduced from 80% in 2000 and 76% in 2001, to 67% in 2004.

mit in Lichen in 2001, the European Commission recommended to its members a so-called “open method of cooperation” in the area of pension reform. What it meant was that the Member States would exchange experiences in the reforms of their systems; they would also determine the guidelines for the future, set up reference points and their ultimate goal would be the coordination of the EU Member States’ systems. This “open coordination method” should be monitored during the process of the pension system reform. In this way, experiences of Member States themselves would be used and this would ultimately lead to the gradual approximation to their pension systems.

The reform of the pension system should be **twofold** – there should be a group of measures based on the continuation of the “parameter” reforms (reforms of the compulsory/public fund) and another group – introduction of capitalised pension funds, which represents the essential reform of the pension system..

As regards the “**parameter**” reforms of the public (first) pillar, their aim is raising the efficiency and reduction of the current deficit. Despite the reforms in 2001 and 2003 that have already given good results, reforms of the first pillar should continue. The following measures are recommended in the next stage:

- A merge of the three pension funds – the fund for the employed, for the self-employed and for the farmers – is planned. The aim is to cut the fixed costs of the pension payment service²¹. This, however, will not have a significant momentary effect on the reduction of deficit due to the badly implemented collection of contributions from the farmers. On the other hand, mid-term effects are expected as the number of active insurees in the self-employed fund is growing and it will continue to grow in the future due to the transfer to private economy.
- Improve the area of contribution collection. Some estimates indicate that as many as a million people are employed in the informal sector in Serbia. Besides, there is considerable presence of the black economy in the formal sector as well²². It is therefore necessary to reinforce the functions of tax administration – to reform inspection services, improve the control of inspectors themselves, build up the information system as well as improve the connection between the Tax Administration and PDI fund.
- **Raise the age limit.** There is a trend in the EU to make the age limits for men and women equal – 65 years of age, while in the region, the age limit for men is 62-65 with the tendency to make the age limit for women equal. In the next stage, i.e. in the next two years, the age limit should gradually become closer to the usual age limits in the EU countries.

Within the second category of reforms, there is the **development of private pension funds** on the voluntary basis. Voluntary pension insurance has not been regulated yet in Serbia. There is a number of private pension

²⁰ However, it should not be forgotten that these costs are only about 2% of the total costs of all three funds. At the same time, if their consolidation improves the ration between the insurees and pensioners (to 1.4 in comparison to the current ratio of somewhat over 1.2 in the employed fund). This measure will be financially supported by the World Bank.

²¹ Contributions are not paid on the total amount of salaries. The possibility for this sort of practice has been considerably reduced with the introduction of compulsory contribution on royalties and temporary service contract (under the new Law on Pension and Disability Insurance of 2003).

²² This was at the federal level until 2003. The Insurance Law envisages the existence of initial capital for getting a licence for pension insurance business, but it does not determine the basic principles and rules for their implementation, nor does it envisage its regulation by a by-legal act.

funds that started the practice of voluntary insurance under the Law on Life Insurance²³. However, this type of insurance requires special and rigorous rules for the control of all organisations that are implementing it, because it does carry certain risks.

The Draft Law on Voluntary Pension Funds and Pension Plans is in its final stage and its adoption is pending. It will define the establishment and functioning of such funds as well as the responsibilities of the National Bank of Serbia (NBS) in the supervision of pension funds. A more detailed regulation on how these funds will be controlled should be passed by the NBS as a supervisor of pension funds.

Apart from legal measures relating to the regulation of business operations of pension funds, it is extremely important to define clearly the tax deductions, both for individuals and for employers who would pay contributions in voluntary pension funds on their employees' behalf. The usual practice is that contributions and investments are exempt from tax, while pensions are taxed through the standard income tax.

Majority of the aforementioned measures can have effects in the short or long-term, but does not really help solve the core of the problem. This is why deeper reforms in the pension system are better in the long-term – they should go in the direction of keeping the public system but with the tendency to reduce its contribution in favour of capital pension funds. One of the alternatives is the following: next to the voluntary-based system of private pension funds (the so-called third pillar), the so-called second pillar, i.e. compulsory insurance should be introduced, whereby a portion of income tax is directed to the compulsory capitalised fund rather than paid in the public (pay-as-you-go) fund. At this moment, however, there are no adequate preconditions for the introduction of private insurance and it should be left for a later stage of the pension system reform. In the meantime, experiences of the countries that have introduced the second pillar should be monitored, as well as the experiences in general in the reform of pension systems, and based on the findings formulate a long-term strategy.

3.2.3.2. The health protection system

A. Current situation and problems

The health protection system in the Republic of Serbia belongs in the group of systems with compulsory welfare/health insurance (the so-called *Bismarck Model*). Its characteristics are the following: it covers almost all citizens; there is a wide scope of rights relating to health protection and there is dominant state ownership over the buildings and equipment. The management of the system is distinctly centralised at the republican level. Private sector is underdeveloped.

In spite of considerable allocations from the gross domestic product for health protection from both the public health sector (6.8%) and the total costs that are estimated at as much as 10% of GDP, this system faces constant funding problems.

This situation is detrimental to the basic principles of functioning of the health protection system, which is based on wide range of rights of its users from the period where the level of available GDP was much higher, and it has not undergone serious reforms yet. The availability of health services is limited by the considerable payments from the users' pockets, which is a serious problem for the poorer population (the elderly, the disabled, refugees, Roma, internally displaced persons).

²³ Strategy for Poverty Reduction in Serbia, Government of the Republic of Serbia, 2003

Republican Bureau for Health Protection finances the existing structure – i.e. the well-developed network of medical institutions with a remarkably good provision of medical staff – both those with university degrees and those with higher or secondary education, as well as with administrative and technical staff. The Bureau primarily aims to provide salaries to all medical employees and only after that to cover the costs of medical treatment and care. This way of payment of service providers maintains social peace but it does not stimulate efficiency and work quality. The dissatisfaction with salaries, little motivation for work and lack of knowledge when it comes to the management of a medical institution generates frequent strikes of medical workers.

The reform of the health protection system was late after the October changes in 2002 in comparison with other social sub-systems and it practically started in 2002.

A framework law – the Law on Medications and Medical Supplies, which was produced in cooperation with European experts and harmonised with the EU requirements has been adopted (Official Gazette of RS, No. 84/2004), while the Draft Law on Health Protection and the Draft Law on Medical Workers' Chambers are currently in public debate. A draft of the new Law on Health Protection is planned for the first half of 2005. Apart from the mentioned framework laws, the Law on the Protection of Population from Communicable Diseases and the Law on Sanitary Inspection have been adopted.

The work on strengthening the functions of public health and taking measures for the health promotion and prevention of diseases is done under the European Union projects, through the EAR. Steps are being taken towards the development of electronic health cards and integrated health information system that would connect the primary and secondary levels of health protection.

The whole system of health protection has been mobilised for the introduction of a new culture of constant development of the quality of work, assessment of satisfaction with the health service and preparations for the introduction of licensing and re-licensing of medical workers, as well as accreditation of medical institutions and programmes.

Strengthening of the capacities of the Ministry of Health and medical institutions by educating and acquiring new skills for performing reforms in the system of health protection is also done under several EU and World Bank projects.

B. Recommendations

According to the current EU regulations, health protection and health protection systems are the responsibilities of the EU Member States. They themselves decide how they will manage their health systems, the amount of funds they will spend on health and health protection of their citizens, what medications they will make available to the patients, as well as what health (medical) technologies they will use in diagnostics and medical treatment. However, communicable diseases, illnesses caused by smoking, bad diet and other hazardous behaviour (drugs, alcohol) cross the national borders and are of common interest to the EU Member States. Single market imposes common responsibility for the safety of medications, blood and blood products, as well as tissues and organs used in treatment and transplantations.

With the exception of medications, for which a new law has been adopted as well as most of by-laws, all other areas mentioned above are recognised as priorities in the reform of the health protection system. Strategy for the Provision of Safe Blood and its products has been finalised as well as the Draft Law on Blood Transfusion (the project is financed by the EU) and they are soon to enter public debate. The draft of the Strategy for the To-

bacco Control as well as the draft of the Public Health Strategy has been prepared (projects financed by the EU) and they will be presented to the public in the first half of 2005.

Fundamental documents, representing the basics of reforms in this sector have been adopted. The document called the **Serbian Health Policy** (2002) was created out of the need to define the main development goals and directions of health protection in Serbia. They are: to maintain and improve public health; to provide fair and equal access to health protection for all; to place the users (patients) in the centre of the system; to achieve financial and institutional sustainability of the system; to improve efficiency and work quality with defining special national programmes in the areas of human resources, institution network, health technology and medical supplies; to define the role of the private sector and to improve the human resources base in the system of health protection.

The presence of international collaborators that year, among them the European Union (EAR) and the World Bank, imposed the need to define a clear vision of the health protection system with the development guidelines. **The Vision of the Health Protection System in Serbia** was realised in the consultative meeting of all relevant players in the health protection system in 2002. The general vision of the health sector is based on several premises:

- The future system of health protection in Serbia will develop from the existing capacities and inherited tradition;
- In the future, the principle of solidarity will be the most important one for passing decisions and choosing solutions, and should therefore be continuously respected at all levels. A user of health protection must always be the centre of attention of decision makers at the political, administrative and professional levels, as service providers;
- Although the aim has to be directing all necessary resources towards the provision of the best possible health protection, the development in the years to come should consider financial limitations caused by the country's economic capacities. This should be openly discussed both in political institutions and in the public;
- In the next decade, a controlled change from the current system should lead to a system in which joint action of public and private sectors in providing health services will ensure a health protection system with effective organisation, realistic resources and equal access to services for all. These services will be based on modern technology and contemporary scientific methods, supported by effective preventive and promotional activities.

The working version of the **Strategy with the Action Plan for the Reform of the Health Protection System in the Republic of Serbia by 2015** is based on previous documents and together with them it was presented in the publication of the Serbian Ministry of Health entitled **Better Health for All in the Third Millennium**. By setting up a platform for the Government activities in the health sector, the Strategy has established the priorities stemming from the assessed health of Serbia's population, directed the activities towards those areas that will provide the greatest benefits for the population considering the limited economic capacities of the country and established a partnership between the government and non-government sectors, including a wide spectrum of social and economic terms of reference as well as the terms of reference of various lifestyles in the de-

velopment of programmes and projects that should protect and improve health and prevent diseases, illnesses and injuries.

The priorities set in the reform of health protection system are the reduction of preventable morbidity and premature mortality of population, harmonisation of health protection rights with financial capacities of the society and creation of modern, sustainable, decentralised and transparent system of health protection.

3.2.3.3. Welfare

A. Current situation and problems

Welfare in Serbia covers the help to the poor (individuals or families) to reach the existential income level, the care of the members of vulnerable groups and the support in starting up young families, including giving incentives to childbirth.

From the aspect of the help to the poor, there are two basic programmes in the existing system of social protection: welfare ("financial support for the family") and children's allowance. Welfare in Serbia is of small scope; it is targeted quite well at the poorest citizens, favours small families and mostly covers the undereducated, the unemployed and those incapable to work. Children's allowances are mostly directed to support the poor²⁴.

The existing welfare system has some deficiencies, but they are not as much a result of conceptual weaknesses and as they are the consequences of operational regulation and implementation. The greatest problem is the financial incapacity to fund the necessary level of social protection, primarily considering the large number of the poor in Serbia and the expected number of poor people caused by the transition process. Furthermore, active social policy for vulnerable groups is underdeveloped. There is a lack of alternative forms of social protection in the system of social services.

B. Goals and recommendations

The main goal of social protection is to provide the minimum of social security. The existing system of social protection is essentially good and modern, and its main characteristics, such as the poverty line, supplement to the poverty line etc. should stay.

The reform of social protection is necessary in the area of improved targeting of social transfers:

- In the context of extended aid by means of larger transfers and a network of social protection that would include the most vulnerable groups that now do not meet the criteria for welfare.
- Provide access for all who meet the criteria but currently do not get social protection, such as the Roma, refugees and internally displaced persons from Kosovo.

Targeting has already considerably improved. With the amendments to the Social protection and Social Security Law in 2004, the decentralised criterion for determining the poverty line was substituted by the centralised one (single poverty line on the whole territory of Serbia), indexation of the poverty line with the cost of living was introduced and the right to care and help significantly expanded.

²⁴ Strategy for the Economic Development of Serbia by 2010, Government of the Republic of Serbia, Belgrade, 2002.

An important element of the long-term strategy is the reform of social services, which is moving towards the de-institutionalising, development of alternative forms of social protection and engaging various players in the sphere of service provision. It is important that going to public institutions is not the only option, which is why the opening of objects that would provide alternative forms of social protection and enable de-institutionalising is of particular importance. Such pilot programmes are already being implemented at the local level under the programme of the Fund for Social Innovations and the Fund for Financing Organisations for the Disabled.

3.3 | Sector policies

3.3.1. Industry, SME and entrepreneurship development

3.3.1.1. Industry

A. Current situation

In comparison with other activities, industry contributes to the Serbian GDP most. In 2002, the contribution was 33% and it dropped to 27.6% in 2003. Industrial production in Serbia is dominated by the processing industry (77%), followed by the production and supply of electric power, water and gas (16%) and mining (7%).

Over the decades, industry was the main lever of the economic development of Serbia. Leaning on massive production systems, financed by expensive foreign credits, protected by high customs and other barriers, self-managed, orientated towards the domestic rather than the foreign market, with the large surplus of the employed, Serbian industry was not ready for technological and structural changes in the world economy and on the world market. Together with other economic sectors, industry went through the great crisis and a huge drop in production in the nineties.

After the radical transitional and reform processes in 2001, Serbian industry quickly entered the privatisation and restructuring process of the whole economy, started labelling growth rates again, increased productivity and export performance. However, the heavy burden of the inherited structure and modus operandi in the previous period is still pressuring all areas of industry, especially the metallurgy.

It is a fact that our industry has a very low level of competitiveness and that, with a few exceptions; it cannot compete with the industries around the world. Despite relatively high investments in the seventies and eighties, our industry today uses only traditional technologies of the previous and earlier generations, mostly of foreign origin.

Serbian industry suffers from a serious shortage of human resources. On the one hand, there is a deficit of quality staff for some jobs (e.g. creative management) and on the other, bad conditions have forced a number of good professionals to leave the industry and, quite often, the country too. According to some estimates, the number of lacking managers of all levels and experts of all profiles is around 40,000.²⁵

²⁵ Bearing in mind various development potentials of Serbian industry, building a new export-orientated industrial structure could take the direction of developing »high technologies and specific services - agrocomplex, fine chemical, pharmaceutical, IT, part of electronic industry as well as the development of the service sector (transport, trade, tourism, special services). The Strategy for the Economic Development of Serbi by 2010, Government of the Republic of Serbia, Belgrade, 2002.

As regards the quality infrastructure, Serbia is practically standing on square one. It contains, above all, technical legislation, institution and harmonised procedures for certification, accreditation and notification that is lagging behind the EU one, and at this moment is one of the main barriers to our joining the EU. Besides, the total function of the state in this area is divided, so that passing the laws regulating the quality infrastructure is at the level of the state union, while the law implementation and market control are at the level of the republic. The existing laws on standardisation, metrology and accreditation are conceptually outdated; they do not meet the current or future needs of our economy, and they are not aligned with the concept or procedures of the EU. The same can be concluded about the institutional organisation of quality infrastructure.

B. EU requirements for industry

The basic premise of the economic development strategy is raising the level of product competitiveness based on the growing participation of knowledge, which, among other things, requires the reform of industrial structure in order to enable its integration in the EU economy.

Higher level of competitiveness boosts export capacities of industry, which is evident in the experiences of developed countries. It makes the scope wider and export structure more favourable, with the increased presence of higher quality products and services. It simultaneously reduced the dependence on imports.

Improved competitiveness will not only create better conditions for the existence of foreign companies here; it will help establish better connections between them and domestic enterprises. A modern way of connecting foreign companies with the domestic ones is through technological and organisational innovations. This creates opportunities for the transfer of expertise, helps restructuring, getting financial help etc., which makes domestic firms more competitive and directly and indirectly export-capable.

Bearing this in mind, Serbia could turn to the development of industrial parks, which would later develop into clusters. Clusters are groups of independent companies, usually geographically linked to a region, specialised in a certain area, linked by common technology and know-how. In other words, this is about forming industrial groups (e.g. automotive, electronic or engineering) as accumulations of similar or complementary business activities in a region, with active synergy effects and common strategic approach that enables dynamic growth of these activities as well as the development of accompanying services. The main task of the state is to support this concept of industrial development, provide the necessary transport and other infrastructure, conditions for a fast building of business and production facilities, fiscal incentives and (highly) qualified labour force.²⁶

The process of restructuring and privatisation is the key one for the development of industry. Raising the competitiveness of public infrastructural firms in the area of electric power industry, petroleum and gas industries and transport is imperative, so that it does not slow down the process of boosting the competitiveness of industrial enterprises, i.e. industry in general.

²⁶ Small enterprises employ up to 50 persons, and medium enterprises have 50-250 employees, while the total annual income and average value of assets as the criteria are adjusted to the business conditions in Serbia (maximal annual income for medium enterprises is 10 million EUR, in comparison with 50 million EUR in the EU). European Commission adopted a new recommendation (2003/361/EC) on 6 May 2003, which gives a clearer definition of SMEs and replaced the old one (96-280-EC) on 1 January 2005. The main innovation is the shifted threshold of minimum annual income for small enterprises from 7 to 10 million EUR (total assets from 5 to 10 million) and for medium enterprises from 40 to 50 million EUR (assets from 27 to 43).

In the next stage, one of the key steps in many industrial areas is the re-engineering of production technologies and investing in the superstructure of existing technologies, and then conquering the new ones. Foreign direct investment may be very important here, because they would not only speed up this stage of raising competitiveness, but would ensure its successful realisation. Research and development directly helps conquering new technologies and adds to the raising of technological and overall, knowledge-based, competitiveness of industry.

Finally, the state needs to provide certain conditions to boost the competitiveness of industry. This primarily refers to the quality infrastructure its timely bringing to the level of quality infrastructure that exists in the EU Member States. Economic operators should, as soon as possible, adopt and implement directives of the New Approach of the EU and the CE sign as a unique “passport” indicating the quality of goods. This will contribute to raising the competitiveness of domestic economic operators and facilitate the export of our products to the EU.

Meeting the essential safety, health or environmental requirements, in the form of laws, signifies the willingness of Member States to make sure that every product that is placed on the market is safe for use, harmless for human health and is environmentally friendly. Harmonised standards have to be transferred to the national level and all standards that do not comply with them should be withdrawn in a due period.

As regards the harmonisation requirement in this area, the following should be done:

- To pass new laws on standardisation, accreditation, metrology and technical regulations (the competence of the State Union);
- To establish an adequate system of market control, and create appropriate organisational structure;
- To transfer all directives of the New Approach to our legislation;
- To transfer all harmonised standards to our legislation;
- To modernise institutions of quality infrastructure;
- To develop a system of conformity assessment;
- To create industrial environment that recognises the CE sign;

Bearing in mind the experiences of other countries, it would be best if the laws regulating the quality infrastructure were “the framework” laws, which would provide only general solutions, while specific and concrete solutions would be given in the by-laws passed by the Government. Thus, all directives of the New Approach could be easily transferred to our legislation, by by-legal acts.

It is necessary to develop a modern and in compliance with the EU requirements system of conformity assessment, which would encompass metrology and calibration, research laboratories, certification, inspection and accreditation bodies. The system should enable mutual comparison in the Member States and at the EU level. It has to comply with the ECAP (European Conformity Assessment Protocols).

The state should help the industry, i.e. economy overall, to finalise the big job of adopting directives of the New Approach, harmonised standards, conformity assessment procedures and provision of the CE sign for its products as soon as possible and with as little total cost as possible. By being authorised to use the CE sign on their products, industrial enterprises in Serbia would create conditions for placing their products on the internal EU market, without any later checking or certification, i.e. as quickly as possible and with the minimum expenses.

This would considerably improve their competitiveness and create conditions for keeping the development pace with their competition.

Realisation of all the activities mentioned above has, at the same time, a paramount importance to the protection of domestic market and domestic economy from the unfair competition from abroad, and prevention of the import of products of lesser quality, i.e. fewer products that can harm human health or environment.

3.3.1.2. Small and medium sized enterprises and entrepreneurship

A. Current situation

The driving force of competitiveness, innovations and employment in Europe are small enterprises. The European Union finances a great number of programmes intended for the development of SMEs, and insists on their single definition (to prevent discrimination in the allocation of funds). The definition of SMEs in Serbia complies with the EU definition if the criterion is the number of the employed.²⁷

Like in the EU, small and medium enterprises in Serbia make 99% of active enterprises – out of 68,882 active enterprises in 2003, 66,753 were small and medium enterprises, but small enterprises dominate (96% i.e. 66,091 in 2003)²⁸. Eighty seven per cent of them are privately owned. A bit over 50% of the employed in Serbian industry are employed in SMEs (in the EU, it is 70%) and in 2003²⁹ their participation in the GDP was 39.8% (small 23.3%, and medium 16.5%). This is considerably lower than in the EU, where small and medium enterprises contribute with about 50-60% in GDP.

Provision of funds is one of the main problems of the SME sector. The credit allocation indicators show that crediting is difficult and expensive in Serbia.

A number of activities have been taken so far in order to facilitate the access of the SME sector to the sources of capital. These sources include the Development Fund of the Republic of Serbia, which has placed about 97% of its assets in the SME sector since 2001, the Self-Employment Programme of the Republican Bureau for the Labour Market and the establishment of the Guarantee Fund in 2003. The main function of the Fund is the issuance of guarantees for credits approved for the SMEs by the banks (up to 50%).

In 2003, Serbian Government adopted the *Development Strategy for Small and Medium Enterprises and Entrepreneurship in the Republic of Serbia for the period 2003-2008*. Its main aim is to provide a framework for the creation of sustainable, competitive and export-orientated SME sector. With this aim, the Government has defined the following key elements: strengthen institutional support and respect the interests of the SME sector at all levels; remove legal obstacles for business operations of enterprises and private entrepreneurs; suggest measures for the facilitation of the SME sector's access to the sources of financing; support the application of information and communication technologies in business, and gradually introduce the principles of the e-government, etc. Strengthening and expanding the network of regional SME agencies is of crucial importance in the implementation of the Strategy.

²⁷ Source: Republican Development Bureau, Springtime Analysis of Economic Trends, 2004

²⁸ The last year for which the data is available.

²⁹ Serbia is already using some financial and technical help from the EU (EAR has opened 3 Euro-info correspondence centres in Serbia, the EAR project Support to the Development of Enterprises and Entrepreneurship has started, European Fund for Serbia helps the financing of micro-enterprises, the EU Revolving Fund for SMEs, EBRD helps development of SMEs through local financial mediators, etc.).

In June 2003, with the signing of the Thessalonica Declaration at the EU Summit, Serbia adopted the European Charter on Small and Medium Enterprises.

Serbian Ministry of Economy has produced a Draft Action Plan for the Support of the SME Development, which envisages measures that the state should take to support the small and medium enterprises sector by 2007. The aim of the proposed measures is to remove the limitations for the growth and development of the SME sector, such as:

- Institutional environment and corresponding regulations,
- Insufficient knowledge and training of the entrepreneurs and the employed in the sector,
- Underdeveloped market of business services necessary for the SMEs,
- Adverse conditions of financing and lack of financial support for the SMEs,
- Insufficient innovation mass, inadequate and slow implementation of modern technologies, without which there is no development of export-orientated enterprises and joining the world market competition on equal footing.

B. Strategic development directions of SMEs

The development of SMEs in Serbia is important because of the social nature of the SME sector, i.e. because it would create job opportunities for special categories (young people, women, pensioners, the disabled, etc.). This complies with the structural adjustment of the economy, following the example of the economies of the EU countries. Lisbon Strategy has marked the SME sector as one of the pillars of economic growth of the EU.

Numerous measures and activities have been taken so far and they all add to the creation of stimulating legal and administrative framework for business operations of SMEs, as well as for their improved financing. The most important directions of the future action are:

- To continue the implementation of the SMEs Development Strategy;
- To continue the application of the European Charter on Small Enterprises;
- To apply fully the Law on Registration of Business Entities, create conditions for on-line registration procedures within the new Agency for Business Entities;
- To implement the Bankruptcy Law and strengthen the Agency for the Licensing of Bankruptcy Managers;
- To continue creating conditions for the financing of SMEs. In addition to the reform of banking sector, it is necessary to facilitate approving micro-credits for non-governmental organisations; to strengthen the existing funds for the financing of SMEs and establish a network of regional and local funds; to continue the implementation of the recently founded Guarantee Fund. It is particularly important to acquaint the entrepreneurs with the crediting possibilities;
- To transform and rationalise the Development Fund;
- Complex organisation of the Chamber of Commerce should be rationalised. With this regard, it is necessary to pass a new Law on Chambers of Commerce; to concentrate unique functions of representation, research and development according to the German-Austrian model of organisation, and

- To reinforce entrepreneur education and training.

Finally, it should be born in mind that the EU approves considerable financial assistance to the development of SMEs. Since there is a lack of domestic assets, these opportunities should be taken and used to the full.³⁰

3.3.2. Telecommunications and audio-visual services

3.3.2.1. Telecommunications

A. Current situation

Telecommunication services are regulated by the Telecommunications Law, whose implementation should start when the members of the Management Board have been appointed and the Telecommunications Agency established.

The monopoly over the **fixed line telephone service** has the operator Telecom Serbia a.d., which also provides mobile telephone services. Telecom Serbia has the exclusive right to provide fixed line telephone services until 9 June 2005. The current development level of fixed telecommunications network is still inadequate, judging by the neighbouring and other European countries.

There are two providers of **mobile telephone services** – Mobtel and Telecom, and PTT Serbia co-owns both companies. Although they are successful operators, there are open issues of unresolved owner relations in both companies as well as the problems relating to the conflict of interests.

Although **the Internet service** has not been regulated, there are over 40 Internet-service providers in Serbia, who provide the Internet directly from abroad, while providers of second and third level purchase capacities from them.

A regulatory framework for the introduction of **universal service** is defined by the Telecommunications Law. According to the same law, Telecom Serbia is bound to provide universal service until the expiration of its exclusive rights, but without the right to cover the costs from the Fund for the Remuneration of Costs of Universal Service.

Unsatisfactory situation in the area of **satellite systems** is a result of the unregulated development in the nineties and the war, when the equipment of the main satellite centre in Ivanjica and the satellite station in Krnjaca were destroyed. The centre in Ivanjica has been rebuilt, but it is not operational yet. Apart from Telecom, a number of institutions have regular licences and documentation, while others work without appropriate licences. Due to the substandard regulations in the area of **cable distribution systems**, there are no precise data on the CDS subscribers or operators.

The broadcasting system suffered great damage during the bombing. Another issue is the unregulated situation in the use of radio frequencies. Several hundreds of broadcasting ultra-shortwave sound stations and television stations operate without appropriate licences. The main reason is that the Broadcasting Law and the Telecommunications Law are not being implemented, as well as the lack of accompanying legal regulations.

³⁰UMTS-Universal Mobile Telecommunications System

B. Directions of strategic development

The implementation of the new legal framework is imperative. It implies adoption of the Telecommunications Development Strategy (currently in the drafting stage), with comprehensive institutional reforms. It is necessary to restructure Telecom Serbia. Solving ownership relations and the role of the state regarding the two incumbent operators is of crucial importance.

Development activities in the fixed telecommunications network should be directed towards the accelerated development and digitalisation of the network, development of access network of certain quality and reducing the waiting list. All these activities should result in the targeted penetration of 45% for telephone subscribers and 30% for the Internet users. In order to improve the performance of the existing fixed line network in the future period, gradual substitution with the networks of younger generation (NGN) is necessary. This will enable the provision of new services, such as the intelligent network services and the services of multi-purpose Internet network.

As regards **mobile telecommunications**, it is necessary to increase the percentage of the territory and populations covered by mobile telecom services. It is also necessary to raise the quality of mobile telecommunications services and introduce advanced 2.5G and UMTS³¹-3G systems. With this regard, it is necessary to solve the problem of the frequency scope necessary for the work of UMTS system and determine the number of UMTS and GSM operators.

Technological development of telecommunication networks should make **the Internet** accessible, cheap, fast and safe. Currently the most frequent Internet access is the "dial-up" one. Analogue connection is used and it is inadequate for professional, business and educational applications, which require "on-line" service, i.e. a non-stop connection.

In order to speed up the launch of **universal service** in Serbia, it is necessary to pass complementary regulations, as well as the Project for Accelerated Realisation of Universal Service. The Telecommunications Agency and the Broadcasting Agency should provide, within their responsibilities, separate funds for the realisation of universal and public broadcasting service.

With a view to acquiring **adequate and functional systems**, telecommunication networks for the needs of ZTP, EPS and NIS (by using contemporary radio and optical transport systems) along railways, transmission lines, gas pipelines and petroleum pipelines.

Considering the great interest of population for CDS as a multi-service network with the on-line Internet service, it is necessary to create conditions for connecting as many users as possible and their full protection. It is necessary to reconstruct the existing and build new and modern CDS, and create an open market for all interested service providers.

The development of **satellite communications** will disencumber other telecommunication systems and introduce new services. For the realisation of this goal, the satellite centre in Ivanjica should be re-launched first. In the framework of the development of this Teleport, it is necessary to plan and expand the capacities, as well as the possibility to 'raise' all interested domestic TV programmes to the satellite level. In order to regulate and liberalise the satellite telecommunications market, it is necessary to pass relevant by-legal acts, which will simplify the procedures for getting licences and permits. In line with this, by-laws should be passed, regulating the min-

³¹ The Broadcasting Law and the Law on Public Information prescribe that the media are obligated to present the basic information on the legal entity that founded them, including the address of the founder and the names of responsible persons (editors, editors in chief).

imum technical conditions that the systems and equipment for satellite communication should meet, in compliance with the ITU documents and the EU.

As regards broadcasting systems, it is necessary to regulate the use of radio-frequency spectrum, which requires a Plan of Frequency Distribution that would comply with international regulations. At the Regional Conference on Radio Communications RRC04-06, the schedule of activities for the preliminary stage of submitting applications and trial planning, new digital distributions (The Digital Plan), and submitting the data for the existing and planned analogue distributions (The Analogue Plan, which would be protected during the transitional period). Proposal for the Digital and Analogue Distribution Application should be prepared. It would be provided by the Proposal for the Comprehensive Digital Plan that will be adopted at the conference in 2006. In order to resolve the problem of the reconstruction of public broadcasting service, a separate act that would define the establishment of a fund should be passed. At the conference of the ITU Member States' governments, an ITU Resolution 126 on the Reconstruction of Public Broadcasting Service was passed, while we have the 2003 General Project for the Reconstruction of Public Broadcasting System. The future development of broadcasting services should be based exclusively on digital technologies.

3.3.2.2. Audio-visual services

Within the audio-visual services, the Broadcasting Law, the Law on Public Information and the Telecommunications Law regulate the broadcasting in Serbia. The Cinematography Law is currently being reformed and the Public Advertising Law is in the adoption stage. The latter will regulate advertising in the electronic media. The by-law on privatisation envisages the privatisation of the local media by July 2006. Postponing of the implementation of the Broadcasting Law has blocked the transformation of state broadcasters into public services.

The main regulatory body that monitors **the establishment and business operations of the electronic media** is the Broadcasting Agency. Serbian auditorium can currently watch the programmes of around 1,100 TV and radio stations, with various levels of coverage on the territory of the republic. State owns one national TV and radio broadcaster (Radio Television of Serbia) and a great number of local broadcasters. The first insight in the state of media scene is limited by the fact that most electronic media operate without any licences whatsoever. In the framework of the Serbian Broadcasting Development Strategy, the key goal is the allocation of licences for the use of the ground broadcasting frequencies, which is the responsibility of the Republican Broadcasting Agency.

An important aspect of the media establishment process is prevention of over-concentration of capital in the media ownership. One of the problems is the lack of provisions on transparency, origin and ownership of capital used for the establishment of the media. The Telecommunications Agency and the Broadcasting Agency should take care of the prevention of the concentration of ownership in the media and creation of monopolies on the market.³²

As regards cinematography, the creation of Draft Law on Cinematography is underway (it should replace the existing law of 1991), whose provisions should comply with the European Convention on Cinematographic Co-production and European Agreement on the Exchange of TV films.

³² As regards state aid to the media, EU Directive **80/723/EEC** on the transparency of financial relations (Official Journal L 193, 29 July 2000) treats this sector as a very important one in the development of the whole society, which is why the programme of state subsidies is exempt from the general treatment of state aid. Subsidies refer to the production of programmes in the languages of national minorities and programmes for social groups with special needs.

B. Directions of strategic development

Broadcasting Agency, as the main regulatory body for the electronic media, should prepare a plan, open a competition for the allocation of frequencies and pass clear procedures and conditions for getting a broadcasting licence.

When the Telecommunications Agency, as a responsible institution, is established, it should devise a Plan and Distribution of Frequencies in the ether of the Republic of Serbia. It is then necessary that the broadcasters profile their services clearly and determine their programmes in line with Article 45 of the Broadcasting Law, according to which broadcasters may broadcast comprehensive programmes (informative, scientific, educational, cultural, entertaining and sports); they can broadcast specialised programmes, or they can only concentrate on advertising and sales. This will facilitate a fair allocation of frequencies.

Broadcasting Agency should protect the interests of the underaged and national minorities and sanction the broadcasting of programmes that encourage discrimination, hatred or violence. With this regard, it is necessary to reform the system of financing of special programme contents (programmes in the languages of national minorities, for social groups with special needs, etc.).³³

In the area of audio and video production, it is necessary to regulate the production and distribution of optical discs and develop efficient mechanisms for combating piracy. A major problem is the lack of adequate sanctions for radio-piracy.

By the time it joins the EU, Serbia will have to align its legislation with the EU laws in this area, primarily with the Directive *Television without Frontiers*.³⁴

The key directions of strategic development in the audio-visual sector are definitely the following:

- Adoption of the single Broadcasting Development Strategy;
- Clear and fair distribution of broadcasting frequencies, with the prior definition of procedures for the issuance of licences for the work with the electronic media, and transformation of the state-owned media into public services;
- Creating conditions for making independent editorial policies, with the special attention of public broadcasters to the information principles;
- Active cooperation of responsible state institutions and independent associations on the development of the electronic media programme contents in line with the European principles;
- Encouraging international cooperation on the development of programme contents and programme exchange, and promoting "European contents";
- Developing the system of state aid for the broadcasters in the development of special programme contents;

³³ The Directive Television without Frontiers (89/552/EEC) presents the base for the coordination of national legislations in the following areas: promotion of production and distribution of European works, television advertising and sponsorship, promoting the protection of rights of the underaged and national minorities and the right to reply/damages.

³⁴ Declaration of Principles of the World Summit on the Information Society, International Telecommunication Union, Geneva, 2003.

- Developing the monitoring of programme content in the context of the respect of rights of national minorities and the underaged;
- Establishing an efficient system of copyright protection in the field of cinematography and production and the trade in 'sound and picture carriers'.

3.3.2.3. Information society

A. Existing situation

European Union has set itself a goal of ensuring the conditions for development of an economy based on knowledge generation and development of information society, which is described as a „society in which every person can create, access and share information and knowledge“ and which „enables the individuals, communities and peoples to realise their full potential and enhance their own life quality in a sustainable manner“.³⁵

- As a member of the „Initiative for electronic South East Europe“ (eSEE) that functions within the Stability Pact for South East Europe, Serbia has signed the “Agenda for the Development of Information Society in the South East Europe Region”³⁶ in 2002. This Agenda is aimed at defining the priorities of state policy and assuming the responsibility for faster development of information society in the country and in the region alike the successful European Union initiatives eEurope 2002 and eEurope 2005³⁷. In line with the assumed obligations, the finalization and adoption of the National Strategy for development of information society is due in 2005. The creation of this Strategy was initiated at the end of 2004 by the local UNDP office and the main coordinator is the Ministry for Science and Environmental Protection.

B. Strategic directions of development

Primary goals in the area of development of information-communication technologies and information society in Serbia should comprise of the following:

- Adoption of the Strategy and Action Plan for development of information society in Serbia.
- Active participation of all responsible institutions in creation of an open and competitive telecommunication market, privatization of state monopolies in this field and creation of accessible infrastructure of electronic communication networks. The responsibility of state bodies is reflected in achieving the conditions for free competition and promotion of investment in this area, while the majority of infrastructure would be created by private sector. However, when this is not profitable for the private sector (e.g. in distant and poor areas), the state should intervene by direct infrastructure creation or subsidizing the private sector. Beside that, in the areas where easy and cheap access to electronic communication networks is not possible, the state should stimulate the opening of free points of access within public institutions (libraries, post offices, hospitals, schools, municipality buildings etc.).

³⁵ eSEEurope Agenda for the Development of the Information Society: a cooperative effort to implement the Information Society in South Eastern Europe, <http://www.eseeuropeconference.org/agenda.html>

³⁶ Initiative eEurope 2002 and eEurope 2005, http://europa.eu.int/information_society/eeurope/

³⁷ On the territory of the Republic, there is over 3,809km of railways, out of which 42% are electrified, which is far below the EU average. Furthermore, the percentage of the two-gauged railways is very small (7%). The long-term lack of investment in the maintenance of infrastructure has resulted in reduced speed on a number of railways.

- Ratification of the Council of Europe Convention on cyber crime. Adoption of regulation on international cooperation mechanisms for investigation and prevention of criminal acts under the Convention.
- Ensuring all material and organisational conditions for efficient functioning of **single** institution vested with all necessary authorizations for managing the efforts for information society establishment. This institution might be the reformed Agency for Informatics and Internet, the Sector for Information Society within the Ministry of Science or the entire new Ministry for Information Society merging these two organisations. Beside the key role in initiating and coordinating the work on adoption of regulation in the information society area, establishing active international cooperation (within the process of the World Summit on Information Society, European Union programme in the information society area, regional initiatives such as eSEE etc.), this institution would be responsible for development of consultative mechanisms for inclusion of all stakeholders in the process of development of information society in Serbia.
- Enabling the citizens to acquire necessary knowledge for use of information and communication technologies, as well as general knowledge for screening, classifying and purposeful use of information. This knowledge should be acquired continuously, through elementary, high school and university education, training at work or re-qualification as well as distance learning. This education should be provided for by the state, private sector and through state-private partnerships (which are especially important for ensuring a quality education in distant and poor areas).
- Supporting the projects aimed at transforming the wealth of language, culture and historical heritage into digital form and making it available through electronic communication networks. This will ensure the preservation of identity of ethnic groups in our region and their specificity. Furthermore, global availability of national contents will contribute to the increase of mutual understanding and tolerance, facilitate the cooperation and increase the confidence among the neighbours; greater stability and security in the region will be accomplished and the European integration process stepped up.
- Government (being the major beneficiary) promotion of the development of entire production and service sector in the areas of information and communication technologies through the public procurement systems.

Introduction of information and communication technologies in public administration for improvement of citizen-related activities, rational consumption of public funds, efficient provision of public services and work transparency. The functioning and methodology of application of information and communication technologies should become a basis for the entire public administration reform, Government's and state agencies' decision-making process.

3.3.3. Agriculture

A. Current situation

After the adversities it has faced in the past fifteen years and difficulties that resulted from adjusting to market economy, Serbian agriculture is standing in front a new, big challenge imposed by the EU association. This process will bring along a number of changes in the structure of production, farms, resource management, production control system, access to the market, the way the environment is treated. These changes, however, should not only be a product of European integration process, but also the result of the established economic practices that should penetrate all segments of agricultural business sector.

This process will have its winners and its losers, but generally speaking, Serbian agriculture should aim at increasing the total profit and the EU integration process should benefit all. In this regard, the EU Association Strategy, in the section on agriculture, requires a serious approach through a detailed knowledge and definition of economic rules that will make it possible to avoid the situation in which the course of reforms in agriculture changes to the negative in accordance with individual interests. This is why this document is a necessary starting point for a planned, coordinated, and precisely scheduled activity with clearly defined players and their responsibilities. It has to present an effective integration of scientific and expert potentials and experiences in the country as well as examples of good practices from abroad.

In any case, it is clear that, based on the experience of new EU Member States, Serbian agriculture will benefit greatly from joining the EU:

1. Free and unlimited access to the world's greatest agricultural market.
2. A sophisticated system of veterinary, phyto-sanitary, food safety and quality standards, which will provide enough security both for the domestic consumers and for the domestic producers, and it will enable the access to foreign markets, both the EU ones and those outside the EU.
3. Considerable funding that Serbia will receive from the EU budget under the Common Agricultural Policy and the programme of rural development.

However, in order to get maximum benefit from the EU integration, Serbia needs to provide the necessary legal framework for each stage of process, so that administration and agrarian industry are ready to take the challenges that the EU brings.

A. Current situation

Thanks to the natural characteristics of its petroleum, climate and water resources, Serbia has a great potential in agriculture, which is not fully used. With adequate agrarian policy, agriculture can contribute significantly to the economic development of the country. Within the structure of realised value of agricultural production, 58% is farm production and 42% is livestock breeding (in the EU, 70% cattle growing and 30% farm production).

Serbia has around 5,111,000 hectares of farming land (0.60ha per capita), 4,255,000 hectares of arable land (0.50ha per capita), which is above the European standard. Eighty-four per cent of farming land is in private ownership (3,574,200ha), and 16% is in the ownership of state or enterprises (680,800ha).

The size of estates is very heterogeneous. Most enterprise-owners are in the category of up to 5,000ha (55.3%) and the fewest in the category of over 5,000ha (2.9%). Fragmented estates are characteristic of 871,000 private farms, farms of 3ha (58.1%) estates dominate, and only 0.8% of farms have estates of 15-20ha, and 0.5% have estates larger than 20ha.

The built-up and the level of technical and technological equipment in the Serbian food industry is not a limiting factor of agricultural growth or its restructuring in the process of augmentation of industrial plants, vegetables and fruit production. However, the capacities are relatively underused, both in the overall industry of processing of farming produce and in some of its aspects in particular.

Agriculture contributes to the GDP with around 21% (with food industry it is around 40%), it employs over 10% of employees, and it participates with 26% in the exports.

Trade balance of Serbian agriculture is almost balanced out. In 2004, over 95% of the imports were covered with exports. The greatest trade partner is the EU. The exports are dominated by raw materials and semi-processed products (fruit and vegetables 33%, cereals 12%, sugar and conditor products 20%, etc.).

Privatisation in agriculture is slow. Only a small number of enterprises from the agricultural and food sector are privatised. Another problem is the privatisation of large, 'strategic' plants.

B. Strategic directions

In late 2004, the Agricultural Strategy of Serbia was presented. It officially defined the aims of Serbian agrarian policy and proposed its new directions that should be implemented in order to achieve the set goals.

Basic directions:

- Restructuring (of producers, ownership and institutions);
- Development of market and market mechanisms;
- Rural development and environmental protection.

Key strategic goals:

- Build sustainable and efficient agricultural sector that can compete on the world market, contributing to the growth of national income.
- Provide food that meets consumers' needs regarding their quality and safety.
- Secure support to the living standard of people who depend on agriculture but are not able to keep the pace with economic reforms;
- To provide support to the sustainable rural growth;
- To prepare Serbian agriculture for the integration in the EU;
- To prepare the policy of domestic support and trade in agriculture for the WTO rules;

Agricultural Strategy of Serbia defines problems in detail, determines goals and given recommendations for a range of issues that Serbian agriculture is facing today and which are connected with the Government's role in agriculture, building functional market of products, land and credit, institution building, developing research, education and transfer of know-how, forestry and water policies, maintaining rural values and developing rural areas with the protection of the environment. All the activities proposed in the Strategy are in full compliance with the EU standards. This is why the Strategy for the EU Accession, in the section on agriculture, gives only basic goals and task of Serbian agriculture on the road to integration into the CAP, while the Agricultural Strategy defines measures and obligations that the Ministry of Agriculture, Forestry and Water Management and other links in the agricultural chain should take in order to achieve the set goals.

Therefore, one of the main aims of Serbian agriculture is its integration in the EU Common Agricultural Policy and then the realisation of the second Copenhagen criterion – to be competitive in such an environment. On this road, the EU provides all sorts of assistance, which becomes bigger with the approach of the day when the country will join the EU and with the realisation of previously set goals. This journey will have three stages:

Stage 1 – This stage has long started and the main aims that should be realised with direct support are the following: abolishment of visible trade, building a credit market, building trade infrastructure, abolishment of existing monopolies, improvement of productivity, restructuring production towards growing more profitable

crops, expansion of estates, orientation towards the food safety and quality, building mechanisms and modalities for adequate use of funds for rural development, forming producer, cattle and vineyard registers.

Prerequisites for the finalisation of this stage are joining the WTO, establishment of the Agency for Rural Payments, finalisation of privatisation in the agro-complex and reduction of visible trade to the minimum. Trends that should characterise this stage of direct support are the following:

- Gradual reduction of market support, with the subsidies for industrial plants being reduced faster than the subsidies for milk;
- Support should be provided only for registered producers. For industrial plants and all other incentives as of 2005, and for milk when cattle labelling is finished;
- Support through the input recourse (fuel and fertilisers) should be maintained at the current level;
- Gradual increase of funds for rural development;
- Gradual introduction of payment separated from production for the areas with adverse production conditions and estates run by old people;
- Extension and launch of new measures for the support directed towards restructuring, increase of the recourse for cattle, improvement of petroleum quality, recourse for new plants, changing sowing structure, insurance premiums, market information system, advisory services, classification system and product grading, units for the development of exports, enhancing customs and domestic inspection services;
- Support to the credit market should remain at the current level.

Stage 2 – This stage is between the current situation and the stage preceding the EU accession. How long it will last depends on the speed of reform and the realisation of goals set in Stage 1. Prerequisites that should be met in order to finalise this stage are the built payment mechanisms, partly built-up land, credit, input and production markets, and getting the status of the EU accession candidate. The characteristic of this stage of direct support are the following;

- Further reduction, until total abolishment, of market support;
- Gradual abolishment of input recourse;
- Gradual reduction of support to the credit market and transfer to the banking sector;
- Increase of non-repayable funds for rural development;
- Increased payments for underdeveloped areas and old peoples' households separated from production;
- Maintaining the same level of support directed towards structural changes;
- Setting up payments for environmental protection;

Stage 3 – This stage implies that Serbian agriculture is on the threshold of joining the EU Common Agricultural Policy, which is why the EU system of direct support is accepted. This will probably mean direct payments per hectare completely separated from production, direction of funds to the rural development and environmental protection through the building of multifunctional agriculture.

C. The EU harmonisation requirements

Before Serbia becomes the EU member, the Stabilisation and Association Agreement will create the free trade zone that will include Serbia, its neighbours and 25 EU countries. Inside this free trade zone, Serbia has little or no chance to protect itself from import, which is why it is essential that agricultural and food products are competitive to the EU products with both their price and the quality.

What Serbia needs to do is to adopt a set of laws, regulations and procedures under which the Union functions. In the agricultural sector, they are legal standards, common agricultural policy and the so-called 'structural funds'. Although Serbia has to adopt fully all the rules and procedures, the order in which to do this is quite important but it also varies from one area to another.

Legal standards referring to agriculture are quite abundant. They cover everything – from animal health, plant health and food safety to the product labelling and consumer protection. Some of these rules, such as the EU standards for abattoirs and dairies should be implemented as soon as possible, because without them Serbia will not be able to get the passage to the EU market.

Common Agrarian Policy (CAP) consists of mechanisms for the administration of the central massive agrarian budget of the EU whose 40 billion EUR make almost a half of the total common budget of the EU. Before Serbia joins the EU and starts participating in the allocation of the total EU budget it is not obligated to apply CAP, but it has to develop and test various mechanisms of implementation before it becomes a member.

Another key element of agriculture is the **EU system of structural funds**, i.e. financial measures for rural and regional development. Many countries have already greatly benefited from the many millions of pre-assistance that were allocated through the mechanisms similar to those used with structural funds. The sooner Serbia establishes these mechanisms the sooner it will be able to use the funds, when they become available. This is why the Strategy envisages creation of a plan of support to the rural development.

Veterinary and phyto-sanitary control and food control

This is about measures that influence a wide spectrum of activities in the area of growing, production and processing of cattle, meat and meat products, fish and fish products, as well as crops. The aim of these controls is to secure consumer protection, public health, animal and plant health by passing single rules to regulate the trade in livestock, meat, meat products, fruit, vegetables, crops, and other plants.

In order to join the EU and WTO, and above all the international trade tendencies, Serbia needs to harmonise the existing legislation with the international one and to implement it.

The European Union has detailed regulations that provide a system of integrated control in the food production, constantly monitor and control communicable and quarantine animal and plant diseases. Unlike the EU Common Agrarian Policy, this is only applicable in the EU Member States, every country that exports food or farm produce to the EU has to comply fully with the existing EU legislation. Thus, the aim is full harmonisation with the veterinary, phyto-sanitary and sanitary standards of the EU. Realisation of this goal will require a staged approach in order to leave time for the adjustments and structure controls.

Therefore, it is necessary to:

- Pass the Strategy for the Veterinary, Phyto-Sanitary and Food Control;
- Adopt laws on veterinary, phyto-sanitary and food control as a base for systematic harmonisation with the EU;
- Establish the structures necessary for the implementation, such as the Agency for Laboratories, Estate Register, Plant Passports and the Animal Labelling System;
- Harmonise regulations on production of seeds and seedling materials with international standards ;
- Establish a system of plant species protection (as intellectual property);
- Improve the system of recognition of species by means of creating the basis for conducting DUS tests.

Legislation in the area of agricultural market

In the area of the EU Common Agricultural Policy, common market organisation ('market organisations') takes the central place. In some agricultural sectors, free movement of products is covered by the rules of relevant market organisation, among others, the conformity with various quality and packaging standards and product labelling, together with the rules on product labelling, analyses, inspection and control. Furthermore, rules on protection of the origin of goods labels and protected geographical origin labels should be considered as well.

Food sector also has its requirements regarding agriculture as the raw material base. This is why the GPP (good production practice), ISO system, NASSR and other advanced solutions appear in agriculture. However, we are lagging behind in meeting the market quality requirements. Improved quality is connected with a number of difficulties of organisational and other nature in fragmented agriculture. Therefore, we are obligated to introduce gradually the quality standards and rules on exhibiting and labelling, which would be closer to the ones in the EU, as well as to comply with the EU health and environmental standards.

Besides, assistance in the improvement of technical agricultural performance is expected, both through the advisory services for the farmers and through the greater involvement of institutes and programmes for structural adjustments.

Finally, requirements for faster adjustments of our agrarian policy with the Common Agrarian Policy of the EU will depend on the announced reform moves of the EU in this area after 2006 (until then, the set measures of budgetary support are determined). They will be definitely directed towards support reduction, moving the funds more towards the sustainable growth project, environmental protection and support to 'organic' production. In other words, we have yet to face a lot of the unknown in this area, apart from the agrarian legislation.

3.3.4. Transport

A. Current situation

The transport development degree and situation in the transport system of Serbia can be evaluated as follows:

- The transport system is not in full conformity with the transport needs of the country's economy and population;
- Domestic equipment, technology and management are lower than the average in the EU countries;
- Transport network is not fully built and in some sections it does not provide the level of service required for the rank of the transport line;
- Advantages of natural and infrastructural potentials for the functioning of certain transport lines (especially railway and river) are underexploited;
- The transport system is not efficient enough;
- Integral transport is practically in its infancy. The safety degree of transport is among the lowest in Europe, partly due to the inadequate legal adjustments to the EU safety standards, and partly due to the outdated and technically worn out vehicles and infrastructure;
- Nearly entire transport infrastructure was damaged during the NATO bombing;
- Finally, there is an evident lack of plans, studies and projects for the road network, which could create conditions for investment in the Serbian road network.

Transport functioning is defined by a great number of legal acts – over 70 orders, decision, rule-books, laws and by-laws. This is where numerous international conventions and/or bilateral agreements on transport belong too.

In addition to the activity regulation, the transport area within the EU also means liberalisation and deregulation, clear separation of some activities from the state and definition of equal conditions for business dealings in both the inter-sector sense and the intra-sector sense, as well setting solid and unified (primarily quality) standards, etc.

Road transport – Road transport is the most developed aspect of transport in Serbia, measured by the spread of transport infrastructure, quality of mobile assets and market participation. Good geographical position and density of road network offer an opportunity to attract the Europe-Near East transit flow, but it is necessary to build more motorway sections on European routes E-75 and E-80 and improve the level of maintenance of the road network in order to make use of these advantages.

Railway transport – Railway transport is characterised by bad infrastructural objects and trains³⁸, low quality of service, increasing debts that ZTP Beograd cannot pay off, high cost of business operations, inadequately organised system, incapacity to operate under market-based conditions and isolation in relation to the European transport system.

Bearing in mind the advantages of the long-distance railway transport of goods, railway transport does not take the appropriate position in the transport system of the Republic of Serbia. This is partly a result of the inadequate transport price policy as well as the slow adjusting of ZTP Beograd to the market business.

River transport – Serbia disposes of considerable natural and geographical advantages for the development of river transport.³⁹ However, this aspect of transport is underused.

A long-lasting process of disinvestment in river transport has been taking place, although all EU recommendations identify river transport as one of the most propulsive types of transport, especially for cheap and massive loads. European plans for transport development by means of pan European corridors crossing paths on our territory (Corridor X and Corridor VII – Danube) and planned re-division of the flow of goods in Europe from road to river transport was one of the key strategic goals of our country.

Air transport – Air transport is the youngest, yet the most propulsive transport branch, all over the world affected by reinforced influences and regulations on the part of the state. National air company, JAT, has started the process of organisational, staff and market restructuring.

As for the regulations, in line with the Constitutional Charter, the Agency for Flight Control at the level of Serbia-Montenegro has been established so far, as well as the Directorate for Civil Aviation of SCG. The existing Law on Air Transport is still in force, while the new legal act is underway.

B. Strategic aspects of approximation of Serbian transport system with the EU one

The short-term strategic recommendations for the approximation of Serbian transport system to the EU one should be linked primarily to the following: 1) revitalisation of all segments of the transport system, 2) continuous current and investment maintenance of infrastructure, 3) current and investment maintenance of mobile

³⁸ The total length of waterways is around 1,600km (the Danube 588km, the Sava 207km, the Tisa 164km, the Tamis 41km and DTD channels 599km).

³⁹ With this regard, the EAR has approved a fund for the experts who will produce the study.

(transport and operational) capacities and 4) acquiring new capacities, especially in cases of simple renewal of existing capacities that can be put back in function or else are not worth it.

In the mid- and long-term, the strategy for Serbian transport system should enable the realisation of at least three strategic goals: 1) faster development and raising to the higher technical, technological and organisational level of the whole transport system, which creates preconditions for more efficient and more rational meeting the transport needs as well as reaching European standards, 2) establishment of such a structure of transport system and a transport services market that correspond to the valorisation of competitive advantages of all transport branches on certain routes and 3) further integration of domestic into international transport tendencies, according to the existing harmonised corridors at the EU level.

On the road to the EU, much more market behaviour in the area of transport will be needed than before. This especially refers to big railway and air transport enterprises. Finalisation of the privatisation process in the field of road transport is surely one of the short-term goals. With this regard, revitalisation and significant investment in river transport should be taken into consideration as well. An especially important strategic place should be reserved for the development of integral transport as a more efficient way of delivering goods to the biggest EU centres, especially via rivers.

Furthermore, through the policy of harmonisation of business condition, and with a view to the more significant deregulation and liberalisation of transport market, the state should even out the starting position of all transport aspects in the context of providing the priority and equal investment in the infrastructure, with a mild favouring of railway transport (for long and medium distances – over 200km) and river transport (investing in wharfs, especially near big firms, and in the infrastructure of integral transport).

As regards harmonisation of conditions, modern European concepts should be applied. This means that every user, in relation to the degree of the infrastructure use, should bear its maintenance costs. In the area of air and river transport this is relatively successfully solved; formal problems that existed in the railway transport (the same firm manages both the infrastructure and the transport) will be gradually resolved by the application of the new Railway Law, while it is necessary to improve the fairness in the fees paid for the use of road transport infrastructure.

Investment priorities in the area of infrastructure should be:

1. **road transport:** modernisation of the main trunk roads (development and application of the HDM-IV model to determine rehabilitation priorities), especially those that are the integral part of the European road network, the most important being the E-75, E-80, E-763 trunk roads, completion of the Belgrade bypass, etc; it is also necessary to set up a system for continuous monitoring of the situation and to maintain the infrastructure;
2. **railway transport:** it should be invested in trunk roads, which not only concentrate the national but also the international and transit goods and passenger flows: E-85, E-70, E-79, E-85, E-66, E-771 etc;
3. **river transport:** 1) renovating of the existing wharfs, 2) connecting big firms with the Danube (e.g. US Steel, which is only 12km away from the river), 3) investing in the infrastructure of integral transport (Makis near Belgrade and the vicinity of Backa Palanka);

4. **air transport:** 1) improving the equipment and the overall offer on the existing airports (especially in Belgrade, which can become a cargo centre of the Balkans), 2) investing in the development of small sport and tourist airports (e.g. in Vrsac and Sombor, or on Zlatibor).

Special attention should be paid to the restructuring of large transport systems, primarily ZTP Beograd (railway) and JAT (air transport).

In the period to come, Serbia also has to pass a National Transport System Development Strategy. This should be a short-term priority, as the current document (*Transport Development Strategy and Policy until 2010* of 1998) needs improvements.⁴⁰

On Serbia's road to the EU, regional cooperation is also important, i.e. further review of the Memorandum of Understanding on the Development of the Central Transport Network in the Southeast Europe. Five countries signed the document in 2004 (Serbia-Montenegro, Croatia, Bosnia-Herzegovina, Macedonia and Albania). The first step has already been taken, i.e. the South Eastern European Transport Observatory (SEETO) has been established, with the permanent secretariat in Belgrade.

Further steps on the path to integration into European transport trends refer to the intensified activities of our representatives in the high-level group for the extension of main EU trans-European axis to the neighbouring countries and regions. A preliminary result of the work done by the representatives of the Ministry of Capital Investments is that, in early March, the EU accepted our projects on Corridors E-7 (the entire navigable flow of the Danube through Serbia) and E-10 (out of about 800km of roads, 450km have been completed). The realisation of projects connected with these two corridors will be financed by European and world institutions and banks, our country, and largely by foreign concessionaires.

Bases of legal harmonisation of Serbian and the EU transport operations

The EU transport is exceptionally harmonised. The essence of the EU common transport policy comes down to three goals: 1) improvement of the quality of transport services, 2) environmental protection, raising the level of safety and strengthening of competition within and among transport branches, and 3) establishment of transport connections with 'the third world'.

In order to approach these requirements, Serbia needs to: a) gradually remove the remaining artificial barriers within every branch transport, b) implement the liberalisation simultaneously with passing the regulations that would conform to the EU standards in the area of professional classification, safety, social measures and obligations relating to public services, c) align rules on the access to the profession of road and river carriers with the EU standards, d) pass compensation measures within the state aid to the public transport with a view to continue creating non-discriminatory conditions on the market, e) separate, both factually and clearly, the functioning of railway infrastructure from the railway transportation firms, and f) conclude contracts on the access to the air transport service market and adjust to the rest of regulations of the EU's common policy in this area.

More specifically, Serbia needs to pass, amend and harmonise with the EU standards the following transport laws in the next year or two: comply with the *Open Sky Agreement*, Law on Public Roads, Law on the Road Safety, Law on the Road Transportation of Passengers, and the Law on the Road Transportation of Cargo, start the implementation of the Railway Law.

⁴⁰ Already, enterprises that invest less than 100,000 EUR and employ at least 5 persons are exempt from the income tax for 20 years.

3.3.5. Energy

A. Existing situation

The area of energy is regulated by the new Law on Energy and the Law on Mining, which are harmonised with the EU regulations in sense of creation of non-discriminatory conditions for transfer, transport and trade in electric energy and natural gas in the entire region. What is also important for this sector are the laws regulating concessions, obligations related to environmental protection, the manner of facility building, as well as by-laws regulating the conditions for consumers' energy supply and the rules of operation and obligations of persons performing energy-related activities. The Energy Law defines institutional, structural-organisational, economic-operational and ownership changes in public energy companies, establishing the new rules for performance of energy-related activities and operation, as well as development of energy-related subjects. The Law also promotes the aims of energy policy and lays down the obligation to pass the Serbian Strategy for energy development for the period of at least ten years.

The general structure of Serbian energy field is comprised of oil and gas, coal pits, electrical energy and decentralized systems of town heating stations and industrial energy.

By January 2005, the Electric Energy Sector is functioning in form of vertically-integrated energy subjects within the Serbian electric power company (*Elektroprivreda Srbije – JP EPS*) which performs production, transfer, distribution and management of electric energy system, including the lignite land pits. Serbian oil and gas sector is organised within one public company NIS (*JP NIS*).

Somewhat "neglected" technological state of production facilities in all energy sectors, caused by reduced repair and maintenance investment throughout the past decade and partial destruction in the 1999 NATO intervention, was successfully repaired, rehabilitated and modernized over the past four years – primarily the electrical energy system and town heating system, thanks to the financial support of the international community (EU and bilateral assistance of certain countries). However, as the donations have ceased and due to the inappropriate prices for electrical and thermal energy, the electric companies are not capable of resuming further increase and maintenance of the achieved level of equipment reliability, production and distribution of these two types of energy, let alone to increase the efficiency of production, transport and distribution and especially to invest in measures for reduction of threat to environment.

The scope and structure of **energy reserves and resources** of Serbia are rather unfavourable. The reserves of quality energy products - oil and gas are low and participate with 1% in the total balance reserves of Serbia, while various coals, primarily low-quality lignite, represent the remaining 99%. The most important renewable energy resource of Serbia is hydro potential (around 17.000 GWh), more than 10.000 GWh being used so far. The remaining technically usable hydro potential is mostly at the "border" rivers of Serbia, whose consumption implies the need for mutual agreement.

The remaining renewable energy resources relate to biomass, hydro potential of geothermal waters, wind and solar energy, with annual potential of more than 3 toe, 80% whereof relates to biomass potential. At around 900 sites along Serbian rivers there are possibilities for construction of small hydro stations (to 10 MW), with possible production of around 1800 GWh.

B. Strategic directions of development and harmonisation with EU requirements

With the aim of opening domestic energy market and its harmonisation with the EU market, the main strategic development directions are:

Reform of legislative-institutional framework – The Law on Energy provides for fulfillment of non-discriminatory conditions for transfer, transport and trade in energy products. The implementation of the Energy Law requires the establishment of appropriate institutional framework comprising of: the Energy Agency, Transmission system operator, Operator for electrical energy market, Operator for transport system for natural gas and Energy Efficiency Agency.

Energy Agency is the most important new institution that operates independently from other subjects and it is responsible for issuing the licences for performing the energy-related activity, approval of rulebook on energy market operation and approval of prices set by energy subjects whose operation is regulated, for establishing the methodology for calculation of justified costs of certain energy subject activities.

Energy Efficiency Agency has already become operational and pursuant to the Energy Law it performs the activities for enhancement of efficiency of final energy consumption, as well as for promotion of rational use of primary energy sources. Furthermore, it proposes the adoption of legal regulation for stimulating the energy subjects and consumers to apply appropriate measures for increasing the energy efficiency, economising, rational and efficient consumption of final energy and promotes the use of renewable energy sources.

Structural-organisational and property changes – two directions of changes: the first implies gradual separation of certain parts of previously vertically-integrated *EPS* that do not perform the main electric industry activities, aimed at their privatization and enabling them to operate independently. The second relates to the right to establish two legally independent energy subjects from the parts of *EPS* which deal with basic energy activities. By Serbian Government Decision, the managing bodies have been established in May this year.

The first subject has been created from the present System for power transfer and parts of *EPS* dealing with system management functions, which remains in the state ownership (public company Serbian Electric Power Network – *EMS Elektromreža Srbije*). The second subject was established from present companies for production of electric energy (including the lignite land pits), and present companies for power distribution; as such, it remains in the property of complex electric power company – present public company Serbian Electric Power Company (*EPS – Elektroprivreda Srbije*).

In the area of oil and industry, the Ministry of Energy and Mining will, in line with the previous studies and JP NIS bodies, propose to the Serbian Government a model of structural, organisational and ownership changes in the existing Serbian company in oil and gas industry.

In the new conditions of social-economic reforms in Serbia and political orientation of our country for EU accession, the Strategy for Serbian energy development until 2015, adopted by the Parliament on 23 May this year, defines the energy needs (in compliance with energy services in consumption sectors the scope and structure of final energy was established, and in line with the scope and structure of domestic production of primary energy and energy infrastructure, total demand of primary energy is established) in line with basic energy, specific technology, ecology and strategic development goals of new Serbian energy policy and presumptions of macroeconomic and economic growth of relevant Republican sectors.

For ensuring the mentioned energy demands, priority development programmes were defined for the entire energy system in Serbia (energy production systems and energy consumption sectors), whose gradual realization is expected to provide for safe production and reliable supply of industry and citizens, greater environmental protection and higher quality of energy services, including the reduction of costs for energy services, both at the level of the country and individual consumers, to the measure acceptable for our economic development.

In compliance with the promoted goals of the Serbian energy policy and basic principles for establishment of energy needs, the selected Priority programmes, with variable programme contents but complementary from the aspect of work harmonisation and development of the overall energy system and gradual but consistent realization of promoted goals, both regarding the safety of industry and household supply and policy for rational and efficient use of energy, including the more intensive use of new renewable energy sources and economically justifiable and ecologically acceptable environmental protection.

- **The first-basic Priority of continuous technology modernization** of the existing energy facilities systems/resources, in all energy production systems.
- **The second-directed Priority of rational use of quality energy products** covering primarily the substitution of electric energy consumption by consumption of natural gas for heating services in the household sector and public and commercial activities, and especially the increase of energy efficiency in production, distribution and use of energy.
- **The third-specific Priority of NRES use** (new renewable energy sources, especially biomass and small hydro power etc. sources) and introduction of new, more efficient and ecologically acceptable energy technologies and devices.
- **The fourth – optional Priority for extraordinary/emergency investment into new electric energy resources**, with new gas technologies (combined gas-steam thermal energy plants), in case of extremely dynamic economic development of the country and aggravated conditions for electric energy supply from the existing resources or from the neighbourhood.
- **The fifth-long-term development and regional strategic Priority**, construction of new energy infrastructure facilities, electric energy and thermal resources (so-called substitute capacities), as well as capital-intensive energy infrastructure within the regional and pan-European infrastructure systems.

The first three Priority programmes, which have been recognized before the establishment of energy needs until 2015 in compliance with the selected scenarios for economic and industrial development of Serbia, are **de facto** “imposed” on the existing energy-technological and economic-ecological conditions in the overall energy system, which is why their gradual and consistent realization represents a precondition for economically certain, energy-efficient and ecologically acceptable development of Serbian energy in the following period. The content of programme, realization dynamics and scope of investment into new electric energy resources (fourth and fifth Priority) depend on the dynamics of economic development, scope and structure of energy requirements, as well as economic-energy conditions in the neighbourhood, especially from the aspect of development of regional and pan-European electric energy and natural gas market.

Beside the specific technology-ecological (in energy production systems) and energy-structural limitations (in energy consumption sectors), Serbian economy and its energy sector are exposed to other limitations, the most

intense being objective natural limitations such as available energy resources in Serbia – both quality energy (oil, natural gas and quality oil) and limited reserves of lignite in the entire Central Serbia, including the uncertain agreement with former Yugoslav Republics on utilization of the remaining technically usable hydro potential, as well as imposed political limitations such as the access of Serbian energy sector to a part of electric energy infrastructure and exploitation of largest lignite resources located in Kosovo-Metohia basins for production of electric energy in the thermal power plants in Central Serbia (along the administrative border with Kosovo and Metohia).

Key elements of the new energy policy of Serbia are the following: Main goals, Priority programmes selected from the aspect of goal realization and appropriate social-economic and systemic-sectoral Measures and Instruments, which enable the realization of the selected Priorities.

The main mechanisms of social impact on market operation, the increase of financial stability of economic subjects and exploitation of development potentials of energy industry for attaining the sustainable socio-economic development of the country are reflected in the adoption of the following measures:

- Measures for establishing a rational market environment, harmonisation of tariff and price, tax, customs, anti-monopoly regulation, as well as measures of structural reorganisation of energy sector and more efficient supervision and management of social property in the energy industry;
- Measures for establishing new and modern technical regulation, provisions and standards for energy technologies/activities and introduction of special instruments for stimulating the activities for rational use and efficient consumption of energy, including the establishment of an agency for monitoring and managing the reform processes in energy industry i.e. monitoring the realization of Serbian Strategy for energy development, in compliance with the economic development of the country and energy environment in the country and in the region;
- Measures for harmonisation of dynamics of energy sector reform for achieving the conditions for equal access of South East European countries in the Energy Community (ECSSE Treaty), whose establishment is expected in mid-2005;
- Measures for establishing the basis for ratification of Kyoto Protocol and our obligations arising from its implementation and incorporated in our regulation and practice, including the institutional organisation for our participation in use of appropriate concessions under certain mechanisms of Kyoto Protocol implementation;
- Measures for stimulating and supporting the strategic initiatives in the domain of investment into new energy resources/technologies and energy efficient equipment/devices for energy exploitation i.e. Measures of financial stimulation of private investment into economic-efficient programmes/projects of energy efficiency and selective exploitation of renewable energy resources, including the Measures for establishment of National fund for the abovementioned programmes/projects;
- Measures for balanced policy of social protection of poorest population groups and protection of economic status of energy subjects, through harmonisation of energy product prices with “justified” costs of electric and thermal energy. In this sense, the prices of energy products should be incentive for rational use and efficient consumption of energy and stimulate the increase of economic competitiveness and

population living standard in the “transition” period of regulation/harmonisation of energy product prices and/or subsidization of poorest population category, especially in the period of slow recovering of economic development and slow population standard growth.

The instruments for implementation of new energy policy and in relation to that the realization of Priority programmes of the Strategy are “reflected” in new legislative and institutional frameworks for work and activities of energy subjects and in reorganisation of the existing structure of public energy companies, in their work and operation, primarily in market regulated conditions and subsequently in liberalised and competition-free energy market. As a logistic support for these instruments, it is envisaged that specific programmes be adopted, such as the Serbian Energy Efficiency Programme, Programme for new renewable energy resources, Programme for environmental protection, Programme for scientific-research and technological development, Programme for directed education and personnel improvement for existing and new jobs in energy sector, including the introduction of modern System of energy statistics and an additional specific energy regulation for renewal of energy activities in new conditions, both in the country and in the region.

Respecting the current energy-technological status of the entire energy system and economic situation in the country and in the region, the reform of Serbian energy sectors was promoted as well as gradual realization of Priority programmes of the Strategy for Serbian energy development until 2015 should enable the following:

- Harmonised development of energy production sectors with energy requirements of the energy consumption sectors, with minimum social expenditure for energy supply and economically acceptable and energy efficient substitution of final energy products. Stimulation of competitiveness of domestic economy, especially the export-oriented industry, is realised through reduction of energy intensity;
- Increased participation of domestic energy resources and improvement of technology and operational performances of the existing energy resources in the entire territory of the Republic of Serbia, through modernization of plants and modernization of the existing technologies, energy efficient and ecologically more acceptable technologies, especially through environmental protection systems, equipment diagnostics and regulation/management;
- Rational use of quality energy products. Increase of efficiency in production, transport and distribution of electric and thermal energy, especially of thermal energy at the points of provision of thermal energy services in the sectors of Industry, Households and Public and commercial activities;
- Diversification of resources and directions of oil and natural gas supply. Intensification of oil and gas research in the country and abroad in line with economic possibilities of energy industry and economically justified import of quality energy products;
- Gradual introduction of technologically reliable, energy efficient, economically certain and ecologically acceptable technology, including the increased use of renewable resources and natural gas technologies for production of electric and thermal energy;
- Selective use of new and renewable energy resources aimed at slowing down the growth rate of energy import, reduction of negative environmental impact, opening an additional possibility for domestic industry, employment of local population, including the harmonisation with EU practice and regulation in this area.

- Structural reorganisation of public energy companies and creation of environment for energy subjects' market operation with thus formed energy prices (for natural monopolies), which respect the justified production costs and enable the investment into development and creation of a fund for protection of poorest population group;
- Stimulation of scientific-research work, directed education and personnel qualification. Conception of technology-development programmes for purposes of energy industry, especially domestic mechanical and electric engineering, including the performance of specialized services in energy activities.

In order for the development of Serbian energy industry to stimulate the economic growth of other economic sectors, it is necessary that the Government establishes a Strategy for economic development of the Republic of Serbia as a framework for harmonisation of strategies of all economic sectors, including the Serbian energy sector.

Treaty on establishment of energy community

The most important activity within the transition of energy sectors of our country and other countries in the SEE region towards the functioning in line with the EU requirements, and a very important activity for the entire European integration process, represents the Treaty on establishment of energy community, whose signing is due in September 2005.

The requirements that this Treaty, as a multilaterally binding international law document, imposes on our country are compatible with the Serbian Energy Law. By-laws that are in drafting stage and which should make this systemic Law operational will take into account the requirements of the Treaty on establishment of energy community.

The Treaty establishing the energy community, although limited to electric energy, gas and appropriate aspects related to energy efficiency and renewable resources of energy, gives the opportunity for enlargement of its scope so as to cover other energy sources. It realizes the compatibility in functioning of SEE national markets of electric energy and gas, preconditions for inclusion of regional energy market of SEE in wider pan-European energy market, attraction of investment in electric energy and gas capacities, stable and continuous energy supply which is essential for economic development and social stability, promotion of competition and reduction of environmental impact of energy activity.

This Treaty underlines the need and deadlines for implementation of appropriate energy legislation (EU Directives 2003/54 and 2003/55 and Regulation 1288/2003), ecology legislation (EU Directives 85/337 with appropriate supplements, 1999/32 with appropriate supplement, 2001/80 and paragraph 2 of Article 4 of the Directive 79/409), legislation in the field of competition and legislation relating to renewable energy resources (Directives 2001/77 and 2003/30). Through the work of regional institutions that will be established pursuant to the Treaty establishing the energy community, the list of standards of relevant normative bodies that have to be implemented by our country and countries in the region will be established.

3.3.6. Environment

A. Current situation

Fundamental environmental policies are formulated in the paramount legal acts that determine the citizens' right to a healthy environment as well as the obligation to protect and improve it in line with the law.

The aim of environmental activities and measures is to create conditions for the adjustment of structure and dynamics of business and other operations, i.e. processes in the environment, so that by meeting the needs of today's generations the right of future generations to a healthy environment is not jeopardised at the same or higher level. In the first transition stage, which in the environment sector started in 2001, reports were made on the situation in the environment and natural resources, with framework priorities and proposals for legislative, institutional and technical organisation and development. A section dedicated to the environment is an integral part of the Strategy for Poverty Reduction (2003). Environment, as one of the priorities, is included in the Reform Agenda II (2003), under the section on infrastructure, primarily regarding waste and hazardous waste, as well as wastewaters and capacity building in the environmental institutions.

The process of harmonisation of Serbian legislation with the EU one has started. Legislation in this area comprises over 100 regulations. After the Constitutional Charter had been passed, all responsibilities in this area were transferred to the republican level. The following laws were adopted in 2004: Law on Environmental Protection, Law on Integrated Pollution Prevention and Control, Law on the Environmental Impact Assessment (EIA) and the Law on Strategic Environmental Impact Assessment (SEIA).

Since the beginning of reforms to date, work on harmonising laws with the EU ones has been taking place. In 2005, it is planned to finalise draft laws on protection from ionizing radiation and nuclear safety, managing chemicals, waste, packaging and packaging waste, air protection, protection of nature, fishery, and protection from noise and vibrations.

National Environmental Action Plan (NEAP, which has grown into the NEPAP – National Programme of Environmental Protection and Action Plan) is underway, as well as a number of Local Environmental Action Plans (LEAP). Work on the Strategy for Sustainable Development and on the national project on determining indicators of sustainable development has started. National Strategy for the Waste Management was adopted in 2003; the Council for Sustainable Development of the Government of Serbia has been established. The process of joining the European Environmental Agency has started; environmental border inspection has been established (2003); we have joined the fully-fledged cooperation in the framework of cooperation in the Danube river-basin (ICPDR – International Commission for the Protection of the Danube River, 2003) and started cooperation in the Sava river-basin (2002).

Ministry of Natural Resources and Environmental Protection, established in 2002, was transformed into the Administration for Environmental Protection within the Ministry of Science and Environmental Protection in 2004. The Fund for Environmental Protection was established under the Law on Environmental Protection and its realisation is now taking place. Agency for Environmental Protection has started work and the liaison with the European Agency for Environmental Protection has been established.

B. The EU harmonisation requirements

With a view to harmonising the chapter on environmental protection with the EU regulations, it is necessary to:

- Continue to build the environmental protection system, which regulates horizontal legislation according to the *acquis* and establishes legal frameworks by areas according to the *acquis* (by analysing whether the passed laws can be implemented and by making improvements with the amendments to the laws);
- Adopt (legislation by areas): Law on Waste Management, Law on Waters, Law on Non-Ionizing Radiation, Law on Protection from Ionizing Radiation and Nuclear Safety, Law on Packaging and Packaging Waste,

Law on Nature Protection, Law on Air Protection, Law on Chemicals Management, Law on Biocides, Law on Forests, Fishery Law (sustainable use and protection of the fish fund), Law on Noise and Vibrations Protection, Law on Geology, etc.

- Complete and adopt strategic documents (NEPAP, on sustainable development, climate changes, forests, wastewaters, air protection, sustainable use of water resources, etc.) and adopt strategies on nature protection and biodiversities, sustainable use of natural resources and other strategies relevant in building an environment system;
- Based on legal obligations, pass action plans for water protection, air and atmosphere protection, urban planning development and planning, soil protection, protection of forests, eco-system protection, protected natural property, waste management, management of chemicals, protection from ionizing and non-ionizing radiation, protection from disasters, protection from noise and vibrations, sustainable energy management, development of information system, development of scientific research, education and up-bringing;
- Adopt laws on ratification of international agreements on environment (e.g. Kyoto Protocol, Aarhus Convention, etc. – 26 priority ones); establish efficient mechanisms for the implementation of international obligations and cooperation;
- Adopt by-laws from the set of laws on environmental protection, adopt by-laws from the set of laws by areas, as well as standards (for drinking water, for example);
- Form expert commissions that will determine which EU directives require a transition period in order to create negotiating positions in the EU accession process; produce an Integral Strategy for Harmonisation with the EU Regulations in the area of environment, which will review the deadlines and accept budgetary implications; produce a National Strategy for Sustainable Use of Natural Resources;
- Monitor the implementation of the National Programme of Environmental Protection and Action Plan (NEPAP) and the Strategy for Sustainable Development; together with the Council for Sustainable Development coordinate the implementation of the Integral Strategy;
- Periodically monitor and analyse the realisation, introduce procedures, provide and monitor the implementation of EIA, IPPC and SEA regulations; produce the balance of what has been done and of legal solutions that in the meantime have been significantly amended in the EU (e.g. passing the REACH regulation for chemicals), pass laws on amendments to the laws/new laws (second round);
- Monitor existing and updated regulations and harmonise them with the EU regulations;
- Improve integration of environment in other sector policies;
- As widely as possible, raise the level of environmental awareness in all structures of the society.

Other requirements in addition to the legal harmonisation requirements are to:

- Strengthen administrative and human capacities for strategic planning in the area of environment, various types of licences, inspection, monitoring of environmental elements, and project management;
- Establish institutions in such a way that they will efficiently monitor and implement activities relating to the EU approximation; provide technical conditions and office space for the Ministry of Environmental Protection, Agency for Environmental Protection, Regulatory Body for Ionizing Radiation, Environmental Fund and local funds, and then the regional, city and municipal secretariats for environment and sustainable development, Serbian Chamber of Commerce, Council for Sustainable Development as an inter-sectoral government body, eco-toxicological and intervention units that would react in the cases of environmental and chemical disasters, as well as other state institutions and expert bodies;
- Fully develop cooperation with the European Environmental Agency (EEA); build environmental infrastructure; restructure the Agency for Environmental Protection, and restructure the information system and liaise with the EEA;
- Fully develop cooperation on protection and sustainable use of the rivers Danube, Sava, Tisa and Drina;
- Fully develop cooperation with the International Agency for Nuclear Energy;
- Establish or build up on the networks of monitoring of environmental and radiation elements, in line with the EU requirements;
- Technically update the border control of chemicals, sources of ionizing radiation, protected plant and animal species, and join the system of common border and customs control;
- Set up a cadastre of polluters, monitor the biggest polluters in particular; encourage the application of the environmental management system in enterprises, ISO 14000/EMC and EMAC, *environmental* labelling, primarily in cooperation with the Serbian Chamber of Commerce; establish a system of good laboratory practice in line with the EU Directives of 2004;
- Provide funding and investing in the environment sector (Fund, etc.), especially in the area of finding solutions for the problem of chemical and medical waste and waste management, wastewaters and reduction of pollution from thermal power plants, as well as maintaining biodiversity; build a system of 'green' public procurement (taking into consideration the system solutions for the environmental protection when implementing public procurement procedures) in order to effectively implement the preventives and principles of sustainable use.

3.3.7. Protection of working environment

A. Existing situation

The area of working environment i.e. safety and health at work is regulated by the Law on Protection at Work, which does not include all elements of the system of safety and health at work which are established by guidelines and directives of the European Union.

The fact that the existing legal regulation in this area is lagging behind the already established changes in the society led to creation of the new Law i.e. Proposal of the Law on Safety and Health at Work, which is in Parliamentary procedure for adoption.

The requirements for establishing a system of safety and health at work in contemporary conditions include the introduction of elements influencing the creation of safe and healthy working conditions, such as:

- introduction of prevention principle for avoiding the injuries at work and professional ailments;
- active participation of medical service in work and production processes;
- introduction of responsibility principle for work organisers for application of measures in the area of safety and health at work;
- selection of workers' representative for safety and health, tasked with cooperation and decision on all issues of safety and health with the employer;
- introduction of mandatory workers' insurance against work injury or professional ailments for the purpose of damage compensation etc.

The aim of the entire new policy in the area of health and safety at work is primarily the prevention of injuries and ailments, and it is based on a number of activities that ought to be conducted.

Application of preventive measures taken at all levels of work implies the realisation of such working conditions that enable the pre-assessment of risk and its elimination or minimization so as to avoid any possibility of work injury or professional ailment of employees, which creates the preconditions for prevention and elimination of risk from possible injuries, professional ailments or work-related ailments and which is aimed at achievement of conditions for full physical, mental and social welfare of employees. Proposal of the Law on Safety and Health at Work has initiated the process of legal harmonisation with EU regulations.

The area of safety and health at work is regulated by EU Directives. Directive 89/391 EEC prescribes the introduction of measures for stimulation of health and safety at work and contains basic principles relating to prevention of professional risks, implementation of health and safety, elimination of risks and factors that may cause accidents, principles of information, consulting, balanced participation in line with the national legislation, training of employees and their representatives for independent and safe work and general guidelines for implementation of the abovementioned principles.

Proposal of the Law on Safety and Health at Work includes other binding principles of the *acquis communautaire*, thus it envisages the establishment of Administration for Health and Safety at work within the line ministry. This Administration shall perform the operations of public administration with the aim of promoting and developing the health at work i.e. reducing the work injuries, professional ailments and work-related ailments. Beside other activities, the Administration prepares the professional basis for creation of national programme for development of health and safety at work and supervises its realisation.

B. Requirements for harmonisation with the EU

For harmonisation with the EU regulations in the area of safety and enhancement of working environment it is necessary to:

- Further develop the system of safety and health at work through arranging laws and by-laws at the level of the Republic of Serbia
- Adopt appropriate laws (Law on Health and Safety at Work etc.) and by-laws (Regulations) which regulate in detail certain matters in this area:
 - for assessment of risk at work and in working environment
 - procedure and periods for periodical examinations and investigation of working environment conditions and working equipment
 - the content of analyses on construction site arrangement
 - previous and periodical medical examinations of workers at high-risk jobs
 - record in the area of health and safety at work
 - content of report on work injury
 - programme, manner and amount of costs for passing the professional examination
 - conditions and amount of costs for licence issuing.
- Draft and adopt the national strategy in the area of health and safety at work
- Monitor the implementation of national strategy
- Periodically analyse the situation in legislation and practice in the area of safety and health at work
- Permanent harmonisation of national legislation provisions with the EU standards and directives
- Establish the Council for health and safety at work
- General awareness raising on working environment promotion.

3.4 | Regional policy

A. Current situation and causes of great inconsistencies in the degree of development of Serbian regions

Regional inconsistencies in the development degree in Serbia are the greatest in Europe and from one year to another, they increase. Regional polarisation since 2000 has become more pronounced (the ratio of the most developed and the least developed municipality, without Belgrade boroughs, increased from 1:19 in 2000 to 1:22 in 2003).

As a result of deep economic crisis in the nineties and the start of the transition process, in addition to the traditionally underdeveloped South of Serbia and Stara Raska, new underdeveloped areas were created (Eastern Serbia, parts of central Serbia, regional mining and centres of traditional industry) and demographic seepage in rural and underdeveloped areas.

Regional reality has the following characteristics:

- Demographic disproportions and migration trends (only in the period 1991-2002, 11.3% of population emigrated from the Pcinj county in the south of Serbia, while 7.6% of population moved out from the Bor county – the newly formed underdeveloped area);
- Real fall of NI per capita in 2003, in comparison to 1990 (100) was: Serbia – 53.5; North – 50.7; South of Serbia – 47.4; Stari Ras – 38.5
- Unemployment rate: 28% in Serbia, 44% Stari Ras, 33% South Serbia.
- Road network structure shows that only 10% of the territory of Stari Ras and 21% in South Serbia have local roads with modern roadways.
- Underdeveloped areas have not made budgetary income over 60% of the republican average for over three decades.
- Underdeveloped entrepreneurship – from 1990 to 2003, the ratio in the SME and employment structures did not change much: while SMEs employed 49.1% of total employed in 1990, 55% of the employed participate in the private sector in 2003.
- 22.4% of socially owned enterprises have been privatised in South Serbia and 23.5% in Stara Raska, while at the level of the Republic of Serbia the percentage is 36.4%.
- Economy of South Serbia and Stara Raska participates with 6.6% only in the total number of enterprises, 3% in total income and 4% in total exports of Serbia.
- Low and inadequate educational and qualification structure of the unemployed (45.5% of the unemployed in underdeveloped municipalities have no qualifications whatsoever).

There are two main causes for such great regional differences in the degree of development. On the one hand, they are caused by the accelerated process of socialist industrialisation and urbanisation in the past decades, which bore characteristics of extensive and spontaneous development with strong autarchic elements not only at the level of larger regional entities but also within local communities. This process was often followed by irrational regional arrangement of business activities, as a result of non-market allocation of production and attributing more significance to the sector rather than structural and regional criteria.

On the other hand, great differences in the development of Serbian regions are a result of the absence of a necessary institutional framework for a more balanced regional development. Serbia still does not have a strategy for regional development. There is no defined policy of regional development either. There are no specialised regional financial institutions or special regional development agencies. Because of this institutional vacuum, the state is not able to provide comprehensive and planned long-term solutions to the increasingly critical position of some regions, such as the counties in the south of Serbia, Bor basin in South Serbia, Sandzak and old industrial centres with the growing economic, social and political tensions.

B. Strategic directions of development in the process of EU accession

When defining a national strategy and long-term policy of regional development, with a view to solving the key problems and causes of great differences in the level of development, commitments of European regional policy should be born in mind. The heart of the policy is to promote solidarity and thus strengthen economic, social and territorial cohesion of the EU. Operational aims of European regional policy come down to the following:

- Help the underdeveloped regions to catch up with the developed ones. This, primarily, refers to the improvements in the area of base infrastructure (traffic, water supply, telecommunications, health and education).
- Encourage economic and social conversion in industrial, rural and urban regions that are facing structural difficulties. In these areas, the main problem is not the lack of infrastructure but the decline of traditional industries. Therefore, the main task here is to develop alternative production and services.
- Promote employment and modernise the education system. This goal is more thematic than territorial and as such, it refers to all measures that promote human resources and employment in the EU.

Measures and instruments of European regional policy are primarily of financial nature. Among the EU initiatives, aimed to achieve a harmonious and sustainable development of the EU territory and financed by European structural funds, for the period 2000-2006, there is INTERREG III, for the cooperation between the EU territories. Although Serbia-Montenegro is not a Candidate Country yet, it can participate in the initiative INTERREG III, which comprises three segments: the trans-border (INTERREG III A), trans-national (INTERREG III B) and inter-regional cooperation (INTERREG III C).

When the new European 2007-2013 Regional Policy comes into force, the aforementioned financial instruments for Candidate Countries and potential Candidate Countries will be substituted with the "Instrument for the Accession Assistance".

A key document, which will serve as a basis for determining the co-financing of regional development in the EU Member States and Candidate Countries, will be the National Development Plan. The period covered by the National Development Plan overlaps with the period for which European regional policy is defined, i.e. the period for which the types of structural and other funds and available budgets are determined.

Taking into consideration European commitments in this area, the key strategic directions of Serbian regional strategy and policy conform to the EU principles, and they are:

- Decentralised incentives for economic and social development of respective regions in line with their specific regional problems;
- Partnership of local communities as social partners and institutions of civil associations;
- Gradual transfer of state responsibilities to regions and municipalities;
- Harmonisation of inter-ministerial activities, with the countries and regulations in the European Union, WTO, and other international partners;

- Harmonisation of regional strategy and policy with a comprehensive development strategy of Serbia (which should be adopted as soon as possible);
- Financing of development programmes and projects together with local communities.

The key goal is, in the first place, to stop further expansion of regional diversities in Serbia, and then, after the most critical transition processes have finished, to provide gradual reduction of those differences. This aim can be achieved by the method of polycentric development, i.e. decentralised development, which implies alleviating structural problems and regional discrepancies, rational use of development factors of all regions based on the market criteria, and finally, fighting the tendency of extensive urban concentration of business activities and population.

All this requires that the state acts in three directions simultaneously:

a) Institutional framework

- Pass the Law on Balanced Regional Development of Serbia, as a key document from which the Strategy for Regional Development of Serbia would stem from; define the criteria for determining the level of underdevelopment; establish institutions in charge of regional development, and define system solutions regarding the financing and other types of support to the faster development of underdeveloped regions.
- Pass the Strategy for Regional Development of Serbia that would define the aims, policies and tasks stemming from the Strategy of Economic Development of Serbia and Urban Planning, with a view to improving regional development. The Strategy for Regional Development will be a base of regional development programmes. The goals set out in the Strategy of Regional Development of Serbia will comply to the sectoral development programmes that are the responsibility of line ministries.
- Define the key financial institution that would primarily aim to reduce regional discrepancies (the most rational solution would be to redefine the status of the Development Fund and change it to the Regional Development Fund).
- At the same time, it is necessary to harmonise domestic regulations with the relevant regulations and standards of the European Union (European Charter on Local Self-Government, European Charter on Regional Languages of Ethnic Minorities, etc.)

b) Regional policy

Parallel to the regional institution building, it is necessary to define a number of activities and measures to encourage economic activity and employment in underdeveloped region, all within the existing economic policy. Bearing this in mind, it is necessary to do the following:

- Continue the application of incentive fiscal measures.
- Republican Development Fund should place a portion of its assets in underdeveloped regions under favourable conditions.
- When building and modernising the transport and other infrastructures, include the regional component too.

- National employment service should pay special attention and allocate funds to the active employment measures in underdeveloped regions.
- Expand the capacities of underdeveloped regions by providing various types of technical assistance;
- Make development plans, stimulate people for the work in underdeveloped regions, form entrepreneur incubators in cooperation with local communities;
- More than ever before, direct foreign credits for development project and donor programmes to underdeveloped regions;
- Donor assistance should be used for financial aid to micro-credits through banks and non-commercial institutions in underdeveloped regions.

c) Encourage faster development of local communities

Bearing in mind new legal solutions, which give greater power to local communities, the following activities should be encouraged:

- Attract foreign and domestic investment and faster development of small and medium enterprises as the main lever of development and new job opportunities;
- Direct some donor assistance towards the expansion of development capacities of poor regions by providing various types of technical assistance;
- Strengthen inter-regional and inter-municipal cooperation especially on activating local development plans and opening new job vacancies;
- Support communal infrastructure building as a prerequisite for the development of small and medium enterprises;
- Rational spatial management and management of land renting policy;
- Greater access to educational, health, social and cultural institutions for citizens.

4. Chapter | *Preparation For Requirements Arising From The Membership*



4.1. | *Harmonisation of legislation with the *acquis communautaire**

4.1.1. *The term harmonisation*

The process of institutional connection of a third country with the European Union, aimed at association and ultimately membership, implies the adoption of the European Union legal heritage (*acquis communautaire*). The core of this body of legislation comprises of regulations passed by the European communities over the history, which were subsequently adopted by the European Union. These regulations are known as the legislation of the European communities or *acquis communautaire*, and most recently as the European Union law. In this sense, the adoption of legal heritage often entails the harmonisation of domestic regulations with the European Union law and to some extent with other “measures and activities”, principles and practice of the Court of Justice, which are covered by the term legal heritage.

However, the harmonisation process does not imply only the adoption of domestic regulations whose solutions are formally or normatively sufficiently harmonised with the *acquis*; it is necessary to provide the required conditions and institutional capacities for their interpretation, voluntary or enforced execution through the court or administrative bodies. From this aspect, the harmonisation process includes methods and techniques for transferring the solutions of European Union legislation into the domestic law, their incorporation or embedding into domestic legal system and the process of implementation, which is individually manifested through realisation of individual rights or assumption of concrete obligations.

4.1.2. *The basis and goals of harmonisation*

Any legal harmonisation is, according to scope and content, determined by goals expected to be achieved through its implementation. For European Union Member States, the legal basis and goals of harmonisation are laid down in the provisions of Articles 3(h) and 94 of the Treaty Establishing the European Community. These provisions envisage the harmonisation of legal and administrative measures, as well as by-laws to the extent necessary for establishing or functioning of common market.

In legal sense, the Republic of Serbia and the State Union of Serbia-Montenegro are not yet formally bound to harmonise their regulations with the EU. Nevertheless, by adopting the Resolution on EU association, Serbia has defined the quick entry into the EU as its strategic goal and the objective of the State Union of Serbia-Montenegro. Beside this politically expressed will, the legal basis for harmonisation of domestic legislation can be generally traced in the supreme legal document – the Constitutional Charter, whose Article 3 defines the following goals of Serbia and Montenegro:

- “inclusion into the European structures, especially in the European Union”
- harmonisation of regulations and practice with the European and international standards”

- “establishing and ensuring the undisturbed operation of the common market in its territory, through co-ordination and harmonisation of economic systems of the Republics, in compliance with the principles and standards of the European Union”.

Accelerated accession to the EU implies the accelerated harmonisation of domestic legislation with the European Union *acquis*; in this sense, the Resolution confirms that the Serbian National Parliament will prioritise the harmonisation of Serbian legislation with the EU *acquis*.

The need to harmonise domestic legislation was also emphasised within the Council Decision on establishing the European Partnership within the Stabilisation and Association Process, and in the consequently adopted Council Decision on the principles, priorities and conditions contained in the European Partnership.

State Union of SCG and Serbia will assume formal obligation to harmonise their legislation only after the conclusion of Stabilisation and Association Agreement. Up to that moment, the already initiated process of harmonisation can be observed as a voluntary process aimed at realisation of certain goals.

At this moment, the harmonisation of domestic legislation with the European Union *acquis* is intended to ensure necessary conditions for enforcing the reforms in political, economic and legal systems of Serbia and the State Union of Serbia-Montenegro. On one hand, these reforms are necessary for synchronized functioning of the State Union Republics and on the other for association and membership in the European Union. We may say that the legal harmonisation currently has the developmental and formal function within Serbian legal system.

Such definition of targeted harmonisation of domestic legislation influences the scope and type of domestic regulations which ought to be harmonised with the EU legal heritage.

4.1.3. The scope of harmonisation

Pursuant to the Treaty Establishing the European Communities, the scope of harmonisation in the European Union is limited to provisions and other measures whose implementation should generally ensure the instituting and operation of common market. For the purposes of legal harmonisation in the third countries, the European Union has presented the “recipe” for harmonisation of internal regulations with its legislative body within the so-called White Book II. White Book II recommends to the third countries that wish to embark upon the European integration to harmonise their regulations with those of the EU in 23 areas. However, full membership requires the internal harmonisation in the following 31 fields:

1. Free movement of goods
2. Free movement of persons
3. Free movement of services
4. Free movement of capital
5. Company Law
6. Competition policy
7. Agriculture
8. Fisheries
9. Transport
10. Taxes
11. Economic and monetary union

12. Statistics
13. Social policy – employment
14. Energy
15. Industrial policy
16. Small and medium enterprises
17. Science and research
18. Education, training and the youth
19. Telecommunications
20. Culture and audio-visual policy
21. Regional policy, structural instruments
22. Environment
23. Consumer protection and health protection
24. Cooperation in justice and home affairs
25. Customs union
26. Foreign relations
27. Common foreign and security policy
28. Financial supervision
29. Financial and budget regulations
30. Agencies
31. Other

According to the enlisted areas, we can conclude that the harmonisation process is almost entirely limited to regulations in the field of business and economy i.e. to harmonisation of regulations which relate to four freedoms - free movement of goods, free movement of labour, free movement of capital and freedom to provide services – and regulations covered by relevant common policies. In other words, harmonisation process includes the domestic regulations related to establishing and functioning of internal market. This means that not all domestic regulations will be eligible for harmonisation (nor will it be necessary), but only those whose implementation helps realise the objectives defined as common or compatible with the SCG's aim to accede to the EU.

4.1.4. Dynamics and priorities of harmonisation

Since harmonisation is a long-term process it will be conducted in several phases, whose length will depend on the current legal, economic and overall social infrastructure and the deadlines which will be accepted within future Stabilisation and Association Agreement. This Strategy is based on the assumption that the negotiation of Stabilisation and Association Agreement will start in 2005 and that the Agreement will be signed in 2006. This Agreement ought to envisage the period of 6 years for its full implementation.

Regardless of the date of conclusion and the time for implementation of the Stabilisation and Association Agreement, the process of harmonisation will have to consist of the following phases:

- 1) Identifying the areas of European law and inventorying the *acquis communautaire* provisions which will require the harmonisation of domestic regulations;
- 2) Composing a list of corresponding domestic regulations;

- 3) Estimating the conformity of existing domestic regulations with the *acquis communautaire* provisions identified in the first phase;
- 4) Establishing the legislative bodies responsible for passing of new and amendment of the existing domestic regulations which were estimated in previous phase as disharmonised;
- 5) Establishing the priorities, dynamics and other issues related to harmonisation and
- 6) Formulation of harmonised domestic regulations.

The first two phases - identification of the areas of European law and inventorying of *acquis communautaire* provisions which will require the harmonisation of domestic regulations and composing of a list of corresponding domestic regulations – have already been realised within a special project of the Institute for Comparative Law entitled “The harmonisation of national legislation with the European Union legislation”, which was finalised at the end of 2003. The results of this project are presented in schematic form within special tables – harmonigraphs for regulations in 23 areas enlisted in the White Book II.

Furthermore, a preliminary conformity assessment of domestic legislation with the EU law was also drawn up – whether it is partly or wholly harmonised, totally disharmonised in relation to EU legislation or if there is a complete absence of domestic legislation, including brief comments on the level of compliance. This analysis should be supplemented by conformity analysis of legislation in the areas which were subsequently introduced in the European Union *acquis* (31 areas); this material ought to be used as a starting point in the process of amendment or adoption of new harmonised legislation.

If this analysis proves to be insufficient, it will be necessary to create a comprehensive analysis and provide the compatibility assessment by the end of negotiations of Stabilisation and Association Agreement i.e. end of 2006, so that the deadline for full implementation of the Agreement and the implementation phases could be established on basis of such estimation. At establishing the deadline for full harmonisation of relevant domestic regulation one should take into account the estimation of economic impacts of implementation of harmonised regulation on the overall economy in Serbia, as well as possible political impacts of such implementation on institutional stability of the entire political system.

A possible proposal based on such comprehensive analysis is that the Stabilisation and Association Agreement be fully implemented within six years after its conclusion and that a priority schedule for adoption and implementation of harmonised domestic legislation be drafted according to the model of Stabilisation and Association Agreements already signed with Macedonia and Croatia.

The regulations envisaged as priorities under the existing Stabilisation and Association Agreements should be used as a starting point at establishing the priorities for adoption and implementation of harmonised domestic legislation, as well as the dynamics suggested in the Annex to the Council Decision on principles, priorities and conditions from the European Partnership with Serbia-Montenegro, dated 22 March 2004.

4.1.5. Present situation and undertaken measures

In February 2005, the Government of the Republic of Serbia has adopted the third annual Action Plan for harmonisation of Serbian legislation with the European Union law, which represents a basis for future harmonisation of Serbian regulations with the EU. This Action Plan envisages the harmonisation of 41 laws, either by adoption of new laws or amendment of the existing ones.

The Action Plan for harmonisation of legislation comprises of a table with short description of priority laws for adoption, the comments of responsible ministries on reasons for their drafting, deadline for preparation and names of persons directly responsible for drafting of particular law.

The Action Plan also includes the elaboration of need for adoption of a certain law, institution responsible for its enforcement, and other important elements for the definition of issues relevant for harmonisation of national legal system with the EU *acquis*.

The suggested deadlines for particular laws may vary depending on their significance and complexity and they are determined by quarters. The laws are proposed with the aim of political and economic advancing towards the European Union, as well as for boosting the economic competitiveness. These proposals are classified according to the White Book chapters on internal market and they follow its schedule.

Priority was given to harmonisation of domestic regulations in the area of internal market (including the free movement of persons, goods, capital and services), the area of competition, trade laws, banking, intellectual and industrial property, public procurement, standardisation, consumer protection, environmental protection.

Certain domestic economic and legal regulations were largely harmonised within the programme of preparation for membership in the World Trade Organisation, and others were (due to their subject and application) exempted from harmonisation.

4.1.6. Methodology of harmonisation

Since the State Union of Serbia-Montenegro, due to the absence of adequate contract relations, cannot anticipate the full EU technical assistance (which is generally available to candidate countries), it has to utilize the technical assistance that the EU unilaterally places at the disposal of the State Union and its Republics during the harmonisation process. These specific forms of assistance include the documents which the EU designed for the third candidate countries, primarily the White Book II for preparation of associated Central and East European countries for integration into the EU market, as well as the European Partnership. The European Partnership represents one of the key instruments in the EU's pre-accession strategy towards the potential candidate countries.

The Partnership defines short-term (12-24 months) and mid-term (3-4 years) priorities in preparation for EU integration. This instrument will exclusively determine the relations between the EU and our country until the conclusion of the Stabilisation and Association Agreement and it served as a basis for creation of the Serbian Government's Action Plan for realising the priorities from European Partnership.

In nomotechnical sense, the harmonisation technique depends on the legal regulation that domestic regulations need to be harmonised with. Most commonly used technique for harmonisation with the *acquis* regulations is reception or takeover of the entire regulation. In case of harmonisation with the Directives, domestic authorities have the discretionary power to choose the appropriate legal instrument and method for transposing the provisions of the Directive into the domestic legal system. The implementation of such domestic legal instrument (law, by-law or other) should enable the accomplishment of the goal defined in the Directive.

The Decisions generally relate to individual cases.

The establishment of the primary meaning of harmonised regulations within the procedure of their incorporation into the domestic legal system, as well as their overall and due implementation, entails the establishment of necessary judicial and administrative capacities, their qualification and independency.

4.1.7. Harmonisation monitoring mechanism

Dynamics and content of harmonisation process can be monitored through internal mechanisms and instruments and through external instruments.

a) Internal monitoring mechanisms

The internal mechanisms primarily imply the *Compatibility Clause* of the draft law, other regulation and general enactment with the European Union regulations and the Comparative analysis of compliance of the draft legislation with the European Union legislation.

A. Present situation in the Republic of Serbia

The amendments to the Government of Serbia Rules of Procedure from 10 October 2003 prescribe that each draft law submitted to the Parliament for consideration and adoption has to be followed by the Statement on harmonisation of the draft law with the European Union regulations; the Statement shall contain the harmonisation assessment for the particular law with appropriate European Union regulations and in case there is no corresponding European regulation to be harmonised with, a statement on this fact.

The introduction of the second instrument into legislative procedure - the Comparative analysis of compliance of the draft legislation with the European Union legislation - is envisaged for the second stage i.e. after the conclusion of the Stabilisation and Association Agreement.

The Resolution on the association imposes political obligation on Serbian Government to at least quarterly inform Serbian National Parliament on envisaged and met obligations, on realisation of all programmes and activities necessary for stepping up the process of association of the State Union of SCG with the European Union.

b) external monitoring mechanisms

The assessment of harmonisation process implementation from the aspect of fulfillment of requirements for SCG's accession to the EU will be prepared by the European Commission within its annual reports, including the establishment of priority areas for the following period. Monitoring of this process is also provided within the Stabilisation and Association Process, primarily through the Annual Report on the Stabilisation and Association Process.

B. Proposal of further activities in the area of harmonisation

For realising the harmonisation process and achieving the goals that this process entails, it is necessary to take up the following steps:

1. Continue the analysis of harmonisation of the remaining domestic regulations which were not covered by previous analyses. This process should be done within a short period, so that the complete list of domestic regulations liable to harmonisation, inventory of relevant EU regulations and assessment of

the level of harmonisation could be created before the conclusion of the Stabilisation and Association Agreement.

2. On basis of such analysis and in compliance with the Action Plan priorities, the responsible ministries should be requested to create draft amendments or supplements to the existing regulations, to propose the adoption of new regulations or to take other adequate measures. The realisation of this task implies capacity building and enhancement in all ministries that participate in the analysis of harmonisation of relevant domestic legislation.

3. Ensure necessary conditions so that the adopted harmonised regulations can be enforced in such a manner so as to realise the goals leading to quick membership of Serbia and the State Union in the European Union. Until the conclusion of the Stabilisation and Association Agreement, the responsibility for monitoring and realising the harmonisation is vested with every administration agency within its competence and with the Serbian European Integration Office.

4.2 | *Translation of legislation*

The EU accession process implies the harmonisation of domestic regulations with the EU legislation and the respecting of large number of regulations. The EU administration regularly issues the documents which have to be accessible to a large number of beneficiaries and which are published in the English language. Their translation into Serbian will be necessary bearing in mind the low level of English language knowledge in the companies, state agencies and other stakeholders. The *acquis communautaire* has been translated so far. Nevertheless, since this is a process of continuous adoption of new legislation, an institution should be appointed for their systematic translation. The process of translation should be standardised, timely and precise, since any possible mistake therein could have significant consequences.

4.3 | *Four freedoms*

4.3.1. *Freedom of movement of goods*

A. Present situation

The free movement of goods is one of the key preconditions for establishing the single market, which is covered by an immense part of the European Union legislation. This is a wide area which includes and regulates the movement of goods (trade, control, technical regulations, standards etc.) in the domestic market, as well as foreign trade (export and import). The characteristics of this area in our country are a large number of relevant by-laws (regulations, rulebooks) and the fact that certain issues are still regulated at the State Union level (standards, certification, intellectual and industrial property). This area is at its transitional culmination in this country (many laws were amended or are in preparation). Furthermore, a substantial part of legislation and regulations, especially those relating to the so-called “quality infrastructure” (standards) originates from the period of SFRY. Another problem lies in harmonisation and articulation of responsibilities of SCG in this area (intellectual property and standards) relative to the republics and to various state bodies.

This field is, among other, regulated (fully or partly) by the following laws (regulations and other legislation are not enlisted because they are too numerous): Trade Law, Foreign Trade Law, Customs Law, Law on Customs Tariff, Law on Patents, Law on Trademarks, Law on Production and Trade in Poisonous Substances, Standardisation Law, Certification Law, Metrology Law, Law on Geographical Indications, Law on Designs and Models, Law on Conditions for Trade in Goods, Providing Services in the Trade in Goods and Inspection Supervision, Law on Commodity Reserves, Law on Tobacco, Law on Arms and Ammunition, the Law on the Action Plan for Harmonisation of Economic Systems of the Republics of the State Union of Serbia-Montenegro and Amendments thereto, Agriculture Law, Law on Protection of Plant Varieties, Law on Seeds, Law on Planting Material, Law on Organic Agriculture, Veterinary Law, Law on Quality Control of Agricultural Products and Foodstuffs in Foreign Trade, Law on Genetically Modified Organisms, Law on Health Safety of Commodities and Objects in General Use, Law on Transport of Hazardous Substances, Law on Production and Trade in Medicines, Law on Production and Trade in Narcotic Drugs etc.

B. Requirements of harmonisation with the EU

In the first stage, it is necessary that our legislation is complied with the requirements for conclusion of the Stabilisation and Association Agreement. This implies that our legislation relating to market regulation and foreign trade has to be fully compatible with basic principles of free movement of goods, such as the principle of non-discrimination between domestic and foreign goods in the market, harmonisation of customs tariffs (harmonised system – tariff classification), as well as the rules envisaged by the WTO in this area (e.g. the Agreement on technical barriers to trade, Agreement on sanitary and phyto-sanitary rules). In this sense, it is primarily necessary to adopt and/or revise the following systemic laws:

- Trade Law
- Foreign Trade Law
- Customs Law
- Law on Customs Tariff

The phase of full harmonisation with the EU law entails the harmonisation of all technical rules and standards, as well as relevant procedures with the EU rules in the area of free movement of goods. Beside the internal harmonisation of regulations related to the forms and control of trade in goods, this implies the harmonisation of appropriate procedures and processes with the EU (information exchange in sense of the Directive 83/189/EEC, associate membership in CEN/CENELEC, Certification Agreement etc.).

The strategy for harmonisation of legislation in this area would also require the establishment of deadlines for certain stages e.g. year 2006 for the first stage and year 2010 for the entire process.

Legislative authorities of the State Union should regularly exchange the information on law proposals. This would help avoid the obstacles to creation of single market which might be established by efficient administrative and legal measures. Control along the existing administrative border between the Republics should have been efficiently performed; the adoption of technical and other standards which may have imposed the obstacles to creation of single market should have been coordinated. The clause on mutual recognition should be incorporated into legal regulations, so that the goods legally produced and sold in one Republic may be marketed in another without additional administrative requests. Internal market should function in such a manner so as to completely enable the free market access and efficient internal trade. In relation to public procurement, it was necessary to harmonise the tender procedures between the Republics and with the EU standards, so that the bidders would not be exposed to different conditions.

With the present «twin-track approach» system, Serbia and Montenegro will still have separate economic systems with, among other, different levels of tariff protection. Nevertheless, along the process of realisation of Stabilisation and Association Agreement, these systems will become harmonised and it will be necessary to conclude an agreement on free trade between the Republics, which will represent one of the conditions for EU accession within the area of free movement of goods.

1. Customs tariffs

When they decided to establish a customs union, Member States have transferred the authority for determination of customs tariff relative to third countries to the Community institutions (today the EU). Basic primary legislation in this area is the Rome Treaty on the establishment of EC and the amendments thereto. Basic secondary legislation in the area of customs union is the so-called Community Customs Code and other regulations. Some issues in this area (for instance organisation and responsibilities of customs administrations, the enforcement of general administrative procedure, customs offences etc.) are still within the competence of the Member States and they regulate it through national legislations. Certain international legal documents also influence the functioning of customs union within the EU, such as the international agreements concluded by the EC within the OUN, WTO, WCO etc, and finally bilateral and multilateral agreements which were signed by certain Member States of the EU.

At the moment of EU accession, new Member State automatically accepts all international legislation signed by the Union (unless already accepted before). The acceptance and realisation of obligations under international agreements signed by SCG facilitate the harmonisation of customs legislation, since it was already harmonised with the key international standards.

Full harmonisation of customs legislation with the EU law is neither necessary nor possible at this stage. The Council Regulation on adoption of the Community Customs Code¹ and Commission Regulation laying down provisions for the implementation of Council Regulation² represent most important secondary legislation in the area of harmonisation of rules for treatment of goods entered into the Union customs area. At the moment of EU accession, a country assumes the obligation to accept and implement this Code i.e. all regulations of the Union. Harmonisation of national legislation in this sense cannot replace the EU Customs Code; it can only facilitate its subsequent implementation.

By the Action Plan and mutual agreements on establishing the joint Customs Administration Office for Serbia-Montenegro, the Republics have undertaken to harmonise their customs procedure and organisation of customs services with the EU rules by 2006.

Regarding the harmonisation of customs tariff, the European Customs tariff³ is one of the key documents that the EU as a customs union is based upon. European customs nomenclature of goods is defined as «combined nomenclature», based on the world system of harmonised commodity description and coding system. This nomenclature classifies the commodities in 98 chapters, appropriate sections and subsections with corresponding tariff numbers and codes.

¹ Council Regulation (EEC) No. 2913/92, 12.10.1992.

² Commission Regulation (ECC) No 2454/93

³ Council Regulation (EEC) No. 2658/87, 27.7.1987.

The existing legislation in Serbia has been developed with the acceptance of European combined nomenclature. Harmonisation was performed regarding the tariff numbers, tariff codes and commodity descriptions, but the nomenclature is not yet aligned with the harmonised system 2000/2002. The creation of these regulations is due in 2005.

Since harmonisation of national legislation in the area of customs implies the balanced acceptance of basic principles and concepts in the pre-accession stage, we may say that the new customs legislation of Serbia is largely harmonised with general principles and rules of the EC Customs Code.

One of the problems observed during the recent negotiation of certain candidate countries for EU membership was the fact that national parliaments were slow in adoption of regulations tailored in cooperation with the Union experts. It is necessary to pay special attention to promotion of staff qualifications and work of customs administration through elaborating the training programmes and enhancing the technical equipment.

The most significant priority related to the anticipated EU association is the establishment of an area for free movement of goods within the State Union of Serbia-Montenegro, as well as harmonisation with procedures and rules enforced in the EU, such as the application of rules of origin, tariff classification and other rules regulated by GATT/World Trade Organisation.

The primary interest of Serbia (and Montenegro) is the harmonisation of preferential rules on origin of goods with the aim of achieving a closer trade and industrial cooperation between the EU and RS (SCG). Furthermore, candidate countries are usually invited to prepare for conclusion of EC/EFTA Convention on common transit procedure and on the single administrative document⁴. The EU assists the candidate countries by establishing the expert groups for fulfillment of necessary technical conditions for accession.

Short-term measures

- Adoption of the Law on Customs Tariff and by-laws.
- Harmonisation of tariff protection, including agriculture (tariffication) in the context of WTO negotiations and the membership in the WTO.
- Adoption of so-called Cumulative rules of origin.
- Conclusion of Free Trade Agreement in the region (multilateral agreement).

Mid-term measures

- Accession to the World Trade Organisation by 2008 and adoption of appropriate measures (GATT, safeguards etc.).
- Gradual adoption of Community Customs Code.

1. Standardisation

As regards the areas within the so-called "quality infrastructure", the State Union of SCG has maintained a wide scope of responsibility related to legislation as well as institutions. The enforcement issues are covered by republican legislations. EU regulations are based on uniform systems of information exchange (structures of centralised information), and the so-called "new approach Directives", which are limited to establishing the main requirements for general aspects of technical regulations and standards (safety, health, environment).

⁴ Convention on common transit procedure and Convention between the EEC and the Republic of Austria, the Republic of Iceland, the Kingdom of Norway, the Kingdom of Sweden and the Swiss Confederation on Simplification of Formalities in trade in Goods.

New legislation should ensure the realisation of the following general objectives in this area:

- Modernisation of state agencies responsible for the issues of standardisation, accreditation and metrology, and their transformation from para-state institutions into the bodies functioning on market economy principles (regarding their services, sources of income and market role),
- Rationalisation of the number of institutions dealing with the quality system management (merging or narrowing the competences),
- Transferring certain activities from the agencies for "quality infrastructure" to private organisations,
- Raising the producers' awareness on the need to improve the quality, through public campaigns etc.

Existing situation

The area of standardisation is presently regulated by the Law on Standardisation ("Official Gazette of FRY", no. 30/96, 59/98, 70/2001 and 8/2003). This Law contains the chapters on standardisation and technical regulations, on publishing the standards and technical regulations, on conformity assessment, accreditation, certification, product testing, conformity control, technical supervision, declaration, labelling, packing etc. The following institutions were responsible for enforcement of this law: Federal Bureau for Standardisation was in charge of passing and publishing the Yugoslav standards, Yugoslav accreditation body and Federal ministries were responsible for passing technical regulations within their scope of work and competence.

Due to certain imprecision and unclear differentiation between standardisation issues and the issues of accreditation and conformity assessment, the application of the current Law on Standardisation was accompanied by occasional conflicts of competence, sometimes even inappropriate implementation of certain provisions of the Law. Such situation induced the need to separate these activities and regulate them by several laws: Law on Standardisation, Law on Accreditation and Law on Technical Requirements for Products and Conformity Assessment.

Harmonisation of domestic legislation in the standardisation area with the regulations of the European Union and World Trade Organisation is the precondition for realising the tendencies of closer integration in international community, particularly the conclusion of Stabilisation and Association Agreement and membership in the World Trade Organisation.

Adequate legal regulation of standardisation in compliance with the European and international standards will enable the accession and full membership in European organisations for standardisation (CEN and CENELEC Institute for European Telecommunication Standards ETSI) and international organisations for standardisation (International Standardisation Organisation - ISO, International Electrotechnical Committee - IEC and International Telecommunication Union - ITU).

Drafting of the Standardisation Law is underway and it should not be substantially different from the solutions adopted by other transition countries i.e. neighbouring countries which have already become the EU Member States or the candidates for EU accession.

The new Standardisation Law will regulate the standardisation area in such a manner so as to ensure harmonisation and market access for all entities i.e. interested parties bound to implement Serbian and Montenegrin standards in all areas of their application. This will enable the information on and access to all other standards of regional and international organisations that the newly-established Institute for Standardisation will join.

The new law suggests that the future national standards be called Serbia-Montenegro standards (SCG) and that all stakeholders participate in their adoption. The following aims will thus be realised: the adoption of standards through mutual consensus, preventing the domination of individual over mutual interests, transparency of standardisation procedures, public access to Serbia-Montenegro standards, and mutual harmonisation of Serbia-Montenegro standards, taking into consideration the technical development and rules of European and international standardisation institutions.

Short-term priorities

The adoption of the proposed law will ensure the credibility of standardisation system in our country, which would facilitate its international and European recognition.

- **It is necessary to adopt the national Strategy for adoption of European standards (EN)**, which would define the dynamics and scope of their adoption in order to eliminate technical barriers for realisation of free movement of goods.
- Newly-established **Institute for Standardisation** should establish international cooperation and partnership through bilateral agreements with corresponding institutions in other countries.
- It is necessary to speed up the adoption of European standards (EN) and increase the number of applied standards.

Mid-term priorities

- Through the activities of the Institute for Standardisation it is necessary to promote the area of standardisation and quality assessment and control, both through teaching agendas and lectures at Universities and through dialogue with the economic actors.
- It is necessary to gradually establish the information exchange system which would correspond to the EU rules on exchange of the draft technical regulations and standards.

3. Accreditation and conformity assessment

Existing situation

Accreditation area was so far regulated by the Law on Standardisation and the Law on Measuring Units and Measuring Instruments, which resulted in the lack of information of economic entities and users of products and services on their rights and obligations in this area. Furthermore, due to the conflict of competences under certain laws, their application was impossible.

In the valid laws, the accreditation area is regulated in the manner which is not in line with international and European practice i.e. with harmonised standards and procedures. In relation to this, the only provision related to accreditation of testing laboratories i.e. calibration laboratories envisages that the Accreditation body only receives the application for accreditation and issues the accreditation certificate, while the Bureau of Measures and Precious Metals performs all other activities in the accreditation process. For accreditation of other organisations in charge of conformity assessment, it is prescribed that the Accreditation body provides professional opinion on the request for accreditation, performs supervision over accredited organisations, proposes the revoking of accreditation certificate etc.

The valid Law on Standardisation does not foresee accreditation of certified bodies for staff certification, except for evaluation of the quality system management and the environmental protection system.

Such situation resulted in disrespect of the mentioned laws and incapacity of our economy to integrate into the European and world trends related to legal and technical regulation i.e. infrastructure necessary for the quality of our products.

Membership in the European Accreditation Organisation will, with the appropriate legal regulation of the accreditation system and the harmonisation thereof, enable our country to accede to the multilateral arrangement on mutual recognition within the European Accreditation Organisation.

The new Law on Accreditation, whose drafting is underway, will ensure the compliance with European and international practice in the area of accreditation. This will facilitate the domestic and foreign trade, since the operation of national accreditation body will be legally regulated, including the respecting of globally accepted criteria for accreditation and recognizing the interest of all stakeholders in this field.

The improved legal solutions will secure that the system for accreditation of conformity assessment services, provided by conformity assessment bodies, obtains the confidence of buyers i.e. consumers of products, and that it ensures the competence of persons performing the conformity assessment and approving the conformity results. Furthermore, the verification of competence will be performed by SCG Accreditation Body, as a completely independent and impartial institution relative to conformity assessment bodies i.e. those who require such assessment.

Adequate legal regulation of the abovementioned activities creates the preconditions for trade under equal terms and provides the opportunity for any domestic product and service officially accepted into the domestic market to be marketed in other countries without re-testing, re-certification etc. This would improve the position of our economic entities both in the country and abroad, through offering quality and cheaper goods and services, bearing in mind that their quality was confirmed by the accreditation body i.e. competent body for conformity assessment, and at the same time the additional costs for conformity assessment will be avoided.

The adoption of new legal solutions ought to enable the domestic conformity assessment organisations to prove their competence and become recognised, which would create the conditions for conclusion of multi-lateral and bilateral agreements on mutual recognition of procedures and results of conformity assessment. In order to meet the requirements of all stakeholders, the level and reputation of testing, calibration, control and certification will also be improved.

The areas of technical requirements for products and conformity assessment were so far regulated by the Standardisation Law. Due to certain imprecision and unclear differentiation between standardisation issues and the issues of accreditation and conformity assessment, the application of the current Law on Standardisation was accompanied by occasional conflicts of competence, sometimes even inappropriate implementation of certain provisions of the law. Such situation induced the need to separate these activities and regulate them by several laws: Law on Standardisation, Law on Accreditation and Law on Technical Requirements for Products and Conformity Assessment.

The drafting of the Law on Technical Requirements for Products and Conformity Assessment is currently underway. At preparation of the proposal of the Law on Technical Requirements for Products and Conformity Assessment, the solutions used were those from the neighbouring countries that have recently acceded to the EU or are in association process, and which are applicable to our economic and legal system. It should be taken into account that these measures may be applied in the Serbia-Montenegro market and may result in the

most favourable solution to the problems of adopting the technical requirements and conformity assessment procedures. At prescribing technical requirements, international principles and obligations assumed under bilateral and multilateral agreements on preventing and eliminating the barriers in international trade have to be respected.

Harmonisation of domestic technical regulations with the European Union Directives i.e. their takeover, as well as harmonisation with the World Trade Organisation rules, represent the preconditions for achieving the tendencies of our country for closer integration in international community, particularly the conclusion of Stabilisation and Association Agreement and accession to the World Trade Organisation

State Union of Serbia-Montenegro should not possess a legal monopoly over the conformity assessment activities that are in general interest. It is more useful to foresee that these activities may be performed by entities which meet the legally prescribed criteria. To that end, the following principles should be taken into account at preparation of the draft law: demonopolisation in the quality area; prevention of conflict of interest; transparency in state institutions' work and respecting European and international rules.

Short-term priorities

- Fulfill the conditions for conclusion of multilateral agreement on mutual recognition within the European Accreditation Body and the integration of SCG accreditation system in the European system.
- Compile a national database on accredited laboratories and bodies.

Mid-term priorities

- Support the legislation harmonised with the EU *acquis* and WTO rules.

4. Metrology

Existing situation

The field of metrology is currently regulated by the Law on Measuring Units and Measuring Instruments ("Official Gazette of FRY", no. 80/94, 28/96 and 12/98). The drafting of the Metrology Law is underway.

Proposal of the Metrology Law is a completely new law which regulates the area of legal metrology in the market economy conditions. This proposal of the law was drafted with the aim of harmonisation with international regulations and practice implemented in the European Union. The solutions from the European Union legislation have been taken over to the extent of their applicability in the State Union market.

As opposite from the legal situation regulated by the Law on Measuring Units and Measuring Instruments («Official Gazette of FRY», no. 80/94, 28/96 and 12/98), the area of calibration is deregulated by envisaged amendments, except for the purposes of legal metrology. The provisions of this law are only applicable to measuring instruments used in legal metrology, while the instruments used in all other metrology branches (industrial, scientific etc.) remain deregulated, which is in compliance with the solutions in international and EU practice.

The Law proposal is in line with the European Union regulations. This proposal is the first in our country to regulate the area of previously packed products. The calibration area arranges the calibration system of Serbia-Montenegro, traceability thereto or traceability to international standards, which enables the traceability of calibration or measurement results. Beside that, the Law envisages the accreditation of laboratories for performing the

certification of measuring instruments and the possibility for instrument producer to check the first certification of his instrument by using his own quality system.

The Law proposal provides for the harmonised role of organisation responsible for measuring, the manner of marketing and use of measuring instruments, the manner of checking the legal metrology control of measuring instruments in laboratories and metrology supervision by using the solutions applied in the European Union.

Short-term priorities

Metrology policy should ensure the development of metrology infrastructure in Serbia-Montenegro and its international recognition.

Mid-term priorities

Training of staff employed in metrology laboratories and provision of new equipment for calibration and verification of measuring instruments; application of internationally accepted measuring units; development, maintenance and transfer of Serbia-Montenegro standard value to the level which fulfills the requirements of this country; support to the development of appropriate and internationally recognised infrastructure for ensuring the traceability of measuring results; direction and funding of metrology researches; development of metrology education and training of metrologists; drafting, adoption and enforcement of the metrology regulations; establishing the fulfillment of legal metrology requirements and public information in metrology area.

5. Sectoral approach

In certain sectors, the European Union has completed the rules related to technical regulations and standards in a more thorough manner than envisaged by the "new approach". It is therefore necessary that the authorities responsible for technical regulations (ministries etc.) or standards (future institute for standardisation) initiate certain activities for harmonising the regulations in the following areas:

- The system of approval of certain types of motor vehicles and their trailers,
- The system of approval of certain types of two-wheeled and three-wheeled motor vehicles (safety and ecological requirements)
- Chemicals
- Foodstuffs
- Medicines for humans
- Veterinary medicines
- Electrical equipment
- Toys
- Construction products

Short-term priority

It is necessary to develop the rules harmonised with appropriate EU Directives for each of the abovementioned areas. On the other hand, it is necessary to possess the institutions competent for supervising the application of technical regulations and standards in this area (inspections, laboratories etc.).

Mid-term priority

In medium term, it is necessary that the Serbia-Montenegro rules are fully in line with the EU *acquis*.

4.3.2. Free movement of workers

Free movement of workers and persons represents a segment which is of fundamental importance for the functioning of the European Union common market. This area is primarily regulated by Articles 39-42 of the Treaty on European Community. Free movement of persons is a broad term and represents a precondition for legal regulation of free movement of workers. Since these freedoms i.e. rights are generally entitled to all citizens of European Union countries, we may say that these two freedoms fall within the corpse of the European citizenship rights.

Free movement of persons relates to undisturbed movement within the European Union, reduction of administrative formalities that may impose obstacles to free movement of EU citizens and their family members who may be citizens of third countries. This also relates to the right of stay and residence in another EU Member State, which implies the prohibition to apply the system of residence permits to the citizens of the European Union. Free movement and stay of EU citizens and their family members within the territories of Member States is regulated by European Parliament and Council Directive 2004/38/EC.

The area of free movement of workers is regulated by three EU Council Directives: 1612/68, 312/76 and 2434/92. The essence of this freedom is that every EU citizen is entitled to employment access under equal conditions as the citizen of the Member State that the employment is sought in. He has the right to use all legal possibilities that the legal system of host country provides in terms of assistance at employment offered to the domestic citizen. His employment shall not depend on any discriminating criteria related to citizenship and in that sense the country shall not apply the employment permit system towards the EU citizens. The right to equal access to employment is the core of free movement of workers, which enables the implementation of other elements of this freedom:

- Equal treatment of all EU citizens in the area of Member State's labour law.
- All employed EU citizens are entitled to equal social and tax benefits as the citizens of host country. They also have equal rights in relation to housing issues.
- Family members of employee from an EU Member State have the right to accompany the employee in the host country, regardless of their citizenship.
- The employee has the right to full coordination of social security, which implies: the transfer of pension and other benefits obtained in one Member State in case he moves to another Member State; aggregation of all social contributions from the states that the EU citizen worked in so that he can enjoy social protection as if he worked in one country all the time; family members of EU citizen are entitled to equal family benefits as host country citizens.
- Full application of mutual recognition of professional qualifications.

It is noteworthy that the free movement of workers is not implemented to full extent towards the new Member States that have acceded to the EU on 1 May 2004. Citizens of these states shall have the right to equal access to employment as citizens of «old» EU Members only after the transition period which will last no longer than 2011. The reason for this lies in fear that the workers from «new» Members would flood the European Union labour market and thus reduce the cost of labour and impoverish the labour potential of their countries. Although this assessment is a moot point, such practice was applied at previous EU enlargements with Greece, Spain and Portugal. Without further analysis of this solution, we may say that the EU citizens have equal rights in all other areas of free movement of persons and workers.

Since the workers from «new» Members of the EU do not have equal access to employment, these countries have been granted the right to apply reciprocal measures to workers from «old» Members during the transition period. Such experience may be useful for Serbia-Montenegro in terms of creation of strategy for labour market liberalisation in the pre- and post-accession periods. However, the EU and its Member States will make the key decision on whether they would automatically provide the SCG citizens with free access to employment after the accession to the EU.

The obligations that SCG has assumed so far through membership in the Council of Europe i.e. conclusion of Revised European Social Charter on 22 March 2005 (RESC) overlap to some extent with the obligations accompanying the EU membership. This primarily relates to Article 19 of RESC, which contains prohibitions to discriminate migratory workers on basis of citizenship. These provisions relate to the right to employment access i.e. the state retains freedom to apply the system of working permits and permits for stay and residence. Article 19 of RESC relates, among other things, to the following:

- Right to equal national treatment in compensation for work and working conditions
- Right to membership in the labour unions and realisation of rights under collective agreement
- Right to equal national treatment at providing the accommodation i.e. housing
- Right to equal national treatment regarding the tax, social and other contributions based on the employment relation
- Right to live with the family at the territory of the host country

Necessary measures of legal harmonisation

At assessment of general conformity of our legislation with the European standards contained in the Revised European Social Charter regarding the migratory worker, we may conclude that there is a need for amendments and supplements to the Law on Employment of Foreigners and Persons Without Citizenship, the Law on Temporary Movement and Stay of Foreigners and a set of other laws partially regulating this area (Law on Civil Servants, Law on Evidence in the Labour Field, Law on Employment and Insurance in Case of Unemployment etc.). Namely, it is necessary to liberalise the procedure for issuance of work and residence permits – if possible merge these two procedures (since dual procedure fails to comply with the request for procedure simplification as prescribed by Article 18 of the Revised European Social Charter); facilitate the procedure for work permit renewal and extend the validity period of residence permit in case of work permit renewal. Furthermore, a foreign person should be allowed to stay in the country as long as he realises the right (receives) to unemployment benefits based on insurance in case of unemployment. Of course, the issuance of working permit and renewal thereof depend on the economic and social factors, but the administrative procedures should be facilitated. The costs of this procedure should also be reduced (or brought down to the minimum level). Finally, the right of migrant worker to be accompanied by his family (spouse and dependants under 21) requires appropriate legal harmonisation.

Social insurance, pension and disability insurance are of special importance for regulating the status of migrant worker. Namely, contrary to the European Union law in the area of free movement of workers/persons (Directive 2004/38/EC), which foresees the principle of aggregation i.e. summing of all insurance periods realised in various EU Member States – both in terms of obtaining and maintaining the right to benefits and establishing the amount of benefit and the rules of social benefit payment to persons residing in Member State territory - the issue of internship aggregation in obtaining and maintain the right, as well as benefit payment on basis of social insurance valid in the Council of Europe Member State (RESC Article 12), assume that the coordination rules are based on reciprocity (bilateral or multilateral international agreement e.g. European Code of Social Security).

Mutual recognition of professional qualifications

With a view to ensure full mobility of workers, it is also necessary to harmonise relevant regulations in the area of recognition of certificates, diplomas and other documents, which may be related with common policies and areas in which the Union can institute the activities of coordination, supplementation and support (e.g. education, youth, sports and vocational training). The aim of the EU's campaign is to develop a European dimension in education, to promote the mobility of teachers and students, through supporting the recognition of certificates, study periods (credit system), distance learning etc. In this sense, Serbia is undertaking a reform of education system, including the reform of university education, in accordance with the standards of Bologna Declaration. Validation of certificates and professional titles is not the issue among the EU Members, except in specific areas and cases. Harmonisation of our legislation in this significant area for worker mobility should include the standards under various Directives devoted to mutual recognition of certificates, diplomas and other documents, in order to facilitate the access to employment and performance of free professions. The Directives are classified into general and sectoral. General Directives are dealing with the mutual recognition of high school diplomas (Directive 92/51) and university diplomas (Directive 89/48). Sectoral Directives regulate individual professions: diploma of a doctor (Directive 75/362, modified 93/16), dentist (Directive 78/687), veterinarian (Directive 78/1026), pharmacist (Directive 85/432), architect (Directive 85/384) etc. All general and sectoral Directives are modified by Directive 2000/19. Regarding the lawyer's profession, Directive 77/249 prescribes the conditions for recognition of lawyers' degree i.e. degree for legal counsel in courts or other competent institutions in another Member State.

Legal harmonisation in this area will make redundant all bilateral international agreements on mutual recognition (validation) of certificates signed between our country and the European Union Member States.

4.3.3. Freedom to provide services

Freedom to provide services is an area leaning on the free movement of workers/people and on mutual recognition of professional qualifications. This area is primarily regulated by the same Directive 2004/38/EC as the area of free movement of workers. What makes this field specific is the fact that it relates to possibilities of self-employment and establishing companies in another EU Member State. Member States are obliged to provide equal treatment at self-employment and company establishment for all EU citizens.

4.3.4. Free movement of capital

Free movement of capital presumes the harmonised preparation of legal and economic aspects. In case of Serbia, preparations in the area of law have advanced much more than those in economic field. The existing legislation on foreign investments in Serbia is largely harmonised with the European Union law. It takes several regulations to make the entire area harmonised with the relevant Union legislation.

Adequate strategy for domestic economic development and its due enforcement are preconditions for complete valorisation of free movement of capital.

Legal basis for free movement of capital in the EU

Legal basis for free movement of capital in the European Union is the Treaty establishing the European Community, primarily the Title III, Chapter 4: "Capital and payment operations", Articles 56 – 60 and Title VI which

regulates the issues of competition, taxation and harmonisation of legal regulations. The main issues arranged by regulations on free movement of capital are: movement of capital, payment operations, insurance, securities, money laundering prevention. All these issues are thoroughly arranged by a number of European Union regulations.

Domestic regime of capital movement

The regime of foreign capital movement is arranged by a number of regulations. The following laws are of special importance:

- a) Law on foreign investments («Official Gazette of FRY», no. 3/2002);
- b) Law on securities and other financial instruments market, (“Official Gazette of FRY”, no. 65/2002, „ Official Gazette of RS”, no. 57/2003 and no. 55/2004).
- c) Law on foreign credit transactions (“Official Gazette of FRY”, no. 42/92);
- d) Law on foreign exchange operations (“Official Gazette of FRY”, no. 23/2002);
- e) Law on money laundering prevention (“Official Gazette of FRY”, no. 53/2001);
- f) Law on payment operations (“Official Gazette of FRY”, no. 3/2002 and no. 5/2003; “Official Gazette of RS”, no. 43/2004).

The legislation on capital movement is supplemented by a number of other regulations, such as the laws on: National Bank of Serbia, banks and other financial organisations, insurance, commercial organisations, protection of competition rules in the domestic market, taxation, accountancy audits etc. Free movement of capital implies the free movement of persons.

The abovementioned regulations on free movement of capital are largely in line with the European Union regulations. The regulations which ought to be adopted in order to harmonise the entire area with relevant European Union legislation cover the following areas:

- a) investment funds
- b) electronic payment
- c) additional insurance of payment
- d) protection of small investors
- e) protection of bank deposits.

In this chapter we shall represent the regulations directly related to free movement of capital and which are not elaborated in other parts of the Strategy.

Proposals for harmonisation with the EU regulations

1. Law On Foreign Investments

A. Existing situation

a) The Law on Foreign Investments was adopted in 2001 («Official Gazette of FRY», no. 3/2002 and 5/2003). This Law is harmonised with the EU legislation and it represents a legally and technically appropriate regulations. It is brief, simple and clear.

The Law on Foreign Investments is one of the most liberal foreign investment regulations. The obstacles to its implementation are at the level of by-laws. For instance, foreign persons cannot benefit from the income tax relief for investments higher than YUM 600 million, which is envisaged by the Law on Amendment to the Law on Enterprise Profit Tax («Official Gazette of the Republic of Serbia, no. 80/2002):

The Law on Amendment to the Law on Enterprise Profit Tax, published in the Official Gazette no. 80/02, includes the following significant provisions on this issue:

Article 50a

The taxpayer who, pursuant to legislation regulating the promotion of investment in the economy of the Republic, invests in his capital assets i.e. whose capital assets are invested in by another person the amount higher than YUM 600 million, and who uses such assets for performance of registered activity in the Republic and employs at least 100 persons on basis of open-end contract during the investment period, shall be relieved from profit tax for the period of ten years in accordance with such investment.

Article 50i

When the Government of the Republic of Serbia passes a decision establishing that the investment under Articles 50a and 50b of this Law is of special importance for the economy of the Republic, in terms of the law regulating the promotion of investment into the economy of the Republic, responsible tax authority shall issue a decision which establishes the fulfillment of conditions for using the tax incentives under Articles 50a and 50b of this law».

Therefore, in order to enable a foreign investor to use the legally prescribed relief, the individual decision of executive body is necessary. On the other hand, such body cannot pass the decision without a law establishing the projects of special importance for Serbia.

No regulation has been adopted so far which would define the «investments...which are of special importance for Serbian economy». That is why the relief cannot be enjoyed.

B – Requirements aimed at harmonisation with EU legislation

- a) Draft the regulations in a clear manner so as to ensure their understanding by all parties covered thereby.
- b) Pass appropriate regulation which would define the undertakings «of special importance for Serbian economy» or criteria for their definition, so that the responsible bodies could pass the decisions on prescribed tax relief.

2. Law On Investment Funds

A – Existing situation

There is no law on investment funds in our country. Its drafting, initiated many years ago, is still underway. What should be taken into account at creation of this law is whether certain issues related to trade in securities have already been covered by the Law on Securities and Other Financial Instruments Market.

Investment funds should be regulated so as to be safer and more favourable than the banks, to which they represent competition in savings mobilisation. The main purpose of relevant EU regulations – Directive 85/611 (amended and supplemented by Directives 2001/107 and 2001/108) – that the Law on Investment Funds should be harmonised with, is the protection of investor's interest.

Passing of the Law on Investment Funds will complete the regulation of the free movement of capital in our country.

For the very reason of investor's safety, the investment funds cannot be established as easily as business organisations. Their establishment requires the licence of the competent authority. The instructions particularly regulate the relation investor – management company – depositor (exclusively renowned banks and insurance companies). The instruction regulates the supervision over all parties.

Most EU Member States have individually regulated the collective investment in transferable securities. Due to the differences in the manners of regulation of this issue, the Council of European Union has arranged this area by Directives that are binding for all EU Members.

It should be noted, nevertheless, that the Directives only prescribe the "harmonised minimum" so that the Member State legislations would be in compliance i.e. to ensure the undisturbed trade in securities throughout the European Union. Apart from this, all Member States have the autonomy in regulating this issue.

B – Requirements aimed at harmonisation with EU legislation

Since there is no Law on Investments Funds in our country, its creation will require the observance of comparative law. It would be most convenient to pursue the concept of the Law on Securities and Other Financial Instruments Market and the Company Law, which are already adopted.

Trade in securities is an issue regulated by two sections of EU legislation "capital movement" and "providing of services". By definition, the transfer of securities between residents of different Member States represents the "movement of capital", whether it is legal or physical transfer. At the same time, having in mind the developed intermediation in trade in securities, it is also classified as "financial service". The adoption of this law will complete the financial system of Serbia.

3. Law On Money Laundering Prevention

A. Existing situation

The Law on Money Laundering Prevention ("Official Gazette of FRY" no. 53/2001) was passed in 2001 and entered into force on 1 July 2002. This Law is partly in line with the European Union Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering and Directive 2001/97/EC of European Parliament and Council of European Union amending and supplementing the Directive 91/308/

EEC on prevention of the use of the financial system for the purpose of money laundering (1st and 2nd Directive). The new proposal of the Law on Money Laundering Prevention which has been in Parliamentary procedure for adoption since November 2004 is created with the aim of harmonisation with international standards prescribed by the abovementioned EU Directives and Recommendations of the FATF (Financial Action Task Force). This proposal envisages a larger number of taxpayers than the present law; the amount over which it is obligatory to report the cash transactions is in line with the Directives; mandatory identification of end-user of funds is introduced; the Administration for Money Laundering Prevention is authorised for ordering the temporary suspension of transactions; obligation to keep the documentation is precisely defined; the training for taxpayer's personnel is envisaged etc. in line with the mentioned international standards. Proposal of the new Criminal Code envisages the criminal act of money laundering which is in line with the mentioned international standards, as well as terrorism financing as a separate criminal act.

B. Requirements for harmonisation with EU regulations

It is necessary to adopt the said laws as soon as possible and to further harmonise them with the European Union law and other standards. Namely, the proposal of the Law on Money Laundering Prevention needs to be supplemented (we suggest the Government's amendments) by provisions laying down the measures for prevention of terrorism financing, authorisations of the Administration for Money Laundering Prevention in this field, widening the list of legal and natural persons bound to fulfill the obligations under the Law and lawyers would be obliged, during the performance of the activity in the name and on behalf of their clients, to report the suspected money laundering activity. The obligation to take measures for prevention of terrorism financing is contained in the Third EU Directive (3rd Directive) in the area of prevention of money laundering in preparation.

4. Law On Securities And Other Financial Instruments Market

A. Existing situation

The Law on Securities and Other Financial Instruments Market was passed in 2002. It was amended and supplemented twice – in 2003 and 2004 ("Official Gazette of FRY", no. 65/2002, "Official Gazette of RS", no. 57/2003 and no. 55/2004).

Article 10 of the Law foresees that domestic and foreign natural and legal persons may „obtain ... the rights from securities ... and ... manage them“. This also means that they may pledge the securities. Nevertheless, this provision fails to mention financial instruments which are not in form of securities. Beside the securities, this Law (Articles 15 and 16) only recognises financial derivatives i.e. standardised stock market instruments as "financial instruments".

EU Directives 98/26 and 2002/47, which are viewed as extremely important for insuring the payment operations, envisage that cash and other financial instruments shall be used as "additional financial insurance". A number of such instruments other than securities have been enlisted. Pledgee has the right to collect money for these instruments i.e. cash them without instituting any procedure. Additional insurance is excepted from the bankruptcy and liquidation regime. It cannot be denied if the lender goes bankrupt in the meantime.

Our Law on Contracts and Torts ("Official Gazette of SFRY, no. 29/78, 39/85, 57/89, "Official Gazette of FRY", no. 13/93) in Articles 989 and 990 envisages the possibility to pledge outstanding debts and securities. According to that, our legislation provides for a general legal basis for additional insurance in the area of rights and duties in payment operations. However, neither the Law on Contracts and Torts nor the Law on Bankruptcy envisage

that the financial instruments pledged in payment operations may be excepted from the bankruptcy and liquidation regime.

B. Requirements aimed at harmonisation with EU legislation

Since the claim collection is one of the weakest points in our economy, the solutions under Directives 98/26 and 2002/47 should be taken into account. The resolving of this issue might require the adoption of a separate regulation, amendments to the Law on Securities and Other Financial Instruments or any other law which regulates the collection of outstanding debts in payment operations.

5. Deposit Protection

A. Existing situation

Bank deposits are not adequately protected in our legislation. The solutions of the previous Law on Agency for Bank Rehabilitation and Deposit Insurance and the Law on Banks and Other Financial Organisations were not successful in regulating this area, hence this issue was arranged by two Decisions of the National Bank of Serbia: (a) «Decision on the conditions for ensuring liquidity for the payment of dinar saving deposits ("Official Gazette of FRY" no. 34/2001) and (b) "Decision on the Measures of Maintaining Foreign Exchange Liquidity of Banks to Assure Payment of Foreign Exchange Savings Deposits" ("Official Gazette of FRY" no. 34/2001). The latter Decision had positive impact on increase of foreign exchange savings in banks. However, this solution is not favourable for banks, since it implies the immobilisation of one half of savings deposits, because they have to be deposited with the NBY.

The preparation of the Law on Deposit Insurance is underway.

B. Requirements aimed at harmonisation with EU legislation

Directive 94/19 from 1994, which was subsequently amended, envisages the "deposit protection" instead of "deposit insurance". The difference is both terminological and analytical. Deposit insurance implies the commercial operation with insurance premium in percentages collected at conclusion of insurance contract; deposit protection implies the protection premiums in per thousands which are obligatory in nature (paid in only in the event of protected case).

After restoring the confidence in domestic banks, the system of deposit protection should be established in the domestic deposit market according to Directive 94/19. Such system would comprise of following elements:

- a) mandatory protection of deposit;
- b) qualitative and quantitative limitation of deposit protection;
- c) protection in form of interbank fund;
- d) protection premium proportionate to the degree of bank risk.

At present it is not possible to realise the theoretically favourable system for deposit protection. Until the confidence is restored in bank system in the credit market, deposit protection should be ensured by a public legal institution. The upper limit of protection of future deposits should be EUR 20.000, as envisaged by the EU Directive.

6. Protection Of Small Investors

A. Existing situation

There is no protection of small investors in securities. The only form of small investor protection in this country is the indirect protection of small shareholders through the Share Fund of the Republic of Serbia. Share Fund realises such protection by inviting small shareholders to jointly sell their shares and thus realise a higher price than in case of individual appearance in the market.

B. Requirements aimed at harmonisation with EU legislation

Securities market in this country is in its renaissance, which is why the small investors in securities should be primarily protected in order to avoid the bad experience with bank deposits. A special Law on Protection of Small Investors complied with the Directive 97/9 is a necessity.

The precondition for the Law on Investor Protection is the Law on Investment Funds, in order to complete the legislation on trade in securities.

Directive 97/9 on investor protection establishes the "harmonised minimum" so as to ensure the compliance of Member State systems for investor protection. The Directive does not foresee a unique system of investor protection. Thus it is not sufficient only to incorporate the Directive provisions, but the system for investor protection should be arranged to suit our needs and circumstances. Comparative legal analysis of deposit protection systems of selected countries should be used as well.

7. Electronic Payment

A. Existing situation

Electronic payments are not yet systematically arranged in this country. The participants in this system act on basis of the Decree of National Bank of Yugoslavia on Electronic Payment ("Official Gazette of FRY", no. 3/2002) and the Law on Payment Operations ("Official Gazette of FRY" no. 3/2002). Banks issue the payment cards according to the Law on Banks and Other Financial Organisations, international standards and experiences.

B. Requirements aimed at harmonisation with EU legislation

At arranging the issues in the electronic payment area, according to Harmonisation Programme, it is necessary to take into account the following enactments of the European Union:

- a) Commission Recommendation no. 87/598 on European Code of electronic payment practice; and
- b) Commission Recommendation no. 88/590 on relations between card holders and card owners.

The electronic payment system should be legally regulated by a comprehensive single law.

4.4 | *General preconditions for single market*

4.4.1. *Accounting and auditing*

A. Existing situation

In the area of accounting, the departure from the state-commanded economy was realised by adoption of the Law on Accounting in 1996. The concept which was retained was that accounting and auditing shall be regulated by a special law instead of the Company Law. The latter has entirely accepted the principles defined in Fourth and Seventh EU Directive, and the Law on Accounting and Auditing also incorporated the solutions from the Eighth Directive. Subsequently, the application of International Accounting Standards (IAS) was enabled in the area of accounting and the mandatory application of International Standards of Auditing (ISA) was introduced. In December 2002, former Federal Parliament adopted the Law on Accounting and Auditing (compiled) which entered into force on 1 January 2003. This Law established the IASs as framework for financial reporting, and the application and enforcement of ISAs was confirmed.

The new Law on Accounting and Auditing proposes the establishment of Chamber of certified public accountants (previously certified auditors) for promotion and development of accounting and auditing professions, application of international regulation and harmonisation therewith, protection of general and individual interests in performance of activities in these areas, organisation of service provision in the area of financial statement audit, quality control of audit companies' operation, issuing and withdrawal of certificate on passed professional examination, as well as realization of other goals in the area of financial reporting.

Beside the Chamber, this Law also envisages the establishment of Accounting and Auditing Commission which would primarily be responsible for monitoring the implementation of International Accounting Standards, proposing to the Ministry the amendments and supplements to the regulations in the area of accounting, and whose operation would include the representatives from the Serbian Association of Accountants and Auditors, as professional association of accountants.

It is of utmost importance that the keeping of books of account, preparation, submission, presentation and audit of financial statements is established in line with the legal, professional and internal regulation⁵.

The new Law Proposal also regulates the following:

- Procedure for issuance and withdrawal of working licence for audit companies and supervision over the audit company operation;
- Financial reporting of legal entities and other forms of organisations established by a legal entity abroad, if the relevant country's regulation fail to prescribe the obligation of keeping books of account and prepare the financial statements;
- Professional titles in accounting and professional title of certified auditor;
- Obligation to introduce internal auditing in large legal entities within two years after this law has stepped into force;

⁵ Legal regulation is represented by this law and by-laws adopted on its basis. Professional regulation is comprised of: International Financial Reporting Standards, International Standards on Auditing, International Standards on Quality Control, International Education Guidelines for of Professional Accountants, Code of Ethics for Professional Accountants. The internal regulation implies internal general rules of legal entities and entrepreneurs containing specific principles, instructions and guidelines for keeping books of account, preparing, presenting, adopting and disclosing financial statements as issued by legal entities and entrepreneurs in compliance with the legal and professional rules.

- The Law defines procedural and essential conditions that a company has to meet in order to obtain the certificate for performing auditing operations from the competent authority, as well as services that the audit company may provide beside its main activity and the mandatory liability insurance of audit companies against any damage that may be caused.

B. Requirements aimed at harmonisation with the EU

The existing regulation at the federal level was greatly in line with the EU requirements, and the proposal of new regulation goes even further in that direction. The adoption of the abovementioned Law would leave the room for improvement of regulation, while the focus would be on efficient implementation thereof.

The vocational training of internal auditors and certified auditors is also within the competence of the Chamber of certified public accountants. Having in mind the internal auditing methodology and international standards for valuation of companies, real estate and equipment that is applied in the EU countries, the implementation of international financial reporting regulation in this country will require the expertise of persons that will perform these activities.

It is very important to ensure the translation of IASs and ISAs which will be performed by legal entities granted the translation and publishing rights by the International Federation of Accountants (IFAC). Due to the mandatory direct application of standards and large number of liable persons, the translation of framework and the text of IAS shall be published in the "Official Gazette of the Republic of Serbia" in parts related to the main body text of the IAS.

4.4.2. Company Law

4.4.2.1. Term and basis of harmonisation

Harmonisation of internal Company Law regulations is one of the key and priority obligations under the Copenhagen criteria relating to legal harmonization with the *acquis*. Company Law in this sense implies the regulations related to establishment and work of commercial and business organisations. In the State Union of Serbia-Montenegro, the area of Company Law falls within the competence of the Member States, and the states have replaced the former federal Law on Enterprises by separate regulations. The issues of company law in Serbia are regulated by the Law on Business Organisation, Law on Registration of Economic Entities and the Law on Agency for Commercial Registers.

In a wider sense, the Company Law and Commercial Organisation Law also imply the regulations on securities and regulations on good management.

Since the establishment and functioning of a common market cannot be imagined without the harmonised Company Law regulations, their harmonization should be considered a priority issue and condition for association and ultimately membership.

4.4.2.2. The aim of harmonization

The intended aim of harmonisation and implementation of harmonised internal regulations can be defined on basis of previously concluded Stabilisation and Association Agreements and general provisions from Articles 3h, 43, 44(2)e and 308 of the Treaty Establishing the European Community.

Pursuant to the enlisted provisions of the Treaty, the main goal of harmonising the Company Law regulations is to ensure the conditions for functioning of common and internal markets, free establishment of EU companies, agencies, branches and subsidiaries in other countries (the right to settle and establish company) and the alignment of protection provisions relating to protection of interests of company members and third parties. Similar requests may be defined by the Stabilisation and Association Agreement for the Company Law regulations of the State Union of SCG.

Such definition of goal determines the scope i.e. types of domestic regulations which ought to be harmonised with the EU *acquis*, as well as the prescribed content of the provisions of domestic harmonised regulations.

A. Existing situation

In mid-2004, the Law on Registration of Economic Entities and Law on Agency for Commercial Registers were adopted in Serbia. The end of 2004 saw the adoption of the Law on Business Organisations. The adoption of these laws was long overdue. The Law on Registration of Economic Entities and the Law on Agency for Commercial Registers were about six months overdue, while the adoption of the Law on Business Organisations was one year late. The adoption of these laws enabled the overall regulation of the Company Law matter.

B. Requirements aimed at harmonisation with EU legislation

The new Laws on Registration of Economic Entities and the Agency for Registers were expected to introduce a single register and to facilitate and shorten the process of registration.

The Law on Registration of Economic Entities is in a normative sense largely harmonised with the EU *acquis*. This law has been in force since 1 January 2005. The Law on Registration envisages that the registers, as unique documents, be kept by a special Agency for Commercial Registers, whose functioning is regulated by the Law on Agency for Commercial Registers. The Agency is seated in Belgrade and represents a specific organisation with the legal person capacity, which operates in compliance with the regulations on public services. The Agency may have separate organisational units – branches, which conduct registration but do not have the legal capacity. The issue of registration body is not regulated in European Union in a uniform manner, nor is such regulation prescribed by the EU *acquis*, so that the registers in Member States are kept either with courts or in Chambers of Commerce.

With a view to shorten the procedure, the Law envisages the possibility of electronic registration. Bearing in mind the current situation of economic entities as regards the computer equipment and skills, this would require a better coordination and establishment of additional transferable capacities. On the other hand, it is necessary to pass the appropriate regulations on electronic signature, for the purpose of legal certainty. Furthermore, the efficient functioning of single register implies the existence of direct connection among the company registers, so as to ensure the free establishment throughout the country.

The Law on Business Organisations replaced the previous Law on Enterprises.

The Law on Business Organisations was expected to prescribe the disclosure requirements covering financial data of the company and entry of these data into the unique register; to prescribe that the company documents intended for third persons include the information that the company is in liquidation procedure; to clearly separate the company nullity from other reasons of company's ceasing to operate; to amend the provisions on minimum initial capital for limited liability companies; to foresee the obligation to convene the shareholder meeting in cases of major losses, so that the shareholders would decide on possible liquidation of the com-

pany or other measures; to more closely regulate the capital maintenance; purchase of own shares; capital decrease and increase; regulate in detail the position of certified auditors; to improve shareholder protection; to include the provisions on nullity of company mergers; introduce rules directly relating to company scissions; instead of reference to the merger rules, clearly regulate the status of company parts and branches in terms of legal person capacity.

The Law on Business Organisations is drafted according to contemporary European laws, including the solutions of the existing EC Directives. Hence, its solutions are mostly harmonised with the First, Second, Third, Sixth and Eleventh Directive.

Nevertheless, there are some differences in regulating the issue of disclosure of data on number of shares, limited transfer of shares, company liability for obligations assumed prior to obtaining the work permit, manner and institutions for merger control, issues of merger nullity, as well as the issue of company scissions.

C. Evaluation

The above mentioned laws provide for establishment and operation of economic entities in Serbia under similar or equal terms as those in Member States. This practically ensures the freedom to establish companies i.e. the right to settle. When it comes to protection of rights of company members and third persons, due to the enlisted differences, these rights are somewhat differently resolved in the existing laws compared to the European Union regulations. After a period of implementation of such solutions and after the signing of the Stabilisation and Association Agreement, these issues should be reconsidered from the aspect of internal and common market functioning among the State Union Republics. On basis of conclusions reached and if it proves to be necessary, these laws should be amended and supplemented in mid-term.

On the other hand, the efficient establishment and functioning of common and internal market and efficient protection of business organisation members and third parties do not depend solely on the overall implementation of the mentioned laws, but also on enforcement of other regulations falling within the scope of the Company Law or serving the mentioned goals. This is why the takeover regulations and the Law on Investment Funds should be passed in compliance with the Takeover Directive.

4.4.3. Intellectual property protection

A. Current situation

Problems relating to the violation of intellectual property rights have reached serious proportions in the past decade. Having manifested a number of shortcomings, the legal framework regulating this area (established as far back as in 1995) was adopted in almost all its entirety in 2004. However, its implementation in practice is still inadequate and inefficient. Therefore, the real application of the law, including combating piracy and forgery, remains the key challenge for Serbia.

Since 2002 efforts have been made in Serbia to raise the level of intellectual property protection and to approximate it with the European standards.

Three new laws were passed in 2004 – the Law on Patents, the Law on Copyright and Related Rights and the Trademark Law – setting foundations for a new legal framework in the area. In this way, a substantial portion of domestic regulations on intellectual property protection was harmonised with the European Union and World Trade Organisation regulations, i.e. with the Agreement on Trade-Related Aspects of Intellectual Property Rights

(TRIPS Agreement). The new laws have reinforced legal protection of the bearers of intellectual property rights by making the provisions that used to cause dilemmas and various interpretations more specific and at the same time by introducing the institutes that proved to be very useful in developed countries.

Positive regulations fail to define the responsibility of state bodies for controlling the production, trade and provision of services, using the products containing the subject of copyright. Furthermore, legal regulations do not prescribe special procedures for registration of economic entities, nor do they define the obligations of economic entities that perform these kinds of activities.

In October 2004, Serbian Government established an Anti-Piracy Commission. As the nature of protection suggests, especially bearing in mind the accelerated development of the IT, the members of the Commission are representatives of various state institutions (Ministry of the Interior, Ministry of Culture, Ministry of Trade, Tourism and Services, Ministry of Justice, Ministry of Finance, Ministry of Science and Environmental Protection, Republican Public Prosecutor's Office and the Ministry of International Economic Relations). The Commission monitors existing regulations and proposed passing the new, modern ones and other measures to prevent spreading and to combat existing forms of piracy. Also, in the field of intellectual and other forms of industrial property, the Commission has proposed (within the Action Plan) taking concrete measures in order to prevent production and sale of forged consumer goods and piracy goods and services.

The Commission is responsible for monitoring the existing regulations and propose the adoption of new and modern regulations and other measures that contribute to prevention of spreading and suppression of the existing forms of piracy. Furthermore, in the area of intellectual property rights protection, the Commission's action plan proposes some concrete measures for preventing the production, sale of counterfeited consumables and pirated goods, as well as providing other services in these areas.

Serbian Criminal Code was also amended and a chapter dealing with unauthorised use of copyright or other related rights was added to it. Unauthorised used of copyright or other related right is an offence whose prosecution is now the official responsibility of the state and very strict sanctions are prescribed. With the amendments of the Criminal Code (introduction of *ex officio* action in criminal proceedings, measures for seizure of criminal proceeds and instruments for their realization) where the violation of related rights is not yet appropriately incriminated, it is necessary to establish specialized services for prevention and suppression of piracy (both within the police and within relevant inspection bodies). In the domain of civil procedure law, the drafting of new Law on Hi-tech Crime is underway, which will also cover the cases that treat the violation of intellectual property rights.

The existing Law on Models and Samples of 1995 is inefficient when it comes to regulating the area of industrial design. The Law is not compatible with the stipulations of the TRIPS Agreement, Directive 98/71/EC of the European Parliament and European Council or the Hague Agreement on Registering Industrial Design. This is why the existing law should be substituted with a new one as soon as possible. The new law should comply fully with the modern understanding of industrial design, as demonstrated in practice by the majority of submitters of models and samples. In mid 2004, a Bill on Legal Protection of Design was completed, with the aim to remove all the deficiencies and strengthen legal protection of bearers of the design right, but its adoption is still pending.

Regulatory discrepancies exist also in the area of protection of integrated circuit topography. It is worth noting that a draft of the new law regulating this area has also been completed.

For the first time, measures for intellectual property protection on the border have been introduced in the Customs Law. A Unit for Intellectual Property Protection was established within the Anti-Smuggling Department of the Republican Customs Administration in June 2004 and after a preparatory period it became operational in October 2004. According to the current law, this public service is obligated to protect intellectual property not only in the import and export, but also in the transit through our country. The owner of the right to protected product name needs to lodge a general claim, an individual application, which binds the Customs to control every delivery of the goods bearing the protected mark. If a customs officer suspects that forged goods have entered the country, the Customs informs the bearer of the intellectual property right and they file a complaint to the Trade Court and demand protection of their right. The damaged party is entitled to the compensation for physical and immediate damages, and the company that imported the forged goods can be banned from imports by the Court.

The Anti-Piracy Committee has recently been established within the Serbian Ministry of Culture and Media. Its members have been selected from a number of public bodies, including the Police, Ministry of Culture and Media and courts of law. The Committee is responsible for monitoring the application of the intellectual property rights laws, primarily those covering production and selling of forged and piracy goods.

B. EU harmonisation requirements

Existing regulations does not entirely provide the necessary framework for fighting piracy and there is an additional problem in its inadequate application. In addition to this, the process of revision of legal solutions that started in 2002 and culminated with the adoption of the aforementioned laws has not been completed. Positive regulations do not define the state institutions' responsibility to control production, trade and use of services and goods that do not contain the copyright. What is more, they do not determine special procedures for the registration of business entities performing these forms of activities. It is necessary to pass a new Law on Integrated Circuit Topography Protection and a Law on Legal Protection of Design. In this way our laws would be in full compliance with the contemporary European laws.

Although proposals of the Law on Integrated Circuit Topography Protection and the Law on Legal Protection of Design were completed long time ago, they are still waiting for adoption.

By adopting the proposed Law on Integrated Circuit Topography Protection, Serbia would harmonise its legislation with international standards in the area, prescribed by the World Trade Organisation and the European Union.⁶ The aims of the Law are to encourage the development of domestic integrated circuit topography and the application of foreign integrated circuits on the territory of Serbia, by providing exclusive rights to their creators and putting at their disposal adequate legal instruments for the protection of those rights from unauthorised use. Both aims are supposed to encourage technological and economic progress of the country. In addition, similar goals would be achieved by the adoption of the Bill on Legal Protection of Design.

Priority should be given to raising the responsibility of all administrative structures in order to secure a more effective application of laws. In cooperation with the economic entities, the Government has to be more efficient in formulating the policies that would further the implementation of measures against and penalties for illegal

⁶ The obligation of providing protection to the creators of integrated circuit topographies the EU prescribed to its Member States by the Directive No. 87/54 on legal protection of semi-conductor products in 1986. On the other hand, under the TRIPS Agreement the World Trade Organisation binds all Member States to provide protection of integrated circuits as regulated by the 1989 Agreement on Intellectual Property, relating to integrated circuits, with some amendments.

activities. It is necessary to provide proactive measures that would reinforce the application of existing legislation and in this way secure a more efficient implementation of existing sanctions.

The intellectual property rights violations which are not in the incrimination zone pursuant to the Criminal Code, should be sanctioned by determining the key elements of violation and economic offences performed by economic entities that seriously and severely violate the provisions of TRIPS Convention (use of unlicensed products, import of counterfeited goods, transport and distribution of products that do not have the appropriate properties etc.). These violations result not only in damage for authors and intellectual property owners, but there are also serious consequences for human health, ecological protection, protection of consumers' rights, protection of cultural values etc. This normative activity is, among other, regulated by the signed charters and conventions such as the Charter of the Council of the Ministers of Culture of South East Europe (Copenhagen 2005).

In order to achieve more efficient protection, the Government should organise training programmes to raise awareness of the harmfulness of piracy both to the national and international economies. It is necessary to educate and train the police, the Customs and inspection services, judiciary (special attention should be paid to the education of judges and prosecutors) and those civil servants who are obligated to react in the intellectual property protection procedures.

It would certainly be useful to pass a Law Application and Implementation Strategy in the field of intellectual property. The Strategy would have to demonstrate the readiness for determined protection of intellectual property as well as sanctioning of all those who violated these rights. At this moment it is too early to predict the content of such a strategy, but it should encompass all issues of regulation application and implementation, including the following:

- Training of the staff who will implement them;
- Certain level of legal protection by the courts of law;
- How to provide swift and efficient monitoring of criminal proceedings related to the violation of intellectual property rights;
- Methodology for the coordination of responsibilities for laws and policies at the State Union level with the responsibilities for their implementation at the republican level;
- Achieving efficient administrative cooperation among various services, including the Customs and inspections, both at the State Union and republican levels;
- How to control the results and progress made in the implementation of laws;
- Additional mechanisms of financing modern law implementation and relevant resources.

4.4.4 Consumer protection

A. Current situation

Consumers in Serbia are not particularly protected, especially not in the way it is done in the countries with market economy. Although the Consumer Protection Law was adopted at the federal level in 2002, it has never become effective. With the adoption of the State Union Charter, consumer protection regulations passed on to the republican level. Unfortunately, Serbia and Montenegro have not adopted special consumer protection laws yet and are therefore at the rear when it comes to regulating this matter.

As regards the EU harmonisation requirements, the greatest importance certainly bears the adoption of the Consumer Protection Bill in Serbia. In this bill, the protection of consumers' economic interests has been worked out in detail and it has been harmonised with the EU directives in this field to a great extent. It contains provisions for the basic forms of economic interest protection, prices of goods and services, packaging material, issuing receipts, written warranty, technical goods, distant selling (i.e. catalogue sales, sales by samples and models, free trial service agreement, electronic selling), as well as consumer protection from unwanted product and service offers. This part also contains fundamental provisions for consumer credit, bargain sales and selling products with defects. Finally, it is stipulated that a consumer is entitled to lodge a complaint if they have noticed a fault with the product they have purchased.

From the list of issues mentioned above and treated in the part of the draft law relating to consumers' economic interest protection it is clear that many of them are regulated by the Debenture Law (selling technical goods, written warranty, standard contracts, sale by sample, catalogue sale, etc.) but it is good that these issues are regulated by the Consumer Protection Law too, as consumers should be spared the hassle of looking for other regulations in order to find the answers to the questions related to the purchased products or services.

Proposal of the Law on Consumer Protection envisages the application of provisions of the Law on Advertising in relation to comparative, deceptive and false advertisements i.e. terms for advertising and prohibition to advertise certain types of products. Proposal of the Law on Advertising, drafted by the Ministry of Trade, Tourism and Services is also in Parliamentary procedure.

B. EU harmonisation requirements

With the adoption of the proposal of the mentioned law, the domestic legislation would largely comply with the EU requirements. However, there is room for additional minor improvements, above all in the area of marketing, consumer credits and establishing small claims courts.

Misleading advertising

European Economic Community adopted Directive 84/450/EEC in 1984 on the harmonisation of legal, by-legal and administrative regulations of Member States regarding misleading advertising. According to Article 2 of the Directive, a 'misleading advertising' is a promotion that, in any shape or form, including its presentation, deceives or can deceive persons intended for or reaches and that, due to its deceitful nature, can influence their economic behaviour or can harm the competition because of that.

The Consumer Protection Bill places marketing products and services in the section referring to information, as marketing really does serve to inform consumers. These provisions are to a great extent in compliance with the EEC Directive on misleading advertising, which is good. The bill reads that "as regards comparative, misleading and untruthful advertising, i.e. marketing conditions and ban on marketing certain types of products, they are stipulated by the provisions of the law regulating advertising".

Consumer credits

Bearing in mind the variety in which consumer credits are treated in national legislations of European countries, the Council of the EU adopted the Directive 87/102/EEC in 1987 on consumer credits. The aim of the Directive was to remove or at least lessen the discrepancies in this area and to formulate the minimum of standards that would enable easier and fairer conditions for getting a credit. In addition to this, the purpose was to provide more protection for the consumer, as a weaker contracting party, when concluding and executing a credit contract.

The Consumer Protection Bill contains provisions that provide basic elements for concluding a consumer credit contract. According to the provisions of this law, the consumer credit contract should be made in writing and provide the basic elements that the agreement should contain. It is important to point out to the provision that reads that the creditor is “obligated to inform the consumer about the highest amount of the consumer credit, annual interest rate and terms and conditions under which it can change, about the credit costs charged at the time when the agreement is concluded and terms and conditions under which those can change, as well as about terms and conditions under which the contract can be terminated.” This is definitely a good thing, but it is not enough. This is why we should follow Slovenia’s example and pass a special law on consumer credits and regulate this matter in detail.

Small claims courts

As regards judicial consumer protection, it should be pointed out that there are small claims courts in a number of world (especially European) countries. Consumers can refer to such courts directly (without engaging a solicitor) on condition the damages claimed are not high. In such cases, having heard both parties, the judge makes a ruling.

The Draft Law on Consumer Goods states that a consumer whose right or interest has been violated can claim physical or immediate damages in the court proceedings. This is a general provision and it does not make it clear what benefits are provided for a consumer whose “right or interest has been violated”. However, what is more important is contained in the provision envisaging that “for the violation of consumer rights, small claims arbitration courts can be established within local self-government or chamber for consumer disputes in line with the law.” Since the Litigation Law does not envisage the establishment of consumer courts, the answer to this question could be found in the Local Self-Government Law, which states that “the units within the local self-government bodies can cooperate with non-governmental, humanitarian and other organisations in the interest of local self-government and local citizens.” This provision would surely enable the establishment of bodies (peace councils, arbitraries, etc.) at the local self-government level, which could deal with the small claims disputes.

4.4.5. Public procurement

Public procurement procedure

The area of public procurement is especially important as its functioning affects the relations between the state and the economic sector, and influences proper use of the budget, the economic development of the Republic of Serbia, as well as other, non-economic parameters such as fight against corruption. Regulation of public procurement in the European Union has a significant role in the forming of common market with equal terms of participation for all interested economic entities in the European Union.

The legal framework within which the public procurement procedure is regulated in the European Union consists of the following:

- ***Directive 2004/17/EC***, which harmonises procedures for public procurement participants in the sectors of water supply, energy, transport and postal services, and
- ***Directive 2004/18/EC***, which harmonises procedures for allocation of contracts for the procurement of goods, services and carrying out works. This directive joins together the three previous directives (Directives 93/36/EEC, 93/37/EEC and 92/50/EEC).

The aforesaid legal acts of the European Union set clear and precise standards regarding the publicity and transparency of public procurement. Serbian Public Procurement Law largely meets all the requirements for equal terms for all tenderers in the procedure, the rules concerning informing the public about the opening of a tendering procedure, transparency principles regarding the use of public funds and anti-corruption rules.

Serbian Public Procurement Administration is a special, independent body that, as a central authority, works on providing conditions for economical, efficient and transparent use of public funds for public procurement and encourages competition and equal terms for all tenderers in the public procurement procedures. With this aim, apart from the Public Procurement Law, the Serbian Government has so far passed:

- Rule book on compulsory elements of the competition documentation in the public procurement procedure;
- Rule book on determining the evidence that verifies the origin of domestic goods;
- Rule book on the tendering procedure and forms for keeping records of open tenders;
- Rule book on forms for keeping records of the public procurement data, and
- Decision on the criteria for the establishment of the public procurement committee.

In order to further approximate the domestic public procurement system with the one in the European Union, it is necessary to reinforce the work on fighting illegal activities, which includes regular consultations with the business sector about the ways of participating and production of a manual on the public procurement procedure and tenderers' rights. In the period to come it is necessary to work on setting up an electronic system of public procurement that would include a uniform way of informing about what has been put out to tender and how to submit offers, which would enable a new public procurement procedure – a competitive dialogue. With a view to its full functioning, a Law on Electronic Signature has been adopted. It can be envisaged with a high level of certainty that setting up such a system will bring considerable saving and contribute to simplifying the whole procedure and making it more transparent. All this will definitely reduce the opportunities for corruption, which is, admittedly, an outstanding issue. However, this plan has to be regarded as a long-term priority, which will be achieved in line with the further development of information systems in the Republic of Serbia.

In mid-term, it is necessary to plan the passing of the Common Public Procurement Dictionary, similar to the one set up in the European Union by the Rule Book 2195/2002, which envisages passing certain catalogue numbers for each kind of goods and services that can be subject to public procurement. In the part that refers to defining the criteria for the specification of such goods it is not permitted to set up such standards that could directly or indirectly discriminate against certain tenderers. Bearing this in mind, it is especially forbidden to specify the standards that would give priority to domestic tenderers and any such kind of discrimination would not comply with the law of the European Union.

In 2005, the work on the Law on Amendments to the Public Procurement Law will start with a view to achieving the two fundamental goals:

- a more efficient application of regulations and
- harmonisation of domestic regulations with the European Union Directives

Moreover, in order to improve the efficiency of Public Procurement Administration, it is planned to specialise this body by its functional sectors.

Protection of tenderers' rights and general interests

The Committee for the Protection of Rights has been established under the Public Procurement Law and it manages auditing of public procurement procedures. Although it was formed within the Public Procurement Administration, the Committee for the Protection of Rights is a body that is completely independent in its work, i.e. its decisions are based solely on the submitted rights protection claims. Its work is regulated by the internal Rules of Procedure, and the Committee reports on its work to the Government and the National Parliament.

Auditing of a public procurement procedure in the European Union is regulated by the following:

- Directive 89/665/EEC on coordination of regulations on the application of auditing procedure of allocation of contracts for the public procurement of goods, services and carrying out works and
- Directive 92/13/EEC on coordination of regulations on the application of auditing procedure for public procurement procedures in the area of water supply, energy, transport and telecommunications.

The aim of these two legal acts is to establish a more effective and timely protection of any tenderer whose right(s) may have been violated during the procedure. They emphasise the provision of legal remedies that will be able to prevent any sort of violating regulations and include passing temporary measures, annulment of illegal decisions and discriminatory technical, economic or financial specifications in the formal invitation to participate in the public procurement procedure and compensation for damages.

Public procurement procedure requires transparency and non-discrimination. In order to achieve these, the control and legal remedies have to be available to all participants in the procedure. The lack of timely and effective legal remedies has a direct influence on the number of interested tenderers, which again can influence building up competition in the Republic of Serbia. Fast and effective control contributes to a more efficient use of budgetary assets and its transparency.

With a view to further harmonisation of domestic legislation with the EU one and raising legal safety in the process of the right and general interest protection, it is necessary to change the concept according to which the Committee for the Protection of Rights is the executive authority, i.e. a body within the Public Procurement Administration. Although the Committee is independent in its work, it cannot completely control all public procurement procedures while it is a part of the executive power system, which surely makes its unbiased work difficult and jeopardises its independence. The Committee for the Protection of Rights needs to be established as a parliamentary body whose members will be directly appointed by the National Parliament. This reform is a necessary move aimed towards raising the level of protection in the public procurement procedure and the control of spending of public funds, which is achieved by levelling with the parliamentary control of the work of executive bodies.

4.4.6. Statistics

Introduction

A global evaluation of FRY's statistical system was done in 2002. The Report on Global Evaluation was published by Eurostat and European Economic Commission of the UN (EEC) in March 2002. The document expresses an opinion about the urgent making of a Master Plan for the development of official statistics with the aim to:

- Enable a dynamic development of official statistics;
- Create a basis for getting the most relevant statistic indicators;

- Direct the development of official statistics towards the harmonisation of standards, classifications, methodologies and statistical practices with the world standards;
- Increase the comparability of official statistics with the statistics of other countries and international organisations, and
- Promote the role and significance of official statistics in society and boost its wider use.

The Master Plan, which covers the period 2003-2006, was adopted in December 2002 at the Federal Government's session. Due to the changes in the statistical system in 2003, which were caused by changes in the political system, there was a slow-down in the execution of certain activities envisaged by the Master Plan. Because of that, the Master Plan was to be revised in early 2005, and the Official Statistics Programme was to be created as well.

Legislation

Current situation

Legal framework for the functioning of statistical system is the Law on Statistical Survey (Official Gazette of RS, No. 83/92), passed at the republican level, the Statistical Survey Programme 2001-2005 (Official Journal of FRY, No. 54/01) and the Master Plan, both passed at the federal level. In 2004, a Draft Law on Official Statistics was finalised. It complied with the EU standards (Council Regulation (EC) No. 322/97) and Fundamental Principles of Official Statistics in the Region of the UN Economic Commission for Europe, 1992). The Law should be adopted by the Government in the first half of 2005.

Further EU harmonisation measures

After the Law on the Official Statistics has been adopted, an opportunity will be created to pass other documents harmonised with the EU standards. These documents are necessary for the creation of a legal framework for the functioning of the statistical system at the republican level:

1. Official Statistics Development Strategy;
2. Official Statistics Programme 2006-2008;
3. Official Statistics Programme 2009-2012.

The documents mentioned under Points 1 and 2 should be completed and adopted by the Government in 2005.

With the adoption of the Law, the Republican Statistics Bureau, as the leading producer of official statistics, will be enabled to establish coordination in the statistical system, which, in the previous period, used to be regulated at the federal level.

Official Statistics Programmes will be made on the basis of the Programme, and also adopted by the Government.

Classifications

Current situation

Classification of activities (CA) complies with the NACE, rev.1, (Official Journal of FRY, No. 54/01) and has been in use since 2001. In 2002, the Nomenclature of Industrial Products was introduced, which complies with the CPA,

rev.1, and in 2004 the Construction Classification, which complies with the CA. In 2002, for the purposes of the 2002 Census, a new classification of occupations was introduced, in compliance with the ISCO-88, and in the research done for the 2003 Household Budget Survey, the COICOP/HBS classification was applied.

Further EU harmonisation measurements

In the period to come (2005-2007) the CA should be harmonised with the NACE2007, classification of products with the CPA2007 and other accompanying product classifications should be harmonised with the current changes in European classifications.

In the same period, it is also necessary to harmonise all classifications used in the system of National Accounts.

In the framework of the National Territorial Unit Classification (NUTS) it is necessary to define the proposed regions for NUTS2. In order to do this it is necessary to establish a Working Group that would consist of the representatives of the statistics, other state bodies and scientific institutions, which would define the EU proposal for the NUTS2 level (2006).

Statistical Registers

Current situation

Statistics keep the administrative Register of Legal Entities and the Single Register of Entrepreneurs (physical units). With the adoption of the new Law on Enterprises and with the establishment of the Agency for the Registration of Economic Entities, this function will be taken over by the Agency in 2005.

Further EU harmonisation measures

In 2005, the Project Team started work on the establishment of Statistical Business Register (SBR), which will be introduced in the system in 2006. This was preceded by the expert training for SBR within the SIDA project and with the help of experts from the Statistics Sweden. The introduction of Statistics Sweden will enable the development of economic statistics in compliance with the EU standards.

In order to launch the Statistical Farm Register it is necessary to do the Agricultural Census, which has prolonged this activity. The data from the 2002 Census and the data from other sources will make the basic data of the Farm Register, which will be realised in 2005.

At this moment, there is no possibility of bringing in the Household Register, due to the absence of mechanism for its maintenance. The data from the 2002 Census is used as a samples framework.

Dissemination

Current situation

The scope and content of publications increased in 2003 and 2004, in line with the functions that were taken over from the federal level. The new Serbian Almanac and Monthly Review were done in 2004, in line with the EU publication standards and they were translated into the English language. The website was launched in 2002.

Further EU harmonisation measures

A new website will be launched in 2005, designed following the best practices of European national statistics. Its content will be enriched considerably. All announcements of the Republican Statistics Bureau will be available on the website free of charge, as well as the Monthly Review and other selected publications (2005). In line with the EU standards, all publications are planned to be disseminated via the website in the period 2005-2008. Moreover, the site will contain both the classifications and the methodologies. Work on creating a data base with the meta-base is planned after this period (i.e. 2009-2010).

The Government should decide on joining the GDDS in 2005, which will improve the data dissemination envisaged by the IMF standards. A coordinator of this activity is to be determined.

STATISTICS AREAS

Demographic and social statistics

Current situation

A census of population and housing was carried out in 2002, in line with the EEC and Eurostat recommendation (Recommendations for the 2000 Censuses of Population and Housing in the ECE region, 1998), which supplied important data for the processing of statistical indicators in this area, in compliance with the EU standards. In line with the Master Plan, the processed indicators of natural migrations of population were harmonised as well.

In the area of labour force statistics in 2004, the Labour Force Survey (LFS) was harmonised with the methodology rules and principles of the International Labour Organisation (ILO).

The household budget survey has been carried out since 2003, in line with the Eurostat methodology (Household Budget Surveys in the EU, Methodology and Recommendations for Harmonisation, 1997). The data on the household expenditure is followed according to the classification COICOP/HBS.

Further EU harmonisation measures

As regards population statistics in the next period, the indicators of natural and mechanical migrations of populations should be harmonised fully with the EU standards.

As regards labour statistics, further harmonisation of LFS is necessary, by means of switching to three-month frequency (2006) and providing the data for NUTS2. Changes in other statistical surveys in this area are also necessary (definition, scope, etc.) as well as increased use of administrative data resources for the processing of statistical indicators (2005-2007).

In the area of public health and education, approximations defined in the 2005-2006 Master Plan are the priority.

Economic statistics

In the Stabilisation and Association Process, relevant and timely statistical data are necessary in decision making and monitoring their effects, whereby the internationally comparable BDP and other economic indicators are of a particular importance.

1. Macroeconomic statistics

Current situation

In the previous period, the calculation of macro-aggregates was based on the Physical Concept. In 2000, in line with SNA93 and ESA95, GDP was calculated by the production method, current prices, and in 2004 Personal Expenditures were calculated (GDP, expenditure method, permanent prices). A set of Calculations by Institutional Sectors was done as well. In late 2004, in cooperation with the IMF, a Plan of Total Implementation of the National Accounts system was completed, harmonised with SNA93 and ESA95.

As regards the price statistics in 2004, a list of data to be collected on the fluctuation of retail prices was extended, with an aim to better integrate all groups of COICOP classification. The methodology of collecting the data on the ground complies with international requirements.

Further EU harmonisation measures

Quarterly GDP - permanent prices, annual calculation of GDP by the expenditure method, current and permanent prices and calculation of GDP by production method will be introduced in 2005, in line with the IMF methodology. Introduction of quarterly GDP, permanent prices, is planned for 2006.

As regards price statistics in 2005, a methodology for calculating the Consumer Price Indexes (CPI) is envisaged, as well as the revision of Producer Price Indexes (PPI) methodology on the domestic market. Work on other price indexes is planned for the period 2006-2010.

2. Business statistics

Current situation

Most of the statistic indicators of the structural business statistics do not comply with the EU standards because they are based on the material (physical) concept.

Basic short-term statistical indicators in 2003-2004 comply with the EU standards (Industrial Production Index (classification, weight, and scope), Retail Turnover Index (scope)).

Further EU harmonisation measures

A Development Plan for Structural Business Statistics will be devised in 2005. Harmonisation with the EU in this area will require bringing in the SBR. In 2005, a new statistical survey for the monitoring of the investment of economic entities in the private sector will be launched. In the period 2006-2008, introduction of new surveys for monitoring the service sector is planned. In addition, the introduction of new, short-term indicators in the industry and construction sectors is planned for 2006-2007. A pilot-project for monitoring road transport is also envisaged. With the assistance of Swedish Statistics experts, revision of existing and introduction of new statistical survey in the energy statistics started in 2005. By the end of 2007 this activity should be finalised, as well as the calculation of a part of energy balance that is the responsibility of statistics.

3. Monetary, financial, trade and balance of payments statistics

Current situation

Statistical indicators in the area of monetary and financial statistics as well as of the balance of payments are the responsibility of the National Bank (NB) and most of them comply with the EU standards. In 2003, the National Bank started monitoring foreign direct investment.

Statistics monitors the goods exchange with foreign countries and it was mostly in line with the standards in 2004 with the introduction of new customs declaration and European classifications and codes. CT is not fully harmonised. A cooperation agreement has been signed with the Customs Administration. In 2003, record keeping of the turnover between the two republics was introduced. The absence of an organised record keeping system of the turnover with Kosovo-Metohia is an outstanding issue.

Further EU harmonisation measures

It is necessary to determine authorised producers of certain statistical indicators in the area of state finances. In this area a closer cooperation between the producers of official statistics is necessary; this is why the signing of a Cooperation Agreement between institutions as well as passing the Official Statistics Programme is envisaged in 2005. Furthermore, it is planned to expand the set of indicators in this area.

Agriculture, forestry and fishery

Current situation

Agriculture statistics does not fully comply with the EU standards due to the non-existence of a Farm Register. Besides, it is necessary to expand the scope of indicators in this area and change the frequency of processing some of them.

In 2003, the statistical survey of animal husbandry complied with the EU standards and a new sample was made based on the data collected in the 2002 Census.

Further EU harmonisation measures

As the Agricultural Development Strategy was passed in 2004, in cooperation with the Ministry of Agriculture an agricultural statistics development strategy should be defined in order to provide the necessary data for decision-making and economic policy monitoring. Agricultural statistics should be harmonised with the EU one by means of introducing a Farm Register, which requires an Agricultural Census by the end of 2007. Carrying out such a census would require considerable funds, which require the assistance of the international community. Furthermore, it is necessary to launch new surveys in the area of agricultural structural and monetary statistics (2007-2008). In 2005, a pilot-project for a farm structure survey is planned.

Key Preconditions

A successful harmonisation of official statistics with the EU requires the following key preconditions:

- Passing regulations,
- Increasing the number of the employed,
- Staff training,
- Expanding the work space.

Passing regulations within the set deadlines and rounding up a legal framework at the republican level are the key preconditions for a successful harmonisation of statistics with the EU standards.

Realisation of planned goals requires considerable financial and human resources. For the realisation of Master Plan a net increase of around 250 employed statistics and information and communication technology experts were envisaged, and after the statistics restructuring in 2003 the number even dropped. The increased number of the employed in the Republican Statistics Bureau in 2003 was a result of take-over of functions from the federal level. In the period 2005-2006, it is necessary to provide funds for new job openings that are envisaged by the new Job Organisation of the RSB (2005).

The planned expert training in statistics is not fully completed due to the belated implementation in the area of CARDS programme statistics projects and limited funds of the Republican Budget. With the assistance of international community an important staff training was planned and carried out under the CARDS-R2001 programme (2004-2005), CARDS-N2003 programme (2003 stopped, 2005-2006) and a SIDA project that encompasses the areas of agricultural statistics, economic statistics, statistical methodology and management (2004-2005). Further statistics expert training should be provided in the period to come under the CARDS programme. It would also be useful to continue with the SIDA project.

The planned work space expansion in 2005 is also imperative.

IT support is vital for the harmonisation with the EU too, which also requires the provision of funds.

4.5 | *Cooperation in justice and home affairs*

4.5.1. *Police*

A. Current situation

1. Legal framework and ratified international documents

Republic of Serbia, as a member of the state union of Serbia-Montenegro, is bound by a number of international agreements that regulate the issues of particular importance for performing police activities. With the support of the United Nations, Serbia-Montenegro has signed and ratified the Civil and Political Rights Pact, Convention against Torture and Other Cruel, Inhuman or Humiliating Punishments and Procedures, Convention on the Fight against Trans-National Organised Crime, Protocol on Prevention, Combating and Penalising Human Smuggling, Especially Women and Children, Single Convention on Narcotics, Convention on Psychotropic Substances, Convention against Illegal Trade in Narcotics and Psychotropic Substances, Convention on Criminal and Other Acts Done in Aircrafts (The Tokyo Convention), Convention on Combating Illegal Hijacking of Aircrafts, Convention on Combating Illegal Acts Directed towards the Safety of Civil Aviation (The Montreal Convention), International Convention against Taking Hostages (The New York Convention). As a member of the Council of Europe, Serbia-Montenegro has ratified the following agreements: European Convention on Human Rights and Fundamental Freedoms, European Convention on the Prevention of Torture and Other Brutal and Humiliating Punishments or Procedures, European Convention on Mutual Assistance in Criminal Matters, European Convention on Combating Terrorism, European Convention on Violence and Unruly Behaviour of Fans at Sports Events and Criminal

and Criminal Law Convention on Corruption. Serbia-Montenegro has signed the Council of Europe Convention on Personal Data Protection, but its ratification is in dispute.

The law enforcement activities are regulated by a number of laws and by-laws, such as the following: Law on Public Administration, Law on Ministries, Law on Home Affairs, Law on Police Commissions, Code on Criminal Procedure, Fundamental Penal Law, Penal Law, Law on Offences, Law on Public Peace and Order, Law on the Prevention of Violence and Unruly Behaviour at Sports Events, Law on Labour Relations in State Bodies, By-Law on Disciplinary Responsibility in the Ministry of the Interior, Rule Book on Internal Organisation of the Ministry of the Interior, Rule Book on the Conditions and Ways of Using Force, Rule Book on the Activities of Public Security Service, Rule Book on Job Organisation in the Ministry of the Interior, Rule Book on Determining Activities Incompatible with Official Responsibilities, Rule Book on the Behaviour and Relations in the Law Enforcement, Directive on the Law Enforcement Ethics and Work of the Law Enforcement and Directive on the Work of Organisational Units for Combating Organised Crime.

Some regulations comply with the international instruments that Serbia-Montenegro is bound by. Thus, with the latest amendments to the Criminal Procedure Code, the Fundamental Penal Law, Penal Law and the Law on Offences, these legal acts meet international standards to a great extent. A new Criminal Code is underway, which should remove the remaining shortcomings and completely codify penal legislation.

2. Law enforcement institutions

The law enforcement work is primarily the responsibility of the Serbian Ministry of the Interior. Existing laws allow for certain law enforcement activities to be performed without the control of the Ministry of the Interior. Article 1 Paragraph 3 of the Law on Home Affairs envisages a special law that would allow assigning some home affairs to other bodies and organisations. In line with this, under the Law on Security and Information Agency (SIA) this agency has been established and given some law enforcement powers. SIA is not controlled by the Ministry of the Interior, but by the Government of Serbia. Amendments to the Law on Security and Information Agency are underway and SIA will be relieved of its law enforcement powers. The Law on Home Affairs and the Law on Ministries do not differentiate between home affairs and law enforcement activities. The Law on Law Enforcement, which has been in preparation since 2000, has not been passed yet.

Current laws do not differentiate between the police work and other activities that the Ministry of the Interior is responsible for. To a certain extent, this has been corrected by the Rule Book on Internal Organisation of the Ministry of the Interior. Thus, the law enforcement work is done by various administrations within the Public Safety Department of the Serbian Ministry of the Interior: Police Administration, Criminal Police Administration, Administration for Border Police, Foreigners and Administrative Work, Traffic Police Administration, Operational Centre, Analytics Administration, Information Administration and Liaison Administration. In addition to these, special organisational units have been established within the Ministry of the Interior, and they are the Gendarmerie and Special Anti-Terrorist Unit (SATU). By the Decision of the Serbian Government, the Special Operations Unit (Red Barrettes) was dissolved on 25 March 2003. Some administrative units have been formed within the Public Safety Department that does not have law enforcement powers (such as the Fire Police Administration and Food and Housing Administration). The Administration for the Fight against Organised Crime has been moved from the Public Safety Department and placed under control of the minister for the interior. The Head of the Public Safety Department is at the same time the Assistant Minister for the Interior.

Services providing logistics and material support to the home affairs authorities have been established in the Serbian Ministry of the Interior. Most of these services have been established within the Department for Finance,

Human Resources, Common, Administrative and Technical Work. Head of this department is at the same time Assistant Minister for the Interior.

The 'community policing' concept, applied on the territory of ex-SFRY, was abandoned in the early nineties. Since then, the system of policing centralism has been applied, with a pronounced hierarchy and command structure. The law enforcement organisation is to a great extent militarised and does not comply with the modern organisation accepted in most EU countries. The chain of command and task execution largely reflects military organisation. Higher and lower officers' commissions in the law enforcement as well as the promotion system are identical to the system that exists in the land forces of Serbia-Montenegro.

3. Cooperation between the home affairs authorities and other state bodies (administrative, judiciary, etc.)

Cooperation and mutual coordination between the Ministry of the Interior and other state bodies can be assessed as satisfactory. The cooperation of the Ministry of the Interior and the law enforcement within the ministry with the Ministry of Finance and Customs Administration is of particular importance. The cooperation between these services has been fruitful more than once, especially in the prevention of smuggling. It is primarily realised through the Border Police Administration and Criminal Police Administration of the Serbian Ministry of the Interior and Anti-Smuggling and Customs Investigation Unit of the Ministry of Finance.

Cooperation between the Ministry of the Interior and local self-government authorities is improving, but it still has not reached the desired level. After the democratic changes in 2000, a pilot-project entitled *Law Enforcement in the Local Community* was launched, which was the beginning of the first stage in the realisation of the 'community policing' model, abandoned in the nineties. The project started in July 2002. It is realised in cooperation with the representatives of the Organisation for European Security and Cooperation (OSCE). Within the framework of cooperation with the OSCE, a project Multi-Ethnic Policing is also being realised on the territory of three municipalities – Bujanovac, Presevo and Medvedja.

The greatest number of problems appears in the cooperation between the police and Serbian judiciary, most often in the investigation and enforcement. Although the police are legally bound to provide the necessary support in the enforcement of court rulings, it is rather inefficient in this area. This especially refers to the execution of court decisions in civil matters. There are considerable shortcomings in investigations, i.e. in the process of revealing and penalising criminal offences.

4. Internal (administrative) and external (judicial and political) control of the police

Offences, criminal, material and disciplinary responsibilities of members of police force is regulated by framework laws that regulate penal and offence matters – Serbian Penal Law and the Law on Offences, as well as special laws such as the Law on Home Affairs and Law on Labour Relations in State Bodies, and by-laws such as the Law Enforcement Code of Ethics and the By-Law on Disciplinary Responsibility. A law enforcement member is disciplinary accountable for the violation of duties and responsibilities at work, which can be serious or less serious. The envisaged measures for less serious infringements of duties and responsibilities are public caution and fine and for the serious ones are a fine, assigning to another job, and termination of employment. The By-Law on Disciplinary Responsibility regulates the disciplinary procedure, which authorises the Disciplinary Court to determine the violations of work duties and responsibilities. A two-instance procedure is provided, and appeals against the Disciplinary Court rulings are processed by the Higher Disciplinary Court as a secondary institution appointed by the Government.

Internal control of the law enforcement work is done by the General Inspector for Republican Public Security, who is also Assistant Minister for the Interior. The General Inspectorate takes operational and preventive measures with the aim to reveal, prevent, combat and penalise all types of misuse and wrongdoings in the police work. Besides, the General Inspectorate directly cooperates with the authorities in charge of disciplinary procedure. This service lacks adequate resources and staff to perform its tasks and greatly depends on the resources of other organisational units in the Ministry of the Interior.

External control is performed by the courts of law and the Parliamentary Committee for Defence and Security. A procedure against a member of police force starts by denunciation to the competent Public Prosecutor, which can be done by a citizen or the Ministry of the Interior itself. In most cases this is done by citizens. Whether a denunciation will be accepted or rejected as unfounded remains at the Public Prosecutor's discretion. In the majority of cases the reports made by citizens are rejected as unfounded. This system of denunciation considerably reduces the efficiency of court control over the work of the Ministry of the Interior, especially when it comes to the use of force or overstepping one's authority. A system of reporting to the General Inspectorate, which has recently started, has been giving very good results.

The Parliamentary Committee for Defence and Security has plenty of potential for improving its work and still does not perform preventive control over the work of the Ministry of the Interior – its work is limited to a post facto discussion. The primary role of the Committee comes down to examine regular reports of the Ministry of the Interior. However, there have been cases when the Committee had to review some controversial cases of excessive use of force, but it seems that the motives for doing this were mostly of a daily political nature and due to the failure to process these cases.

5. Capacity to join EUROPOL

By the Decision of the EU Council for Home Affairs and Justice of 13 June 2002, started the process of entering into the Agreement on Cooperation between the EUROPOL and five EU non-member states, among them Serbia-Montenegro. In order to join EUROPOL in the near future, Serbia-Montenegro needs to meet a number of conditions regarding the harmonisation of its national legislation with the EU standards. In addition to this, it is pointed out that a very important step to be made is to join the Convention on Personal Data Protection and its developing in the national legislation.

B. Recommendations

Passing the Law on the Police is of crucial importance. This law should exist parallel to the amended Law on Home Affairs. Police responsibilities of the Ministry of the Interior should be clearly determined and separated from administrative and other responsibilities and powers of the Ministry. The existing provision of the Law on Home Affairs from Article 1 Paragraph 3 should be substituted and disable the transfer of responsibilities of certain police powers to other bodies of the state administration outside the control of the Ministry of the Interior.

Law on the Police should contain basic police structures and render the establishment of some organisational units within the Ministry by its internal acts.

The Law Enforcement Code of Ethics should also be incorporated in the text of the Law on the Police, as well as fundamental disciplinary responsibilities of the members of police force. The internal control system as well as the responsibilities of the General Inspectorate and disciplinary authorities should be regulated by a law, rather than rule books and by-laws. It is necessary to establish a special control body, which should be completely independent from police structures. Its work would complement the work of existing internal control authorities,

such as the General Inspectorate, and it would be authorised to investigate the cases of alleged abuse of power by the Serbian police, especially the use of force.

As regards the disputed Convention on Personal Data Protection, the procedure of depositing ratification instruments before the Council of Europe should be restarted and the current situation resolved. After that the Law on Personal Data Protection should be amended.

Police work should be modernised, firstly by further improvement of technical equipment and capacities. At the same time the use of information technologies should be developed in all spheres of police work on the whole territory of the Republic of Serbia.

The training of the members of police force should be more systematic and directed towards the respect of fundamental human rights of citizens. In this regard, various methods of gaining knowledge in this area should be institutionalised and intensified. The members of police force have to stick by the fundamental principles of humanity, especially banning torture, inhuman or humiliating treatment aimed at eliciting evidence. Bearing this in mind, the system of evaluating success of the police force should also change by regarding a case resolved only if the verdict is guilty.

Control of the work of police force is extremely important, both the internal and external. In this regard, the General Inspectorate should be strengthened by human resources and equipment. Internal organisation of authorities with police powers has to create a climate of total independence of the General Inspectorate and other organisational units in the ministry. Although the denunciation system recognises the possibility of reporting by citizens, they are too easily rejected by Public Prosecutors. In this regard the work of Public Prosecutor's Office should be improved in order to strengthen the external control of the police work. Parliamentary control of the authorities with police powers should be reinforced too.

Equal employment opportunities in the police force for members of all ethnic groups should be achieved, in line with the real situation in the society. With a view of this, work on decentralisation of the Ministry of the Interior and development of the '*community policing*' concept should continue.

4.5.2. Visas, asylum, migrations

4.5.2.1. Border control

A. Current situation

In January 2005 the Ministry of the Interior started taking over border control from the Army of Serbia-Montenegro, the border with Hungary first. A plan of the dynamics of border take-over has been made, according to which the first borders to be taken over are the outer border of the former SFRY, while the borders with the former Yugoslav republics will be taken over at a later stage.

Border management is regulated by the existing international legal instruments, the Law on Crossing the State Border and Movement in the Border Zone (1979) and the By-Law on Determining Border Crossings (1992).

Border Police units (Administration for Border Police, Foreigners and Administrative Work) are responsible for the control of border crossings and border zone around border crossings. Apart from military and police units, the Customs and inspections services, such as phyto-sanitary inspection, play an important part in border control.

Significant progress has been made in the institutionalising of the cooperation between the Border Police, the Customs and inspection services.

Frontiers are not approved by international agreements with all neighbouring countries, and there are disputes with Croatia and Bosnia-Herzegovina about the frontier line along the Danube and the Drina rivers.

The existing layout of border crossings does not fully meet the needs of international transport. Technical equipment of border crossings is inadequate. Assistance programmes providing funding from the EU funds and agencies can be used far more efficiently, which requires further administrative capacity building.

B. Recommendations

Faster and more determined steps towards the improvement of border control impose themselves as an integral part of progress in the field of immigration and are a precondition for joining the Schengen system. This is why the following issues should be paid attention to:

- Continue the transfer of border control to the Ministry of the Interior according to the established plan of dynamics.

Adopt the National Strategy for Integrated Border Control in line with the Directive for integrated border control of the Western Balkan countries, issued by the European Commission in October 2004.

- *Adopt the new State Border Control Law*

The existing Law on Crossing the State Border and Movement in the Border Zone should be substituted with a new State Border Control Law, which will, together with the accompanying by-laws, completely regulate the area of the state border control. New legal acts will include the matters now contained in military regulations and military units' rules. The State Border Control Law and the accompanying by-laws should be harmonised as much as possible with the decisions of the Council of the EU and conditions of the Schengen Agreement.

- *Strengthen the information structure of Border Police*

With a view to developing an efficient and comprehensive system of border control, it is necessary to establish a unique information network and data base for the needs of Border Police. The data base would be linked with the data base on immigrants and other registers and data bases, especially those in the Ministry of the Interior. The information structure should include not only Border Police on border crossings and in settlements, but also the units outside these areas, where there is higher risk from illegal immigrants entering the country.

- *Improve cooperation of all services in the area of border activities.*

A system of efficient cooperation between the Border Police, other parts of the police, non-police part of the Ministry of the Interior, the Customs and inspection services is of crucial importance for the development of border control. It is of particular importance that there is an effective and applicable protocol regulating the form and the cooperation procedure between the Border Police and the Customs. Data exchange between these services should be done automatically and without the complicated and hindering procedures.

- *Pay further attention to combating corruption within border services and the fight against smuggling and human trafficking.*

Corruption in border services should be completely rooted out so that European standards for border control and legal safety can be established. The implementation of efficient measures for combating human trafficking and smuggling is not possible either if corruption is not clamped down on.

- *Improve the network and condition of border crossings.*

The border crossings network should be coordinated with the network of regional and continental roads and, if analyses prove it justifiable, set up new border crossings where there is a need and capacity for frequent crossings, which is a precondition for a cost-effective border crossing. It is necessary to considerably improve penetration capacities of the existing border crossings as well as their technical equipment and infrastructure. All border crossings should be equipped with computers and the Internet access, unique and mutually connected data bases on crossings over the border and migrants should be made easily accessible, as well as the automatic data exchange with the Customs. In the reconstruction and equipping of border crossings the EU funds should be used effectively. The aim is for the border crossings to meet the EU standards and the Schengen Agreement conditions.

- *Continue work on determining the frontier lines with the neighbouring countries and establish cooperation with their border services.*

All disputes with the neighbouring countries about the frontier lines should be resolved. Independently of this, protocols on cooperation with border services of neighbouring countries will raise the level of efficiency and reliability of Border Police work and Customs and will facilitate their work

- *Restructure border services in line with the EU standards.*

The Border Police Administration for Foreigners and Administrative Work should be divided in line with the general aim of dividing police and administrative work. Signing procedures for the cooperation of Border Police, other police units, organisational parts of the Ministry of the Interior and other state institutions as well as the signing of procedures for joining the relevant data bases and registers will be necessary.

4.5.2.2. Migrations

A. Current situation

The laws regulating the rights of foreigners and stateless persons to reside on the territory of Serbia are the Law on Foreigners' Movement and Residence (1980), Law on Conditions for Establishing Labour Relations with Foreigners (1978) and the Law on Foreigners' Health Protection (1998) as well as accompanying by-laws. A new, more modern law is underway, which will regulate the area of movement and residence of foreigners.

The Law on Foreigners' Movement and Residence prescribes travel documents necessary for entering the country, the visa issuance procedure, types of stay (transit, temporary residence with a time limit of one year maximum, permanent residence, asylum and exile), conditions for getting or losing a status, etc. Issuing visas, residence or work permits is not completely separated. Special exit visas are envisaged for foreigners with permanent residence.

Foreigners with valid travel documents and visas are granted temporary stay of three months since entering the country without special permit, while those carrying work visas are allowed to stay until the visa is valid. On the other hand, foreigners who enter the country for employment reasons are obligated to submit a request for temporary stay no later than three days after they have entered the country, or within seven days, if the request is submitted by the employer. Foreigners in transit can stay in the country up to seven days without special permit.

Various state institutions are authorized to keep relevant records; those institutions are ministries of foreign and home affairs and diplomatic and consular offices.

The visa regime has been revised as well as technical conditions when issuing them, with a view to approximating our measures to the Schengen ones. The obligation to issue visas for the citizens of EU countries has been abolished, while visas are gradually introduced for the citizens of some other countries, in line with the EU visa policy.

Being a transit country for migrants from Asia and Africa towards the European Union, Serbia faces increasing challenges in solving the illegal immigration issues. The existing law envisages that illegal immigrants who cannot be deported from the country are referred by the Ministry of the Interior's decision to a special immigration centre. However, such a centre, organised by the EU standards, does not exist.

Agreements on Return and Readmission with Croatia, Bosnia-Herzegovina, Bulgaria, Hungary, Slovenia, Austria, Switzerland, Germany, Italy, Slovak Republic, Sweden, Denmark, Belgium, Holland and Luxemburg have been ratified so far. These agreements are in line with the Recommendation of the Council of the EU of 1994.

The institution responsible for the status of foreigners, illegal immigrants and implementation of readmission agreements is the Border Police Administration for Foreigners and Administrative Work of the Ministry of the Interior.

B. Recommendations

- *Further harmonise the visa policy for citizens of some countries with the EU standards.*

This measure is a step towards Serbia's joining the Schengen system and it contributes to combating illegal immigration.

- *Change the rules on the length of temporary stay.*

Although the current law envisages a temporary residence of maximum one year, precise measures should be prescribed under which temporary residence is granted for a longer period (two or three years), in order to facilitate the work of responsible institutions in undisputable cases and facilitating procedures for foreign citizens too. In line with the Schengen Agreement, shortening the period of stay for foreigners with transit visas should be reviewed in order to minimise the possibility of illegal immigrants staying in the country until complete harmonisation of the visa regime and readmission with all neighbouring countries.

- *Clearly separate the visa regime from residential and work permits.*

After the liberalisation of the foreign investment regime, measures and legal consequences of issuing a work permit and a temporary residence permit for employment reasons or performing professional work should be harmonised with the Schengen Agreement criteria.

- *Improve the work of diplomatic and consular offices.*

The procedure of issuing a visa must be fully harmonised with the Schengen Agreement. The assessment of measures for issuing or obtaining a visa should be conducted within a centralised office under a prescribed procedure.

- *Abolish the possibility of issuing visas on the border except in clearly defined cases, bearing in mind that the wholeness of the centralised system of visa issuance.*
- *Establish single records and centralised office.*

It is extremely important to establish an electronic data base on illegal immigrants, issued visas, residential or work status of foreigners and, possibly, the measures taken. It is absolutely untenable to keep separate records on any of the data listed above, and it is also necessary that the single data base is compatible with the information system prescribed by the Schengen Agreement. A centralised office should be established. It would manage the single data base and be responsible for appropriate implementation of rules and regulations in this area as well as coordination with the Ministry of the Interior, diplomatic and consular offices and the police. Such an office should be under the wing of the non-police section of the Ministry of the Interior, after it has been restructured and the Law on the Law Enforcement has been passed.

- *Build centres for illegal immigrants in line with the technical conditions and criteria of the EU Member States.*

Amendments to the law should introduce a measure of detaining in a centre, as a measure weaker than deportation, and by-legal acts should prescribe technical conditions and conditions for stay and treatment of illegal immigrants in a centre. Accommodation capacities of the centre should correspond to the assessed needs.

- *Sign agreements on cooperation with the competent institutions in neighbouring countries.*

Institutionalisation of cooperation between Serbian public institutions and the neighbouring countries' in the field of immigration is necessary especially because it would improve the efficiency of data exchange, fight against illegal immigration and human trafficking.

- *Expand the network of international agreements on readmission.*

The aim is that our country signs and ratifies agreements on readmission with all EU Member States, all EU candidate and prospective candidate countries as well as with all countries whose citizens immigrate to Serbia-Montenegro.

- *Restructure services in the Ministry of the Interior.*

Border Police Administration for Foreigners and Administrative Work should be divided primarily in line with the general aim of separating police and administrative work. When a special, independent organisational unit for dealing with the foreigners' status is formed it should employ enough staff with adequate knowledge of foreign languages. It will be necessary to prescribe procedures for the coordination of work of Border Police, Or-

organisational Unit for Administrative Work with Foreigners and diplomatic and consular offices, as well as the access to the single data base.

- *Train regular police force to work on cases with foreign citizens and immigrants.*

Bearing in mind that the members of police (not only border police) will come across the immigration problems, it is necessary to train them, by a prepared programme, and make them better able to deal with foreign citizens and immigrants, especially the illegal ones.

4.5.2.3. Asylum

A. Current legislative situation

The state union of Serbia-Montenegro has ratified many international agreements, which are directly or indirectly relevant for the asylum issues. Serbia-Montenegro signed the UN Convention on the Refugee Status (1951), the Protocol on the Refugee Status (1967), the International Pact on Civil and Political Rights, the UN Convention against Torture and Other Cruel, Inhuman or Humiliating Treatment and Punishments, the European Convention on the Protection of Human Rights and Fundamental Freedoms, the European Convention on the Prevention of Torture, Inhuman or Humiliating Treatment and Punishments, the UN Convention on Children's Rights and other relevant international agreements. The state is therefore bound to incorporate these documents in the legal system and apply them consistently.

The right to asylum is a guaranteed right in Serbia-Montenegro. According to Article 38 Paragraph 2 of the Convention on Human and Minority Rights *"every foreigner who has a justified fear from persecution because of their race, colour, gender, language, faith, nationality, belonging to a group or political believes has a right to asylum."* The Convention goes even further than the UN Convention on the Refugee Status as it extends the persecution list with colour, gender and language, which are not prescribed by the UN Convention as conditions for getting a refugee status.

The Convention envisages that the procedure for getting asylum is prescribed by the law (Article 38 Paragraph 2). The Asylum Law was adopted by the SCG Parliament on 21 March 2005 and it is just a framework law that contains only basic principles, while the detailed regulation of this area is left to the Member Republics. The Law was given a positive mark by the UN High Commissariat for Refugees and it complies with the Convention on the Refugee Status of 1951 and the Protocol of 1967, standards and recommendations of the Council of Europe and relevant EU directives and rule books.

Serbia-Montenegro does not provide an adequate centre for asylum seekers and refugees in compliance with international standards. Asylum seekers and refugees waiting to be transferred to a third country reside in prisons.

B. Recommendations

The fundamental obligation after the adoption of the Asylum Law at the state union level is to adopt the Asylum Law of the Republic of Serbia.

After Serbia-Montenegro and the Republic of Serbia have adopted the laws, which will be in line with international standards, it will be necessary to pass a number of by-laws in order to provide the implementation of the laws. Among others, it is necessary to pass a regulation on the format of forms to be filled in by the asylum seek-

ers, they will have to be translated into many languages, provide interpreters etc. It is necessary to devise an efficient procedure for the admittance and accommodation of asylum seekers.

As there is still no adequate asylum centre, it is necessary to provide appropriate accommodation, in line with the standards set for such institutions, as well as organise appropriate aid programmes, primarily educational and health ones.

Situation on border crossings, i.e. the capacity of public authorities to efficiently and appropriately react to asylum requests should be examined. In line with the findings, appropriate, continuous training of Border Police should be organised, as well as the inspectors for foreigners and other departments of the Ministry of the Interior and bodies that the future law will authorise for such work. Advancing communication and electronic links between the authorities responsible for asylum issues is a must, as well as setting up a central data base on asylum seekers and refugees, in line with the Law on Data Protection.

The UNHCR Mission was not authorised to have its desks at the Belgrade airport or border crossings for a long time. This has started to change and UNHCR should be given access to all border crossings in Serbia, in line with their capacities.

The Ministry of Human and Minority Rights of Serbia-Montenegro should be given a more effective role in the monitoring of refugee rights, considering that this is one of its responsibilities.

4.5.2.4. Schengen Agreement

The generally accepted European standard is the Schengen Agreement of 1980, concluded between France, Germany and the Benelux countries in Luxembourg on 14 June 1985. The Schengen Implementing Convention of 19 June 1990 and all other by-laws were adopted on the basis of two regulations. The Schengen area now covers 13 EU Member States considering that the Republic of Ireland and Great Britain decided not to join the Schengen Agreement. The ten new members from Central and Eastern Europe are not members of the Schengen Agreement, but have been given a transition period to join it. These countries are expected to reach a certain level of control of their international borders in order to be able to successfully apply the provisions of the Schengen Agreement.

Schengen Agreement implies abolishment of internal borders within the European Union and setting up external borders and a unique visa and asylum regimes towards the third countries.

A. Current situation

Current situation is not satisfactory in this area. This matter is the responsibility of the state union of Serbia-Montenegro (Article 19 of the Constitutional Charter, which prescribes as one of the responsibilities of the State-Union Parliament "passing laws and other legal acts on immigration, asylum, visa and integrated management border management policies in line with the European Union standards"). There is neither a single system of visa issuance in both republics nor compliance with the communitarian visa list. Serbia, while this is almost completed in Montenegro.

Legislation – in addition to legal documents, the most important domestic regulations in this area are the Memorandum of Understanding between the Defence Ministry and the Ministry of the Interior, the Law on Crossing the State Border and Movement in the Border Zone, the Military Law, the Law on the Movement and Resi-

dence of Foreigners, the Refugee Law, the Rule Book on the Issuance of Travel and Other Documents and Visas to Foreigners and Forms for Such Documents and Visas, the Decision on the abolishment of visas for entering Serbia-Montenegro, the Decision on the transfer of state border security, the equipment necessary for such activities and temporary referral of professional SCG army officers and NCOs to work in the Montenegrin Ministry of the Interior.

B. Recommendations

Complete demilitarisation of state borders is necessary as well as the introduction of a single visa regime at the state-union level, provision of full harmonisation with the communitarian visa list for the whole territory of the state union of Serbia-Montenegro, provision of training and necessary equipment in line with the requirements of the Schengen Agreement, reinforcement of Border Police and Customs Service and regulation of the asylum matter.

Further implementation and conclusion of readmission agreements and extending the list with the states from which the immigrants come to Serbia-Montenegro is also necessary.

In order to meet these requirements it is necessary to pass a new Law on Crossing the State Border, the Asylum Law, by-laws on the visa issuance to foreign citizens, the Law on the Movement and Stay of Foreigners, to adopt the National Strategy for Setting Up an Integrated Border Management in line with the European standards.

4.5.3. International cooperation in criminal law matters

The realisation of the main concept of the 'freedom to move, settle and work', which is the basis of the EU, has imposed the need to take and adopt additional, so-called 'compensation' measures whose aim is to enable, facilitate and strengthen the cooperation between the police, customs and justice as well as the fight against crime (especially the cross-border one). From the aspect of criminal law, these measures contribute to the existence of a unique sense and equal approach to justice, while from an individual's aspect, these measures contribute to the legal safety on the one and equality of all citizens before the law on the other hand, both when it comes to respecting fundamental rights and the equality regarding the existence of responsibility on the whole EU territory. This safety and equality are achieved by mutual recognition of court decisions.

Mutual recognition of court decisions in criminal matters presupposes legal and technical harmonisation of national legislation. The areas that require the harmonisation of criminal legislation to combat serious forms of crime are now the following: illegal trafficking of humans, drugs, arms and nuclear substances; sexual exploitation of children (especially child pornography on the Internet); hooliganism; fraud (especially in cashless payments and when concluding contracts of public and legal character); corruption in public and private sectors; financial crime (in general); acts against the financial interests of the EU; forging of the Euro; money laundry; doping; organised crime (especially membership in a criminal organisation); terrorism; criminal acts against the environment; racism, xenophobia; Internet-crime and high-technology crime; adopting the minimum of rules on common (single) measures for determining the origin, identification, freezing, seizure and confiscation of profit made by means of criminal activities; at the moment, the violent, urban and criminal actions of the minors are being monitored (and their harmonisation is soon to be realised). Harmonisation is achieved either by criminalisation (harmonisation by prescribing new types of criminal activities) or by the adoption of rules on common (single) definition (of criminal act) and sanctions for criminal actions (harmonisation by amending the existing criminal acts).

A. Current situation

Since 2001 the criminal legislation has started to show tendencies towards modernisation and approximation with European standards.

Legislation – main physical regulation in this area are: the Fundamental Criminal Law, Criminal Law of the Republic of Serbia, Law on White Collar Offences, Law on the Organisation and Responsibilities of Public Authorities in the Fight against Organised Crime, Law on the Prevention of Violence and Unruly Behaviour at Sports Events, Law on the Organisation and Responsibilities of Public Institutions in War Crimes Procedures, Law on Offences, Law on the Amendments to the Federal Laws Envisaging Fines for White Collar Offences and Transgressions, Law on the Valorisation of Fines for the Offences in Republican Laws.

B. Recommendations

Achieve and strengthen generally accepted international standards in the domain of criminal and criminal law principles – Basic EU principles are the principle of legality, the principle of criminal responsibility and the principle of proportion. This aim is not possible to achieve by simply activating the legislative function of the state. For its full achievement mutual functioning of three elements is necessary: legal instruments of a state (which has mostly existed so far), behaviour (work style) of justice when performing its functions and the influence of the public with a view to strengthening justice as well as preventing the influence of executive authorities on it in order to meet its daily political needs.

Establish the compatibility of court decisions with regard to defining criminal acts, which are harmonised or shall be harmonised at the EU level – This goal can be achieved only if the state takes its legislative functions. As an alternative measure, in case a legal procedure proves impossible or inefficient due to the lack of social consensus, the compatibility of court rulings may be possible to achieve by exchanging the data of court practices through the EUROJUST network, which would affect the ‘work style’ of judiciary – their creative interpretations of legal provisions of the existing incriminations and thus achieving compatibility to a certain extent. This is because the existing incriminations largely cover the activities that the EU law considers criminal.

Enable the pronouncement and execution of other effective and just criminal law measures – The EU legislation has a wide variety of measures that enable, even before the court decision has been made, to identify, discover, freeze and confiscate the objects, property, assets, income and possessions in general gained by illegal activities. Considering that our legislation has so far contained measures such as the seizure of property, the measures of seizing the assets gained in criminal activity or objects that were used in a criminal activity, by amending the penal legislation these measures should be modernised and in this way reinforce their impact.

4.5.4. Terrorism

A. Current situation

When talking about new security challenges, priorities are the fight against terrorism, organised crime, human trafficking, border protection, etc.

In Serbia, well trained (anti-terrorist) and equipped units tasked with discouraging terrorists to perform a terrorist act, i.e. with intervening should there be a conflict with individuals or smaller terrorist groups (SAJ, gendarmerie) should be differentiated from special criminal police (counter-terrorist service) tasked with operational gathering and processing the data with a view to preventing terrorist acts, and if they do happen together with the judiciary to investigate, catch and legally prosecute the perpetrators. Other activities in the fight against ter-

rorism that include the rest of public authorities, media, culture, art, non-government and other organisations should discourage and oppose the ideas of terrorism and can be classified as so-called anti-terrorist measures.

The basic penal law recognises only two criminal acts of terrorism and they are the criminal act of terrorism from Article 125 and the criminal act of international terrorism from Article 155, as well as a number of criminal acts with the elements of terrorism.

B. Recommendations

Amend criminal code – incorporate all criminal acts of terrorism as well as those with the elements of terrorism in a new chapter of the Fundamental Penal Law, which would be entitled Criminal Acts of Internal and International Terrorism. The solution would be a special chapter in the Penal or a special anti-terrorist law, in which all criminal acts would be included, and which would differentiate between them and political criminal acts, i.e. where internal terrorism would be treated more as a crime committed for political motives, rather than a political criminal act. As regards criminal acts with the elements of terrorism, they should also be incorporated in the suggested new chapter of the Criminal Code. These are primarily criminal acts whose incrimination should prevent the establishment of terrorist organisations, logistic support to such organisations, i.e. their financing, equipping with arms, nuclear and explosive materials and other equipment.

Crisis Management should be made a separate section, i.e. solving and stabilising the situation (disasters, states of emergency) after a terrorist attack. It is necessary to point out here that a Crisis Management Office (States of Emergency Office) should be established within the Ministry of the Interior, so that it could take over the key role of in the rehabilitation after not only terrorist attacks but also earthquakes, floods, chemical, nuclear and other forms of disasters, serious traffic accidents (in water, air and road traffic) etc.



5. Chapter |

***Administrative Capacity For EU Accession And
Public Administration Reform***

5

5.1 | Internal relation of the two processes

The process of EU accession requires from the very beginning the existence of a reliable system of public administration which would be capable of accepting and conveying to internal participants numerous and complex requirements for harmonisation with the EU rules. All administrative systems of developed countries are also facing difficulties in relation to this task, whether at the moment of EU accession or afterwards, as EU Member States. Serbia will face serious difficulties in this view, since it is only at the beginning of process of general systemic transformation.

Minor part of this problem is contained in the area of building and enhancement of specific institutions directly involved in the EU association activities. These are mostly new activities and new institutions which are established for this purpose and approach their subject of work with necessary professional knowledge and enthusiasm. However, all segments of society need to be imbued with the process of EU association and this can be realised only by instruments provided by the public administration system.

In its inherited, currently prevailing state, the Serbian public administration apparatus is not capable of enforcing a number of decisions of relevant state institutions and agencies from the field of association policy. What is more, the Serbian public administration system has difficulty in realising the decisions which are not directly related to association policy but to the current modification of legislative framework of public life. The entire system – central administration and local self-government – has to be transformed in order to comply with the overall reform policy of the state, regardless of the promoter of such policy. This kind of change has already been initiated in Serbia, but it has to be accelerated and intensified since this is a precondition for successful reforms in various fields and efficient implementation of EU association policy.

The general problem of administrative capacity for EU accession has three levels. **Firstly**, the system of public administration has to be adjusted through reforms along with the overall reform process in Serbia. **Secondly**, the inseparable part of this reform process is a specific adjustment to the conditions arising from the policy of EU accession. And **thirdly**, within the association policy, special administrative capacities should be developed which would be capable of leading and implementing this process. This particularly relates to the establishment of new regulatory environment, establishment and enhancement of independent regulatory bodies enlisted within this strategy. There is an evident inefficiency in definition of such regulatory environment, primarily related to regulations on enforcement of laws and general enactments. The mentioned process represents an indicator of efficiency and qualification of public administration with a view to the EU accession. Since the preparation of state and society for European Union corresponds to the reform of fundamental areas of life, both in terms of time and content, the enhancement of administrative capacity for association cannot be observed separately from the reform of overall public administration complex.

What calls for further attention are the European standards for organisation and operation of public administration, which have been affirmed for more than a decade now through the process of establishment of «European administrative area». This is a system of rules and principles established through decisions and conclusions of

European institutions and organisations – European Council, European Court of Justice, Council of Europe - and relate to the need for mutual harmonisation of Member State administrative systems. The abovementioned system of rules is characteristic even for most developed countries within the Organisation for Economic Cooperation and Development (OECD, which provides legal assistance through its SIGMA programme in the process of legal drafting related to public administration and civil servants, incorporating in these drafts the standards applied in modern systems of public administration in thirty most developed countries in the world). Since the European Union does not have a separate public administration system, such mutual harmonisation among the Member States is an important precondition for a balanced enforcement of the decisions of Union's institutions. Associating countries have to bear this in mind. From this aspect, European Council conclusions from Madrid (1995) represent a kind of supplement to the Copenhagen criteria (1993) when it comes to harmonisation of pre-candidate and candidate countries to standards of public administration in the EU Member States. The reform of public administration in Serbia has to take into account the mentioned principles, rules and practice.

5.2 | *Public administration reform*

5.2.1. Significance of public administration reform for realization of the rule of law, society democratization and sustainable economic growth

Rule of law, democratization of society and sustainable economic growth through implementation of economic and social reforms represent strategic goals of the Serbian Government. In realization of these goals, public administration reform is one of the key priorities.

Public administration reform is a complex and long-term process, especially in transition countries, whose administration is rather weak and burdened with problems accumulated over the decades, both at the central and local level. It is not only the issue of territorial and administrative distribution of competences in the state or the issue of the number of employees, nor is it a set of decisions motivated by the ruling party interests. On the contrary, the public administration reform is an important precondition for the success of reforms of other society segments and it is closely interrelated with them.

In order to realize a positive transformation of this sector, this process has to be carefully planned and supported by all significant political actors in a wider sense. A precondition for this is the existence of a strategic document for public administration reform, based on general principles of European administrative framework (*European Administrative Space*) and the so-called «good governance», as well as on the concept of so-called «open government».

Furthermore, the process of public administration reform should go hand in hand with the related development frameworks and programmes, such as the Poverty Reduction Strategy, European Partnership, Strategy of Sustainable Development, Strategy of promotion of information society etc, as well as the activities related to realization of Millennium development goals in order to integrate and mutually harmonise the different development initiatives in the transition process. Without strong, capable and stable institutions it is not possible to realize the desired long-term results in any other field, which was also indicated by the experiences of other transition countries.

The ultimate aim of the reform is to ensure a high quality of services for citizens and creation of public administration that will significantly contribute to economic stability and living standard quality, which is of utmost importance for quality and efficiency of economic and social reforms.

The path towards realization of this goal will not be easy or quick, primarily having in mind the found state and the fact that, due to a number of circumstances, Serbia is greatly lagging behind other transition countries in the reforms in this area. One of them is certainly lagging in adoption of the new Serbian constitution as a basis for definition of territorial power organisation. No major departure from the present state is expected in the new constitutional system, except for its stronger general tendency for decentralization of power and administration. Consequently, having in mind the prevailing mood among political actors, the public administration reform may already count on general decentralization tendency and future constitutional orientation in this direction. Having in mind the relevant constitutional proposals, Serbia will have a three-dimensional vertical structure of government in future, as well as of public administration – central, province and local – with clearly established constitutional competences. According to the proposals from the Government of Serbia and President of the Republic, the medium level of government and public administration would relate to the existing Provinces of Vojvodina and Kosovo-Metohia (with certain political conditionality for latter), with open constitutional possibility for remaining parts of (central) Serbia to establish certain forms of regional self-governance.

Successful reform of public administration has to respect the historical development of the country and its characteristics. At the same time, in order to realize a successful reform it has to be harmonised with European and world trends in the social development. The most important world trends in the development of modern society that influence the structure of public administration and the position of public sector in the country are as follows:

- Transfer from industrial to IT society;
- Transfer from national to world economy;
- Transfer from short- to long-term planning;
- Transfer from centralism to decentralisation.

A long time had passed before the domain of reform policy, initiated after the political changes in October 2000, appropriately included the public administration reform. Part of this reform started in a special segment of decentralization by adoption of two laws at the beginning of 2002 – the Law on Establishing the Competences of Autonomous Provinces and the Law on Local Self-government – while there was an unjustified stagnation for a long while in the area of central administration. Strategy for public administration reform in the Republic of Serbia, containing (beside the review of found situation) the main goals and principles of reform, key areas of reform, institutional framework and action plan for its implementation, was adopted at the end of 2004. Strategic management of public administration reform was vested with the Council for public administration reform, headed by the Prime Minister. The tasks of this Council is to establish the proposals for strategic development of public administration in the Republic of Serbia, to initiate and propose to the Serbian Government the measures and activities relating to the public administration reform, preview the draft laws relating to organisation and work of the Government, public administration bodies, as well as other drafts related to the public administration reform and to submit its opinions to the Government. At the operational level, the management and coordination of the entire public administration reform process is vested with the Ministry for Public Administration and Local Self-government.

5.2.2. General aims and principles of public administration

Good organisation of public services is a parameter that indicates the administration efficiency to the citizens in everyday life. In this sense, Serbia is traditionally lagging, and without this segment there can be no ultimate substantial reforms or the solid preparation for European integrations. That is why the Serbian Strategy for public administration reform sets out two interrelated goals:

- Creation of democratic state based on the rule of law, responsibility, transparency, economic character and efficiency and
- Creation of citizen-oriented public administration, capable of providing high quality services to citizens and private sector with reasonable costs.

For realizing these goals, the Strategy sets out the following principles:

- **Principle of decentralization**, implying the optimum power distribution among the central, province (regional) and local level, with the aim of bringing the public services closer to citizens and increasingly under their control;
- **Principle of depolitisation**, implying the distinction between the process of political decision-making process from the process of legal standardization of political decisions and enforcement of legal regulations;
- **Principle of professionalisation**, which assumes the qualified, responsible and efficient administration;
- **Principle of rationalization**, reflected in the optimum organisation of public administration which would be able for realizing a high quality of services with engaging of necessary number of employees. This principle implies the sustainability principle, which relates to realistic planning and implementation of public administration reform having in mind the existing financial capacity and human resources;
- **Principle of modernization**, which counts on modern equipment of public administrations with application of modern information and communication technologies;
- **Principle of open government implementation**, as a public administration controlling mechanism that implies that the work of public administration bodies is subject to permanent control of higher instances of executive power, judicial and citizen control, as well as control of specific institutions such as the ombudsman.

All future laws and by-laws have to be in line with these principles, since the reform of legislative framework will create the legal basis for implementation and establishment of the abovementioned principles, which is the initial step towards great systemic changes. Beside the abovementioned, permanent monitoring of impacts of legislation enforcement is planned, with active participation of all relevant social subjects, which is the basis mechanism that ensures the dynamics of reform process and enables its constant harmonisation with real needs i.e. elimination of perceived weaknesses and lacks.

Action plan for implementation of public administration reform, which comprises a part of the Strategy for public administration reform and whose preparation is underway, envisages the concrete plans and framework deadlines for reform of legal regulation reform in the period from 2004 to 2008.

5.2.3 Reform of legislative framework and public policy

Legislative framework is an important instrument for management of social changes and it includes the adoption of laws and other regulations, as well as their implementation and supervision thereof. The atmosphere of legality and rule of law is established in this way. Doubtlessly, the harmonisation of legal regulation with the EU law is an important precondition for the dynamics of integration process. Just like the institutional part of the public administration reform is a basis for transformation, legal reform is a necessary precondition for institutional reform. This implies that one of the main parts of regulatory reform is the very reform of public administration.

Reform process should contain the deregulation in appropriate areas and to the necessary extent as a part of the general process of society democratization and establishment of conditions for free movement of goods, services and capital, as well as a better regulation in order to ensure the high quality realization of public interest by viewing the administration as a citizen service.

A segment of this reform is also the transfer of regulatory mechanisms from public administration bodies to local self-government level.

Reform of legislative framework in the public administration area particularly implies the adoption of regulations that will represent the legal framework for functional and organisational reform of public administration based on strategic principles. In the first place, it implies a set of laws and by-laws that lay down the foundation for public administration in Serbia, such as the new Law on Public Administration and the Law on Civil Servants, but also the laws regulating the procedural operation of public administration bodies and control of legality and regularity of their work – Law on General Administrative Procedure and the Law on Citizen's Defender (Ombudsman). The anti-corruption laws are of utmost importance – Law on Prevention of Conflict of Interest at Performance of Public Duties and the Law on Free Access to Information – as well as the adopted Serbian National strategy for fight against corruption. On the other hand, the monitoring of implementation and assessment of the Law on Local Self-government and Law on Local Elections will show whether and to what extent is the valid regulation slowing down the efficient decentralization process. Finally, the harmonisation of sectoral laws in each of the areas where the competences have been transferred to the local self-government is an indispensable part of regulatory reform.

The reform of legislative framework requires certain measures for creation and enforcement of each law. Some of these measures are motivated by quicker integration in European courses and others are primarily motivated by economic rationality reasons. At creation and implementation of each legal regulation, the following three measures will be taken:

- **Analysis of law impact**, which has to be a composite part of each draft law and which implies primarily the reviewing of financial impacts of law enforcement;
- Law impact analysis on the future process of Serbian association with the European Union. Immediately after the signing of Stabilisation and Association Agreement, Serbia and Montenegro will be obliged to initiate the process of harmonisation of domestic legislation with the *acquis communautaire* in the areas established by this agreement. Serbian Government has already adopted the mechanism for compatibility assessment that ought to serve as a parameter for success and precision of action plans;

- **Impact assessment** for regulations before their drafting and after their implementation, which is a very important tool for assessing the sustainability of certain regulation and avoiding possible mistakes that may be rather expensive. However, the problems that this form of analysis imposes on the context of public administration reform stems from the multidisciplinary character of this process, so that it has to be introduced and developed over a long period since it requires strong institutional and financial frameworks for reform implementation in all areas of society, as well as qualified personnel.

Public administration reform does not imply the mere legislative reform implementation, but also the manner of implementing the general and sectoral public policies. Through enforcement of laws and other **general** regulations of National Parliament, the Government implements the policy of the Republic of Serbia. According to the presently valid Constitution of the Republic of Serbia, Government supervises the work of the public administration bodies, directs the public administration bodies along the policy implementation and enforcement of laws and other general regulations and harmonises their operation. Finally, the Government operation is public.

All these provisions indicate the need for full implementation of open government principles as a necessary standard for the public administration functioning. The reform of public administration implies the realization of this goal. However, the open government principle should not be observed as separate from social reality, so that the implementation of this principle requires the creation of mechanism that will introduce state institutions as well as non-government organisations i.e. all stakeholders into the Government policy implementation. This primarily implies that the Government seriously considers and accepts the initiatives for adoption of laws originating from local self-government units, syndicates, expert audience and non-governmental organisations, to enable them for expressing their views on new law proposals, as well as to consult them in relation to the impacts of implementation of the adopted laws. This is especially important in the areas of labour, health, pension, disability and other related legislation.

One of the Government's special focuses should be the part of public administration that is involved in direct communication with citizens. By application of the abovementioned principles of public administration reform, their work should be promoted so as to facilitate the realization of rights and legal obligations for citizens.

The process of adoption of new laws that should regulate the new system of public administration in Serbia has already been initiated by adoption of a number of laws, and its dynamics is determined by the Action plan for implementation of the public administration reform that is harmonised with appropriate part of the Serbian Government's Action plan for realization of European Partnership priorities, but it is not compatible with it due to its wider scope (complete reform of public administration sectors, including the related areas) and longer (2004-2008).

This legal matter will be adopted in 2005 and it includes:

1. The Law on the Government,
2. The Law on the Public Administration,
3. The Law on the Civil Servants,
4. The Law on the Citizen's Defender (Ombudsman),
5. The Law on the General Administrative Procedure,
6. The Law on the Administrative Disputes,
7. The Law on the Prevention of Conflict of Interest at Performance of Public Duties,
8. The Law on the Access to Information of Public Interest,

9. The Law on the Electronic Signature,
10. The Law on the Public Agencies,
11. The Law on the Civil Servant Salaries,
12. The Law on the Inspection Supervision.

All these laws, together with the regulations for their implementation, should be passed in 2005, and the majority thereof is prepared and in various stages of adoption.

A number of laws with the same purpose and effect should be added to this list of laws for improvement of public administration, namely:

- The Law on Supreme Audit Institution;
- The Law on the Public Notary;
- The Law on Inspection Supervision.

Action plan for implementation of public administration reform envisages the process of realization of conditions for efficient establishment of the projected legislative framework. The question is, namely of monitoring, analysis and evaluation of impact of new legislative arrangement, new system of human resource management, introduction of new information technologies and development of controlling mechanisms for public administration operation. These conditions for achieving a new, modern and rational administration should be realised by 2008. This period coincides with the envisaged initiation of our country's negotiations for accession to the European Union, providing that the Stabilisation and Association Agreement is concluded during 2006. This is the more important since the state of public administration in Serbia (as well as in Montenegro and at the State Union level) will be an important parameter for accession negotiations.

It ought to be noted that the Action plan included the monitoring and reviewing of enforcement of the existing Law on Local Self-government, including the possibility for its amendment (2006). The public administration reform implies the amendment of appropriate sectoral laws for the purpose of transferring the competence to decentralized administration, as well as amendments of financial regulations to the same end. The main purpose of these amendments is contained in projection and realization of operational decentralized public administration system in Serbia. Beside that, a set of coherent measures and activities which should be taken in the local self-government area along its road towards widely decentralized self-government and the local self-government capable of efficient satisfaction of citizens' needs in its territory, is envisaged by the Work programme for better local self-government.

5.2.4. Decentralised public administration

Optimum organisation of public administration in Serbia implies decentralisation among other. This is also a binding condition under the Council of Europe's European Charter on local self-government.

Process of decentralization should be conducted gradually, along with organisational and material enhancement of administrative potentials of lower government instances. Strategy for public administration reform supports the combination of three models of decentralisation – model of power de-concentration, model of power delegation and model of power devolution to lower instances of territorial organisation. The main goal is, due to the unequal organisational and material circumstances, to use all three models and gradually bring all local units – municipal and town – to the most efficient model i.e. the model of power devolution. The solutions of

future new Serbian Constitution will define the levels of sub-central government and will represent a basis for power delegation from central to lower instances.

Along with the modified competences of local self-government it is necessary to define the sources of funds for local self-government's financing performance of the transferred responsibilities. That is why the **process of fiscal decentralization**, as a special reform process, is directly connected with the overall public administration reform.

Fiscal decentralization is a significant instrument for increasing the participation in decision-making process, which provides greater transparency at public service rendering. Furthermore, the manner of realizing this decentralization may have significant impact on macroeconomic administration and stability in certain country.

Local governments in the country have to be enabled to establish their institutional structures in such a manner so as to be fully responsible for fiscal decisions they make. Hence the steps towards decentralization require simultaneous substantial changes in the public revenue system and system of financial balance, but also the realization of measures directed at reduction of risk from over-indebtedness of local self-government, disturbance of overall budget balance at the state level etc.

In relation to material preconditions for decentralization, the issue of **local self-government property** is one of the vital ones. By appropriate constitutional and legal solutions it is necessary to create the constitutional legal basis for local self-government property, which is, beside local revenues, also an important condition for successful performance of public activities and represents our obligation under the Council of Europe's European Charter on local self-government.

5.2.5. Creation of professional and depoliticized public administration

Only a professional public administration based on the principle of merits (skills) and responsibilities of civil servants may successfully realize the requirements placed before it during the reform process. In order to change the public administration attitude towards citizens, significant changes within the very administration are necessary. That is why the establishment of professional administration is the key for successful reform. Establishment of professional administration is a lasting process that includes several elements and whose initial stage in the transition countries requires intense engagement and great efforts for laying adequate foundation for the entire process.

There are three major groups of elements that the establishment of modern and professional public administration is based upon:

- legal framework for regulating the status and position of civil servants;
- qualified personnel (civil servants);
- working environment, closely connected with the principle of work modernisation.

1) Legal framework for regulating the status and position of civil servants

It is undisputable that the legal status of public administration employees has to be regulated by law, since they have the employment relation with the «state», which is in this case the employer. As in any other employer-employee relation, there is a need for arranging the mutual relations, rights and obligations, which has to be done by a law.

There has to be a special legislation for regulating the legal position of civil servants, which is the first element for establishing a professional public administration. Special legislation in this area is the means for improving administrative capacities:

- Rule of law,
- Transparency of work,
- responsibility,
- legal certainty,
- efficiency.

Naturally, this does not imply that certain issues of civil servants' legal position are not subject to provisions of the general Labour Law, when it comes to the issues which require specific regulation (e.g. provisions on duration of working hours, right to vacation and leaves etc.).

Specific obligations of civil servants arise from the very nature of public administration. These obligations include the following:

- (1) to be at citizens' disposal,
- (2) work in public interest,
- (3) to be unbiased at performing the activities,
- (4) to respect the principle of legality,
- (5) to be responsible for own work,
- (6) to be responsible to the state for damage caused by own work.

Work in public administration implies certain specific obligations and, due to the nature of jobs, it also implies some specific rights of civil servants, which ought to be regulated by special law. These specific rights primarily include:

- (1) right to refuse the performance of illegal orders,
- (2) right to protection from excessive pressures, which actually implies the obligation of employer (state or local self-government body) to protect him from reacting and pressures caused by unfounded dissatisfaction of citizens, and particularly from political pressures,
- (3) right to training and additional qualification during work,
- (4) possibility of advancement during the career on basis of expressed skills and results.

At the same time, the Law should regulate the mechanisms for protection of rights guaranteed to civil servants.

One of the most important issues within the public administration reform in all transition countries (thus for Serbia as well) is the issue of depolitisation. Regarding the basic meaning of depolitisation – that the civil servants have to be neutral and may not be guided by their own political beliefs in performing their jobs – we may say that a significant level of professionalism is achieved in Serbia. However, the application of depolitisation principle implies another step i.e. clear division of work and authorizations among the selected politicians and officials appointed on basis of political trust on one hand and professional civil servants in high positions within the public administration on the other. Without this step, especially in transition countries with relatively frequent changes of government, it is not possible to create a stable and efficient system of public administration that enables the continuity in performance of public services.

Anyhow, regardless of problems in this sphere of the reforms, depoliticisation of highest positions in public administration remains one of the priority principles of the reform. Thus, it is of utmost importance to establish a solid legal basis for restricting the political impact on operational management in public administration and for development and improvement of career system.

2) *Personnel qualification – human resource management*

One of the preconditions for successful public administration reform is its rationalisation. Engagement of new civil servants should be harmonised with the rationalization requirements.

Transparency of employment procedure is way to ensure transparency of public administration and availability of employment in public administration to all interested persons.

Employment on basis of qualifications and skills implies that the criteria that candidates have to meet are known in advance - such as professional qualifications, abilities and possibly previous experience, as well as that the selection is performed by applying these criteria and selecting the best candidate.

Training and professional qualification of employees should be a lasting process with the aim of continuous enhancement of public administration and ensuring the reform implementation. The training does not only represent a prerequisite for professional advancement, but also for improved performance of the existing job. It is important that the training covers all levels of public administration and in situations when the capacity of local self-government is rather low it would be very useful to cover the employees in these bodies as well.

An important segment of public administration reform is also the need to educate the civil servants on the issues of European integrations with the aim of enhancing institutional and administrative capacities for performing the activities relating to accession to and association with the European Union. The training has to be in line with individual needs of each ministry and each sector, enabling the acquisition of both knowledge and skills for good European administrative practice. For the purpose of complementarity of administrative practice, procedures and mechanisms in our region, it would be useful to establish a regional school for public administration under the auspices of the European Union. Because of its location and preconditions, Belgrade is interested in being the location of such school.

3) *Reform of salary system*

One of the key elements of reform is the reform of public administration salary system.

Concrete measures¹ that are taken in this area should be aimed at:

- ensuring consistency, transparency and impartiality in the system of civil servant rewarding;
- creating differences in salaries that will stimulate the employees to perform higher quality and more efficient work in order to advance in the career, which would result in higher salary, and stimulate them to accept the jobs with greater responsibility which are better paid;

¹ In November 2004, the Minister for public administration and local self-government and the Minister of Finance adopted the **Common statement on necessary reform of salary system in public administration and basic principles for reform of salary system in public administration**, and subsequently, in line with the **Conclusion of the Serbian Government** 05 no:121-8431/2004 of 23 December 2005 (and conclusions of the Serbian Government 05 no: 121-2115/2005-001 of 07 April 2005 and 05 no: 121-2115/2005-003 of 14 April 2005), new bases have been established in practice for civil servants and according to the type of job, responsibility and complexity of job.

At the same time, the system for monitoring and evaluation of civil servants' work has been introduced, on basis of which the motivation and rewarding mechanism was established according to work results.

- ensuring the salaries that are proportionate to the level of private sector salaries, which would make public administration attractive to young, professional individuals and reduce the outflow of experienced resources from public administration, beside reducing risk from possible corruption of civil servants.

5.2.6. Reform of central administration in the European integration process

All ministries of the Serbian Government have to be organisationally prepared for European integration activities. The scope of issues contained in the Feasibility Study, and particularly the issues that will be contained in the Stabilisation and Association Agreement, require the appropriate preparation of ministries to meet the specific requirements of policies that will arise from these documents. In this sense, the ministries have to be prepared for the following:

- conduct all necessary preparations for negotiation of Stabilisation and Association Agreement in coordination with the Serbian European Integration Office;
- provide concrete proposals during negotiations and offer any other support to our negotiation teams;
- at proposing the laws, pay attention to their compatibility with appropriate legislation of the European Union;
- ensure efficient law enforcement through a reliable system of supervision and control.

In order to realize these goals, it is necessary to continue with enhancement of ministry capacities. It is necessary to establish the **European integration units** within each ministry. They will be responsible for monitoring the creation of policy and measures significant for association (already initiated process). Each of these units already possesses organisational preconditions for monitoring the creation of policy and measures significant for European Union association policy. Challenges in development and sustainability of human resources for European integration activities, resulting from the human resources fluctuation, demand a continuous training for all activities. Support and guidelines at definition of training programmes and human resource enhancement for public administration will be provided by the Serbian European Integration Office in coordination with the Ministry for Public Administration and Local Self-government.

For better coordination of the ministries' work on association issues, it is necessary to establish the inter-ministerial professional units. These may be permanent or **ad hoc** units, whose members would include the representatives of scientific institutions, professional associations, chamber of commerce, province and local administrations.

Reorganisation of ministries and enhancement of their capacities for these activities have to be accompanied by **informatics modernization** of their work i.e. implementation and constant innovation of information technologies. There has to be an Internet database of all data on the EU, as well as appropriate portal of European integrations and our association policy. It is also necessary to create a database with information on all civil servants working on European integration issues and at all levels of public administration.

A special aspect in enhancement and adjustment of ministries' administrative capacities is management of international financial assistance, especially regarding the assistance and various donor projects from the EU programmes (CARDS and anticipated pre-accession instruments from 2007). Previous administrative mechanism, located within the Sector for coordination of development and donor assistance within the Ministry for International Economic Relations, has to be harmonised with the EU criteria. It has to be done in two directions: **firstly**, it is necessary to enhance inter-ministerial network for coordinated assistance administration, with inclusion of

European integration units within the ministries; **secondly**, it is necessary to enable regional and local administration levels for direct receipt of assistance entitled for them. It should be noted that the EU is increasingly directly addressing its donor programmes at regional and local government levels, thus we have to be prepared for such assistance policy.

5.3 | *Administrative capacity for European Union accession*

5.3.1. *European Partnership priorities*

a) Short-term priorities

Part of the European Partnership section on Democracy and the rule of law, protection of human and minority rights relates to the reform of public administration. Main general short-term priority is the need for strengthening and maintaining the administrative capacities of institutions dealing with the European integration issues at the State Union level as well as at the republican levels, especially in terms of staff, training, equipment and promotion of their mutual cooperation. In case of Serbia, the particularly important requirement, which was already addressed by the previously described Strategy, is the adoption of overall strategy for public administration reform, which would contain a precise calendar of activities that would lead to such reform. The implementation of planned reforms of salary system and human resource development are underway, which were also short-term priorities under the European Partnership and tasks envisaged by the Action plan of the Strategy for reform of public administration in the Republic of Serbia.

b) Mid-term priorities

The continued reform of public administration is one of significant mid-term priorities from the European Partnership. This group of priorities includes the development of structures for European integrations, especially by strengthening the European integration offices, establishing the mechanisms for their undisturbed cooperation and enhancement of European integration departments within the State Union and republican ministries.

The defined mid-term priority for Serbia is adoption and enforcement of laws on public administration and civil servants, while the application of measures for human resource development in public administration represents one mid-term priority that is already realised. Another underlined need is to enhance the public administration capacities for policy creation and coordination among the ministries at the Government level and at the local level. Another complementary priority is the process of economic policy formulation, as well as improvement of the statistical services' work. This set also includes the establishment of department for mid-term economic planning.

5.4 | *Mechanisms for coordination of administrative capacities for European Union accession process*

According to present state in relation to coordination of relations between Serbia-Montenegro and European Union, there are two levels and three groups of institutional structures responsible for this activity in the State Union.

At the State Union level, the key ministry responsible for European integration issues is Ministry for International Economic Relations, which is, according to the SCG Constitutional Charter, competent for conclusion of Stabilisation and Association Agreement in coordination with the Republics. Operational part of the work in the area of integration and coordination is performed by the Serbia-Montenegro European Integration Office, which is at the same time the administrative service of the key political body for European integration of the State Union level – Council of Serbia and Montenegro for European integrations. Foreign Ministry of Serbia-Montenegro and its Sector for European Union do not have a significant role in these activities, which is unusual in comparison with the models existing in the new Member States of the European Union and certain candidate countries. The role of this ministry in preparation of the countries for EU membership was reflected in the professional support it may provide at establishing the negotiation techniques and methods of diplomatic communication. The fact that the negotiations with the European Union (on Stabilisation and Association Agreement and especially on full membership) imply greater complexity than in case with the ten new Member States demand the establishment of more numerous and powerful (from the human resource aspect) diplomatic mission with the European Union institutions, with greater participation of diplomatic agents capable of following and representing sectoral interests of Serbia and Montenegro in relation with the European Union. It is important to pay special attention to a large number of sectoral stakeholders that are very active in Brussels. It is necessary to employ equal diplomatic resources in the European Union Member States.

The practice of quality and efficient coordination of horizontal and vertical structure of power presumes the existence of one central administrative body (agency). Such practice appeared to be successful since it enables a careful balancing among the national interests and sectoral priorities that have to be fulfilled for European Union accession. In this sense, it is necessary to establish one system, vertically and horizontally connected, which would at the same time negotiate and coordinate and if possible control the legislative (regulatory) activity at adoption and implementation of European Union *acquis*.

At Serbian level, the Deputy Prime Minister is responsible for the European integration activities. Operational agency for all necessary activities related to this responsibility is the Serbian European Integration Office. The success of the Office work is greatly related to political capacity that has to be continuously enhanced during association process. Beside the Deputy PM, the role of Prime Minister in performance of European activities is of utmost significance in all European Union Member States.

Furthermore, the establishment of European integration units within the ministries was initiated in 2003 i.e. organisation of activities in the European integration area within other organisational forms depending on the nature of activities performed within the Ministry and obligations of the ministries in the European integration area. With the aim of improving the operation in this field, further enhancement of professional and human resources is necessary. It is particularly important to emphasise that the good performance of European integration activities requires that these units have a politically credible position within internal organisational procedures (presence at the ministry collegiums, proposal of measures, participation in creation of ministry's policy, preparation of annual work plans for the ministry). Coordination of line ministries and the European Integration Office in the European integration activities is performed through the Commission for coordination of European Union accession process. In case of Serbia, the key political body is also the Council for European integrations of the Serbian Government.

At the level of Montenegro, the widest authorities in European integration activities lie within the Ministry for International Economic Relations and European integrations. Certain participation in these activities is realised by

the Foreign Ministry of Montenegro, which is responsible for political dialogue. The establishment of European integration units in other Montenegrin ministries is underway.

Mechanisms of coordination of administration for the accession process are one of the key preconditions for success and economic sustainability of European Union accession. Their significance has first come to the fore in preparations of negotiations for signing of the Stabilisation and Association Agreement. These negotiations are the first test of sustainability and applicability of negotiation positions for even more important negotiation cycle i.e. negotiation for membership. Preparation for all negotiations, as well as the mere negotiation process are extremely complex and comprise of a number of "mini" negotiations, which is why the coordination of all actors is extremely important for appropriate interpretation and the realization of strategic guidelines of Serbia-Montenegro and its Republics in negotiations with the European Union. Functional coordination mechanism implies:

- coordination of impact analyses of foreign trade liberalisation and implementation of the *acquis* in internal legal orders of Serbia-Montenegro and its Republics,
- establishing the priorities in determination of transition periods for certain categories of goods, services and other factors of European Union internal market,
- coordination of all actors in the process of planning the introduction and implementation of the European Union *acquis*,
- comprehensive and efficient coordination of both government instances in Serbia and Montenegro and all three subjects of European integrations (State Union, Republic of Serbia and Republic of Montenegro) with the aim of adequate representation of negotiation positions of all actors and their maximum incorporation in relations with the European Union,
- key negotiator, more general and specific negotiation teams should be timely introduced to negotiation positions of all national actors in negotiations (two months before the initiation of negotiations). The same applies to the central coordinating body,
- discussion in Serbian Government sessions, on basis of specially established point of the agenda on the position of the Republic of Serbia in the European integration process, including the identification of possible problems and modalities for their resolution,
- intensive inter-resource cooperation through establishment of *ad hoc* working groups of the Serbian Government.

5.5 | *Main problems of administrative structures for European integration activities*

During the implementation of European integration activities, we are faced with a major contradiction: on one hand, it is obvious that the European Union insists on one interlocutor in the Serbia-Montenegro Stabilisation and Association Process; on the other hand, the model with three parties, envisaged for realization of these tasks is largely dysfunctional. The Constitutional Charter, as key document, although envisaging coordination of activities in relation to the European Union at the State Union level (Ministry for International Economic Relations), failed to envisage the necessary mechanisms for such coordination. That is why it is presently impossible to establish the existence of harmonised activity of the State Union and its Republics in fulfillment of conditions for European Union association. Beside the absence of operational provisions in major documents of the State Union which would enable such coordination, there is also the absence of political will and conversion of

republican interests in this process. Even in the existing twin-track integration, there has to be a minimum level of coordination of these activities and monitoring of the success of all three levels.

This is why alternative strategies for coordination of European integration processes in the in different circumstances also have to be taken into account. Namely, since the existing model is not efficient, it has to be amended for the purpose of enhancing the efficiency in realization of European integration activities. Possible model depends on the constitutional order, which may not remain at the existing level.

With the aim of realizing the efficiency, there are two possible scenarios and accordingly two levels of coordination for European integration activities. The first model would be applied in case of strengthening the functionality of State Union, and the second one in case the State Union disintegration and generation of two independent states.

The application of the first model, which would imply the strengthening of the State Union functions, especially those relating to the Serbia-Montenegro European integration process, would also imply the strengthening of functional mechanisms for coordination among the Republics and at the State Union level in realization of all obligations for implementation of Stabilisation and Association Agreement. Naturally, such solution would imply the appropriate amendment of the Constitutional Charter aimed at increased functional autonomy and responsibility of ministries and bodies in charge of European integrations. In this sense, there are two possible coordination models:

- Minor amendment of Constitutional Charter, which would imply the introduction of necessary but currently lacking implementation and coordination mechanisms. In this case, the constitutional authorities of SCG Ministry for International Economic Relations would be more clearly defined, this institution being of key importance for establishment of contractual relations with the European Union. Operational activities relating to establishment of contractual relations, as well as coordination of republican competent bodies for preparation and implementation would be performed by the SCG European integration office. In relation to the abovementioned, the influence of the Foreign Ministry related to integration issues ought to be increased in terms of precision of its role in political dialogue with the West Balkan states, with neighbouring countries (in terms of regional political dialogue), as well as with the European Union and its Member States.
- Significant amendment of the Constitutional Charter, which would transfer the majority of political and negotiation authorities for association to the Foreign Ministry. Such situation would imply a greater role of this Ministry in the integration process as key negotiator. The European integration office would also be within its structure, or a special Sector for European integrations that would be operationally prepared for coordination of European integration activities. Ministry for International Economic Relations would be responsible for coordination of trade elements of negotiation with two Republics.
- Combination of two mentioned solutions: such mechanism would level the position of the two ministries at the State Union level – Ministry for International Economic Relations and Foreign Ministry. They would have similar authorities in line with their general competences in the European integration area: firstly in economic aspects and secondly in political negotiation. In this case, they would be responsible for coordination of European integration activities with the Republics in their specific domains.

The second model would imply sovereignty for each of the present Republics. In this case, it would not be necessary to elaborate the mechanisms of coordination among the Republics but establish a complete and efficient state mechanism dedicated to European integration activities in Serbia. The experience of countries that acceded to the EU in 2004, as well as current candidate countries, indicates that there are principally three solutions. In certain countries, the internal coordination is performed by the Foreign Ministry i.e. service or sector within this Ministry, headed by a senior state official. In cases when internal coordination is separate from the Foreign Ministry, it may be organised within a special ministry, whether in form of special office directly under the responsibility of the Prime Minister or Deputy Prime Minister in charge of European integration, which is the current arrangement in Serbia.



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