



**SPAI General Assessment Report  
for  
FRY / SERBIA**

***FINAL REPORT***  
***Adopted on 29 April 2002***

## 1 FRY / SERBIA

### 1.1 ADOPTION AND IMPLEMENTATION OF EUROPEAN AND OTHER INTERNATIONAL INSTRUMENTS

#### 1.1.1 ACCESSION TO INTERNATIONAL AGREEMENTS

The Republic of Serbia is part of the Federal Republic of Yugoslavia (FRY) and as such it is not an international legal subject capable of acceding to international agreements and other mechanisms. However, it seems that the implementation of SPAI in this field is a coordinated effort of both the Republic of Serbia's administration and relevant Federal institutions (hereinafter designated as "FRY/Serbia").

ACCESSION TO INTERNATIONAL CONVENTIONS	STATUS	MEASURES TAKEN OR ENVISAGED
Council of Europe Criminal Law Convention on Corruption – ETS n° 173 (1999)	See note below <sup>1</sup>	On 9 November 2000, the FRY officially applied for membership of the Council of Europe. <sup>2</sup> It currently has a guest status to the CoE Parliamentary Assembly. The FRY may participate in CoE treaties provided that they are open to accession by non member-states and that it has been formally invited to accede by the Committee of Ministers of the CoE.
Council of Europe Civil Law Convention on Corruption – ETS n° 174 (1999)	----	
Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime – ETS n° 141 (1990)	----	
OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997)	----	
United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)	Accession on: 12/03/2001	
United Nations Convention against Transnational Organised Crime (2000)	Signed on: 12/12/2000	
UN Trafficking In Persons Protocol (2000)	Ratified on: 06/09/2001	
UN Smuggling Protocol (2000)		
<b>PARTICIPATION IN :</b>		
Group of States against Corruption (GRECO) - CoE	----	The Serbian Government's strategy for fighting corruption envisages, among the next steps to be taken, joining all relevant international forums and institutions charged with fighting corruption (GRECO, OECD, etc).
Select Committee for the Evaluation of Anti-Money Laundering Measures (PC-R-EV)	----	
OECD Working Group on Bribery in International Business Transactions	----	

<sup>1</sup> The Federal Parliament has adopted in March 2002 the Law on the Ratification of the Council of Europe Criminal Law Convention on Corruption ("Official Gazette FRY – International Agreements", No. 2/2002, 2 March 2002).

<sup>2</sup> Letter from the Federal Minister for Foreign Affairs to the Secretary General of the Council of Europe of 9 November 2000.

In April 2002, the FRY has ratified the Convention on the Transfer of Sentenced Persons (ETS n° 112). The FRY has been invited by the Committee of Ministers of the Council of Europe to accede to the European Convention on the Transfer of Proceedings in Criminal Matters (ETS n° 073). Furthermore, the issue of inviting the FRY to accede to the European Convention on Extradition (ETS n° 024) and to the European Convention on Mutual Assistance in Criminal Matters (ETS n° 030) is currently under examination. At present, no wish has been expressed by the FRY to accede to the Civil Law Convention on Corruption (ETS n° 174) nor to the Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime (ETS n° 141).

The FRY/Serbian authorities have informed the SPAI Secretariat that the FRY has adopted, in March 2002, a Law on the Ratification of the Criminal Law Convention on Corruption (ETS n° 173) and that this convention has been ratified. Furthermore, it is determined, according to article 5 of this law, that the FRY will, in the process of ratification, include a reserve<sup>3</sup> in respect to article 37 of the Convention. However, the FRY will only become an official party to this convention once the procedure for accession (formal invitation for accession by the Committee of Ministers of the Council of Europe; necessary measures undertaken to ensure that the domestic law allows the convention to be implemented; deposition of the instrument of accession at the seat of the Council of Europe in Strasbourg).

The Republic of Serbia has in December 2001 joined the Stability Pact Anti-corruption Initiative and also participates in the Stability Pact Initiative against Organised Crime (SPOC).

### **1.1.2 MUTUAL ASSISTANCE IN CRIMINAL MATTERS**

International cooperation in criminal matters is carried out pursuant to the provisions of the FRY Criminal Procedure Code<sup>4</sup>, unless otherwise stipulated by an international treaty. Bilateral agreements covering legal assistance in criminal matters and extradition are in force with several countries among which Albania, Bulgaria, Cyprus, Czech Republic, France, Germany, Greece, Hungary, Italy, Netherlands, Poland, Romania, Russian Federation, Slovakia, Switzerland, Turkey, Ukraine, United Kingdom, United States of America, etc.

Mutual assistance in criminal matters is shared between different institutions at Federal and Republic level, with a clear division of work among the competent institutions prescribed by law. However, it seems that the proceedings for mutual assistance are still not fully efficient due to lengthy procedures and communication difficulties within the different institutions.

The Federal Ministry of Justice is the main channel of transmission and reception of requests for mutual assistance in criminal matters. In case of urgency and if reciprocity exists, requests may be transmitted through the Federal Ministry of Internal Affairs. In accordance with article 538 of the new Criminal Procedure Code, the Federal Minister of Justice is obliged to regulate in detail, within the next 6 months, the contents of a request and other related issues. According to the

---

<sup>3</sup> “ *The FRY holds the right to reject a request for mutual assistance according to the article 26 paragraph 1 in case the criminal act is, according to the Yugoslav law, a political crime.*”

<sup>4</sup> See articles 530 to 538 in Chapter XXXII on Proceedings on Mutual Assistance and Enforcement of International Treaties in Criminal Matters of the recently adopted federal Criminal Procedure Code, which has entered into force on 28 March 2002.

information provided, a draft of this regulation has been prepared and will be presented to the Parliament on schedule.

As a general rule, domestic courts cannot enforce foreign verdicts upon request from a foreign authority. In exceptional cases, the enforcement of a foreign criminal verdict is possible if it is provided so by an international treaty or by reciprocity and provided that the sanction is also imposed by the domestic court according to the federal penal legislation (article 534 of the Criminal Procedure Code).

Bilateral agreements on recognition and enforcement of courts' decisions in criminal matters have been concluded with Austria, the Czech Republic, Slovakia and Denmark. The FRY is a party to the Convention on the Transfer of Sentenced Persons (ETS n° 112)<sup>5</sup>. The Convention will enter into force in the FRY on 1 August 2002, after which time the transfer of sentenced persons and recognition and enforcement of the sentence will be possible with all the countries members of the Council of Europe.

According to article 22 of the 2002 Serbian Law on Organisation of Courts (which will enter into force in October 2002), the District Court shall be competent to conduct proceedings for surrender of accused and convicted persons, execute a criminal verdict of a foreign court, decide on recognition and execution of foreign judicial and arbitration decisions, unless they fall under the jurisdiction of another court and perform other tasks prescribed by the law.

The Yugoslav Constitution, the Serbian Constitution as well as the Criminal Procedure Code set out the legal conditions applying to extradition. The FRY/Serbia refuses extradition of its nationals to another state (article 17 of the Yugoslav Constitution, article 47 of the Serbian Constitution), though they can be prosecuted by domestic courts for offences committed abroad. Specific preconditions are listed in article 540 of the Criminal Procedure Code (Chapter XXXIII on Proceedings for extradition of defendants and sentenced persons), such as: Yugoslav citizenship, offence not committed in the territory of the FRY, against it or its citizens, requirement for dual criminality, prescription, amnesty, the *non bis in idem* principle, etc.

The existence of European data protection standards is usually a pre-condition for the exchange of sensitive data among European countries. In February 2002, the FRY has been officially invited to accede to the European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS n° 108) pending that a prior legislative counselling on the compatibility of the Yugoslav legislation<sup>6</sup> with the provisions of the convention would be carried out by the Council of Europe in cooperation with the members of the Advisory Committee set up within the framework of this convention.

### **1.1.3 INTERNATIONAL CO-OPERATION IN FINANCIAL INVESTIGATIONS AND MONEY LAUNDERING CASES**

The FRY is not a party to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime. The recently adopted Money Laundering Act, which will

---

<sup>5</sup> The Law on Ratification of the Convention on the Transfer of Sentenced Persons has been published in the Official Gazette of FRY, supplement for the international contracts 4/01.

<sup>6</sup> See Decree on Enactment of the Law on Protection of Personal Data, passed by the Federal Assembly on May 12, 1998.

enter into force on 1 July 2002, sets out only a general rule for international cooperation on money laundering issues. Article 23 stipulates that *“the competent federal authority may provide the data and information on money laundering issues to the foreign State authorities and to international institutions, upon their request or on its own initiative, under the condition of reciprocity”*.

The Federal Ministry of Internal Affairs has direct control over the Federal police but not over the police of the Republic of Serbia. The Head of the Crime Investigation Directorate of the Federal Ministry is also the Head of the INTERPOL National Central Bureau. The Crime Investigation Directorate’s staff fulfills only a liaison role between the police of the two Republics related to international requests for assistance to and from international police forces. In accordance with the Criminal Procedure Code (article 535), full data is to be provided to the federal Ministry of Internal Affairs by the authority before which proceedings are conducted in regard with criminal offences related to counterfeiting of money, money laundering and trafficking.

The FRY/Serbia’s experience in international cooperation in financial investigations and money laundering cases is limited, due to the fact that Yugoslavia was for several years under sanctions and excluded from international financial flows, therefore there was no place for serious cooperation. Efforts to develop international cooperation have been initiated through the establishment of the Money Laundering Commission, the training of the Central Bank’s employees on money laundering issues and the promotion of contacts at international level. Though at present detailed provisions establishing a framework for international cooperation are lacking, future practice will tell whether the FRY and Serbia are able to cooperate efficiently.

#### **1.1.4 RECOMMENDATIONS FOR REFORM**

1. Accede to relevant European and other international instruments, in particular the Council of Europe Criminal and Civil Law conventions on corruption and the Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime and adopt implementing legislation.
2. Continue with efforts to make international co-operation, in particular mutual legal assistance, more effective by further promoting direct contacts and communication between judges and prosecutors, specializing and training staff, and by supporting judicial networking at European and international levels.
3. Improve national data protection legislation and standards as a basis for enhanced international exchange of information, fully in line with the standards set by the Council of Europe Convention for the Protection of Individuals with Regard to Automatic Processing of Personal Data (1981) and Recommendation R(87)15 regulating the use of personal data in the police sector.

## 1.2 PROMOTION OF GOOD GOVERNANCE AND RELIABLE PUBLIC ADMINISTRATIONS

Corruption in some of the State Institutions of Stability Pact countries detracts from the efforts to promote economic growth and engender popular support for democracy. Poorly defined professional requirements and roles; inadequate accountability practices; weak control mechanisms; and low wages make public servants and politicians susceptible to improper conduct and foster poor administration. Practices inherited from the days of one-party rule inhibit development of, and adherence to, high ethical standards in the administration.

### 1.2.1 PUBLIC PROCUREMENT SYSTEM

#### LEGAL AND INSTITUTIONAL FRAMEWORK

The draft Public Procurement Law (PPL) is in the process of being adopted. The Republic of Serbia is generally good at introducing procurement procedures which are compatible with international standards. The nature of procedures provided is open, restricted and negotiated. Most contracting entities are covered by the PPL: central; regional and local authorities including entities operating in utilities sectors and other public enterprises which occupy monopoly positions. The draft PPL sets thresholds which impose adequate minimum time limits and publicity conditions. Suitable selection and award criteria have been adopted in the PPL. The basic principles of, *inter alia*, transparency, efficiency and accountability required by the EU directives, UNCITRAL, the WTO's GPA are adopted in the PPL. In addition, the PPL incorporates provisions relating to eligibility and conflict of interest as well as rules on fraudulent and corrupt practices which serve to strengthen the law and meet the concerns of the Serbian authorities.

#### *The Institutional framework*

The Ministry of Finance and Economy of the Republic of Serbia (MoFE) is the institution identified in the draft PPL as, together with the to be established Public Procurement Agency (PPA), having the lead role in introducing a decentralised public procurement system. It will be responsible for proposing to the Government secondary legislation (including lists of contractors, standard notice forms, standard statistical forms etc.). The role of the future PPA is still to be decided but in the draft the following key responsibilities have been included:

- participates in the preparation of rules in the field of public procurement;
- provides consulting services to contractors, tenderers and to both receivers and granters of concessions on issues concerning public procurement and concession granting;
- stimulates and is responsible for training in the field of public procurement;
- co-operates with foreign institutions and experts in the field of public procurement;
- is responsible for the publication and the availability of technical publications;
- is responsible for model tender documentation for the typical sorts of public procurement;
- is responsible for the availability of information on public procurement in other states;
- is responsible for a systematic collection of basic statistical data on contractors and maintains databases of important public procurement data;
- is responsible for the preparation of and participation in setting professional criteria for assessing individual types of expenses of public finance beneficiaries;
- is responsible for the preparation of uniform databases for establishing records of suppliers and their financial standing based on data concerning the contracts assumed and implemented;

- annually submits to the Government an analysis of the public procurement situation in the previous year with proposals for its improvement;
- monitors public procurement tenders and is responsible for the procedure of granting concessions;
- co-operates with other state bodies, organisations for compulsory social insurance and territorial autonomy and local government bodies;
- monitors the implementation of the provisions of this Act and the relevant implementing regulations;
- notifies the institution in charge with external audit of public expenditures on infringements of contractors in implementing the public procurement rules.

Based on the draft PPL, the PPA will be directly responsible to the Government. As of today no unit within the Ministry of Finance and Economy has been given the responsibility to co-ordinate the Ministry's work within this area.

#### ***The Joint Services Administration***

The Joint Services Administration (JSA) performs a range of administrative services for Republican ministries, including financial services, IT and procurement of consumables. The JSA has a financial section of 74 staff to perform the bookkeeping for ministries, including the processing of payment orders for salaries and the purchase of goods and services.

## **1.2.2 PUBLIC EXPENDITURE MANAGEMENT AND FINANCIAL CONTROL SYSTEMS**

### **BACKGROUND**

The public finance system currently in place in the Republic of Serbia is based on that developed in the Socialist Federal Republic of Yugoslavia and which was present in all former Yugoslav Republics and regions. The Socialist Federal Republic of Yugoslavia established a government agency to handle domestic payments on behalf of legal entities and natural persons. This agency, the Social Accounting Service, or SDK (*"Služba društvenog knjigovodstva"*), operated in all the constituent republics. Banks had deposit accounts and the SDK, in effect, operated the accounting system for the banks. All payments (other than cross-border payments by enterprises) were made through the SDK. The modern-day equivalent of the SDK in the Republic of Serbia is the *"Zavod za Obračun i Plaćanja"* (Clearing and Payments Service) or ZOP. It is a form of settlement system and clearinghouse and operates a giro arrangement, with every legal entity (of which there are some 100,000) required to have an account with the ZOP. Payments between entities are made by the ZOP as transfers between its accounts, for which it charges a commission. All tax collections are made through the ZOP, with taxpayers depositing funds into the appropriate revenue account at the ZOP. It does not pay interest on deposits, nor does it provide any form of credit.

This system does not meet the requirements of a market economy financial system, nor is it appropriate for the public sector. The introduction of modern financial management and control tools for the public sector while gradually eliminating the ZOP system is a prerequisite to the development of a sound public expenditure management system. The ZOP System is an inheritance of the former Yugoslavia and is present in all former Yugoslav Republics. In the Republic of Serbia the situation is complicated by the fact that the ZOP is a Federal system managed from within the National Bank of Yugoslavia (NBJ). However, the Bank and ZOP management appear committed to reform.

## THE LEGAL FRAMEWORK

A new Organic Budget Law (OBL), called the “Budget System Law”, establishing the legal framework for a Treasury system, has been developed by the MoFE. The Law has been adopted on February 26th 2002.<sup>7</sup> The Treasury will be located within the MoFE and will have the following functions: financial planning, cash management, expenditure control, debt management, accounting and reporting. The work with the US Treasury Budget Advisor and other donors permits the development of a budget system and a revised Chart of Accounts. The European Agency for Reconstruction will fund the development of the treasury ledger system. The MoFE is committed to change and the establishment of a Treasury and introduction of a Treasury Ledger System will provide the MoFE with the necessary degree of control over budget allocations and expenditures and will provide the basis for the introduction of a modern financial and commitment control system. Local Government are required by the Organic Budget Law to set up their own treasuries.

## THE INSTITUTIONAL FRAMEWORK

The Ministry of Finance and Economy of the Republic of Serbia intends to introduce a treasury function and general ledger, including the establishment of a Treasury Single Account (also known as the Treasury Consolidated Account, or TCA) to ensure the transparency of the budget and budget transactions and to unify all revenues. Implementation of the Treasury is one of the MoFE’s highest priorities for 2002. The present ministry was set up in January, 2001. It inherited from its predecessor 110 staff and a structure comprising seven sectors and a Secretariat. The sectors were: economic and financial systems, fiscal systems, balance and public expenditure financing, budget, legal property affairs, special conditions for real estate, and financial inspection and compensation. Since then, the Ministry has introduced a framework for reorganisation by appointing Assistant Ministers for macroeconomic and fiscal analysis, budget, balance of public expenditure in revenues, and fiscal system.

Additional Assistant Minister posts are designated for budgetary inspection and Treasury. The MoFE has been working closely with the US Treasury Department and the IMF to harmonise budgetary reporting with Government Finance Statistics (GFS) requirements. The extra-budgetary funds, such as the Social Security Fund, have not yet brought their reporting into line with GFS, but this will be introduced by 2003.

### *The ZOP System*

Users of the ZOP system complete a form, in triplicate, to make payments or transfers to other users. One copy of the payment order (PO) is sent to the payee, and the other two copies are sent to the ZOP. The ZOP will accept only original POs, not facsimiles. It does not accept input in any form other than hard copy. ZOP staff checks each PO to ensure that it has been correctly completed. They also check for adequacy of funds in the originator’s account. Once validated, each PO is hand-stamped and the data entered into the ZOP computer system. After the close of business each day, the ZOP sums the total values of the POs entered into the system. The ZOP then nets the values of all POs originated against POs received in each account. This can only be done after all the branches and sub-branches of the ZOP have consolidated their individual positions. Payment is generally not made against the PO until the following day.

---

<sup>7</sup> “Official Gazette of the Republic of Serbia” No. 9/2002, 26 February 2002.

Final settlement of the PO to the payee is in cash, although no cash transfer occurs for payments between accounts. Transfers are done through the ZOP computer system, into which all branch offices are linked. Most revenues of the Republic are paid into the Republican budget revenue account (type 840 account), while the revenues of state owned enterprises are paid into the type 842 account. Revenues in the type 840 account are split on a regular basis by the ZOP according to the various laws and the appropriate proportions are paid into the accounts of the recipient entities. Revenues of the Republic are transferred by the ZOP from the type 840 account to the Republic's type 630 account. Previously each Ministry had at least one type 637 (budget expenditure) account. Effective 1 October 2001, the MoFE closed the primary giro accounts of those ministries that had their bookkeeping done by the joint services administration. The ZOP retains the hard copy of every authorisation. ZOP is organised into 6 regions and 55 sub-units, with 150 small units, spread throughout the Republic of Serbia. It has an extensive computer network linking all its main units. Present planning is for ZOP to be transformed by the end of 2002 and its various functions (clearing house, tax collection and statistical data) re-distributed to the banking and public sectors.

#### ***The Joint Services Administration***

The Joint Services Administration (JSA) performs a range of administrative services for Republican ministries, including financial services, Information Technology and procurement of consumables. The JSA has a financial section of 74 staff to perform the bookkeeping for ministries, including the processing of payment orders for salaries and the purchase of goods and services. The ministries submit the necessary financial documentation, together with a payment order signed by the relevant authorised person. The JSA then processes the documentation, completes the payment instruments and submits them to the ZOP. The transaction data is then recorded in the general ledger of the relevant ministry. On average, approximately 300-400 payment orders are prepared daily, although this can rise to over 1,000 on some days.

The JSA provides end of month reporting to each ministry showing expenditure against budget. The software used for the system is a bespoke package developed in 1997 using Oracle 7.3. The package requires some modification, particularly to the reporting component, but the majority of the programmers involved in its development have left and the remainder are required for system maintenance. The JSA has an IT group of 23 staff operating a computer network of some 1,500 PCs and 4 mainframes. It also has a direct link with the budget department in the MoFE. The IT department operates a LAN which is linked to a WAN covering Belgrade. The systems operate on a 24/7 basis. There are plans to extend the WAN to cover the whole of the Republic of Serbia. Other plans include the installation of a fibre optic backbone, upgrading from Oracle 7.3 to Oracle 9i and increasing the capacity of the servers. Financial constraints may restrict the extent of these plans.

#### ***The National Bank of Yugoslavia (NBJ) and the TSA***

Currently, there is no Treasury Single Account (TSA) for the Republic of Serbia. The MoFE main budgetary account is held at the National Bank of Yugoslavia, but the numerous bank accounts opened by individual ministries are largely held by commercial banks. A number of these accounts were closed during 2001, and the MoFE and NBJ intend to seek closure of the remaining accounts during 2002. However, there has been significant resistance to this from those ministries with significant sources of own revenue, such as the Ministry of Justice, Ministry of Education and Ministry of the Interior.

### 1.2.3 CIVIL SERVICE CAPACITIES

#### LEGAL AND INSTITUTIONAL FRAMEWORK

The existing legal framework for public administration stems from the Socialist Federal Republic of Yugoslavia. Administrative action lacks transparency and an adequate redress and appeal system. General administrative law as well as public employment law is often too detailed and not service-oriented. Some existing legislation seems to hamper the necessary reform, geared to improve the efficiency of the public administration and the capacity and the professionalism of its staff and curb corruption. It is necessary to review basic administrative legal framework plus the laws on state employment, including general service, customs, police, prison staff, and possibly investigation services, etc.

The laws included are those that provide the frameworks for administrative action and also for the creation, tasking and accountability frameworks for government bodies. Typical laws for consideration would include the law on government, the law on administration, the law on law making, the law on administrative procedures, the laws concerning status and employment in public administration, the salary laws, the possible by-laws concerning classification, salary supplements etc., the codes of conduct, the Incompatibility legislation, etc.. These laws would have to be harmonised with some of the provisions being developed in the Ministry of Finance and Economy concerning expenditure and revenue management (e.g. internal control).

### 1.2.4 PUBLIC SECTOR EXTERNAL AUDIT SYSTEM

The Government has taken the first steps towards establishing a reliable and effective system of public internal financial control with the administration. Still, the mechanisms for the transparency of and the accountability for decision-making are still very weak and this is a major impediment to the development of an efficient and effective public sector administration. The quality of public financial planning, financial management, financial control and financial reporting are generally very poor in the Republic of Serbia.

In the accounting field, standards adopted in the early 1990s had much in common with international accounting standards but working practices deteriorated in subsequent years. There is no audit law and there are no satisfactory ex-ante or ex-post control functions. There are no suitable, local accountancy or audit training providers.

Of particular concern is the lack of parliamentary oversight of the planning and execution of the state budget and the operations of publicly-funded agencies. The National Assembly has established a Working Group of senior parliamentarians (the Vice President of the National Assembly and the Vice Chair of the Budget and Finance Committee), plus the Deputy Minister of the Ministry of Finance and Economy and a representative of the Ministry of Justice to consider the way forward for the creation and establishment of a Supreme Audit Institution (SAI) for the Republic. The Working Group considers both 'Office' and 'Court' models of SAI. The Working Group considers that the SAI is likely to require some 200 staff to be able to operate effectively. It is envisaged that recruits will be selected from the Payments Agency (ZOP) who will be available as ZOP winds down by the end of 2002 and from the banks that have recently collapsed. Recruits may also be university graduates with relevant qualifications.

## 1.2.5 RECOMMENDATIONS FOR REFORM

### **Public procurement systems**

1. Adopt the procurement act that would introduce procurement procedures which are compatible with both the structure and substance of the EU directives and the UNCITRAL Model.
2. Establish the Public Procurement Agency (PPA) that will have the lead role in introducing a decentralised public procurement system and will be responsible for proposing to the Government secondary legislation (including lists of contractors, standard notice forms, standard statistical forms etc.).

### **Public expenditure management and financial control systems**

3. Introduce modern financial management and control tools for the public sector while gradually eliminate the ZOP system. This is a prerequisite to the development of a sound public expenditure management system.
4. Adopt the Organic Budget Law by-laws.
5. Advance on the introduction of the treasury function and general ledger, including the establishment of a Treasury Single Account to ensure the transparency of the budget and budget transactions and to unify all revenues.

### **Civil service capacities**

6. Review the basic administrative legal framework including the laws on state employment, general service, customs, police, prison staff, possibly investigation services, etc...
7. Create a central civil service management capacity.

### **Public Sector external audit systems**

8. Create and staff an INTOSAI compliant external audit capacity.

## **1.3 STRENGTHENING LEGISLATION AND PROMOTION OF THE RULE OF LAW**

The SPAI Compact requires that countries create an appropriate legal framework by criminalizing corruption and money laundering, ensuring appropriate remedies for victims and effective enforcement. Countries also commit themselves to setting up specialised anti-corruption units with sufficient human, legal and budgetary resources, enjoying independence and protection in the exercise of their functions, and who have the capacity to protect collaborators. Furthermore, countries are required to strengthen investigative capacities by fostering inter-agency co-operation, the use of special investigative means – while respecting human rights – and providing appropriate training.

After democratic changes in year 2001, the fight against corruption has become one of the priority objectives of the Government. In recent months, the Serbian Government has begun to take concrete steps in forming new institutions and the articulation of a national program for the fight against corruption, notably with the participation of the Civil Society. Anti-corruption legislation is being passed or in the process of adoption which would improve its existing legislative framework. However, the legislative framework needs to be further strengthened and appropriate inter-agency co-operation and training programmes need to be developed. While a number of concrete actions and initiatives recently undertaken by the Government in prevention and repression of corruption should be commended, the implementation of legislation and the proper and efficient functioning of all chains of justice (police, prosecutors and judiciary) still remains a great challenge. It should also be noted that while Serbia is committed to undertake a number of strong actions to curb corruption, including actions in the repressive field, due consideration should be given to the rule of law and protection of human rights, to avoid creating overreaching powers of certain institutions than can backfire in the future.

### **1.3.1 CRIMINALISATION OF CORRUPTION AND MONEY LAUNDERING**

When assessing legislation in the FRY/Serbia, one has to take into consideration the division of legislative jurisdiction between the Federation and the Republic. Article 77 of the 1992 Federal Constitution lists the matters which fall within the competence of the Federation, among which: enforcement of human rights guarantees enshrined in the federal constitution, responsibility and sanctions for violations of federal statutes, procedural law in proceedings before courts and other authorities, the status of foreigners, monetary, banking and customs systems, border control, etc. While both, the Republic and the Federation, hold the legislative power regarding criminal matters (the general part of the Criminal Code is in the domain of the Federation while the special part is in the jurisdiction of the Federation and the Republic), the Criminal Procedure Code is exclusively the prerogative of the Federation.

#### **CRIMINALISATION OF CORRUPTION**

There is no single definition of “corruption” in the Serbian legal system. However, the Serbian Criminal Code, recently amended in 2002, provides for a number of corruption (and corruption-related) offences within the meaning of international legal instruments, in particular the Criminal Law Convention on Corruption (ETS n° 173). Furthermore, recent amendments to the Criminal Code which entered into force on 9 March 2002 introduced a whole new chapter dealing specifically with corruption offences (Chapter XXI A).

Most relevant incriminations are provided for in article 254 (“Accepting a Bribe”), article 255 (“Offering a Bribe”), article 253 (“Illegal Mediation” / “Trading in Influence”), and article 242 (“Misuse of Official Position”) of the Serbian Criminal Code. The minimum sanction for passive bribery is 1 year of imprisonment and for active bribery a minimum of 6 months of imprisonment. In both cases confiscation of the received gifts and benefits is prescribed (except when the offender has voluntarily reported the offence before its discovery; in such case, the bribe is returned to the giver).

Incrimination of public sector corruption covers both officials of the Republic of Serbia and federal officials i.e. persons with particular tasks in a government body, or a body of local self-government and administration. However, it does not sanction the corruption with a foreign element – corruption of foreign public officials. Passive and active bribery in private sector is criminalized through the term of “responsible person” in articles 254 and 255. According to Article 46 of the Serbian Criminal Code, the “responsible person” is the owner of the company or the other legal entity (enterprise, fund, institution, organisation, etc.) or any other person entrusted, according to his/her function, investment or the special authorization, with particular tasks within a legal entity.

The Code also provides for a set of corruption-related offences related to legal entities in Chapter XV (“Criminal Offences against the Economy”), also most of the offences in Chapter XXI (“Criminal Offences Against Official Duty”), can be labelled as corruption-related offences. In addition, the Code includes a special provision incriminating “Criminal Association” (Art. 227).

Paragraph 3 of article 255 of the Serbian Criminal Code provides that when a person who promises or gives the bribe has been solicited by the public official to do so, and has reported the act to the competent law enforcement authority before the crime was detected, can be exempted from the sanction. Additional special mitigation measures for corruption and some corruption related offences were introduced with the recent amendments. Article 255A prescribes that any accomplice in commission of the (corruption related) offence, who discloses the offence, perpetrator or organiser or prevents committing of the offence, may be punished more leniently.

The amendments also defined a set of new criminal offences which cover corruption in administrative bodies, in public procurement, in the judiciary, in the privatisation procedure, in health services, in the educational system, abuse of position of defence attorney or legal representative, restriction of freedom of public information. While the introduction of those new special criminal offences (a large number of which were already covered by the general definitions of passive and active bribery in articles 254 and 255) shows a stronger commitment of the criminal justice system to penalising corruption in Serbia, such fragmented incriminations (with very different prescribed sanctions) could lead to problems of applying and interpreting the law in practice. It therefore remains to be seen how these provisions can be implemented in concrete cases.

The Serbian Criminal Code has no provisions on corporate responsibility for corruption offences. Liability of legal entities is provided through the so-called “Economic Misdemeanours”, which are subject to special court proceedings. However, it remains unclear whether legal entities can be held responsible for corruption offences though the system of “Economic Misdemeanours”.

## CRIMINALISATION OF MONEY LAUNDERING

Money laundering was not criminalized as a separate criminal offence in the Serbian criminal legislation. In September 2001, the FRY has enacted money laundering preventive legislation<sup>8</sup> which will enter into force in July 2002.

The new Money Laundering Act defines money laundering, renders a wide range of institutions subject to its provisions and lists the actions and measures to be undertaken by in discovering and preventing money laundering. It makes money laundering a criminal offence with penalties ranging from 6 months up to 8 years imprisonment, according to the amount of deposited money and/or the wilful commitment of laundering. The definition of the offence follows the “all offences” approach; therefore any corruption offence can be a predicate offence to money laundering. In addition negligent money laundering is criminalized and confiscation of proceeds from crime is possible.

The Act also provides for clear and dissuasive provisions regarding failure by legal persons or the obligor’s employees responsible to comply with their obligations (i.e. establish the identity of the party to the transaction, failure to report within due time, to keep the data and documentation, the use of such information for other purpose than those prescribed by the act, etc).

The Act mentions only the “competent federal authority” and does not include provisions on the establishment, organisation or detailed competencies of the Financial Intelligence Unit on the level of the Federation or the Republic. However, in 2002, the Federal Government has formed the Federal Commission for the Prevention of Money Laundering<sup>9</sup> as an independent federal institution. Furthermore, the draft Law on the Public Revenue Agency envisages the creation of a special Financial Intelligence Unit within the Public Revenue Agency.

As for confiscation of proceeds from crime, there are a number of provisions in different laws. Articles 80 to 86 of the FRY Criminal Procedure Code deal with forfeiture of instrumentalities and confiscation of proceeds from crime. Furthermore, articles 254 and 255 of the Serbian Criminal Code prescribe the mandatory confiscation of gifts and benefits in relation to giving of and receiving of bribes. The Criminal Procedure Code allows for temporary seizure before the formal initiation of investigations as a security measure when there is a danger in delay (article 238). It is, however, unclear whether indirect proceeds of crime are covered by those provisions and it seems that the confiscation provisions are seldom used and the confiscation regime is inefficient. Although the Statistics Bureau keeps statistical information on confiscation of proceeds from crime, the statistical data in this field is very weak and fragmented.

## EFFECTIVENESS OF LEGISLATION

In general, it is difficult to measure the effectiveness of the current legislation, owing to the fact that most of it has been introduced recently or is still in the process of adoption. In addition the official statistics on a number of crime reports, charges and criminal convictions (including corruption offences) are at the moment still unreliable due to the differences of methodology of different institutions which record data and the lack of information technology equipment.

The actual enforcement of anti-corruption legislation (which is recently improving) and the proper functioning of all actors involved in the chain of justice (police, prosecutors and judiciary)

---

<sup>8</sup> The Money Laundering Act, “Official Gazette FRY” n° 53, 28 September 2001.

<sup>9</sup> Official Gazette FRY n° 15/2002.

remains a major challenge. It appears that there are certain public services, among which customs, tax, municipal administration, the judiciary, the police and the central executive which stand out among the state institutions cited as centres of corruption by the surveys and the civil society. The fluctuating low salaries of police, customs officials and judiciary staff encourage various forms of pressure and corruption. Measures are under consideration for increasing the salaries of the judiciary staff from funds collected through the implementation of the Law on Court fees and for preparing a Law on salaries in state institutions in order to create a more rational ratio of salaries in the judiciary and improve compensation to all employees.

In 2001 and 2002, a process of reorganization of the legal and institutional framework as well as the change of personnel in courts and prosecutor's offices has been conducted. It included the initiation of dismissal procedures against the majority of the presiding judges, of criminal proceedings against certain judges and prosecutors and new appointments.

Since early 2001, criminal proceedings have been brought in Serbia against a number of former high-ranking officials suspected of abuse of power or other criminal activities. Several senior officials and leading "businessmen" of the former regime have been arrested, detained, or charged with serious criminal offences. Charges have been brought against 47 state officials for fraud and mismanaging the budget, among which 17 ministers.

In 2001, 201 criminal charges were brought against 209 members of the Ministry of Internal Affairs for 242 crimes. 42 persons were arrested and criminal charges were filed against 29 individuals. Criminal charges have been filed against 232 police officers and 1216 policemen have been brought up for disciplinary action on suspicion of receiving bribes and involvement in other criminal acts.

Given the fact that the police is an institution actively involved in fighting corruption, it is essential to take measures to prevent and react to the risks of corruption among police officers, through the adoption of adequate administrative, ethics and financial measures. The development of an independent control mechanism to oversee the work of the police, to examine complaints and propose disciplinary sanctions is fundamental.

Furthermore, the 26 anti-corruption fighting units which are present throughout Serbia have received several information reports from citizens related to corruption cases, which constitute the basis for initiating investigations and prosecution.

### **1.3.2 SPECIALIZED UNITS**

Serbia has recently created a number of institutions to address the issue of corruption on strategic, coordinative and operational level, however their coordination and clear description of their powers need further streamlining. During the year 2001, the Serbian Government has set up several structures in order to ensure the implementation of the anti-corruption instruments. On 24 December 2001, the Serbian Prime Minister announced a National programme for Fighting Crime and Corruption, which he described as the key priority of the Serbian Government for the year 2002. This plan envisages the five following priorities: the securing of the institutional frame, the reform of the public administration, the economic reform, the motivation of the participation of civil society and the affirmation of the political environment favouring the fight against corruption.

## NATIONAL CO-ORDINATION MECHANISM

In December 2001, the Government has appointed eleven distinguished civil society members to the **Council for the Fight against Corruption**, a structure whose mandate is to provide legal expertise to the Serbian government in the fight against corruption, to analyse the incidence of corruption and suggest measures for the fight against corruption to competent state bodies. The Council works on the development of the anti-corruption strategy, monitors and studies the phenomenon of corruption, provides legal expertise for further reforms and drafts legislation on the issue of corruption.

A **Committee for the Fight against Corruption** at a high governmental level has also been created in order to steer the anti-corruption action of the administration. It is headed by the Prime Minister of the Republic of Serbia and consists of the Minister of Finance and Economy, the Minister of Interior, the Head of State Security Service, the Director of the Federal Customs Office, and the State Prosecutor.

Serbia has also appointed a Senior Representative to the SPAI. The SPAI Senior Representative is supported in his work by an **Anti-Corruption task Force** of 26 representatives from the Ministry of Justice, the Public Prosecutor's office, the Republic's Tax Revenue Agency, the Ministry of Interior, the Belgrade Customs Office, the Ministry for International Economic Relations, the Agency for Privatisation, the Federal Ministry for Foreign Affairs, the Ministry for Health and Protection of the Environment, the Bureau for Communications, Ministry for Educations and Sport, Transparency International and a professional union. This team reviews on a regular basis the implementation of the anti-corruption initiative, plans future actions and eases the communication flow between various state institutions and the civil society.

An **Anti-Corruption Office** is being created, which will be attached to the Ministry of Finance and Economy as the SPAI Senior Representative Office.

## SPECIALISED ANTI-CORRUPTION UNITS

26 **Anti-Corruption Fighting Units**, present in the larger cities of Serbia, have been formed by representatives of the Ministry of Internal Affairs, the Serbian State Prosecution Office and the State Security Service. These teams gather reports of corruption through information received by hotline numbers which have been published in the media. They are composed of three officers, representing respectively the public security, the state security and the public attorney's office, who have full authority to investigate and prosecute offenders. The establishment of Anti-corruption fighting units marked an important step forward in investigating corruption offences, because police investigators co-ordinate the investigation directly with the designated Public Prosecutor and not through the regular police hierarchy. An important step forward would be to enable the police officers in the use of special investigative means, which are essential for the efficient fight against corruption (the new Code of Criminal Procedure also regulates special investigative means). Currently, the police needs assistance of the State Security Service to carry out anti-corruption investigation that involves use of special investigative means and this has been strongly criticised by the Civil Society.

There is no specific anti-corruption specialisation within the judicial organisations. Article 36 of the Law on Organisation of the Courts stipulates that a Department for Criminal Offences against the Economy and Unified Market of Yugoslavia is to be established within the District courts and the Court of Appeal as of 1 January 2002. These special departments within courts are already

established due to the particularity of certain legal matters and their organization and work are defined in the Regulation of Internal Organization.

At federal level, the Customs Authority was reorganised. The Federal Customs Service went through a large reorganization of its Department for Smuggling, Prevention and Customs Investigations which included the re-modulation of its hierarchical structure, the design of a strategy to directly fight corruption and the set up of temporary regulations on the work ethics of customs officers.

### **SPECIALISED PROSECUTORS**

The prosecution service was reorganised by the new Law on the Public Prosecutor's Office (entered into force in January 2002), importantly the law granted more autonomy to the prosecutors from the executive. The first and important sign of specialisation of prosecutors in prosecuting corruption offences is the designation of specific prosecutors to work with the above mentioned Anti-Corruption Fighting Units. Apart from that, however, there seems to be no specific structural division within the prosecutorial organisation specialised in the fight against corruption but only an informal division of tasks between individual prosecutors. Municipal prosecutors have the authority to act in criminal cases connected with corruption.

Serbian authorities pointed out that special departments within the prosecution services will be established, which will have specific functions in combating corruption. Though the Law on Public Prosecutor's Office does not mention the creation of these new departments, their organization and work are affirmed by the Regulation of Internal Organization. The number of deputies of a district attorney office which are going to be assigned exclusively specialized tasks in the fight against corruption will be decided by taking into account the number of deputies in the office (there are 30 district attorney offices in Serbia).

### **SPECIALIZED UNITS WITHIN MINISTRY OF THE INTERIOR/POLICE**

The Serbian Minister of Internal Affairs (who is also the Deputy Prime Minister) has direct control over the Public Security Department and the State Security Department. The Chief of Police (who is also an Assistant Minister) heads the Public Security Department, which comprises the Crime Investigation Directorate. With the aim of securing a more effective fight against organised crime, a special Unit for Fight against Organised Crime has been established within the Directorate for the Fight against Organised Crime, the latter reporting directly to the Minister.

Until April 2001, the Serbian Police had a combined anti-organised crime and anti-corruption section which had been established in 2000. The specialisation of this unit derived from a specific assignment of duties rather than a special training. Indication has been provided that at present, there is an existing department for fight against corruption within the administration for fight against organized crime, corruption and organized crime being treated jointly, following the conclusions of the Palermo Conference on the Fight against Corruption, held in December 2002.

Noteworthy is the establishment of the above mentioned 26 Anti-Corruption Fighting Units, which operate within the Departments for the Fight against Economic Crime.

The reorganisation of the police is currently under way. The new Law on Police is drafted and is being currently publicly debated. It is expected to be adopted in the next few months.

Under consideration is also the establishment of three bureaus under the direct control of the Cabinet of the Internal Affairs Minister: The Bureau for Petitions and Grievances, the Bureau for Public Relations and Media and the Bureau for Co-operation with International Police and Security Services. Especially the first one could play an important role also in curbing internal corruption within the police.

#### **FINANCIAL INTELLIGENCE UNITS**

Some of the tasks normally performed by the Financial Intelligence Unit are vested in the Federal Commission for the Prevention of Money Laundering. The Commission is responsible for collecting, processing, analysing, providing information to competent public institutions (Judiciary, Inspection, the Ministry of Interior), keeping records, taking other measures according to the Law and finally keeping data and information received from obligors from article 5 of the Money Laundering Act which are:

- banks and other financial organisations (Post Office Savings Bank, savings banks, savings and credit organisations, and savings and credit cooperatives);
- Post Office units, other enterprises;
- Government agencies, organisations, funds, bureaux and institutions as well as other legal persons which are in whole or in part financed from public revenues;
- The National Bank of Yugoslavia – Clearing and Payments Department as the executor of the country's payment operations;
- Insurance companies;
- Stock exchanges, stock brokers and other persons engaged in transactions involving cash, securities, precious metals and jewels as well as purchase and sale of claims and debts; and
- Exchange offices, pawnshops, gambling rooms, betting places, slot machine clubs as well as organisers of commodity and money lotteries and other games of chance.

The Commission has at this stage a president and four members who are nominated by the Federal Government upon proposal of the Federal Minister of Finance, given that the president manages its work and is responsible for the performance of the organisation.

In addition, the Public Revenue Agency (PRA), which will become a part of the Ministry of Finance and Economy, will, according to the draft Law on PRA, have a special Financial Intelligence Unit. This Unit will, according to the draft, co-operate with customs, judiciary, police and other agencies in fight against financial crime.

### **1.3.3 INVESTIGATIVE CAPACITIES**

#### **INTER-AGENCY CO-OPERATION**

Investigations against corruption and money laundering require a comprehensive legal framework, proper infrastructure for law enforcement bodies and prosecutors, and a high level of inter-agency co-operation and co-ordination. In all those areas the Republic of Serbia is presently still relatively weak. In addition there is a complex question of the relationship between the Federal level and the Republic. However, the establishment of a number of coordinative mechanisms (see above section on specialised units) and especially the creation of Anti-Corruption Fighting Units which bring together police officers and prosecutors, mark important progress in this area. Much remain to be done, however, especially in general relations between

the police and the prosecutors (in particular in the light of new powers vested to the prosecutors by the new Criminal Procedure Code).

#### **COLLABORATION WITH JUSTICE, WITNESS PROTECTION**

The protection of witnesses and people reporting corruption offences seems to be of major concern in FRY/Serbia.

Collaboration with judicial agencies is considered a mitigating circumstance under the Serbian Criminal Code. As presented above in the section on criminalizing corruption and money laundering, this applies to all corruption and most corruption-related offences.

Issues related to the protection of witnesses, victims and other vulnerable targets will be regulated within the Law on the Fight Against Organized Crime which is currently in the process of drafting. Furthermore, it is planned to establish a special police unit within the Bureau for the fight against organized crime, which will deal with the protection of certain categories of persons, including witnesses and crime victims

Currently, Article 109 of the Criminal Procedure Code provides a general obligation upon the court to protect a witness and an injured person from possible insult, threat or other assault. It is at the discretion of the president of the Court or the State Attorney, upon a motion of the investigative judge or the president of the court committee, court president or public prosecutor to request that the Ministry of Interior takes special protective measures. While this provision can serve as a basis for physical protection of witnesses, the Criminal Procedure Code, however, does not provide any further special advanced or detailed procedural measures dealing with the protection of witnesses and other vulnerable targets.

In practice, protection structures are still missing and the lack of public confidence in the judiciary and the prosecutors and police authorities is reflected by the high number of anonymous reports of corruption to the Anti-Corruption Fighting Units and the fear of persons to report such cases openly. Furthermore, it is not clear to what extent the existing modest protective measures are actually applied to witnesses providing evidence in corruption cases.

#### **USE OF SPECIAL INVESTIGATIVE MEANS**

According to article 232 of the new Criminal Procedure Code, surveillance and recording of telephone and other conversations as well as video recording can be ordered by an investigating judge, after a motivated motion is submitted by the State Attorney, when there are grounds for suspicion that a person has committed a criminal offence with elements of organised crime, money laundering, trafficking or corruption. The measures may last up to three months and may be prolonged for three additional months if it is justified by important reasons. If criminal proceedings are not initiated against the suspect or if the data is not necessary for the proceedings, the material is destroyed under the supervision of the investigating judge. However, there seems not to be any time limit obligation on the authorities for the destruction of the data obtained through use of special investigation means.

Apart from that, according to information available, no comprehensive legislation for the use of special investigative means exists in the Republic of Serbia, at least not for public law enforcement authorities. Other forms of special investigative means, such as electronic surveillance, undercover operations, simulated corruption offences, etc.) are not regulated and the

evidence cannot be used in court. According to the information provided, these issues will be addressed by the new Law on the Fight Against Organized Crime.

In addition, due to abuses in the past, the public is hostile to the use of such measures and the police lacks infrastructure and training to use special investigative means which used to be (and to large extent still are) primarily in the domain of the Secret Security Services.

#### **SPECIALISED TRAINING**

While different international organisations are developing and implementing in co-operation with the Serbian Government a number of training programmes for different institutions, systematic and specialised training for judges, prosecutors, police, customs officials and other law enforcement officers in the investigation and prosecution of corruption related cases is not yet available.

The Working Group for establishing the Centre for Professional Education and Advanced Training of Judges, Prosecutors and Their Staff was set up in June 2001. It initially consisted of representatives from the Supreme Court, the Judges Association, the Ministry of Justice, Fund for an Open Society, CUPS, UNDP, Council of Europe and OSCE. Other organizations such as ABA/CEELI, USAID and EAR joined the working group at a later stage. The Public Prosecutors Association, when established, became a member as well.

The first task of the Working Group was to make a project proposal, that would cover all the needs for such an advanced Centre i.e. curricula for courses, staff for the Centre, premises, equipment etc. The negotiations ended up in an Agreement on founding the centre, which was signed on 6 December 2001. The Centre for Professional Education and Advanced Training plays a major role in building an independent, impartial and efficient judiciary. The Signers are the two founders, the Government of Republic of Serbia and the Judges Association together with the premier in the Judiciary, the Supreme Court President and the project-holder, the UNDP.

#### 1.3.4 RECOMMENDATIONS FOR REFORM

##### ***Criminalisation of corruption and money laundering***

1. Criminalize active and passive bribery of foreign and international officials and ensure consistent and harmonised application of the newly introduced specific corruption offences in relation to generic corruption offences.
2. Review provisions concerning confiscation and provisional measures to enhance their effectiveness and ensure that they are fully operational.
3. Consider the publication of annual reports on the corruption situation in the country as a tool in monitoring the effectiveness of anti-corruption measures.
4. Pursue the institutional reform of all actors in the chain of justice (police, prosecutors, judiciary), in particular by adopting relevant legislation providing for proper independence of the prosecutors and the judiciary and establishing sustainable and independent structures for the administration, specialized training and funding of these institutions.

##### ***Specialised units***

5. Ensure the coordination and clear distribution of competencies among different institutions involved in the prevention and repression of corruption on strategic, coordinative and operational level.
6. Enhance specialization within the prosecution and police, including the creation and strengthening of specialized units.
7. Create a Financial Intelligence Unit, as foreseen in the draft law on Public Revenue Agency.

##### ***Investigative capacities***

8. Institutionalise and enhance inter-agency cooperation between specialized units, and in particular strengthen the powers of the prosecutors to direct and supervise the work of the police in the (pre)investigation stage of the criminal proceedings.
9. Take measures (including introducing a legal framework and setting up effective structures) to ensure the protection of witnesses, vulnerable targets and collaborators with justice (physical as well as procedural protective measures) and ensure their effective application in corruption cases.
10. Review the legal framework for the use of special investigative means (including electronic surveillance, undercover operations) and ensure its use in investigation of corruption offences with due respect for human rights, while providing necessary control mechanisms and the oversight of the judicial authority.
11. Promote regular and effective specialized anti-corruption and money laundering training for prosecutors, police officers and judges.

## 1.4 PROMOTION OF TRANSPARENCY AND INTEGRITY IN BUSINESS OPERATIONS

The Stability Pact Anti-Corruption Initiative requires countries of South Eastern Europe to rid business deals of corrupt practices through *inter alia*: enactment and effective enforcement of laws aimed at combating active and passive bribery in business transactions, open and transparent conditions for domestic and foreign investment, the development of adequate external and internal company controls, and other measures aimed at strengthening the efforts of corporations themselves to combat bribery.

Stamping out corruption from business deals and from citizens' daily lives constitutes a primary objective for the governmental coalition in power since early 2001. The institutional framework for investigating and prosecuting corruption-related offences has recently been strengthened, with the entering into force on 9 March 2002 of the Law on Amendments to the Serbian Criminal Code, which increases the level of imprisonment sanctions for bribery offences. This Law also provides for the introduction of new bribery offences specific to sectors prone to bribery acts: administration, public procurement, privatisation, judiciary, education, and health.

### 1.4.1 PREVENTING BRIBERY OF PUBLIC OFFICIALS IN BUSINESS TRANSACTIONS

Preventing and deterring bribery of public officials in business deals requires making bribery of public officials a crime, levying significant and effective penalties on those who bribe, including companies, and ensuring that jurisdiction, investigation and prosecution are effective. It is also essential that measures be taken to help companies overcome pressure to bribe coming from public officials themselves. This includes the prohibition of passive bribery of public officials and the development of open and transparent conditions for investment.

#### ACTIVE BRIBERY AND THE RESPONSIBILITY OF COMPANIES

##### *The offence of active bribery*

Bribing a public official is a criminal offence under article 255 of the Criminal Code of the Republic of Serbia (hereinafter "Serbian Criminal Code"), whether the public official is an official of the Republic of Serbia or of the Federal Republic of Yugoslavia. Article 255 prohibits the act of promising or giving a gift or any other benefit to an official to perform or not perform an official action. The act shall be sanctioned whether the bribe is effectively given to the public official or just proposed or promised to him. The severity of the sanctions depends on the nature of the official's act or omission that the briber was intended to obtain, as follows: article 255-1 prohibits bribing an official so that the official acts or refrains from acting in breach of his/her official duties; article 255-2, for which the sanction is lower, prohibits bribing an official so that the official acts or refrains from acting within his/her authority.

Bribing a public official is prohibited whatever the purpose of the bribe (obtaining a permit, being awarded a contract, avoiding existing regulations, etc.) and regardless of the form of the bribe as long as it constitutes a "benefit". The definition of an official, provided in article 46 of the Serbian Criminal Code, includes (i) any person who performs official duties in a government administration or agency; (ii) any person who, whether appointed or elected, holds, at all levels and subdivisions of government within the territory of the Republic of Serbia, a legislative or

administrative (but not judicial) office; (iii) any person who takes decisions in an institution or enterprise on the rights, obligations or interests of natural or legal persons, who has been legally entrusted in law enforcement (this provision would include judges) and (iv) any person who de facto exercises official duties (this would include a public agency or enterprise). Persons exercising functions in state-owned enterprises would also be included, according to the authorities of FRY and the Republic of Serbia. Furthermore, it is prohibited to offer or give bribes to “any official person in a federal body” (article 255-4 of the Serbian Criminal Code). The definition of federal officials covers elected or appointed officials of the Federal Parliament, Federal Government, Federal ministries and other federal institutions and military personnel in specific cases (article 113 of the Federal Criminal Code).

Active bribery of foreign public officials is however prohibited by neither the federal nor the Serbian criminal legislation. Since the authorities of FRY/Serbia have expressed the wish to get closer to the international anti-bribery standards, they should consider introducing the offence of bribing a foreign public official in their domestic legislation in compliance with the requirements of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

Complicity, incitement and aiding are regulated by the Federal Criminal Code and also constitute sanctionable criminal offences (articles 22, 23, 24 of the Federal Criminal Code). Attempt constitutes an offence only for those criminal acts for which a sentence of at least 5 years imprisonment is statutorily provided. Thus, the attempt to bribe a public official can be punished only when the purpose of the bribe is to induce the official to act or refrain from acting in breach of his duties. However, attempting to give a bribe would be considered as offering a bribe, and thus would be sanctioned under article 255 of the Serbian Criminal Code whatever the purpose of the bribe.

Leniency measures are provided to encourage bribers and their accomplices to report and provide testimony to bribery acts. First, the law provides for an exemption from penalty, when the perpetrator of a bribery offence has given a bribe at the request of an official and has reported the offence before it was revealed (article 255-3 Serbian Criminal Code). Furthermore, a new leniency measure has been introduced in early 2002 in the Serbian Criminal Code, to mitigate the punishment of any accomplice who discloses or prevents the committing of an offence (new article 255a).

Other criminal law provisions aim at sanctioning “unconscientious conduct of business affairs” (article 136 Serbian Criminal Code) and “conclusion of contracts harmful to one’s company” (article 140). These provisions may apply to bribery cases.

### ***Corporate responsibility***

There is no regulation that would provide for corporate responsibility for bribery acts, neither under the federal nor under the Serbian criminal legislation. First, only natural persons can be held criminally liable for bribery acts. Second, while there are various statutes regulating the economic activities of legal persons under which fines can be levied on companies for economic or environmental offences, bribery acts committed by companies would not fall under the scope of these statutes. The absence of criminal or other liability for business entities does not mean however that bribery in business transactions can be committed with impunity via companies. Indeed, any natural person – and this would include persons such as a director, a manager or a simple employee of a business entity – bribing a public official is subject to sanctions.

However, a new draft Law on Public procurement introduces anti-corruption provisions (Section 1.8, article 14: prohibition on offering bribes), according to which the contractor is obliged to reject a tender when the tenderer gives or proposes to give a gift or any advantage to a current or former contractor's employee, thus attempting to influence an action, a decision, or the course of the public procurement procedure. According to this draft legislation, the contractor is obliged to inform by a written note the tenderer and the Public Procurement Agency of the rejection of the tender and of the reasons for it, and shall record it in the documentation related to the public contract.

#### ***Sanctions on natural and legal persons***

The level of sanctions for active bribery of a public official is currently being strengthened. A Law on Amendments to the Serbian Criminal Code, which increases the imprisonment sanction for active bribery up to eight years, has been adopted on 9 March 2002. Before the adoption of these amendments, some bribery acts often remained unsanctioned: in cases when the purpose of the bribe was to obtain that the public official acts within his authorised duties, which is the case in the most frequent bribery cases, e.g. where the bribe is given to speed up an administrative process, there was no minimum penalty. In order to avoid any impunity of bribers, the new amended version of the Criminal Code introduces a minimum penalty of six months imprisonment for those bribery acts which do not aim at obtaining a breach of duties by the public official. The maximum sanction for active bribery, which was five years imprisonment under previous legislation, has been extended in March 2002 to eight years imprisonment. Current penalties remain somewhat lower than the penalties applicable to similar offences in the Serbian Criminal Code such as fraud and embezzlement, which are punished by a deprivation of liberty of up to 15 years. It would be advisable that the level of penalties regarding these similar offences be harmonised.

The Law on Amendments of the Serbian Criminal Code does not provide for monetary sanctions for corruption-related acts. However, a fine may be imposed by the courts as an additional punishment, according to article 36-1 of the Federal Criminal Code, for offences committed with the intention of acquiring "gain", i.e. a material or non-material benefit – which is the case for bribery offences. Other punitive measures include the confiscation of the bribe and of the proceeds of bribery. Articles 80 to 86 of the Federal Criminal Procedure Code deal with forfeiture of instrumentalities and confiscation of proceeds from crime. Articles 254 and 255 of the Serbian Criminal Code prescribe the mandatory confiscation of the bribe and of the proceeds of bribery and the Federal Criminal Procedure Code allows under certain conditions for temporary seizure of the bribe before the formal initiation of investigations as a security measure. In the case when the briber has voluntarily reported the offence before its discovery, the bribe is returned to the giver. Furthermore, according to the authorities of FRY and the Republic of Serbia, it is possible to seize and/or confiscate a bribe and the proceeds of bribery from third party beneficiaries, including legal persons.

#### ***Money laundering provisions***

Until now, there were no money laundering provisions in Serbian legislation. A new Money Laundering Law, adopted in September 2001, shall be implemented starting from July 2002. In particular, bribery will become a predicate offence for the purpose of application of money laundering legislation (article 27 of the Money Laundering Law). Laundering money acquired "in an illegal manner" (which would include bribery offences) shall be punished by imprisonment from 6 months to five years. Furthermore, confiscation of the laundered money and of any property assets acquired with it is provided for. Various institutions (banks, post offices,

insurance companies, exchange offices, gambling rooms, etc) as listed in the Money Laundering Law will, as from July 2002, have numerous recording, filing, and reporting obligations in respect of any suspect transaction, and will undergo high fines in case of negligence in fulfilling these obligations.

### **Enforcement**

Until recently, the unreliability of the court filing system, the frequent political interference with judges and generally the slowness of the judiciary system led citizens to enter into bribery acts or to turn to private “debt collection” agencies. There were no specialised anti-corruption departments within the public prosecution offices. In the year 2000, a total of 11 inquiries into suspected corruption cases were launched in the Republic of Serbia; only one ending in a conviction. Shortly after its coming to power, the new Serbian democratic Government took several steps to show that it would abstain from interfering in the investigation and prosecution of corruption cases. The new Law on the Public Prosecutor’s Office, which entered into force on 1 January 2002, established this Office as an autonomous authority. The Law expressly rules out any form of influence that could be exercised on its activities (article 3). Furthermore, a recently established High Judicial Council, mainly composed of high level judges and prosecutors, shall decide on all questions related to the judges and prosecutors’ careers, on which the Government should no longer interfere.

General rules, provided by the Criminal Procedure Code, apply to investigation and prosecution of bribery cases. If there is sufficient evidence to suspect that a bribery act has been committed, the authorities are obliged to initiate (*ex officio*) preliminary investigations. Once the investigation is completed, when there is a reasonable suspicion that a criminal act has been committed, the public prosecutor is obliged to initiate a criminal prosecution. According to the Federal and Serbian authorities, no special circumstances, such as considerations of national economic interest, the potential effect upon relations with another State, or the identity of the persons involved, would influence the investigation and prosecution of a bribery case.

The statute of limitations for bribery offences is of 3 or 5 years, depending on the level of sanctions incurred for the bribery act. This time limit, in line with the international standards, seems to allow an adequate period of time for investigation and prosecution of bribery cases.

Jurisdiction is established on both a territorial and nationality basis. Federal criminal legislation applies to Federal citizens that have committed a crime abroad provided they are found on the territory of FRY or have been extradited to FRY. Provided they are present on Federal territory under the same conditions, foreigners that have committed a criminal act against the Federation or its citizens can also be prosecuted. It would seem that corruption-related offences are considered to be criminal acts against the Federation or its citizens.

Mutual legal assistance in bribery matters is an essential tool for enabling states to investigate and obtain evidence in order to prosecute cases of bribery of public officials in the framework of business transactions, as this form of crime most often involves two or more jurisdictions. Under the existing framework applicable to FRY/Serbia, assistance in criminal matters would be possible pursuant to the provisions of the Federal Criminal Procedure Code, unless an international treaty (bilateral and multilateral treaties or conventions on mutual legal assistance) provides otherwise. In particular, bank secrecy can be lifted upon a court request. Extradition is granted under some prerequisites such as dual criminality. Rules on extradition forbid however extradition of nationals of the Federal Republic of Yugoslavia.

## **CURBING PRESSURE FOR BRIBES FROM OFFICIALS**

### ***Extortion/solicitation***

Passive bribery, i.e. asking or accepting a gift or any other benefit for the purpose of acting or refraining from acting in relation to the performance of official duties, is criminalized under article 254 of the Serbian Criminal Code and under article 179 of the Federal Criminal Code (which applies to federal officials only, e.g. members of the military, customs officers or judges of federal courts). Penalties consist of a deprivation of liberty of six months to ten years under each law. Penalties are reduced but still high (three months to three years imprisonment) if the bribe has been solicited or accepted following the execution of his/her official duty by a public official. The Serbian Criminal Code also prohibits certain offences linked with corruption, such as the abuse of official position (art. 242), violation of laws by judges (art. 243), abuse of authority in the economy (art. 139), illegal mediation (art. 253), etc. New corruption offences for soliciting bribes have been introduced in the Serbian Criminal Code in March 2002, concerning certain specific sectors (among others, the administration, the judiciary, the education and health sectors, the public procurement and privatisation processes). If, in one of these sectors, a material benefit exceeding a determined amount has been solicited and effectively acquired by the official, increased sanctions shall apply (up to 10 years imprisonment concerning the administration and the judiciary).

### ***Transparency of the regulatory system for doing business***

Rules and administrative procedures applicable to businesses are in part inherited from the former Yugoslavia and in part from the more liberal investment regime introduced in the Federation and the Republic of Serbia over recent years. During the 1990s, solicitation of bribes by public officials was a common phenomenon, especially in government procurement. Numerous and substantial changes are currently made to FRY/Serbia's regulatory system in order to introduce simpler and more transparent administrative procedures regulating investment and entrepreneurship.

Inflation is now mastered and the exchange rate unified, with unlimited access of enterprises and individuals to hard currencies. Macroeconomic stabilisation, privatisation process and banking reform are underway. Furthermore, the Government has initiated a general tax reform, aiming at reducing the number of taxes applicable to businesses. As part of recent governmental initiatives towards enhancing transparency of the business environment, a new Law on Foreign Investments has entered into force in January 2002 that aims to ensure legal security for foreign investors. It provides for equal treatment of foreign and domestic investors, and even for preferential treatment of foreign investments under certain conditions.

The Government has also taken major and visible steps to show its resolve towards change, with the adoption of legislation imposing a one-off tax on businesses that have benefited from favours during Milosevic's era. A Commission in charge of investigating these misuses, established in February 2001 and made up mainly of Ministers of the Serbian Government, regularly publishes lists of extra profiteers (271 persons in February 2002) and ensures that the one-off tax is collected (more than a hundred million Euro are expected).

#### **1.4.2 PROMOTING INTEGRITY IN BUSINESSES**

Not only governments have major responsibility in sanctioning bribery of public officials in business transactions but governments also have the corresponding responsibility to introduce sound company controls and to strengthen the efforts of corporations themselves to combat extortion and bribery.

##### **DETECTING SUSPICIOUS PAYMENTS**

###### *Accounting requirements and auditing standards*

The accounting and auditing regime in the Republic of Serbia remains to be adjusted to European and international standards. Accounting and auditing in FRY/Serbia are regulated by the Federal Law on Accounting and the Law on Audit of Financial Statements, as well as regulations promulgated on the basis of these laws. The latest version of both laws was promulgated in 1996 and 1999, respectively.

All legal entities carrying out business or economic activities as defined in the Accounting Law, are required to maintain accounting records and present financial information about the enterprise. Financial statements have to be submitted to the Institute for Payment Transfers each year and the Institute is entitled to determine whether the accounting regulations are properly applied. General provisions aimed at prohibiting the making of false documents are contained in the Serbian Criminal Code (articles 233 and 248). Penalties include a deprivation of liberty of up to five years. In addition, all large and medium sized enterprises, as defined by the Law on Accounting, banks and other financial institutions, insurance companies, stock exchanges and exchange of intermediaries have an obligation to have their financial statements audited in accordance with the provisions of the Law on Audit of Financial Statements. This Law prohibits the auditing of a company's financial statements in case of conflict of interest (article 25) and sanctions for irregularities committed by auditors include fines ranging up to 2,500 Euro or a ban from pursuing their activities. In 1993, the Assembly of the Association of Accountants and Auditors passed a Code of Professional Ethics of the Accounting Profession, providing for disciplinary measures and sanctions, on the model of the IFAC Code. In practice however, sanctions tend to be rarely applied.

Major firms and several important banks located in Belgrade have recently submitted their financial statements to an extensive audit, carried out by international consulting firms, in order to attract foreign investors. However, a large part of Serbian small and medium sized enterprises continue, as during the previous decade, to hold a business in parallel to their official activities, to hold hidden stocks of goods that escape any control, and to make off-the-books transactions, including bribe payments. Efforts are however currently made by the Serbian Chamber of Commerce to promote the establishment of internal auditing departments within private companies.

###### *Tax treatment of suspicious payments*

The legislation in FRY/Serbia does not allow corporations to deduct bribe payments to public officials from their income tax.

##### **INSTILLING AN ANTI-BRIBERY CORPORATE CULTURE**

The development and implementation of efficient anti-corruption management practices are virtually non-existent among private and public companies in the Republic of Serbia. The Republic does not yet have clearly defined corporate governance standards, as corporate governance remains regulated by the Federal Law on Enterprises, nor does it have legal provisions aimed at prohibiting contributions to political parties to obtain or retain business.

Various governmental bodies, at both the Republic and Federal levels, are in charge of the communication with the private sector, in particular the Republic's and Federal Chambers of Commerce and Employers' organizations. Relevant industries' representatives and Chambers of Commerce are frequently consulted in particular when drafting legislation or regulations. This was for instance the case concerning the Law on Public Procurement. Thematic meetings, gathering the Government and the private sector, are regularly held, recently on the theme of the banking sector and fiscal system reform. It also appears that the Serbian Government often consults the Serbian Chamber of Commerce regarding general issues of interest for the economy. According to the new Law on Chambers of Commerce, the Serbian Chamber represents the interest of its members and can initiate and/or give opinions on economic legislation and regulations at the Republic level.

However, business representatives suffer from their division at the local, Republic and Federal levels and have not undertaken until now any common initiatives towards addressing corruption in the private sector.

### 1.4.3 RECOMMENDATIONS FOR REFORM

#### ***Preventing Bribery of Public officials in Business transactions***

1. Further streamline criminal legislation related to corruption offences, in particular by introducing the offence of bribing foreign public officials according to international standards.
2. Provide for adequate criminal and/or administrative and civil liability for companies bribing public officials; in particular, apply procurement and other dissuasive sanctions to companies that are determined to have bribed public officials.
3. Ensure that the overall practical application of criminal law as regards corruption offences be harmonised, considering the differences between the newly introduced corruption offences specific to certain sectors and the generic corruption offences. Ensure also that monetary sanctions be effectively applied in addition to imprisonment sanctions, in particular with regard to bribery acts committed on behalf of legal persons.
4. Ensure that bribery acts in business transactions are seriously investigated and prosecuted by the competent authorities, free of political or other influence in compliance with international standards.

#### ***Promoting Integrity in Business***

5. Continue to introduce more transparent administrative procedures and a simpler legal and institutional environment for doing business in FRY/Serbia.
6. Ensure that corporate fines can be levied concerning violations of accounting regulations, and further develop accounting and auditing regulations to diminish the importance of the grey economy, in particular by ensuring that companies keep adequate records that are available for inspection and investigation.
7. Further involve the private sector representatives in the legislation and regulation drafting process in the economic field; in particular, hold regular consultations with the private sector to provide businesses with the opportunity to identify for the SPAI Senior Representative which areas are conducive to corruption from the business perspective.
8. Further raise awareness and promote changes in business attitudes towards corruption and promote high corporate governance standards.
9. Continue to develop regular statistical reports on bribery offences, to be shared with the general public.

## 1.5 PROMOTION OF AN ACTIVE CIVIL SOCIETY

An active civil society helps make government accountable for its decisions and actions. The members of the SPAI Compact have committed themselves to creating the necessary conditions in their countries to promote and empower civil society and independent media, enabling them to contribute actively to anti-corruption programs. These conditions include: (a) *public attitudes* that demonstrate intolerance toward corruption; (b) the existence of basic *civil liberties* that encourage active public participation in anti-corruption activities; (c) existing *laws that facilitate the establishment of civil society organisations*; (d) the establishment of civil society organisations that have the *capacity and maturity* to pursue challenging objectives; (e) a *mass media* that is able to scrutinise government operations freely and gain easy access to authoritative information; (f) government operations that are *transparent* and that demonstrate a sincere *willingness to co-operate* with civil society; and (g) a civil society that has a *track record of action* that matches its verbal commitment to fighting corruption. The status of efforts to develop these conditions is assessed in this section based on information compiled from a variety of sources.

The Republic of Serbia has implemented many of the immediate steps related to civil society participation as required under the SPAI Compact and Action Plan. A Council for Anti-Corruption, composed of 11 representatives of civil society, was established in December 2001 to assist the Government in the formulation of anti-corruption strategies and to monitor the Government's anti-corruption activities. The text of the Initiative has been translated into Serbian. It has been published in several periodicals and posted on the official website of the Government. In order to sensitise the public about the problem of corruption and present the SPAI to the general public, the Government also issued a special Newsletter about the Initiative. Finally, the Senior Representative has on several occasions invited citizens, civil society organisations and non-governmental agencies to actively engage in the fight against corruption.

### 1.5.1 PUBLIC ATTITUDES TOWARD CORRUPTION

A survey conducted by the Southeast European Legal Development Initiative (SELDI) in 2001 measured public attitudes towards corruption in each of the SPAI member states. In the Republic of Serbia, political instability, crime, and the economic situation were viewed as greater problems than corruption. The main factor influencing the spread of corruption is by far considered to be the low level of salaries. Generally, corrupt practices are not tolerated in the society's value system, and Serbian citizens appear to be more optimistic than any of their neighbours regarding the capacity of their society to cope with the problem.

### 1.5.2 CIVIL LIBERTIES

The Constitution of the Republic of Serbia guarantees political and human rights, including the right to privacy and property, the right to vote and strike, freedom of entrepreneurship, religion, assembly, association, press, and speech, and the protection of personal data.

Article 43 of the Constitution provides for freedom of assembly without prior permission. A public gathering must be notified to the competent authority 48 hours in advance. Freedom of assembly can be provisionally restricted for the purpose of preventing an obstruction of traffic, a threat to public health and morals or for the protection of human lives and property.

Citizens of the Republic of Serbia are guaranteed freedom of association, including political, trade union and other forms of organisations, without need for a permission, but subject to registration by the competent authority (Article 44).

Freedom of speech and of the press is regulated by the Constitution and the Public Information Law. This Law was however suspended in 2001 and new regulations corresponding to European standards are under preparation. A Broadcasting Act has been drafted by the Government of the Republic of Serbia and is expected to be adopted by the Parliament in the forthcoming months, and a draft Public Information Act has been submitted to public discussion. Prepared in co-operation with the Independent Union of Journalists, the Public Information Act is expected to be adopted by mid-2002.

### **1.5.3 LEGAL ENVIRONMENT FOR CIVIL SOCIETY**

There are no legal or administrative obstacles to the activities of civil society organisations (CSOs) in the Republic of Serbia.

CSOs' activities are regulated by the 1982 Law on Social Organizations and Associations. According to the Law, CSOs in the Republic of Serbia are registered as "citizens' associations" and "social-political organisations", a terminology which goes back to the socialist period. Regulations relative to registration are applied in a relatively liberal way and it is not difficult to register a CSO in the Republic. Authorities authorised to register civil society organisations are the Federal Ministry of Justice and the Ministry of Internal Affairs of the Republic of Serbia.

New legislation is however being drafted. An Association Act, meant to replace the Law on Social Organizations and Associations, is currently under debate by Parliament. The Act regulates the founding, registration, duties and administrative aspects of CSOs. It eases registration procedures by making it possible for an association to be registered by the competent local authorities. A single register of all associations is kept at the Federal level.

A source of difficulty for civil society organisations lies in the existing tax legislation. The fiscal system was reformed in March and April 2001, within a relatively short period of time. Under the new regulations, CSOs are exempt from paying income tax unless they have a surplus due to commercial activities of 300,000 dinars or more at the end of the fiscal year. The new tax laws are considered by many organisations as insufficiently flexible.

Donations, whether domestic or foreign, are tax exempt if given in cash. Donations in the form of goods and services can be tax exempt if they are an element of an international contract or on the decision of the competent revenue service institution. Article 11 of the Circulation Tax Law provides for tax exemption for donations given as humanitarian aid and subject to an international contract. However, tax officials are often criticized for their inclination to impose taxes on foreign donations received by CSOs.

Corporate donations in the fields of health, education, religion and sport are tax deductible up to 3.5% of a corporation's total income and donations to cultural activities, up to 5%. Individual donations are not tax deductible.

## TRADE UNIONS

According to Article 44 of the Constitution of the Republic of Serbia “freedom of political union or other kind of organizing and operating even without permission, with enrollment at the competent institution, is guaranteed”. Consequently, unions have the right to organize and operate without authorization from public authorities, but subject to registration in the union register kept by the Ministry for Labor.

Article 37 of the Serbian Constitution guarantees the right to strike in accordance with the Law and Article 57 of the Federal Constitution guarantees the right for workers to strike for protection of their professional and economic interests. Conditions for organizing a strike are set out in the Federal Law on Strike.

### 1.5.4 CIVIL SOCIETY CAPACITY

#### NON-GOVERNMENTAL ORGANISATIONS (NGOS)

The development of civil society in the Republic of Serbia essentially followed the evolution of the socio-political system. According to estimations, some 500 NGOs have been formed since 1991, most of them focusing on ecological, humanitarian, and human rights issues. The most active NGOs include those in the fields of human rights, anti-war, and women’s rights. Particularly well-known organisations comprise the Centre for Anti-War Action, the Helsinki Committee for Human Rights and the National Resistance Movement (Otpor), a student movement created in 1998, which has played and still plays an active role on the political scene.

Apart from a dozen Belgrade-based NGOs, which have well-defined basic goals and missions, an established reputation and loyal donors, the majority of existing NGOs has a rather poor organisational capacity. Most of them are small, have only a few staff members and lack management skills. Although there is a local cadre of activists who can teach NGO management skills, more specialised training is needed in NGO management, in particular in budgeting and fund raising. New organisations also frequently lack office space and equipment (e.g. telephones, fax machines, computers, e-mail and Internet access). While most NGOs are based in Belgrade, there is a growing number of new organisations established outside the capital.

The most serious obstacle to the development and sustainability of the not-for-profit sector in the Republic of Serbia is the limited financial capacities of many organisations. Most NGOs operate on very limited budgets and depend on volunteer support and foreign donations for their activities. They generally lack fundraising skills and many operate on a sporadic basis according to the donations they receive. Because of the deteriorated state of the Serbian economy most NGOs will remain dependent on the international donor community in the foreseeable future.

With a view to remedying their financial difficulties, a number of NGOs engaged in revenue-raising activities, such as the provision of services for which they require a payment, with the risk of being categorised as profit-organisations if it is established that they charge for the services provided. Revenues to support programs and core administrative costs are not subject to taxation.

There is a growing interest on the part of the Government and municipalities in supporting NGOs. On 13 June 2001, the Prime Minister called on all municipality offices to organise open competitions for grant donations to local NGOs, in accordance with the agreement reached at the Third Forum of Yugoslav NGOs. Consequently, the Municipality of Uzice organized a call for

tender for ecological projects and the Municipality of Indjija for projects related to human rights, refugees and other questions of local interest. The local government of the province of Vojvodina issued an invitation to tender for small grants of 5,000 DEM for individual NGO projects. Open competitions for public grants have also been organised at the federal level, in particular by the Ministry of Education and Sport and the Ministry for National and Ethnic Associations.

Several organisations provide direct support to the Serbian NGO sector, among which the Centre for Development for the Non-Profit Sector, Civic Initiatives, and the Centre for Democracy Foundation. The Centre for Development for the Non-Profit Sector is an NGO support centre, which provides legal assistance to NGOs and consultation services, and regularly issues a directory of NGOs in the country. It was established in 1996 with a view to supporting the development and renewal of the not-for-profit sector in the Republic of Serbia.

Created in 1996, Civic Initiatives (CI) aims at fostering civil and democratic development and at promoting civil society through education and information. It supports local NGOs and independent media through the "Breaking barriers, building bridges" project, a programme launched in the autumn of 1997 in co-operation with the Institute for Democracy in Eastern Europe in Washington, D.C., and the financial support of USAID. A broad range of activities has been organised under the programme, including democracy seminars, NGO development training workshops, infrastructure assistance, and internships. These activities, carried out mostly outside of Belgrade, put CI in direct contact with more than 150 NGOs from central Serbia, Sandzak, Kosovo, Vojvodina, and Montenegro. In addition, CI has proven active in working with representatives of political parties, trade unions, local authorities, media, and other civic groups and citizens. CI offers assistance to local NGOs in the form of counselling, technical assistance, information exchange, advising, contacts with other NGOs, and networking.

The Centre for Democratic Foundation (CDF) was created in 1994. Its main objectives are to promote the development of civil society in the Republic of Serbia and in the Federal Republic of Yugoslavia, support the development of democratic institutions and of a democratic culture, and promote the rule of law and human rights. It provides free of charge legal counselling to individuals and NGOs and has developed a number of educational programmes and seminars for NGOs to train them on project proposals drafting, fund-raising, management issues, communication, etc.

## **TRADE UNIONS**

Over the past decade, trade unions have been relatively weak. Independent unions in particular suffered from the former regime's attempts to suppress their activities. The most important trade union organisations include the government-controlled Alliance of Independent Labour Unions, which has an estimated membership of 1,000,000, and the independent United Branch of Independent Labour Unions, which has about 170,000 members. The Employer's Union consists of, according to its management, around 150,000 members. It is very active and participates in many public debates. Other unions are smaller and more sector-specific, such as the Union of Bank Employees, which claims some 12,000 members. A number of smaller unions representing transportation workers, journalists, retirees, etc., are also rather active.

### 1.5.5 STATE OF THE MEDIA

The change in government in October 2000 ended the state's intense campaign of repression against independent media, although some problems remain.

Freedom of speech and of the press is guaranteed by the Constitution and the Public Information Law. The main provisions of the Law were however suspended in February 2001 by the Serbian Parliament, which retained only the provisions referring to freedom of public information and the setting-up, registration and closing down of media outlets. A new law, which is now under the parliamentary procedure, has been drafted by an independent expert group established by the Independent Journalists' Association of Serbia and the Media Centre, along with a new Broadcasting law. Support to the drafting process of these two laws was provided by the European Commission, the Council of Europe, UNESCO, OSCE, and Article 19 with a view to ensuring compliance of the new regulations with European standards. The laws foresee the establishment of two new independent bodies to protect freedom of media and ensure a fair allocation of broadcast frequencies and issue of licences in the Republic of Serbia: the Press Council and the Broadcasting Council.

Despite the constitutional guarantees, freedom of the media is limited by the existing Criminal Code provisions on slander and libel, political pressure and unequal treatment of the media on the part of the authorities.

In FRY/Serbia, libel and slander are offences punishable by a prison sentence. Several proposals have been submitted by the International Press Institute and the South East European Media Organisation to the Serbian authorities urging them to replace the existing provisions by civil law provisions. No effective measures have however been taken so far in this regard, but criminal libel cases against journalists are relatively rare.

Although important progress has been made with regard to freedom of the media since the fall of the Milosevic's regime, political pressure on the media, and in particular on public media, remains a problem. Activities and views of the opposition and critical opinions are rarely presented. In the course of 2001, several senior executives of radio and television outlets resigned to protest against the pressure exerted by the ruling parties and a number of press releases were issued by the Independent Journalists' Association of Serbia calling on the authorities to refrain from exerting pressure on the media. Legislation to limit political control over the media is currently being prepared.

According to official data, there were 253 TV stations, 504 radio stations and 641 newspapers or magazines in the Federal Republic of Yugoslavia in June 2001. However, due to the high number of unregistered media outlets, the total number is estimated to be about 1,000. Private ownership predominates in the Serbian press, radio and television. While private press prevails in terms of quality and circulation, public radio and television, which cover the entire territory unlike private outlets, remain the most influential. Their finances are more stable and their staff potential greater. The most important private media are the Belgrade's B-92 radio station, which has developed a network of 24 opposition radio stations throughout the country, the Studio B independent television station, and the Belgrade-based *Politika*, the oldest daily in the Balkans, which in February 2002 formed a joint venture with the German Media Group WAZ<sup>10</sup>. The

---

<sup>10</sup> WAZ already owns magazines in several other Central and Eastern European countries, among which are Bulgaria, Croatia, the Czech Republic, Hungary and Romania.

development of electronic media remains limited and is hindered by insufficient financial resources and a still underdeveloped access to the Internet<sup>11</sup>.

Although the Republic of Serbia has a great diversity of independent media, many private outlets experience important financial difficulties and most of them are dependent on foreign donations to survive. Their development and viability is hampered by limited financial, technical and personnel resources and a poor advertising market, as well as by the unequal treatment they are subject to on the part of the authorities. Independent journalists regularly denounce the attitude of the authorities, which favour such public media by granting it for instance a privileged access to information, and the material, legal and administrative privileges accorded to the state-led Association of Independent Journalists compared to its counterpart the Independent Association of Journalists of Serbia.

Analytical and investigative articles are rather rare. The media often lacks the funds necessary for serious investigations, there is a lack of training in investigative journalism and investigative undertakings put the journalists at important risks.

Investigative journalism courses are almost non-existent. The only body offering such courses is the School of Investigative Journalism established by the journalist Miroslav Filipovic in co-operation with the Council of Europe.

While the situation of journalists greatly improved after the change of government in October 2000, some journalists have however been subject to threats since then. With a view to addressing the problem, the Independent Journalists' Association of Serbia (IJAS) and the Media Centre, together with the Serbian Government, recently launched the "Stop the mafia" campaign aiming at protecting journalists exposed to threat in their work. IJAS also established a Task Force for the safety of journalists, which is composed of representatives of the Federal Secretariat for Information, the Serbian Government, the police and the media, and a special SOS phone line for journalists receiving threats has been established. Special security training courses for journalists will also be organised by IJAS.

Reporting on corruption, previously non-existent, started with the change in government in October 2000. In early 2001, a flood of texts on corruption involving officials of the previous regime and dealing with financial malpractice in state-owned companies were published. After a period of lesser interest, the topic emerged again in August-September 2001.

There are several active media associations in the Republic of Serbia, among which are the Independent Journalists' Association of Serbia, the Media Centre, the Serbian branch of the Association of Independent Electronic Media in the Federal Republic of Yugoslavia (ANEM), and the Association of Electronic Media of Serbia. The Independent Journalists' Association of Serbia (IJAS) was established in 1994 and is very active in promoting free journalism, media pluralism, ethical standards, and mutual co-operation between journalists, and in protecting journalists' rights and interests. The Media Centre, on its side, organises journalist training and specialised courses, such as Internet workshops for journalists, seminars in local print media, local electronic media, journalistic management, economics desk journalism, etc., and provides a number of services to independent media to help them in their work. The Association of Independent Electronic Media was set up in 1993 by a group of private radio and TV broadcasters with the main goal to unite efforts for counteracting the state monopoly over the media in the Federation and the Republic of Serbia. Currently, ANEM unites 30 radio and 15 TV stations,

---

<sup>11</sup> According to the International Telecommunication Union, there were 400 000 Internet users in FRY, i.e. 3.75 percent of the population.

covering approximately 65% of the territory of the Republics of Serbia and Montenegro. Market research shows that the ANEM member stations have some 1.2 million listeners and spectators, which is almost as many as the state media.

#### **1.5.6 GOVERNMENTAL TRANSPARENCY AND COOPERATION WITH CIVIL SOCIETY**

Following the change of Government in October 2000, co-operation between the Government and civil society organisations greatly improved. Many efforts were recently undertaken to further involve CSOs in the governmental and legislative work. A recent measure that drew particular attention was the decision, in January 2002, to allow NGOs and the Otpor movement to attend Legislature sessions, thereby extending public monitoring of the Legislature.

A number of actions have also been undertaken to improve access to Government information. New legislation on freedom of information is being prepared to guarantee citizens free access to information in the possession of state organs. In the course of 2001, the Government of the Republic of Serbia held 410 press conferences and gave more than 600 official reports to inform the public about its activities and plans. Particular efforts are being made to disseminate information via the Internet. An official website for the Government has been developed, which provides up-to-date information in Serbian and English about the Government's activities, and in the course of the past 12 months, 11 out of the 17 ministries created their own websites. In addition, all ministries appointed public reporting (PR) managers, who are responsible for co-ordinating the communication between the ministries and the media. As formal public reporting education is not available in the Republic of Serbia, all PR managers have undergone intensive training in co-operation with foreign experts.

Further activities under consideration include the "Open Government" project, which aims at enhancing the transparency of Government's activities and at making communication between citizens and the Government as simple and direct as possible. The project foresees: 1) direct access to all government documents (except for state secret ones) via the Government's website; 2) the possibility for citizens to contact the State via the Internet on a permanent basis; 3) the establishment of contact agencies throughout the Republic of Serbia; 4) the establishment of an information hotline; and 5) the organisation of a weekly TV programme, during which ministers and high government officials will have a public debate with citizens. In addition, a Law on Information and a Law on Obligation and Accessibility of Information have been drafted and are currently under discussion.

Particularly important efforts have also been made to encourage the involvement of CSOs in the fight against corruption. The increased participation of civil society in the anti-corruption reform effort is one of the five main components of the Serbian Government's strategy for fighting corruption drafted in October 2001 and expected to be adopted in the very near future. Four fields of activity are envisaged: increase public awareness with regard to the need to fight corruption, facilitate freedom of information, create fora for the public discussion of draft laws, and promote the role of the media and NGOs in the fight against corruption.

#### **PROMOTING CIVIL SOCIETY PARTICIPATION IN SPAI**

Since FRY/Serbia joined the SPAI, the Serbian Government has taken a number of concrete steps to co-operate with civil society and promote the active participation of civil society organisations and citizens in the fight against corruption. With a view to raising public awareness and involving the general public in the Initiative, the text of the SPAI was translated into Serbian and published

in several periodicals, and a special Government Newsletter about the Initiative was issued. The text of the Initiative was also posted on the official website of the Government and the SPAI Senior Representative for the Republic of Serbia issued several statements inviting citizens, civil society organisations and non-governmental agencies to actively engage in the fight against corruption.

A consultation mechanism of civil society on anti-corruption issues was established in December 2001 with the creation of the Council for Anti-Corruption. The Council is composed of 11 representatives of civil society. It oversees the implementation of the Anti-Corruption Initiative at the country level, assists the Government in the formulation of anti-corruption strategies and monitors the Government's anti-corruption activities. It is the main link between civil society and the Government regarding anti-corruption issues: it initiates academic studies, public debates, and discussion panels, and makes suggestions for reforms. It is responsible for the development of a network of civil society and business organisations, non-government bodies and academic institutions, which are to take part in anti-corruption efforts. Due to restricted funds, the Council has only been able to perform a limited number of activities so far. Further funds will be necessary to enable it to implement all the activities for which it is responsible.

Recent measures have been also undertaken to enhance the flow of information between municipal authorities and NGOs regarding corruption issues. On the initiative of the Ministry of Finance and Economy, the establishment of a network of municipal officers in charge of monitoring corruption within their institutions and developing relations with NGOs on corruption matters is under consideration. Three meetings have already been organised between NGOs and the Ministry of Finance and Economy and the network is expected to start functioning at the end of 2002.

Close links have been established with Transparency International Serbia, in particular in the field of public procurement. Transparency International provided feedback on the Law for Public Procurement and its president is a member of the working group on public procurement established on the initiative of the Ministry of Finance and Economy of the Republic of Serbia. Contacts have also been developed with representatives of the business community on public procurement issues, both the Union of Employers and the Chamber of Commerce of the Republic of Serbia being represented in the working group on public procurement.

In order to involve the general public in the fight against corruption, 26 Anti-Corruption Units, located throughout the Republic of Serbia and composed of three officers each, were established in late 2001 and begun functioning in January 2002. These Units are meant to serve as contact points for citizens faced with corruption. The Units' hotlines have been publicised in the media. The three officers who compose the Units have full authority to investigate and prosecute offenders. During their first month of existence, the Units investigated more than 250 cases of corruption.

#### **1.5.7 CIVIL SOCIETY ANTI-CORRUPTION ACTIVITY**

Civil society's involvement in the fight against corruption in the Republic of Serbia is quite recent. The commitment of civil society to join in the anti-corruption effort has been demonstrated over the past few years by many concrete activities. A sampling of these civil society projects is listed below:

The Belgrade-based Centre for Free Elections and Democracy (CeSID) is a non-governmental organisation whose activities aim at promoting free and fair elections and democratic values in the Federal Republic of Yugoslavia. It recently undertook a monitoring of five municipality offices in the Republic of Serbia as to their efficiency and transparency in the delivery of services to citizens. The project is expected to expand to 90 municipalities.

The Centre for Liberal Democratic Studies is an independent think tank, which develops policy proposals and organises seminars and lectures on various policy issues. Current anti-corruption related projects of the Centre include an analysis of Corruption in the Federal Customs Administration, a general study on Corruption in the Republic of Serbia, and the definition of an Anti-Corruption Platform.

The Centre for Management focuses on education, research and advocacy campaigns, including the organisation of conferences and round table discussions on policy issues. It recently conducted several research projects on corruption, including studies of “Stability and corruption in South Eastern Europe”, “Anticorruption Policy in Serbia”, and “Corruption in Serbia”. In 2001, the Centre launched an anti-corruption training programme, the Menon-Programme.

The Centre for Policy Studies conducts research and analysis on contemporary problems. Its current activities include a study on “Fighting Corruption in Transition Economies – the Case of FRY” and an analysis of media in the transition process. It also conducted several probes of public opinion on various forms of corruption and published books about the role of trade unions in transition and public opinion in the Republic of Serbia.

In June 2001, the National Resistance Movement (OTPOR), a student movement created in 1998, launched an anti-corruption programme to sensitise citizens about the problem of corruption. The programme includes a media campaign and the organisation of anti-corruption activities in eighty different local offices. OTPOR is also collaborating with the State Customs Offices to monitor the work of officials at customs points.

Established in 1992, the European Movement in Serbia aims at promoting European values and the development of a democratic and pluralistic society in the Republic of Serbia. It recently launched a new project “Towards More Transparent Budgeting and Public Procurement in the Free Municipalities of Serbia”. On 15 May 2001, the Movement organised a meeting between the different NGOs involved in the fight against corruption in the Republic of Serbia with the aim to initiate a greater co-ordination of activities. NGOs present at the meeting included: the Centre for Liberal Democratic Studies, the Centre for Management, the Centre for Policy Studies, Civic Initiatives, the European Movement for Serbia, OTPOR, and Transparency International Serbia. The purpose of the meeting was to exchange ideas and enhance co-ordination in order to improve the quality and impact of anti-corruption activities.

The Transparency International Serbia chapter was launched in February 2001 as an organisational unit of the European Movement in Serbia. Its activities aim at increasing government accountability and curbing corruption. Since its launch, Transparency International Serbia has organised a number of roundtables on corruption in the customs service, the health sector, education, the police, the judiciary, and tax service. It also published an “anatomy of corruption” and a study on “privatisation and corruption”. In September 2001, it issued a thorough analysis of the so-called pillars of integrity in the Republic of Serbia and the Federal Republic of Yugoslavia, which cover the executive and legislative power, the judiciary, the Public Prosecutor’s Office, the police, public services, the Auditor General, anti-corruption agencies, the Ombudsman, the media and civil society. Further projects include budget and public

procurement reform, public awareness raising, and the preparation of a national anti-corruption strategy. Transparency International Serbia also actively co-operates with the Serbian Government, especially on public procurement issues.

Among the most recent anti-corruption activities of the Vojvodina NGO coalition are the launch of awareness raising campaigns in the Republic of Serbia and the preparation of case studies related to corruption issues.

In the area of advocacy of democratic principles, the association Civic Initiatives plays an active role, organising seminars on citizens and democracy, democracy and transition, human rights, the role of trade unions in the process of transition, the role of non-governmental organisations in civil society, political programmes and practice, elections and electoral results, and coalition building. The Centre for Democracy Foundation also organises regular activities aimed at promoting the development of democratic institutions and of a democratic pluralistic culture.

The Fund for an Open Society Yugoslavia provides support to independent media, NGOs, independent think tanks, independent trade unions and local governments with a view to promote the development of an active civil society and to enhance transparency of local government's management procedures.

Finally, as regards human rights issues, an active organisation is the Helsinki Committee for Human Rights in Serbia, whose activities aim at promoting the rule of law and protecting human rights and fundamental freedoms. The Committee publishes reports about human right issues, provides legal aid to victims of human rights violations, and organises conferences and roundtables on topics related to democracy, rule of law, human rights and fundamental freedoms.

#### **TRADE UNIONS**

The Employer's Union recently committed itself to undertake actions in the anti-corruption field. It participates in the panel of experts on public procurement issues established by the Serbian Government and expressed its intention to organise panels and conferences to sensitise small and medium sized businesses to the negative economic consequences of corruption and raise awareness of the Republic's businessmen about the problem.

#### **CHAMBER OF COMMERCE**

The Chamber of Commerce of the Republic of Serbia did not involve itself directly in the fight against corruption, but it collaborated in the drafting of a number of laws, which regulate corruption, among which is the Law on Public Procurement. It also participates in the panel of experts on public procurement issues established by the Serbian Government, along with TI Serbia and the Employer's Union.

## **1.5.8 RECOMMENDATIONS FOR REFORM**

### **Public Attitudes Toward Corruption**

1. Continue to publicize steps taken in the Anti-Corruption Initiative, especially examples of concrete measures that have brought good results.
2. Continue to co-operate with NGOs to hold discussion forums and public awareness campaigns.

### **Legal Environment for Civil Society**

4. Pass the draft Association Act regulating the founding, registration, duties and administrative aspects of CSOs.
5. Revise tax regulations to clearly establish the not-for-profit character of CSOs.

### **Civil Society Capacity**

6. Provide financial support to NGO training organizations and support centres, in particular for training in management, budgeting, and fundraising.
7. Provide capacity-building training and implementation support to NGOs in coalition building, advocacy and lobbying, public awareness campaigns, legal support for victims of corruption, and government monitoring and oversight.
8. Promote the establishment of anti-corruption coalitions of NGOs and business associations at the central and local levels.

### **State of the Media**

9. Pass the Broadcasting Act to ensure a fair allocation of radio and television frequencies, and finalise the draft of the Public Information Act and adopt it in order to guarantee freedom of the media.
10. Replace the criminal provisions on slander and libel by civil law provisions.
11. Ensure equal treatment of all media, in particular equal access to information and equal rights, and do more to support independent journalists and media outlets and ensure a diversity of media ownership.
12. Fund training for journalists and managers in order to improve professionalism and profits and develop training in investigative journalism. Encourage professional investigative journalism of corruption cases.

### **Governmental Transparency and Cooperation with Civil Society**

13. Pass the Public Information Act to guarantee citizens free access to government information.
14. Further increase the Government's capacity to inform, consult and engage civil society in policy-making (including opportunities to comment on draft legislation and upcoming policy issues).