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Background and Context

In the South East Europe (SEE) region, businesses continue to identify corruption and lack of transparency as key constraints to economic growth and competitiveness. Similarly, the *OECD Competitiveness Outlook for South East Europe* from 2018 and 2021[1] found a number of policy shortcomings in this regard. These range from limited practical support for whistle-blowers and a lack of business integrity mechanisms to insufficient fining for anti-competitive behaviour and risks of politicisation of state-owned enterprises' governing boards.

To address these findings, the OECD is implementing the project *Fair Market Conditions for Competitiveness in the Adriatic Region* (the Project) which is funded by the Siemens Integrity Initiative and provides the context for this report. The Project aims to support the creation of a level playing field in three pilot countries from the SEE region (Bosnia and Herzegovina, Croatia, and Serbia) to enhance competitiveness and integrity in a sustainable and inclusive way. Having a level playing field means that the same rules regarding financial, regulatory and fiscal treatment, as well as public procurement, apply consistently to public, state-owned and private companies. This ensures that no entity operating in the market is subject to undue competitive advantages or disadvantages, and that every actor has equal market access (OECD, 2012[1]). Levelling the competitive playing field can help boost productivity, efficiency, output quality and innovation. Eventually, a level playing field increases a country's level of competition and economic development as well as the economic well-being of its citizens. In this context, the Project's first key objective is to raise awareness about integrity standards and good practices among government officials, businesses and civil society. The second objective is to build capacity and to foster the implementation of recommendations on transparency and efficiency of anti-corruption and competition authorities. The third objective is to promote the latest knowledge on international standards and practices on anti-corruption and integrity in academic curricula, as academia plays a major role in educating future public and private actors.

By building on an extensive set of OECD analyses[2] – primarily, the OECD Competitiveness Outlook – and good practices from OECD member countries, as well as input from external experts and stakeholders, this document aims to support the Project's second objective. To this end, this country profile maps the main legal and institutional frameworks, key achievements and policy challenges, and provides actionable policy recommendations in the areas of **anti-corruption, competition and state-owned enterprises (SOEs)** which are considered particularly relevant for creating fair market conditions. As these areas are interconnected, reforms in one policy domain may influence policy settings in the others (OECD, 2015[2]). For instance, the unjust allocation of power and resources as a result of corrupt practices, can create unfair market conditions by diminishing regulation and antitrust enforcement intended to correct market imperfections and by creating barriers to market entry. Moreover, bribery can direct companies' efforts towards rent-seeking instead of focusing on generating customer benefit. Corruption can also harm competition in public procurement by excluding potential competitors or by favouring others (OECD, 2010[3]). Inversely, high levels of competition and sound competition policies reduce opportunities and incentives for corrupt behaviour. Lastly, SOE and competition policies are often intertwined as they both influence the rules that apply to a specific type of market actor.

In this profile, a focus is set on the energy and industry sectors for several reasons: Firstly, given their significant contribution to GDP and employment in the Serbian economy they are important to the

[1] *Competitiveness in South East Europe: A Policy Outlook 2018* (OECD, 2018[11]); *Competitiveness in South East Europe: A Policy Outlook 2021* (OECD, 2021[63]).
[2] E.g. the publications *Competitiveness in South East Europe: A Policy Outlook* from 2018 and 2021, hereinafter OECD Competitiveness Outlook, and the *SME Policy Index: Western Balkans and Turkey* from 2019.

country's social and economic development[3] (see Box 1 and 2). Secondly, ensuring a level playing field is particularly vital in these sectors. Since they are very capital-intensive, there are usually higher market entry barriers and a higher market concentration. This market dominance can attract more anti-competitive and corrupt behaviour to increase profit margins. Thirdly, in the energy and industry sectors there is a strong prevalence of SOEs since these sectors require considerable administration due to their size and indispensability for the population (IMF, 2019[4]). As governments make in some circumstances deliberate decisions to pursue non-neutral practices in the favour of SOEs (OECD, 2012[1]), a disruption of the level playing field may occur more likely in sectors with a high number of SOEs. Lastly, meeting specific standards in these sectors is also relevant for EU accession which Serbia is pursuing.

Box 1: The Industry Sector in Serbia

The **industry sector** plays a crucial role in Serbia's economy by contributing to 27% of its GDP and 35% of employment (SORS, 2021[5]), with the market growing by 6% annually between 2014 and 2019 (SORS, 2021[6]). After services, the industry sector is attracting most Foreign Direct Investment (FDI), mainly in the automotive (15.9%), the food, beverage and agriculture (11.6%), the textile (9.1%), the electronics (5.6%), the construction (5.6%) and the machinery subsectors (5.2%) (Deloitte, 2020[7]). Serbia is perceived as one of the most attractive investment destinations in SEE due to its long-standing specialisation in industrial production, its geographic proximity to the EU's most developed markets and its wage-cost advantages compared to Western Europe (European Commission, 2019[8]). The subsectors of the industry sector on which this document focuses are manufacturing, construction, transportation and water resources management.

The **manufacturing sector** makes up 13.3% of the GDP (SORS, 2021[5]) and employs 22.2% of the working population (SORS, 2021[9]). It also contributes to Serbia's export basket with electrical equipment (10.9%), motor vehicles and trailers (10.9%), food products (10.1%), rubber and plastic products (9.3%) and basic metals (8.7%) having the largest contributions (SORS, 2021[10]). Within the manufacturing sector, the main companies are based in Belgrade and operate in the automotive segment (Fiat, Michelin), electronics (Siemens, Gorenje), communications technology (Microsoft, IBM), food (Nestlé) and textile (Benetton) industries (OECD, 2018[11]).

The **construction sector**, including the creation, renovation or extension of fixed assets of infrastructure, contributes to 5.4% of the GDP (SORS, 2021[5]) and employs 5.4% of the working population (SORS, 2021[9]). The vast majority of construction firms are located in Belgrade and encompass chiefly micro-enterprises with up to ten employees, mainly in building construction. Larger companies usually perform civil engineering activities (Radosavljevic, 2020[12]). Major companies are: Energoprojekt Holding, a joint stock company headquartered in Belgrade co-owned by Napred Razvoj and the Serbian government; MPP Jedinstvo, a private company headquartered in Sevojno; and Mostogradnja, a joint venture headquartered in Belgrade and jointly owned by RFZO, the government of Serbia and the City of Belgrade.

The **transportation sector** relates to the operation, construction and maintenance of transport networks such as rail, road and air transport. It accounts for 3.4% of the GDP (SORS, 2021[5]) and employs 5.7% of the working population (SORS, 2021[9]). The main companies operating in the transport sector are SOEs or joint stock companies with partial government ownership. Despite liberalisation efforts, the market remains very concentrated. Železnice Srbije (Serbian Railways) operates the rail network. It had a legal monopoly over all rail transport services until 2015, when

[3] The industry sector contributes to 27% of GDP and 35% of employment; the energy sector contributes to 4.0% of GDP and 1.2% of employment.

three new companies were established, taking over its former jurisdictions: Srbija Voz (passenger transport), Srbija Kargo (cargo transport) and Serbian Railways Infrastructure (infrastructure management) (OECD, 2020[13]). For road transport, the most important company is the SOE Putevi Srbije, which deals with road construction and maintenance. For air transport, Air Serbia, a joint stock company with the government as majority shareholder, is the main airline in the country.

The **water resources management sector** relates to water supply. It accounts for 1.1% of the GDP (SORS, 2021[5]) and 1.7% of the working population[4] (SORS, 2021[9]). Demand for water supply mainly stems from households (75.0%), the industrial sector (9.8%) and other users such as agriculture (15.3%) (SORS, 2021[14]). Water management underlies the jurisdiction of the Ministry of Environmental Protection, provincial administrative bodies and local administrations as well as government-held water management companies (Embassy of Belgium, 2017[15]). Three government-held water management companies operate in Serbia: Srbijavode (Serbia Waters), Vode Vojvodine (Waters of Vojvodina) and Beogradvode (Belgrade Waters), the first one being the largest company in the sector in terms of market share.

Box 2: The Energy Sector in Serbia

The **energy sector** is a strategic industry for Serbia with significant weight in its economy. It comprises the totality of the value chain involved in the production and supply of energy from the extraction of primary energy sources such as oil, coal and gas over refining energy carriers, to the production and distribution of energy such as electricity or heat (Investopedia, 2021[16]). The sector accounts for 4.0% of GDP (Republic of Serbia, 2021[17]) and for 1.2% of the working population[5] (SORS, 2021[9]). The total energy supply (TES)[6] in Serbia amounts to 15 290 ktoe which corresponds approximately to 5.2% of Germany's energy supply (IEA, 2021[18]).

Energy is mainly produced from coal (65.4%), biomass (11.1%), hydropower (9.7%), crude oil and natural gas liquid (9.5%), and natural gas (3.9%) (SORS, 2021[9]). While Serbia extracts some oil and gas, the country remains highly dependent on imports, especially from Russia. For instance, Serbia imports 72% of its natural gas and 60% of its oil demand (Worldometer, 2021[19]).

The energy sector in Serbia is highly concentrated, with SOEs dominating the energy market, often holding a market share exceeding 80%. As a result, more than one third of all SOE employees in Serbia operate in the energy market (SORS, 2021[9]). Energy companies are mainly located in large urban areas such as Belgrade and Novi Sad. For instance, the two main companies for electricity are Elektromreža Srbije JSC (EMS) and Elektroprivreda Srbije (EPS). Both are Belgrade-headquartered SOEs. EMS, as the transmission system operator, deals with electricity transmission, whereas EPS generates electric power and mines coal, and trades and supplies electricity (AERS, 2020[20]). With over 20 000 employees, EPS is the largest enterprise in Serbia (Republic of Serbia, 2021[17]). According to a decision made by the Government of Serbia in 2020, the distribution system operator, Elektrodistribucija Srbije (EDS), has been legally and functionally separated from EPS. The separation of the generation of electricity and network operation was completed in 2021 when ownership of EDS was transferred from EPS to the Republic of Serbia. The main provider of gas is the Novi Sad-based SOE Srbijagas, which holds a natural gas supply monopoly and employs a staff of 4 000. Srbijagas benefits from long-term contracts with the Russian Gazprom, the main supplier to the Serbian market. Srbijagas' main subsidiaries are Transportgas Srbija and YugoRosGaz, the

[4] These estimates include also sewerage, waste management and remediation alongside water supply.
[5] Refers to the fields of electricity, gas, steam and air conditioning supply.
[6] Total Energy Supply (TES) is the evaluation of energy supplied by fuels in their primary form, prior to any conversions such as coal to electricity.

latter being jointly owned by Gazprom and Srbijagas (European Commission, 2020[21]). When it comes to oil derivates, the largest company is Naftna Industrija Srbije (NIS). It is a joint stock company headquartered in Novi Sad, which is owned by Gazprom, the Government of Serbia and other minority shareholders (Republic of Serbia, 2021[17]).

When it comes to electricity demand, final consumption stems mainly from households (46%), the industry sector (30%), and commercial and public services (18%) (Eurostat, 2020[22]). The regulated price of electricity available to households as universal supply is significantly below the price offered in the open market (-15%) (AERS, 2020[20]). Its price is substantially lower than in the European Union (-66%) (Eurostat, 2020[22]). Regarding gas, the majority of sales relates to non-household customers under unregulated prices constituting 84% of the market (Energy Community Secretariat, 2020[23]). Also gas prices are substantially lower than in the European Union (-51%) (Eurostat, 2021[24]). Consumption of oil and petroleum products on the other hand, stems from the transport (80%), industry (13%) and other sectors (7%) (Eurostat, 2021[24]).

The following three subchapters on the areas of anti-corruption, competition and SOEs are each structured into policy issues which are fundamental for policy frameworks that effectively foster fair market conditions, ensure a level playing field and tackle corruption.

1. Anti-Corruption Policy: Fostering Integrity in the Public and Private Sector

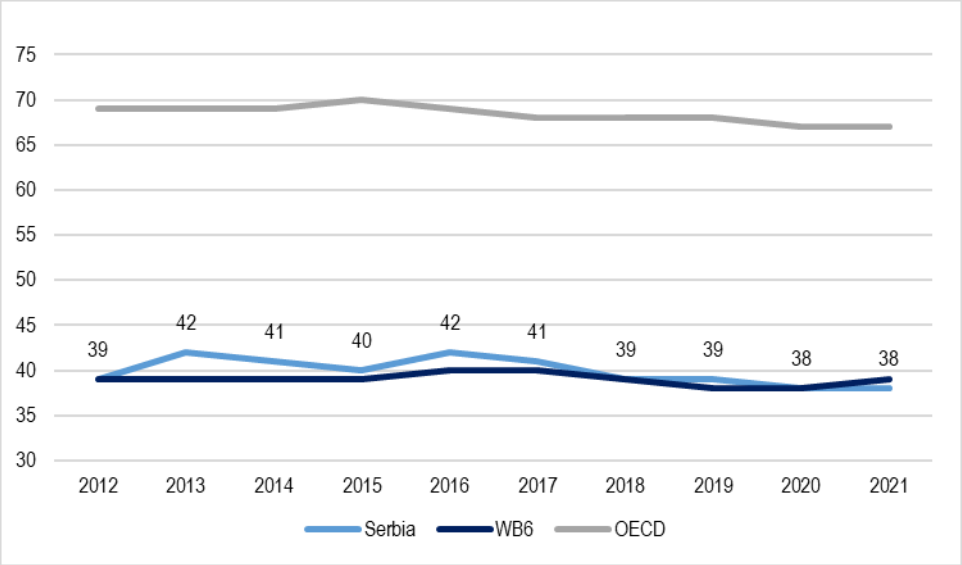
Why Anti-Corruption Policies Matter

Corruption has negative effects on numerous areas that are crucial for a country's economic and social development such as investment, competition, entrepreneurship, government efficiency and human-capital formation (OECD, 2015[2]). Having well-designed standards on public integrity and anti-corruption is a prerequisite for tackling the potential consequences of corruption such as resource misallocation, price distortion, reduced quality or scarcity of goods and services, distorted competition, decreasing growth and innovation, unfair allocation of benefits and a loss of trust in the government and public authorities.

Perceptions of Corruption in Serbia

According to the 2021 Transparency International Corruption Perception Index (CPI), Serbia ranks 96th out of 180 evaluated countries (Transparency International, 2022[25]). In comparison, the lowest scoring EU member states Romania (rank 66), Hungary (rank 73) and Bulgaria (rank 78) perform still significantly more advanced. Serbia's score has been decreasing over the last six years (see Figure 1). While it performed above the World Bank Six (WB6) average continuously until 2018, it scored fourth among the WB6 in 2021. While Serbia has made progress in drafting and passing transparency and anti-corruption reforms, the main challenge remains their implementation and enforcement. For instance, as shown by the 2019 USAID's Government Accountability Initiative's survey, to get their requests processed, 21% of citizens had to give a bribe, a gift or return a favour in healthcare institutions, 13% at the police, 11% at public prosecutors' offices as well as 10% in courts and educational institutions (USAID, 2019[26]). Moreover, according to the Balkan Barometer 2021, 39% of respondents in Serbia do not think that the government fights corruption successfully (ACIT and EPIK Institute, 2021[27]). This lack of public trust could indicate a need to further include civil society in the design of the anti-corruption policy framework.

Figure 1: Transparency International Corruption Perception Index: Serbia's Scores in Comparison (2012-2021)



Note: The scores of the CPI range from 0 ("highly corrupt") to 100 ("very clean"). The vertical axis shows a limited range of the scores for better visualisation of the yearly score changes. The scores are shown for the last nine years since Transparency International started to use an improved methodology from 2012 on which is still used today.
Source: Transparency International Corruption Perception Index from 2012 to 2021.

Findings of the OECD Competitiveness Outlook 2021 on Anti-Corruption Policies

The findings of the OECD Competitiveness Outlook 2021 show that Serbia has overall improved its performance regarding anti-corruption policies in comparison to the 2018 assessment. Recommendations to enhance the capacity of anti-corruption law enforcement and prosecutorial bodies have been implemented. For instance, a new and more comprehensive Law on Prevention of Corruption came into force in 2020 and was amended to be further improved in 2021. Moreover, investments have been made to further strengthen specialised prosecutorial bodies. The track record of the investigation and prosecution of high-level corruption has been established, but its sustainability and effectiveness are yet to be demonstrated. The results of the OECD Competitiveness Outlook 2021 are elaborated in more detail in the sub-parts following this introduction.

The Role of Anti-Corruption Policies in the Energy and Industry Sector

Comprehensive anti-corruption policies are indispensable in particular in the industry and energy sectors[7], where large-scale investments have been made to modernise and expand the energy, transport and water infrastructures in Serbia. For instance, in the time frame of 2009-2020 the Western Balkans Investment Framework (WBIF) has supported 41 projects in Serbia with WBIF grants of EUR 216.4 million across all eligible sectors as of June 2020, including energy (EUR 28 million), transport (EUR 154.1 million) and environment which also comprises water (EUR 17.3 million); whereas the loans signed on WBIF projects had reached EUR 2.4 billion (WBIF, 2020[28]). Furthermore, in the framework of the Instrument for Pre-Accession Assistance 2014-2020 (IPA II), it received EUR 770 million of bilateral grants, which inter alia covered funding for projects related to energy (EUR 56 million), transport (EUR 56 million) and environment (EUR 238 million) (WBIF, 2020[28]). In addition, in

[7] See Box 1 and 2.

the period 2013-2021 China has made investments in 9 energy projects, 5 industry projects and 13 infrastructure projects related to transport in Serbia with respective values of approximately EUR 2.2 billion, EUR 1.6 billion and EUR 9.9 billion (Balkan Investigative Reporting Network, 2021[29]). Russian investment in Serbia, which accumulated to EUR 2.4 billion in the period 2010-2020, is focused mainly on the energy sector (National Bank of Serbia, 2021[30]). In such circumstances, where investments are high but where the prevalent policy and legal frameworks do not sufficiently address corruption, the risk of anti-competitive behaviour usually grows significantly. Therefore, the anti-corruption policy recommendations made in this subchapter also apply to the energy and industry sectors.

1.1. Prevention of Corruption

Serbia has a generally advanced legal framework for the prevention of corruption consisting of several elements.

The **Anti-Corruption Agency** (former ACA, current APC), having multiple preventive and oversight competencies, is the main corruption **prevention body**. In action since 2010, the APC bases its mandate on the new **Law on Prevention of Corruption** which was adopted in 2020 and amended in 2021 for enhanced compliance with recommendations by the Group of States against Corruption (GRECO). The APC is an independent state body accountable to the Serbian National Assembly (NA). The NA elects the director and the council members of the APC following a procedure with merit-based criteria to be conducted by the Selection Committee of the Judicial Academy. Allocated annual funds must be sufficient to provide the efficient and independent operation of the APC which has the autonomy in implementing the budget. According to GRECO, appropriate guarantees for ensuring the independence of the APC are established (GRECO, 2020[31]).

Having clear rules on **conflict of interest** is crucial to ensure that public officials do not favour private interests over their position's responsibilities to the public, that they remain unbiased in their actions and do not misuse their power or influence. The Law on Prevention of Corruption provides a framework on conflict of interest that applies to public officials defined as any elected, appointed or nominated person in a public authority. The definition of conflict of interest covers actual, potential and apparent conflicts. The accompanying *Manual for Recognising and Managing Conflicts of Interest and Incompatibility of Offices* aims at getting public officials acquainted with the regulations. Generally, a public official whose public office requires full-time or permanent work may not perform other work or business activity. A public official who performs another activity while holding a public office is obligated to inform the APC. The APC determines whether this activity endangers the impartial performance of the public function. It also has to give its consent if a public official whose activity has ceased wants to establish in the subsequent two years an employment relationship or business cooperation with an entity that has a business relationship with the public official's authority. In addition, the APC decides on violations of the Law on Prevention of Corruption by issuing a reprimand, publicly recommending dismissal from public office or submitting a crime notification and an application for starting misdemeanour proceedings. Meanwhile, the Law on Civil Servants envisages that conflicts of interest of civil servants who do not hold positions of public officials shall be managed and resolved within their respective public bodies.

Another vital tool to safeguard integrity in public service is **asset and interest disclosure** by public officials. It allows oversight institutions and the public to track the officials' finances, to scrutinise whether variations in wealth are justified and to monitor their outside interests. Asset and interest disclosure is also governed by the Law on Prevention of Corruption. Under this law the obligation of regular disclosure of economic and private interest situations applies to most public officials with a few exceptions such as members of local government councils. Public officials are defined as persons who are directly elected by the citizens or elected, appointed or nominated by the National Assembly,

President of the Republic, Supreme Court of Cassation, High Judicial Council, State Prosecutorial Council, Government of the Republic of Serbia, assembly of the Autonomous Province, Government of the Autonomous Province and authorities of the local self-government units. Declarations are filed through an online platform and are publicly available. For a failure to submit the reports on time, the APC has to submit to the court a request for the initiation of misdemeanour proceedings. In addition, failure to report assets and income or submission of false information on assets and income constitutes a criminal offence. During the last years, the number of sanctions imposed for non-submission of declarations has been decreasing, which could be interpreted as a sign of improved overall compliance. However, it can be considered a limitation that the obligation of disclosure does not extend to the office staff of political officials.

The existing framework for **whistle-blower protection** – mechanisms that protect employees, who disclose information allegedly providing evidence of a legal, regulatory and ethical violation, from retaliation – is rather advanced. The **Law on Whistle-blower Protection** (adopted in 2014) extends to both the private and public sectors. Whistleblowing may be carried out by internal or external reporting or by public disclosure. However, conditions for public disclosure are narrow – essentially in cases of imminent danger, but not when there is a risk of retaliation or a low prospect of the breach being effectively addressed. The law contains multiple provisions of protection for whistle-blowers and expressly prohibits hindering of whistleblowing. An employer must inform engaged persons about their rights stemming from the Law on Whistle-blower Protection and must appoint an authorised person for the receipt of information and administering procedures. Regarding training, the NGO and media outlet Pištaljka trains judges, public prosecutors and authorised whistleblowing officials in the application of the Law. Overall, Serbia has had a high level of whistle-blower activity with 774 whistle-blower cases received in courts from June 2015 to December 2019 and a track record of decisions in favour of the whistle-blowers (Negotiation Group for Chapter 23, 2020[32]). Nevertheless, the whistle-blower protection system is still short of fully providing all measures of support such as comprehensive information and easily accessible and free of charge advice, assistance from competent authorities, financial assistance and psychological support. Only Pištaljka provides free legal aid to whistle-blowers.

Furthermore, the government has continued **public awareness and education activities**. The APC has been organising annual conferences, engaging in numerous training and education activities and producing tutorials and guidance materials**.** Overall, over 50 training programmes for public officials, 6 training sessions for trainers and several (online) trainings on ethics and integrity in the public sector took place from 2017 to 2021. The respective training is mandatory for heads and employees in the public sector. In addition, the APC held 5 trainings attended by more than 1 000 high school pupils and it hosts internship programmes for young professionals in cooperation with the OSCE Mission to Serbia. Spreading such values from early on is crucial to create a society in which fostering transparency is a priority. However, despite these notable achievements, there is no evidence of monitoring the effectiveness of public awareness and education activities yet.

Box 3: Raising Awareness of Anti-Corruption Policies and Integrity in Academia

Raising awareness of anti-corruption policies and integrity in academia is especially important to harness young people's desire for fairness and equity, since they might become public or private actors in the future. A stocktaking analysis conducted in 2020 by the OECD in the context of the Project supported by the Siemens Integrity Initiative has shown that curricula at Belgrade University and the University of Kragujevac feature courses in which anti-corruption and integrity topics are addressed. In addition, the Faculty of Law of the University of Belgrade has cooperation agreements and internship opportunities with the judiciary sector and Transparency Serbia which enable law students to gain first-hand experience. Key partners from the government are the Ministry of

Foreign Affairs and the APC. The University of Kragujevac has two learning centres and laboratories which organise collective action events. It also cooperates with the government and the business sector as well as with non-governmental organisations (NGOs) and student unions.

Nevertheless, the stocktaking analysis has revealed that approximately two thirds of all students at Belgrade University have not yet been educated about anti-corruption and integrity topics throughout their studies as mainly law students benefit from the activities mentioned above. The same applies to the University of Kragujevac. Consequently, it was found that the knowledge of students from both universities on specific anti-corruption and integrity topics was overall limited.

Moreover, during expert group consultations organised by the OECD with stakeholders of the Project, professors stated that they are not regularly consulted by the government or the private sector to provide expert knowledge. They confirmed that there is little awareness about their research on anti-corruption and integrity issues that could benefit the public and the private sector. Therefore, there is still significant potential for improvement concerning visibility, awareness and exchange about common principles and recent anti-corruption reforms across the society. So far, an academic platform that brings the public, private and academic sector together does not yet exist in Serbia.

Key Recommendations:

The following key recommendations provide guidance for the way forward:

- Ensure that **public asset disclosure** also extends to the office staff of public officials.
- Provide all necessary measures of support for **whistle-blower protection** that are not provided yet: access to comprehensive, free and easily accessible advice; timely assistance from competent authorities; financial assistance; and psychological support.
- Monitor and evaluate the effectiveness of **awareness and education activities** to assess their impact and to find out whether they need adjustment. This could eventually increase Serbia's performance in the area of raising public awareness of corruption that has stayed on the same level as in the OECD Competitiveness Outlook 2018.
- Raise **awareness about academic research** on integrity and anti-corruption topics by supporting universities in the conception of information campaigns and a communication and media strategy.
- Consult **experts from academia** regularly when drafting or revising anti-corruption policies.
- Support the establishment of an **online academic platform**, which provides visibility of research, facilitates the exchange of good practices, stimulates academic discussions and boosts awareness about common principles and recent anti-corruption reforms across various stakeholders, students and society. Such a platform would ensure that information is easily accessible for a broad audience and is collected sustainably in a long-term database.

1.2. Anti-Corruption Policy Framework

The **Action Plan for Negotiations of Chapter 23**[8] is the main strategic document and the basis for the fight against corruption. A new planning document for areas with particular corruption risk, the **Operational Plan for Prevention of Corruption**, was adopted in September 2021. More than 60% of activities envisaged in the subchapter on the fight against corruption of the Action Plan had been implemented by mid-2020. Implementation reports can be accessed on the APC's website. At the time

[8] The chapter of the *acquis communautaire* on judiciary and fundamental rights.

of writing, the APC is conducting an analysis of former anti-corruption documents. This impact assessment of measures which have been undertaken in eight vulnerable areas will serve as one of the baseline documents for the future National Anti-Corruption Strategy.

It should be positively highlighted that Serbia is also participating in **international anti-corruption frameworks**. For instance, it is a member of the OECD Anti-Corruption Network for Eastern Europe and Central Asia (OECD/ACN). The OECD/ACN is a regional outreach programme of the OECD Working Group on Bribery that supports its member countries in their efforts to prevent and fight corruption. Moreover, Serbia participates in the Open Government Partnership (OGP). In the framework of this partnership, members have to co-create a two-year action plan with civil society that outlines concrete commitments to enhance transparency, accountability and public participation in government. Serbia is currently implementing 12 commitments from its 2020-2022 action plan in areas such as e-Governance and free access to information.

Preventing corruption on a smaller scale where it can go more easily unnoticed is crucial as well. In this context, the adoption of several **local anti-corruption action plans** is part of the Action Plan for Negotiations of Chapter 23. As of June 2022, 76% of local self-government (LSG) units that are subject to this obligation have adopted local anti-corruption action plans. They include the identification of corruption risks and the definition of measures to eliminate them. As part of the plans, every local self-government unit designates a person or body in charge of co-ordinating the activities and sets up a body responsible for monitoring and informing the public and other concerned actors about the activities and the achievements (Mojsilović, 2017[33]). The effects of the local action plans on transparency of LSGs are yet to materialise, for example regarding the extent of content available on the LSGs' websites, the quality of information booklets or the comprehensiveness of information on corruption issues that is accessible in the service centres and at working premises of LSGs' administrations (Transparency Serbia, 2020[34]).

The **inclusion of civil society** in the drafting of the anti-corruption framework is crucial to take ownership, identify the root causes of corruption, define effective policy responses and monitor their implementation. In Serbia, civil society has been involved in some parts of the anti-corruption policy design. During the drafting of the Action Plan for Negotiations of Chapter 23 in 2016 and its revised version in 2019/2020, several working versions were discussed with civil society organisations (CSOs). In 2017, the APC held public consultations to design a model local action plan as a reference document and published a report containing the comments submitted by CSOs as a basis to include them. In 2018, the APC provided five grants to CSOs to directly assist local self-government units in drafting local action plans. In 2019, before the new Law on Prevention of Corruption was passed, public discussions about the draft proposals were held[9]. In addition, the APC regularly allocates grants for CSO projects aimed at corruption prevention. Although efforts have been made to include civil society in the design of anti-corruption frameworks, there is no platform yet that allows for more regular exchange between civil society representatives and like-minded actors from the private and public sector who want to tackle corruption through collective action. Box 4 explains the benefits of using collective action in the fight against corruption and how a platform for interaction between collective action community members would facilitate this endeavour.

Box 4: Using Collective Action to Counteract Corruption

In contexts that are vulnerable towards corruption, collective action has proven effective in promoting integrity and competition rules (OECD, 2020[35]). A widely accepted definition by the

[9] However, no report on the discussion was published afterwards by the government. Therefore it is not visible if comments were actually taken into account.

World Bank defines collective actions as follows: "A collaborative and sustained process of cooperation between stakeholders. It increases the impact and credibility of individual action, brings vulnerable individual players into an alliance of like-minded organisations and levels the playing field between competitors" (World Bank, 2008[36]). The stakeholders can be representatives from the public and private sector, as well as from civil society and academia who want to define rules and standards to which they adhere globally and individually. Collective action can take many forms. It may involve a statement or declaration condemning corruption, an integrity pact, an initiative to develop common standards and principles, or a certification process (OECD, 2020[35]). It is a unique tool in advancing integrity and achieving a level playing field as it ensures that all participants, who co-operate and monitor each other, adopt the necessary standards at the same time.

However, it requires time, expertise and close collaboration to be sustainable and successful in the long term as its coordination, design and implementation are complex. Collective action does not involve a single, isolated event. In fact, a certain period of development and maturation is required, during which the various aspects of improving integrity can be addressed (OECD, 2020[35]). The creation of a self-sustaining platform for interaction and dialogue between collective action community members is a way to ensure successful collective action by:

- Allowing for more regular communication, better coordination and easier exchange of good practices.
- Enabling the community members to proceed with and promote activities that raise awareness about anti-corruption practices in the public.
- Helping to identify and boost champions for integrity that can take the position of a role model.

Another important aspect of the prevention of corruption is the elimination of rules and practices that create favourable conditions for corruption or preventing adoption of such rules (OECD, 2015[2]). **Corruption proofing of legislation** used to be a regular activity of the APC as it is prescribed in the Law on Prevention of Corruption. Since 2013, the APC has published more than 100 assessments of this type. As part of these efforts, state administration bodies are obliged to submit draft laws in areas of high corruption risk and areas affected by international agreements in the anti-corruption field to the APC to obtain its opinion. With that, all relevant draft laws are subject to corruption proofing. Despite the initial efforts, public reporting on assessments for corruption proofing of legislation diminished in 2018 which raises uncertainty about how regular this activity is currently performed (ACA/APC, n.d.[37]). According to the APC, the reporting will be resumed once the restructuring of their website is completed.

In addition, according to the Law on Prevention of Corruption, **corruption risk assessments** are mandatory for public sector institutions as a step in the preparation of **integrity plans**. An integrity plan is a preventative mechanism for the fight against corruption created individually for different types of institutions. They need to contain the assessment of exposure to corruption risks and measures to detect, prevent and diminish those risks which allows the respective institution to take targeted actions (ACA/APC, 2015[38]). However, the APC has observed that integrity plans often remain formal documents and are not always fully implemented as some authorities pay little attention to their content and meaning (ACA/APC, 2020[39]).

Key Recommendations:

The following key recommendations provide guidance for the way forward:

- Develop a self-sustaining **dialogue platform for civil society** to ensure regular interaction in a sustainable way (e.g. establishing a collective action community). This can help increase NGO representation and public awareness about champions in the fight against corruption. Furthermore, such a platform could be used as a mechanism to monitor the implementation of the Action Plan for Negotiations of Chapter 23.
- Make regular public reporting on assessments for **corruption proofing of legislation** mandatory to ensure that corruption proofing remains a steady activity.
- Increase awareness about the **integrity plans'** relevance as tools for the fight against corruption among authorities and monitor if they are sufficiently implemented (see Box 5).

Box 5: External Evaluation of the Romanian Anti-Corruption Strategy's Implementation

The Ministry of Justice of Romania, which is in charge of the anti-corruption policy coordination in Romania, performs the monitoring and evaluation of the implementation strategy according to a standard methodology. Furthermore, Romania started to use external evaluations of the strategy's impact in order to better shape the new policy documents.

To exclude conflict of interest, the external evaluations have not been sought at the local level, as all key anti-corruption stakeholders would have been involved in the policy design. The evaluation of the implementation of the 2005-2007 National Anti-Corruption Strategy and the Strategy on Fighting Corruption in Vulnerable Sectors and Local Public Administration 2008-2010 in Romania was carried out by independent experts with the assistance of the United Nations Development Program (UNDP), the support of the Ministry of Justice and relevant local stakeholders. The assessment involved:

- Collecting and summarising data;
- Conducting in-depth interviews on-site;
- Reviewing and analysing the information gathered;
- Preparing the assessment report with recommendations for improvement;
- Communicating the summarised information with relevant stakeholders.

In 2015, Romania asked the OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN) to support the external evaluation of the implementation of its 2012-2015 National Anti-Corruption Strategy. The evaluation included a desk research, an on-site exploratory mission, drafting of a report and presentation of its results back in the country. The report identified achievements and challenges in the implementation of the past national anti-corruption strategy, and it also provided recommendations for the development of a new one. Estonian and Latvian experts prepared the report and the recommendations under coordination of the ACN secretariat.

This example represents an especially comprehensive approach to monitor and evaluate the implementation of corruption strategies due to two main aspects: Firstly, a strong guarantee of impartiality as the evaluation was carried out by independent experts with the assistance of external bodies like the UNDP and the ACN as well as multiple other stakeholders; and secondly, a transparent and thorough assessment as it included multiple steps and the information was communicated to stakeholders.

Source: Information provided by the Ministry of Justice of Romania (national contact point of the OECD/ACN).

1.3. Business Integrity and Corporate Liability

Business integrity refers to the commitment by businesses to consistently adhere to laws and regulations, certain ethical standards, and responsible core values. It is a prerequisite for a level playing field, as businesses can only compete fairly if none profits from unfair advantages resulting from corrupt practices. Business integrity is also an essential ingredient for sustainable and long-term business growth since having a good reputation is necessary to gain the trust of customers, suppliers, business partners and investors.

Serbian Company Law does not specifically address business integrity and the management of corruption risks. General **principles of oversight** are prescribed such as the duty of the supervisory board of a joint stock company to perform internal supervision of the management. More specific obligations apply to public joint stock companies where at least one dedicated person shall be responsible for the internal supervision of operations and subject to specific elaborated requirement procedures. Nevertheless, there is not yet any designated institution or **reporting mechanism** such as a hotline for anonymous reporting of corrupt practices or a business ombudsman institution which is responsible for receiving complaints from entrepreneurs, individuals and companies about corruption-related matters in businesses apart from the APC. Business ombudsman institutions are designed to supplement judicial and institutional responses to corruption by investigating claims of abuse of businesses' rights, resolving disputes as an impartial mediator between the involved parties and providing advocacy or advisory services (Danon and Savran, 2021[40]). Some of them have also listed whistle-blower protection as their function (OECD, 2018[41]). Ombudsman institutions are unique actors as they offer non-judicial ways of resolving suspicions of misconduct and they do not depend on the involvement of high-level authorities. Instead, they rely on their independence, neutrality, accessibility, transparency and expertise which results in high levels of trust among the society (Danon and Savran, 2021[40]). Since business ombudsman institutions interact with businesses and their employees and oversee if their rights have been respected, they also monitor the implementation of policies for ensuring business integrity. In doing so, they can hold governments and businesses accountable and make recommendations for improvement (OECD, 2018[41]). Such assessments are regularly included in reports that are submitted by business ombudsman institutions. Being a flexible tool that can fit local contexts, the institutions can either be part of a government, be based in business chambers or be independent bodies established by governments and business associations with the assistance of international partners.

The **liability of legal persons** is established for all criminal offences. According to the **Law on Liability of Legal Persons for Criminal Matters**, adopted in 2008, a legal person shall be held accountable for criminal offences that have been committed for the benefit of the legal person by a responsible person within the scope of his/her authority. However, legal entities, which are entrusted by law with the exercise of public authority, are exempt from liability for criminal offences committed in the exercise of public authority. The law envisages both fines and the termination of the legal entity as penalties, security measures as well as other legal consequences, e.g. a ban on participation in public procurement. The upper limit of fines for corruption offences, for example active bribery which carries the maximum prison sentence of up to five years, is approximately EUR 42 500. This limit is low relative to the possible scale of large corruption transactions. Overall, the enforcement and effectiveness of the corporate liability framework for combatting corruption could not be assessed due to the absence of relevant statistics.

Regarding **beneficial ownership**, according to the **Law on the Central Records of Beneficial Owners** (adopted in 2018), information on beneficial owners of legal entities – natural persons who ultimately own or control a legal entity or arrangement – is publicly disclosed by the Serbian Business Registers Agency. The disclosed information on beneficial owners is accessible free of charge. The law envisages criminal liability as well as fines for legal entities and their responsible persons for non-compliance.

Serbia has sound laws that prohibit **bribery of public officials** which is generally a common form of corruption practised by some businesses. The **Serbian Criminal Code** prohibits both active (offering, promising, giving of an undue advantage) and passive bribery (accepting, soliciting an undue advantage) of national and foreign public officials (Transparency Serbia, 2020[42]). Payments to employees in public administration or public utility companies, to speed up their actions, also fall under the definition of bribery. The actions of intermediaries in bribery are criminalised as well. Moreover, the Criminal Code recognises and prohibits active and passive commercial bribery, meaning bribery among businesses, as a criminal offence (Transparency Serbia, 2020[42]). However, there is still potential for improving the enforcement of the law prohibiting bribery of public officials and commercial bribery (Transparency Serbia, 2020[42]). Law enforcement agencies show active enforcement in only a limited number of cases. Furthermore, there has been no sanctioning yet for insufficient oversight or violation of supervisory duty regarding bribery by any person who manages a private sector entity or against legal persons. The most significant challenge is that the prosecutorial bodies do not proactively investigate publicly exposed suspicions of corruption.

Lobbying can provide decision-makers with valuable insights and data, as well as grant stakeholders – such as businesses – access to the development and implementation of public policies. However, it can also lead to undue influence, unfair competition and regulatory capture to the detriment of the public interest and effective public policies. A sound framework for transparency in lobbying is therefore crucial to safeguard the integrity of the public decision-making process (OECD, 2013[43]). The **Law on Lobbying**, which is the first one of its kind in Serbia, came into force in August 2019. It requires a mandatory public register for lobbyists that is managed by the APC. Lobbyists are required to submit an annual report to the APC, in which they must disclose relevant personal and employment information, information on lobbying objectives and clients that they are targeting, as well as information on what they are advocating for. The definition of lobbying targets is broad and includes lobbying at different levels of government. However, it does not include lobbying in SOEs that do not exercise public authority but compete on the market (Transparency Serbia, 2020[42]). Lastly, the law prescribes neither the duty for institutions to publish reports on lobbyists that approached them nor the duty of targeted persons to report informal or attempted lobbying (Transparency Serbia, 2020[42]).

Key Recommendations:

The following key recommendations provide guidance for the way forward:

- Deploy **business ombudsmen** who are responsible for receiving complaints about corruption-related matters. This step could be approached by organising a roundtable with businesses and business associations, to define the functions of a Serbian Business Ombudsman mechanism and to exchange good practices with other countries in the region.
- Establish a **hotline for anonymous reporting** of corrupt practices in businesses to facilitate the collection of information and to lower inhibitions towards whistleblowing (see Box 6).
- Strengthen **corporate liability** for corruption offences by significantly increasing the maximum applicable fines. Collect and publish data on the enforcement and effectiveness of the corporate liability framework for combatting corruption.
- Ensure that enforcement agencies perform active law enforcement against **bribery** in all cases and that prosecutorial bodies investigate publicly exposed suspicions of corruption proactively. Establish sanctions for insufficient oversight or violation of supervisory duty regarding bribery.
- Include SOEs as **lobbying** targets. Introduce also the duty for institutions to publish reports on lobbyists that approached them and for targeted persons to report informal or attempted lobbying. The OECD Recommendation on Principles for Transparency and

Integrity in Lobbying and the OECD publication *Lobbying in the 21st Century: Transparency, Integrity and Access* can provide guidance on this issue.

Box 6: Hotline for Reporting Corruption Cases in Austria

In 2013, the Federal Ministry of Justice in Austria launched an online portal to enable individuals to report wrongdoing to upgrade the fight against corruption by easing access to such information.

After reviewing the measures of anonymity provided by this virtual disclosure system, the user is directed to select the type of wrongdoing that best fits the information they would like to disclose, according to the following options: corruption, white-collar crime, welfare fraud, financial crime, fraudulent accounting, capital-market offences and money laundering. Upon selecting the most suitable option, the user is invited to submit their information. The technical setup of the portal ensures that investigators from the Public Prosecutor's Office against Corruption and White-Collar Crime are not able to trace submissions or identify the discloser, rendering the system an anonymous method of communication. To ensure that anonymity is guaranteed, disclosers are required to choose pseudonymous usernames when setting up their secured mailbox. The anonymity of the information disclosed is maintained using encryption and other security procedures. Disclosers are also asked not to enter any data that might give any clues to their identity and to refrain from submitting their report on a device that was provided by their employer. Following submission, the Office of Prosecution for Economic Crime and Corruption provides the discloser with feedback and the status of their disclosure via a secure mailbox. If there are issues left to be clarified regarding the case, questions are directed to the discloser through anonymous dialogue. The establishment of the hotline has led to increased reporting of corruption cases and it has been very positively received by the public and anti-corruption experts.

The key aspects to the hotline's success are the easy and universal access for the public, the strong guarantees of anonymity for the user and the high levels of transparency as it provides feedback on the status of a reporting.

Source: (OECD, 2016[44]), *Committing to Effective Whistle-blower Protection*, http://dx.doi.org/10.1787/9789264252639-en.

1.4. Investigation and Prosecution

Anti-corruption frameworks can only be effective if there are well-functioning investigative and prosecutorial bodies and procedures which enforce them.

Based on the **Law on Organisation and Competences of State Bodies in the Suppression of Organised Crime, Terrorism and Corruption** (in force since 2018), the Prosecutor's Office for Organized Crime (POOC) and the Section for Suppressing High-Level Corruption (SCOC) of the Criminal Police Directorate are the competent state bodies for **investigating and prosecuting high-level corruption**. High-level corruption as such is not defined explicitly but the anti-corruption competence of the bodies comprises abuse of official authority; trading in influence; as well as passive and active bribery when the defendant or the person to whom a bribe is given is an official or responsible person performing a public function. Although the Statistical Office gathers data on prosecutions and convictions, the current record-keeping is not suitable for measuring the progress and the level of efficiency of the criminal justice system as it lacks information of the perpetrator's official position at the time of the offence, indictments, final convictions, sentences and recovered proceeds of corruption.

The Ministry of Interior shall comprise at least two **specialised anti-corruption investigative bodies**: the unit responsible for the suppression of organised crime (the SCOC) and the unit responsible for the suppression of corruption (the Anti-Corruption Department of the Criminal Police Directorate). There are also several **specialised anti-corruption prosecutorial bodies**: the POOC and special anti-corruption departments of four higher public prosecutor's offices. Within the POOC, 21 prosecutors act as processors of economic crime and criminal offences related to corruption supported by 27 administrative staff members. As of 2020, 45 deputy public prosecutors worked in the anti-corruption departments. In the last years, several investments have been made in the capacity of the specialised prosecutorial bodies. Since 2018, the POOC has employed a financial forensic expert. There is also evidence of training on various relevant topics for the staff of the investigation and prosecution bodies. In addition, regular coordination meetings between the police and the prosecutorial bodies have been organised and liaison officers were appointed (European Commission, 2020[21]). Moreover, six task forces have been established in the prosecutorial bodies, which include representatives of the police, the tax administration and the anti-money laundering administration.

In terms of **alternative and innovative sources of legal assistance**, the University of Belgrade has established a **Legal Clinic for Anti-Corruption** that is run by students and professors. The Legal Clinic provides a special form of education for fourth year undergraduate students consisting of a theoretical and a practical part which allows for gaining comprehensive knowledge and experience. In the theoretical part, students learn about the notion of corruption, its impact on human rights and anti-corruption mechanisms. They are also educated about international and European anti-corruption approaches with a special focus on UNCAC and the Serbian normative and institutional framework. The practical part consists of work with clients at the Legal Clinic in the form of provision of legal information and advice. It further includes internships at, for example, the APC, the court, the Public Prosecution Office, Transparency Serbia or Pištaljka. Moreover, students cooperate with NGOs by monitoring court cases and by providing legal analysis and free legal advice. Lastly, the practical part entails cooperation with international organisations like UNDP, USAID and the OSCE which offer lectures by international practitioners and experts, and an essay competition where two students are awarded a trip to Italy to visit anti-corruption bodies. Although the Legal Clinic does not provide any form of official legal aid in accordance with the Law on Free Legal Aid, it supplies free general legal information, for example on existing legal remedies in a case of corruption. This is highly beneficial for companies and citizens who are looking for easy and quick access to this information and also for students who can attain hands-on experience. Nevertheless, this tool still has little visibility and it is not a common practice yet, since the University of Belgrade is the only university in the country that uses it.

Key Recommendations:

The following key recommendations provide guidance for the way forward:

- Monitor the effectiveness of the **investigation and prosecution of high-level corruption** by collecting, analysing and publishing data on the perpetrator's official position at the time of the offence, indictments, final convictions, sentences and recovered proceeds of corruption.
- Support universities in the endeavour to replicate the model of **Anti-Corruption Legal Clinics**, which aim to provide free general consultation to companies and citizens on corruption issues and which equip students with comprehensive knowledge and hands-on experience.

Implementing the key recommendations on prevention of corruption, the anti-corruption policy framework, business integrity and corporate liability as well as investigation and prosecution of corruption cases can also serve as a basis to enhance integrity and transparency in competition and in SOEs. These policy areas will be examined in the following two subchapters.

2. Competition Policy: Moving towards an Improved Business Environment

Why Competition Policies Matter

Competition has been recognised as a powerful driver of productivity growth and innovation. It gives businesses incentives to be more efficient and innovative, to lower their costs, to reduce their prices and to better respond to customers' needs. Furthermore, it motivates them to supply internationally competitive products and services and to upgrade in global value chains. Thus, a competitive economic environment helps raise economic growth and increase living standards, thereby also helping to reduce inequality. High levels of competition are especially important for transition economies like Serbia which can substantially benefit from the sophistication of products and services for the domestic market and for boosting their exports. Higher levels of competition can be achieved by implementing well-designed competition policies and by fostering integrity, since there is an inverse relationship between competition and corruption: low levels of competition and high levels of corruption are correlated (OECD, 2015[2]).

Findings of the OECD Competitiveness Outlook 2021 on Competition Policies

In general, the findings of the OECD Competitiveness Outlook 2021 show that the legal provisions in Serbia on anti-competitive agreements, abuse of dominance and merger review are broadly in line with international standards and EU agreements and have not undergone substantial changes compared to the assessment from 2018. However, there is still work to be done to fully bring the legislative framework in line with EU guidelines (European Commission, 2020[21]). Some discrepancies persist regarding efforts to improve cartel detection, bid rigging prevention, public procurement procedures and the promotion of competitive neutrality. The results of the OECD Competitiveness Outlook 2021 are elaborated in more detail in the sub-parts following this introduction.

The Role of Competition Policies in the Energy and Industry Sector

Competition policies are particularly vital in the energy and industry sectors. As capital-intensive sectors, these are generally characterised by higher market concentration, as also seen in Serbia, and may attract more anti-competitive behaviour to increase profit margins. Moreover, a general strong prevalence of SOEs in these sectors increases opportunities for a disruption of the level playing field, meaning that SOEs may benefit from unfair advantages, due to their ownership structure. Additionally, in energy and industry projects, public procurement plays a major role – a process that sometimes attracts manipulation and rent-seeking attempts. In Serbia, public procurement is the type of government expenditures most prone to corrupt practices (World Bank, 2020[45])

2.1. Scope of Action

The main body responsible for protecting competition, is the **Commission for Protection of Competition (CPC)**. It is an independent organisation established in 2005 that performs its duties under the **Law on Protection of Competition**, adopted in 2009 and amended in 2013. The CPC has the power to make enforcement decisions against anti-competitive practices, review mergers and

advocate competition principles vis-à-vis national policy makers. The government has no legal right to interfere with its decisions. The CPC is accountable for its work before the NA, to which it submits an annual report. Regarding enforcement capacity, the total number of the CPC's staff has been growing from 39 in 2015 to 50 in 2020. This figure is comparable to those of other OECD and non-OECD countries. The CPC's budget has increased over the years from EUR 2.7 million in 2015 to approximately EUR 4.4 million in 2019. Despite being high in comparison with neighbouring SEE economies, the budget is rather small if compared with foreign competition authorities. The provisions of the Law on Protection of Competition ensure **competitive neutrality**, insofar as they apply to all legal and natural persons that directly or indirectly perform economic activities in Serbia, regardless of their legal status, ownership, citizenship or state of origin.

Another vital aspect to the protection of competition is controlling **state aid** since this financial tool can distort the level playing field if it is not used with moderation or if only certain market players benefit from it. In October 2019, the Republic of Serbia introduced a new **Law on State Aid Control** and established an independent authority, the **Commission for State Aid Control (CSAC)**. The CSAC's mandate encompasses issuing opinions on the alignment of laws and regulations with the rules on state aid control, as well as raising awareness about the significance of state aid control.

The Law on Protection of Competition applies to all sectors of the economy and the CPC is entitled to enforce competition rules prescribed therein, regardless of existing regulatory bodies in subsectors. However, such regulatory bodies can constitute additional support in safeguarding or promoting competition. In the energy sector, the **Energy Agency of the Republic of Serbia (AERS)** is a regulatory body whose aim is to improve and guide the sustainable development of the electricity and natural gas markets based on non-discrimination and efficient competition principles. Its responsibilities include price regulation, licensing of energy entities to conduct energy activities, deciding appeals, energy market supervision and implementation of international agreements. The AERS reflects, in principle, international good practices. It is mostly in line with the EU's Third Energy Package, a series of directives and legislations proposed by the European Parliament that entered into force in 2009. It aims to establish a level-playing field for competitive energy markets to create a single, more liberalised EU gas and electricity market, and to enhance international co-operation and regional integration within the EU. Its transposition and implementation is an EU accession criteria. The AERS' independence is reflected by its reporting and oversight requirements. Moreover, the body's revenues are separated and independent in so far that it is financed through revenues arising from regulated activities, fees for issued energy licences and other revenues from the activities within its jurisdiction. However, there is a lack of human resources which prevents the AERS from fully assuming its role. Furthermore, its financial budget and internal structure are still subject to approval by the parliament which makes these issues likely to be politicised. Lastly, the AERS does not have the authority to impose fines. It can only initiate proceedings at the appropriate court, limiting its power to enforce market rules swiftly. Consequently, it cannot act as a credible market enforcer as it partly transfers this role to the judicial system which might slow down the enforcement process. Concerning procedural transparency, the AERS performs well as it publishes annual and financial reports on its website, providing comprehensive information and statistics on their duties, a register of approved licences, decisions on prices, as well as approved legal acts and decisions. Overall, according to the Annual Implementation Report of the Energy Community Secretariat, the performance of the AERS is rated 64% of 100% (Energy Community Secretariat, 2020[23]).

Both the **natural gas market and the electricity markets** are liberalised and price deregulation is in place. Free selection of suppliers and rules for switching suppliers also exist. The country is in the lead among the Western Balkan contracting parties of the Energy Community in the development of an electricity wholesale market (Energy Community Secretariat, 2020[23]). Trading takes place on the bilateral and on the organised day-head market. Regionally coordinated capacity allocation takes place on the interconnections with Bulgaria and Croatia only, while other interconnections are still

bilaterally allocated. The Serbian gas market remains entirely foreclosed based on breaches of EU rules (Energy Community Secretariat, 2020[23]). The wholesale market is monopolised by Srbijagas and Gazprom. A virtual trading point for gas exists in theory but is not operational. Overall, a wide range of the EU Network Codes, a set of technical rules enabling the development of an internal energy market in Europe that is sustainable, secure and competitive, has been fully or partially transposed, but the full transposition of all codes is not possible without amending the primary legislation – something that is currently being tackled. The full transposition of the Regulation of Wholesale Energy Market Integrity and Transparency (REMIT) is also still pending.

Regarding the industry sector, namely the transport sector, each transport mode has its own regulatory agency that is inter alia responsible for issues related to competition. The **Civil Aviation Directorate (CAD)** is Serbia's national supervisory authority for air transport and is adequately staffed to fulfil its obligations. The EU Airport Charges Directive, a legal act setting a common framework for the regulation of airport charges across the European Union, has been transposed into national legislation. The market is monitored regularly by the CAD as foreseen by the EU Air Service Regulation, which provides the economic framework for air transport on the granting and oversight of operating licences of Community air carriers, market access, airport registration and leasing, public service obligations, traffic distribution between airports, and pricing.

The **Directorate for Railways** is the regulatory body and safety authority for railway transport that supervises the implementation of legislation. It has an adequate level of resources. However, the amended Law on Railways (2020) has expanded its remit (now including cableways, passenger rights, licensing, market regulation, metro, etc.). Therefore, it is estimated that it will need additional staff and budget in the future. There are currently two state-owned operators and ten private operators, of which two are responsible for maintenance. This is the largest number of private operators in the region.

In the road sector, several regulatory entities exist. The **Ministry of Construction, Transport and Infrastructure** issues permits. The **Road Traffic Safety Agency** is responsible for activities that include preparing and publishing drafts of particular general enactments, regulating and stipulating legal relations of wider importance as well as passing of particular general enactments. In the context of road market regulation, good progress has been made on harmonising legislation with the Transport Community Treaty (TCT). Legislation on the transport of dangerous goods, training of professional drivers, certificates of professional competence, driver's qualification cards and working times of vehicle crew engaged in road transport and tachographs has been further aligned.

Serbia is also a member of the **Transport Community** which aims to align transport policies in the Western Balkans with EU standards. The TCT also contains guidelines on competition legislation that obliges the contracting parties to abolish policies that prevent, restrict or distort competition in the transport sector. Since the release of the OECD Competitiveness Outlook 2018 good progress has been made in harmonising regulation with the TCT and the acquis across all transport modes. Nevertheless, significant efforts remain to be undertaken for public procurement rules since a law exists that allows the government to suspend national public procurement legislation for infrastructure projects in circumstances deemed urgent. It allows the government to select a strategic partner which undermines fair competition.

Key Recommendations:

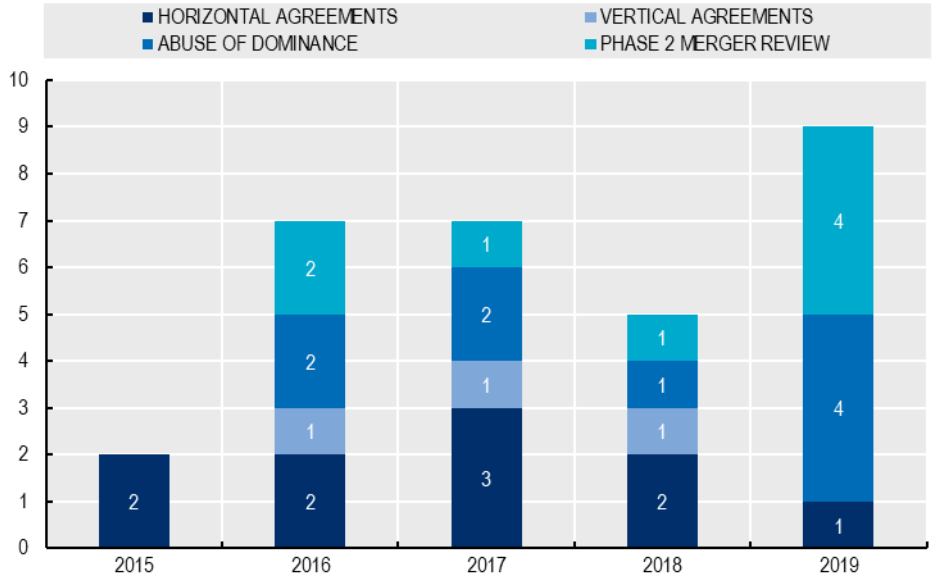
The following key recommendations provide guidance for the way forward:

- Strengthen the human resource **capacities of the AERS**, grant it more influence on its financial budget and internal structure, and foster its role as market enforcer by enabling it to impose sanctions.
- Foster the creation of an **organised market** or trading point for natural gas.
- Make the necessary amendments to the Energy Law to allow for the full transposition of the **EU Network Codes**. Fully transpose the REMIT.
- Advance efforts to improve **public procurement rules** in the transport sector to further meet the terms of the TCT.

2.2. Fight against Anti-Competitive Behaviour

The CPC has appropriate powers to investigate, sanction or remedy possible **antitrust infringements**. Serbia's record of competition enforcement is rather advanced among the Western Balkan Six. The findings of the OECD Competitiveness Outlook 2021 have shown that only Albania made more formal decisions than Serbia in the time frame of 2015-2019. However, there remains scope for improvement. According to the OECD Database on General Competition Statistics (OECD CompStats[10]), 15 small economies included in the database (comparable to Serbia), made on average 60 competition decisions during the period 2015-2019, while Serbia made 30 (see Figure 2).

Figure 2: Competition Decisions in Serbia (2015-2019)



Note: In 2019, the CPC took only one decision on anti-competitive horizontal agreements (cartels). In the previous four years, it had made nine cartel decisions in total, including a few cases of bid rigging in public procurement, a particular form of collusive price-fixing behaviour by which firms coordinate their bids. The CPC has significantly increased the number of decisions on abuse of dominance in 2019, by adopting an infringement decision and closing other three cases with commitments imposed on the parties. Before 2019, the CPC also tackled three cases of vertical agreements (in 2016, 2017 and 2018), related to resale price maintenance. The

[10] OECD CompStats is a database with general statistics about competition agencies, including data on enforcement and information on advocacy initiatives. It encompasses data from competition agencies in 56 jurisdictions, including 37 OECD countries (36 OECD countries and the European Union) (OECD, 2020[64]). The database currently covers the period 2015-19 and data will be collected annually in the future.

data for 2020 (not depicted) seem to show that the CPC is continuing its enforcement actions on anti-competitive agreements. It issued infringement decisions and imposed fines on the parties in four cases: one related to horizontal price fixing, one to bid rigging and two concerning resale price maintenance.
Source: Data provided by the CPC.

In 2009, the leniency provision was introduced into Serbian competition law, and in 2010, the CPC introduced a **leniency programme**, which ensures partial or total immunity from sanctions to firms that unveil the existence of a cartel and/or bring evidence to support a cartel investigation. The programme is consistent with international good practices and there are guidelines on how to apply it. However, the leniency programme has not been sufficiently effective yet: the CPC has received only one application in 2018, despite the active promotion of the initiative. This issue has been already highlighted in the OECD Competitiveness Outlook 2018. A possible explanation for its lack of effectiveness is that the fines are currently too low. The total amount of fines imposed on parties involved in anti-competitive infringements (agreements and abuse) reached a peak of EUR 3.8 million in 2018 but it then decreased to EUR 857 000 in 2019. OECD CompStats can help to place these figures in context. On average, the 15 competition authorities in smaller jurisdictions that participated in CompStats made decisions on 3.2 cartel cases per year in the period 2015-19, while the average fines levied on cartel infringers was EUR 2.7 million per year.

Thorough **merger control**, meaning the procedures used for reviewing corporate mergers and acquisitions, is vital to avoid anti-competitive consequences of concentrations, e.g. like monopolisation, less choice and higher prices for consumers. The Law on Protection of Competition provides for ex ante control of mergers, following the principles of the EU Merger Regulation. The CPC may compel merging firms and third parties to provide relevant information and may perform unannounced inspections on the premises of the parties. The assessment of notified mergers shall follow thorough scrutiny of the evidence, which includes an economic analysis of the restrictive effects and possible efficiencies stemming from the concentration. In case of significant restriction, distortion or prevention of competition in the relevant markets, the CPC may prohibit the transaction. Furthermore, the CPC may accept remedies proposed by the merging parties to address possible competition concerns and clear the merger. It can also issue conditional approvals, which require merging parties to implement specific conditions. The number of merger notifications has almost doubled in four years, from 107 in 2015 to 197 in 2019. However, a significant share of mergers notified to the CPC concern extra-territorial transactions. In the period 2015-2019, the CPC carried out eight in-depth (so called Phase II) merger investigations and two 'gun jumping' cases (meaning the failure to notify a merger to the competition authority or implementing all or part of a merger during the mandatory waiting period). None of the transactions were prohibited, but remedies were imposed for five of them between 2016 and 2019. Three additional Phase II merger reviews and two 'gun jumping' cases were also conducted in 2020.

Ensuring that **public procurement** is competitive, is a prerequisite to secure the best value for public money. The **Public Procurement Office** is the main institution responsible for public procurement. It provides interpretations and support for implementing public procurement rules, monitors the application of the Public Procurement Law, issues implementing regulations and disseminates information about public contracts. Serbia's legal and institutional public procurement frameworks are broadly aligned with EU standards (European Commission, 2020[21]). In July 2020, a new **Law on Public Procurement**, aiming to further align with the 2014 EU Directives, entered into force. It introduced obligatory e-procurement practices and provisions on applying the principles of equal treatment, non-discrimination, transparency and competition to international agreements. Nevertheless, a need for further harmonisation remains (European Commission, 2020[21]). For instance, in February 2020, a new law on special procedures for linear infrastructure projects was adopted. It allows the government to exempt linear infrastructure projects of "special importance for

the Republic of Serbia" from the application of public procurement rules. Thus, national public procurement legislation can be suspended for the entire duration or particular phases of a project and the government has the power to select a strategic partner in circumstances deemed as urgent (European Commission, 2020[21]). This undermines the added value and effective implementation of the new Law on Public Procurement by allowing the circumvention of national legislation as well as of EU rules and standards (European Commission, 2020[21]).

Regarding measures against anti-competitive behaviour in Serbia's energy sector, a great need exists especially within the natural gas sector regarding the implementation of **unbundling** and **third-party access**, which are key pillars of the EU's Third Energy Package for ensuring high levels of competition and avoiding discrimination (Energy Community Secretariat, 2020[46]). Unbundling is the separation of energy supply and generation from the operation of transmission networks. If a single company operates a transmission network and generates or sells energy at the same time, it may have an incentive to obstruct competitors' access to infrastructure (European Commission, 2019[47]). This prevents fair competition in the market and can lead to higher prices for consumers. Progress has been made in functional unbundling through the adoption of a new foundation act in January 2021, and the AERS has issued a licence to operate as a distribution system operator in April 2021. The Energy Community's affirmation is yet to be provided. Third-party access means that owners of natural monopoly infrastructure facilities have to give open and non-discriminatory access to other parties/competitors than their customers. The dominant market position of the two key players, Srbijagas and Gazprom, could constitute barriers to competition and market entry in case these two pillars remain insufficiently implemented.

In network sectors like the energy and industry sectors, the level of state participation in the form of **state aid** is high[11] (World Bank, 2019[48]). The OECD-World Bank Group Product Market Regulation database shows that active state participation in markets creates the most barriers to competition as it accounts for 60% of all restrictions in Serbia (World Bank, 2019[48]). In 2019, the country was the second highest subsidy provider in Europe (Bertelsmann Stiftung, 2020[49]). According to the annual report on state aid from 2017, which is the most recent version that is available to the public on the CSAC's website, state aid expenditures amounted to 2.2% of GDP (CSAC, 2019[50]). Calculations based on data from the Ministry of Finance made by the World Bank estimate the amount for 2018 at still above 2.0% of GDP (World Bank, 2020[51]). This is well above the limit of 1.0% of GDP which is recommended by the European Council as part of the Lisbon Strategy. SOEs receive about 60% of all corporate subsidies (World Bank, 2019[52]). In addition, information provided by the government seems to suggest that state entities do not settle their bills with the power sector in full and promptly, which is another form of subsidy. This is supported by Srbijagas writing off EUR 1.2 billion in debt in 2019. However, the extent of this is unclear at this stage. SOEs benefit disproportionately from state aid although they are on average significantly less productive, compared to similar companies in the same sector. According to a comparative analysis by the IMF, if Serbia's SOEs achieved private sector productivity levels, they could increase their output by nearly 14% (IMF, 2019[4]). In the industry sector, especially state-owned manufacturing firms are about 25% less productive than average private firms in this sector (World Bank, 2019[53]). Meanwhile, start-ups receive only 16% and SMEs 20% of subsidies although they encounter more risks and they generally find it more difficult to access credit (World Bank, 2019[52]).

Key Recommendations:

The following key recommendations provide guidance for the way forward:

[11] This applies especially to the transport sector which received a share of 4.7% of total state aid granted in 2017 (latest data available on the CSAC's website) (CSAC, 2019[50]).

- Increase **fines for anti-competitive behaviour** to ensure deterrence and to support the effectiveness of the **leniency programme**.
- Extend the co-operation with public procurement bodies to enhance **cartel detection** and to foster **bid rigging prevention** through better tender design by procurement officials (see Box 7). The OECD Guidelines on Fighting Bid Rigging in Public Procurement and the OECD Competition Assessment Toolkit provide valuable guidance on this issue. Raising awareness of these tools and implementing the OECD Recommendation on Bid Rigging in Public Procurement would help to improve public procurement procedures.
- Foster further alignment with the **2014 EU Directives on Public Procurement**, in particular by adopting amendments to the new law on special procedures for linear infrastructure projects.
- Complete the implementation of **unbundling** and **third-party access** in the energy sector.
- Monitor if **state aid** is granted in line with state aid control regulations, adjust levels if necessary and redirect resources to more productive use (e.g. to public investment or to firms that have the potential to generate more jobs and growth through innovation) if beneficial. Set up a comprehensive registry of state aid and ensure that all grantors report regularly to the CSAC.

Box 7: Preventing Bid Rigging through Awareness Raising Materials and Training Programmes for Public Procurement Officials in Poland

The OECD Recommendation on Fighting Bid Rigging in Public Procurement requests adherents to "ensure that officials responsible for public procurement at all levels of government are aware of signs, suspicious behaviour and unusual bidding patterns which may indicate collusion, so that these suspicious activities are better identified and investigated by the responsible public agencies". Therefore, the Office for Competition and Consumer Protection in Poland, UOKiK, has developed guidelines on bid rigging and a reporting form, which are targeted at procurement officials and contracting entities and draw on the OECD Guidelines. Both documents are available on UOKiK's website, along with additional public campaign materials, like films, videos, news articles and radio broadcasts. To reach out to procurement officials, the President of UOKiK, has established a network for competition grouping UOKiK, the Public Procurement Office, the Central Anti-Corruption Bureau, the Internal Security Agency, the Prosecution Services and the police. In the framework of this network UOKiK provides training on bid rigging for public officials, municipalities and other partners. It also reaches out to stakeholders at various conferences and other events.

In 2014, UOKiK participated in a conference on the practical aspects of public procurement organised by the Public Procurement Office where it presented its insights into bid rigging practices. It has also contributed significantly to legislative works leading to the amendment of the Public Procurement Law, as well as to the drafting of the upcoming guidelines of the Prime Minister regarding recognition, prevention and detection of threats to trade, especially bid rigging practices, detrimental to public interests like state safety or entrepreneurs' and consumers' interests.

UOKiK's actions reflect OECD good practices and build on particular strengths. Training materials are publicly available online which ensures easy access for everyone. Moreover, a variety of tools are offered so that the trainings can be tailored to the audience. Lastly, creating networks facilitates knowledge exchange between officials.

Source: (OECD, 2016[54]), *Fighting Bid Rigging in Public Procurement: Report on Implementing the OECD Recommendation*, www.oecd.org/daf/competition/Fighting-bid-rigging-in-public-procurement-report-2016.pdf.

2.3. Advocacy

Promoting compliance with competition principles through advocacy is an important precondition for developing a stable competition culture in the long term. The CPC has wide **advocacy powers**. It may monitor and analyse competition conditions in specific markets or sectors, issue opinions to the competent authorities on draft or existing regulations that affect competition and cooperate with state entities to improve the implementation of competition rules. Albeit public entities have no obligation, they often submit draft laws and regulations to the CPC to seek for its advice. The Department for Legal Affairs is the CPC's specialised unit in charge of **competition assessment**. In 2019, the CPC signed a Memorandum of Understanding with the Public Policy Secretariat to improve the competition assessment of legislation on the basis of the OECD's Competition Assessment Toolkit. Additionally, the CPC has performed a significant number of **market studies** from 2016 to 2020 which allowed it to gain a better understanding of competition in several sectors. For example, in 2020, the CPC finalised a sector inquiry into the international rail freight transport market. A sector inquiry into the intercity bus transportation market is still ongoing at the time of writing and is being implemented in cooperation with the World Bank Group under the Serbia Investment Climate Program.

The CPC also conducts **outreach activities** to promote cooperation with other public authorities, including public procurement officials. Since November 2016 the CPC is a member of a tripartite Cooperation Agreement signed with the APC and the Republic Commission for Protection of Rights in Public Procurement Procedures. Moreover, the CPC regularly organises awareness raising activities like trainings and seminars, disseminates educational materials through dedicated social media accounts, and publishes a weekly newsletter on competition news. The number of advocacy events organised by the CPC has grown steadily during the last five years. For instance, the CPC signed a Memorandum of Understanding with the AERS, the Regulatory Agency for Electronic Communications and Postal Services (RATEL) and the National Bank of Serbia (NBS). In 2020 and 2021, under the EU funded project ''Further Development of Protection of Competition in Serbia'', joint workshops have been held with the AERS, RATEL, the Directorate for Railways, the Ministry of Construction, Transport and Infrastructure, and CAD as well as workshops for the CSAC and the NBS. However, there is still room for advocating the concept of **competitive neutrality** more intensively to ensure that all enterprises face the same set of rules, irrespective of their ownership or nationality. Given the importance of SOEs in Serbia, the CPC can make a decisive contribution to promote competitive neutrality in cooperation with the CSAC.

Key Recommendations:

The following key recommendation provides guidance for the way forward:

- Advocate **competitive neutrality** more intensively to ensure that all enterprises face the same set of rules and that the government does not grant selective aid to SOEs (see Box 8). Provide training to the CPC's and CSAC's staff on this issue. The OECD Council Recommendation on Competitive Neutrality can provide further guidance.

Box 8: Measures for Ensuring Competitive Neutrality in the European Union

Countries that are members of the European Union or use the EU model for ensuring competitive neutrality often have a provision like Article 106 EC of the Treaty on the Functioning of the European Union (TFEU), setting the rules for entities that perform services of general economic interest or are granted special or exclusive rights. Broadly, Article 106 EC provides that the services performed by government entities or private entities on behalf of the government, should be subject to the

competition provisions of the TFEU – unless applying these rules obstructs the performance of the particular tasks assigned to them under the law.

In addition to Article 106 TFEU, the European rules on state aid and subsidies apply to all subsidies and forms of state aid that Member States or other public bodies provide to any company, public or private. They are particularly important in the context of public companies, given the specific relationship public bodies have with public companies. State aids does not only cover capital injections or grants, but also tax reductions or tax holidays, reductions in the social security costs and warranties. State aid is generally forbidden, though there are exceptions. The Member States are obliged to notify the Commission if they plan to grant state aid to any company. The Commission then scrutinises the planned measure and decides whether to authorise it. Another tool used by the Commission to achieve competitive neutrality between public and private firms is the Transparency Directive which concerns the financial relationships between public bodies and public companies. The Transparency Directive requires separate accountability. Public companies that have both commercial and non-commercial activities need to separate their accounts to demonstrate how their budget is divided between commercial and non-commercial activities.

There are two characteristics that especially contribute to the practicality of the EU's approach:

- Firstly, the principle of neutrality has been recognised under the EU Treaties for more than 50 years. Article 106 of the TFEU establishes that public companies fall under the scope of competition law, and that EU Member States are not entitled to do anything contrary to this rule. Public companies are also subject to rules on monopolisation and state aids.
- Secondly, a characteristic of the system is that the Treaty empowers the European Commission with the tools to tackle problems concerning the economic activities of public-sector companies. The Commission can require Member States to apply competition rules to public companies. And, if a public company infringes competition rules, the Commission itself can issue a decision against that company requiring it to stop the conduct and can impose fines. If the public company infringes competition law with the assistance of the government or due to governmental influence, the Commission can address a directive or a decision to the Member State, requiring it to stop these practices.

Source: (Capobianco and Christiansen, 2011[55]), *OECD Corporate Governance Working Papers No. 1, Competitive Neutrality and State-owned enterprises: Challenges and Policy Options*, http://dx.doi.org/10.1787/5kg9xfgjdhg6-en.

3. State-Owned Enterprises (SOEs): Ensuring a Level Playing Field

Why SOE Policies Matter

SOEs play an important role in the Serbian economy. The SOE landscape is larger than in most other economies in the Western Balkans and Central Eastern European region in terms of both employment and productivity (IMF, 2019[4]). According to the Ministry of Economy, the state-owned landscape counts 156 SOEs and 38 minority-owned companies. SOEs in Serbia employ almost 85 000 people, accounting for an estimated 2.9% of national employment[12]. To ensure that these SOEs operate for the common good and on an equal footing with private companies, well-designed ownership policies have to be in place. In sectors with a strong prevalence of SOEs, it is crucial to have sound transparency and accountability policies that ensure a level playing field. Such practices prevent SOEs from receiving

[12] Calculations based on data provided by Serbian authorities and the number of employed persons in Serbia (2 938 200) as reported in the national Labour Force Survey Quarter IV 2019 (SORS, 2019[62]).

favourable financial, regulatory and tax treatment. Unfair advantages granted only to SOEs but not to private companies create market distortions, lowers the level of competition and thereby decrease necessary innovation and productivity. Lastly, consistent policies for restructuring and privatising SOEs have to ensure that such major interventions are conducted in a transparent and structured manner.

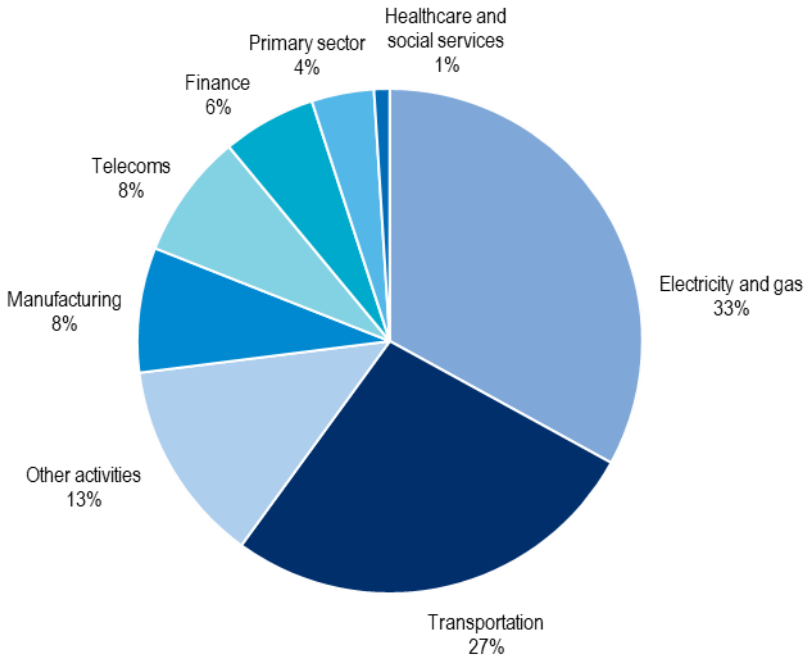
Findings of the OECD Competitiveness Outlook 2021 on SOE Policies

The findings of the OECD Competitiveness Outlook 2021 show that Serbia's main progress to the last assessment in 2018 is the adoption of a new state ownership strategy in 2021. If implemented successfully, it could contribute to more professional and centralised ownership practices, supported by improved SOE performance monitoring. The performance regarding the board nomination framework has been somewhat enhanced by introducing certain minimum qualification requirements for board members and directors and by clarifying their responsibilities and competencies. Nevertheless, there is still potential for improvement, for instance in increasing the independence and professionalism of boards and in further strengthening minority shareholder protection. It should be positively highlighted that auditing practices are well-established. The results of the OECD Competitiveness Outlook 2021 are elaborated in more detail in the sub-parts following this introduction.

The Role of SOE Policies in the Energy and Industry Sector

The majority of SOEs as measured by their employment share, are concentrated in the energy and industry sectors (e.g. 33% in electricity and gas, followed by 27% in transportation and 8% in manufacturing as depicted in Figure 3). SOEs generally have a strong presence in the energy and industry sectors since they require considerable administration due to their size and indispensability for the population[13] (IMF, 2019[4]). In Serbia, SOEs are either the sole or the main providers of essential public goods, infrastructure and services that are critical for social and economic development.

Figure 3: Sectoral Distribution of SOEs by Employment in Serbia



[13] See Box 1 and 2.

Note: There are two state-owned water supply and sewage enterprises that employ 29 people and are not included in the figure because of their very small employment share.
Source: Calculations based on information provided by Serbian authorities.

3.1. Efficiency and Performance through Improved Governance

At the time of writing, Serbia has not yet implemented a **state ownership policy**. Some elements of an ownership policy can currently be gleaned within the existing legal framework covering SOEs, in particular within the **Law on Public Enterprises**, adopted in 2016. The Law on Public Enterprises applies only to enterprises that perform public-interest activities. Therefore, it can be inferred that a rational for keeping enterprises under state ownership is the performance of public-interest activities ("activities of general interest" in national nomenclature). In contrast, the rationale for state ownership in other SOEs, namely the companies that are primarily engaged in commercial activities, has not been articulated. So far, the Government of Serbia has the ultimate responsibility to exercise ownership rights over SOEs which fall under the scope of the Law on Public Enterprises, including the right to appoint and to dismiss SOE board members. In some sectors, the respective line ministries also have other responsibilities (e.g. the determination of strategic goals). For instance, SOEs which produce and supply electricity and gas are overseen by the Ministry of Mining and Energy. However, the exercise of ownership rights is not clearly identified within the state administration. As of yet, there has been no coordinating body responsible for professionalising state ownership a whole-of-government basis. However, in April 2021 the Government of Serbia adopted the Strategy of State Ownership and Management of Economic Entities Owned by the Republic of Serbia from the Period of 2021 to 2027. The strategy, which was developed with the support of the European Bank for Reconstruction and Development (EBRD), envisages the establishment of a single, centralised management system for economic entities. It has been determined that the Ministry of Economy will perform a centralised ownership function, except in cases when obligations undertaken by international acts prevail. The Ministry of Economy will develop and establish an ownership policy that defines the justification and purpose of state ownership, state ownership goals, the role of the state in corporate governance and how the state will implement its ownership policy.

Serbia has professionalised its **SOE board nomination frameworks** by, for instance, introducing certain minimum qualification requirements such as education and work experience for board members and directors and by clarifying their responsibilities and competencies. Although Serbia has made significant efforts to improve the board nomination process, there is still a lack of substantive information to assess if the process is robust in practice. A risk of politicisation still cannot be ruled out since there is little evidence concerning the selection procedures for board members. The OECD Competitiveness Outlook 2018 also sheds light on the concern related to the presence of politically affiliated persons serving on boards in the region. Regarding the promotion of independent and professional boards, the Law on Public Enterprises requires that one member of every public enterprise board must be independent and that both the independent member and the company chief executive officer (CEO) cannot be a member of political party. However, this restriction does not apply to other board members, who can be politicians. The government appoints public enterprise CEOs, meaning that the board has no role in this process which weakens its corporate decision-making power. Normally, a corporate board responsible for monitoring the CEO's activities should also have the power to appoint and dismiss the CEO. In Serbia, the board of a public enterprise is only granted authority to "monitor the work of directors". Moreover, several board responsibilities require the consent of the government, as per the Law on Public Enterprises. Another shortcoming is, that requirements for board members do not apply to all SOEs, only to those under the scope of the Law on Public Enterprises.

Key Recommendations:

The following key recommendations provide guidance for the way forward:

- Implement the Strategy of State Ownership and Management of Economic Entities Owned by the Republic of Serbia, ensuring that the new **ownership policy** clearly stipulates in practice the rationales of state ownership, state ownership goals and the role of the state in corporate governance. Ensure that a single, centralised management system is established as planned to harmonise state ownership practices, ultimately leading to better performance and management of SOEs (see Box 9).
- Take steps to strengthen the transparency and professionalism of the **SOE board nomination process**. In line with OECD good practices, the board nomination process should be merit-based and fully transparent. It should result in boards with the requisite mix of experience, qualifications and independence to effectively oversee management decisions in the interest of corporate performance and value creation.

Box 9: Establishment of a Governance Coordination Centre for SOEs in Lithuania

Lithuania used to have primarily decentralised state ownership arrangements. In most of the country's SOEs, which are often line ministries also responsible for sectoral policy and/or regulation in the relevant markets exercise state ownership rights. However, this complicates the harmonisation of practices across the public administration. In contrast, a more centralised model would help improve monitoring and professionalising state ownership practices, ultimately leading to better performance and management of SOEs.

To address this challenge, Lithuania has taken significant steps to harmonise state ownership practices across the public administration through the development of SOE governance and disclosure standards and the establishment of a Governance Coordination Centre (GCC) tasked with monitoring and reporting to the public on their implementation. It notably produces a detailed annual report on SOEs. Its main tasks include the following:

- Preparing aggregate reports on SOEs, with information on their financial performance and efficiency.
- Supporting SOE goal setting, including by calculating return-on-equity targets and evaluating the content and implementation of strategic goals.
- Participating in SOE board nomination processes.
- Contributing to SOE policy formulation, including by making methodological recommendations and initiating legislative reforms.
- Advising and consulting with the government, responsible line ministries and SOEs on matters like SOE governance practices, ownership decisions and dividend pay-outs.

These reforms have led to significant achievements like the creation of an evaluation tool by the GCC – the SOE Good Corporate Governance Index – that facilitates the evaluation of the quality of SOE governance based on the Guidelines on Corporate Governance of SOEs developed by the OECD. An evaluation carried out by the GCC shows that the overall quality of the strategic planning of Lithuanian SOEs is improving. In addition, the transfer of the GCC to a public institution, together with the doubling of its operational budget, have further strengthened its capacity to monitor and help enforce the state's governance and disclosure standards. Accordingly, the OECD has recognised these changes as "significant progress" in the report *Corporate Governance in Lithuania*.

A number of requirements have proven key for these improvements to materialise. For instance, the responsibilities of the GCC had to be sufficiently broad and include a variety of tasks that are

essential for the co-ordination of SOEs. Furthermore, the centralisation of these tasks in one body ensured the standardisation of processes, higher efficiency and greater clarity of responsibilities.

Source: (OECD, 2018[56]), *Corporate Governance in Lithuania,* https://doi.org/10.1787/9789264302617-en. See also the website of the Lithuania Governance Co-ordination Centre: https://governance.lt/en/.

3.2. Transparency and Accountability Practices

Financial and non-financial reporting of SOEs are important transparency and accountability practices that give stakeholders an accurate depiction of SOEs' performance, operations, liquidity and use of finances. Serbia's legislative provisions establish multiple financial and other reporting requirements for SOEs, e.g. to publish audited financial statements and business plans on their websites. By law, public enterprises are required to submit annual reports and financial statements to the Business Register Agency, which make them publicly available. They have the legal obligation to submit quarterly reports on their realisation of the annual and triennial business programmes to the Ministry of Economy which are later published on their website. They are also required to report according to internationally recognised standards such as the International Financial Reporting Standards. Although the Law on Public Enterprises does not stipulate the obligation to publish sustainability reports, some enterprises do it on their website within the framework of an internal act. However, aggregate reports on the activities and performance of SOEs are not yet publicly available although making it public could be a good way to incentivise improvements by state ownership ministries and SOEs.

Auditing, the examination of financial reports, increases the credibility of financial statements and gives the shareholders confidence that the accounts are true. Sound basic legislation to ensure high quality auditing practices among SOEs are established. Audits of SOEs' financial statements are conducted by independent external providers. SOEs that have the status of "public-interest entities" are required to establish an audit committee, as per the **Law on Audit**. This includes all SOEs that operate under the scope of the Law on Public Enterprises. In all SOEs that are considered "large" in accordance with criteria set forth in the Law on Accounting, audit committees must be chaired by an independent member and must include an audit professional or person with experience in the financial sector. The role of the audit committee is, among other things, to propose and control the implementation of accounting policies and standards in the preparation of financial reports, to assess the content of these reports and propose candidates for auditors. SOEs are also obliged to establish internal audit and financial management control units.

Increasing awareness of **transparency and accountability guidance tools** is an important contribution towards developing good practices in this regard. Stakeholder interviews with the members of the Project's collective action community indicate, that there is substantial room for improvement of the understanding and implementation of the OECD Guidelines on Anti-Corruption and Integrity in SOEs and the OECD Recommendation on Bid Rigging in Public Procurement. However, no specific training for compliance officers and specialists for anti-competitive practices in the new digital age is offered yet.

Key Recommendations:

The following key recommendations provide guidance for the way forward:

- Improve **SOE monitoring and disclosure practices**, including by using the information that the Ministry of Economy collects to produce a publicly available aggregate report on the

activities and performance of SOEs (see Box 10). This issue has already been brought up in the OECD Competitiveness Outlook 2018.

- Establish **peer-to-peer trainings** among compliance officers about tools that can provide guidance on creating transparency and accountability practices for SOEs. Provide tailored learning materials on topics such as whistle-blower protection and public procurement, and raise awareness of the new OECD Guidelines on Anti-Corruption and Integrity in SOEs and the Recommendation on Bid Rigging in Public Procurement.

Box 10: Aggregate Disclosure in Lithuania

Since 2010, the Lithuanian authorities have published an annual report on the characteristics, operations and performance of the SOE portfolio. The report is produced by a central co-ordinating body, the Governance Co-ordination Centre, which is tasked with monitoring and reporting on SOEs' compliance with the state's policies and guidelines bearing on corporate governance and transparency. The report is available online and is notably produced in both Lithuanian and English. Among the main elements included in the report are the following:

State ownership policy. The report gives an overview of the Lithuanian state's ownership policy and disclosure requirements for SOEs, enshrined in two policy documents, Ownership Guidelines and Transparency Guidelines. It also references the key legal acts bearing on SOEs' operations. It furthermore communicates the state's overarching objectives for SOEs, based on sorting enterprises into three categories according to whether they are primarily commercially oriented, primarily public service oriented or a mixture of both.

Corporate governance index. The corporate governance index rates all SOEs according to the quality of their corporate governance in three dimensions: transparency, boards of directors, and strategic planning and implementation. This section of the report is also used to highlight significant recent developments or issues of concern, such as major changes in the functioning or composition of SOE boards of directors.

SOE executive remuneration. This section reports on the average remuneration of high-level SOE executives by sector and by corporate form.

SOEs' non-commercial objectives. This section reports on the costs associated with SOEs' non-commercial objectives ("special obligations" in national nomenclature), as well as their related funding arrangements. It provides a breakdown by individual enterprise, including any losses incurred for funding non-commercial objectives. The related information is requested annually from line ministries by a central co-ordinating agency.

Value and performance of SOEs. This section provides an overview of the value of SOEs, their annual aggregate financial performance and their contributions to national employment, all broken down by sector. It also reports on SOEs' rates of return and highlights significant related evolutions since the preceding year.

Reporting on individual SOEs. This section provides detailed reporting on recent financial and corporate governance developments in Lithuania's largest SOEs. It also provides information on their board composition, identifying which board members represent ministries and which are considered independent.

Lithuania's aggregate disclosure is comparatively on a high international level and is regarded as significant progress in the country's SOE reform. Its strengths lie in the following components: it is

comprehensive (e.g. by also including reports about non-financial performance of SOEs) and detailed since it is produced by a central co-ordinating body; and it is easily accessible to both the Lithuanian and international public.

Source: (OECD, 2015[57]), *Review of the Corporate Governance of State-Owned Enterprises: Lithuania*, www.oecd.org/daf/ca/Lithuania_SOE_Review.pdf.

3.3. Ensuring a Level Playing Field

Basic elements are in place to ensure that **SOEs' legal and regulatory treatment** is broadly in line with that of private companies – notably the fact that a large proportion of SOEs are subject to the **Company Law** and that SOEs is generally not formally exempt from market regulations (e.g. competition rules) which are both aspects that also apply to private companies. However, the existence of a subset of SOEs incorporated under the separate legal form of "public enterprise" gives rise to concerns about operational differences that may arise owing to their different legal treatment. A commonly occurring example is that some SOEs are exempt from bankruptcy procedures, removing a key incentive to undertake corporate improvements to avoid liquidation. In some sectors, for instance in the energy sector, independent regulators have been established, thus mitigating the problematic mixing of objectives that can arise when the state bodies responsible for ownership are also responsible for sectoral regulation or policies. Nevertheless, this is only the case for some sectors and since line ministries still play a role in the operational activities of SOEs while also being responsible for sectoral policy, a full separation of ownership and regulatory functions has not been ensured yet. The steps taken to centralise the monitoring of SOEs and to place some ownership responsibilities under the Ministry of Economy should contribute to a greater separation of functions, but since line ministries still reportedly play an important role in SOE operational decision-making, the separation is not complete.

In terms of **access to finance**, most SOEs obtain some financing on the marketplace, but not on market consistent terms owing, e.g. to explicit or implicit state guarantees. Serbia has committed to reducing the extent of state guarantees to SOEs and improving transparency surrounding them, mainly in the context of commitments made to the IMF (U.S. Department of State, 2018[58]). As an EU candidate country, Serbia is expected to comply with EU rules on competition, which include state-aid rules intended to ensure that state equity financing is provided on market-consistent terms and does not distort competition. Serbia has implemented the EU state aid regulations and its law is largely aligned with the EU acquis, however, there are still implementation gaps that are discussed further below. Explicit state guarantees on SOEs' commercial debt are allowed, although recently the government has limited them to situations where the SOE is making capital investments; guarantees cannot be given for loans simply to finance ongoing operations. As shown in the previous subchapter on competition, SOEs generally benefit from preferential financing and/or leniency over payments to the government or other SOEs, distorting the level playing field and leading to an inefficient allocation of resources. Examples highlighted in external assessments include direct state subsidies to state-owned railways and coal mines, explicit state guarantees on bank loans, tax arrears, and unpaid debts to the state-owned electricity company. Local governments are the largest source of subsidies to SOEs. They are mostly provided to public transportation and water companies – reflecting at times insufficient user fee collection and, sometimes, low prices for services (IMF, 2019[4]). The largest beneficiary of direct central government subsidies is railway transport. Subsidies to Serbian companies undergoing privatisation have fallen significantly over the last ten years, as some of the most heavily supported companies have been either sold or bankrupted (IMF, 2019[4]). In a few cases, the government takes on SOEs' debts even when no guarantee is issued, for example in the energy sector and air transport (IMF, 2019[4]). Overall, there is room to improve the scope and quality of the data collected that allows for providing a transparent, public depiction of granted state aid and for systematic and rigorous

impact evaluations of state aid programmes. For instance, annual reports on state aid granted in Serbia are only available up until 2017 on the CSAC's website.

It is important to take into account that the rules and standards on **state aid** diverge from the norm since the beginning of the COVID-19 pandemic when economic emergency and recovery frameworks were introduced. Due to the **COVID-19 outbreak**, the CSAC started to allow, as of March 2020, the granting of aid as part of recovery measures, in accordance with the national state aid law and Article 107(3) (b)[14] in the Treaty on the Functioning of the European Union (TFEU) (European Commission, 2020[21]). Within the temporary framework for state aid measures, the government adopted two decrees in April 2020, earmarking budget funds for direct cash subsidies to the private sector (EUR 831.6 million), adopting the financial programme of favourable loans delivered through the Development Fund (EUR 200 million), state guarantee scheme for loans through commercial banks (EUR 2 billion), direct cash subsidies to the agriculture sector (EUR 9.8 million) and favourable loans to the agriculture sector (EUR 12.4 million) (European Commission, 2020[21]). Additional financial aid in form of support schemes was provided for the tourism and transport sectors. Two of the most important schemes were directed towards the state airline operator AirSerbia and the energy utility EPS. They both suffered particularly from the consequences of the pandemic and are considered to be pillars of Serbian economy. Fiscal aid to these companies amounted to 0.4% to 0.5% of GDP in 2020 (Fiscal Council of the Republic of Serbia, 2020[59]). During such an exceptional period, it is particularly important to ensure that allocation of state funds is conducted in a non-discriminatory and transparent way.

Key Recommendations:

The following key recommendations provide guidance for the way forward:

- Streamline **SOEs' legal status** and eliminate any significant legislative differences that could distort fair competition to optimise SOEs' position in the marketplace. Good practice calls for SOEs engaged in economic activities to be incorporated under the same legal form as privately owned companies.
- Fill gaps regarding the implementation of EU based **state-aid** regulations on access to finance for SOEs and conduct an analysis of gaps in state aid regulation. Ensure monitoring, tracking and impact evaluation of grants of state aid (e.g. through comprehensive registries).

3.4. Reforming and Privatising State-Owned Enterprises

Reforming and privatising SOEs are major interventions that require a smooth organisation to be conducted successfully. The government is in the **process of restructuring SOEs**, although at a slow pace. Restructuring of large SOEs, particularly in the sectors of mining, energy and transport, is supported by the International Monetary Fund (IMF), the World Bank and the EBRD. Among these SOEs are Železnice Srbije (Serbian Railways), PE Srbijagas (Public Enterprise for activities of transport, distribution and trade of natural gas), PE Elektrprivreda Srbije (Public Enterprise for Electric Power Industry) and PE Putevi Srbije (Public Enterprise for State Roads). The restructuring programmes include measures for improving the financial position (e.g. debt restructuring) as well as the organisational and management structures of the enterprises. In 2016, amendments to the Law on Public Enterprises were made aiming to strengthen the **professionalism of SOE management**, e.g.

[14] TFEU, Article 107(3) (b): "The following may be considered to be compatible with the internal market: aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State".

requiring directors to be appointed through public procedures. However, external assessments point to shortcomings in the implementation of the amendments. For instance, there were several cases where "acting directors" were still in place past the deadline for appointing directors according to the new procedures. One of the most recent major breaches of rule took place in the energy sector: Milorad Grčić was appointed director of electricity provider EPS in 2016 but remained in office although his term had expired after one year (Balkan Green Energy News, 2022[60]). Following five outages and fires in EPS that took place from December 2021 to January 2022 he had to resign from his post. It was also found that he had not fully met the requirements of having at least five years of relevant experience when he was initially appointed. The combined costs of emergency power imports and repairs of the damages are estimated at several EUR 100 million.

The **process of privatising SOEs** in Serbia is regulated by the **Law on Privatisation** which was adopted in 2014. The process is conducted by the Ministry of Economy. The legal framework defines three privatisation models by equity sale, assets sale and strategic partnership. Foreign investors are engaged in the privatisation process as they can submit bids, participate in auctions and purchase company shares. More than 310 enterprises, most with zero or a small number of employees, went into bankruptcy from 2014 until 2020. Other companies were privatised and non-EU investors acquired some of the largest firms in mining, metallurgy and agriculture (European Commission, 2019[61]).

Key Recommendations:

The following key recommendation provides guidance for the way forward:

- Implement fully the amendments of the Law on Public Enterprises by closely monitoring the compliance to deadlines to further **professionalise SOE management**.

Conclusion

This country profile provides an updated picture of the framework, challenges, achievements and recommendations regarding anti-corruption, competition and SOE policies in Serbia with a focus on the energy and industry sectors. The key recommendations provided for each policy issue are based on the extensive research and analysis of the OECD Competitiveness Outlook 2021, several other OECD publications and tools, as well as input from external experts and stakeholders.

Overall, well-developed legal frameworks and policies to tackle corruption are in place in several key areas. The implementation of the new Law on Prevention of Corruption is expected to bring improvements in areas such as corruption proofing of legislation and management of conflicts of interest. Nevertheless, some key challenges remain to be addressed. For instance, the protection of whistle-blowers has encountered difficulties due to reasons such as insufficient awareness and understanding of the law as well as limited practical support. Having ombudsmen in businesses who receive complaints about corruption-related matters is not a common practice yet either. In some areas, there is still not enough data collection and publication yet to determine the enforcement and effectiveness of existing policies and frameworks, e.g. of the corporate liability framework for combatting corruption and of the investigation and prosecution of high-level corruption. There is still significant potential for the inclusion of civil society and academia in the design of anti-corruption policies.

Regarding competition policies, the CPC has been performing positively over the last few years. Nonetheless, an increase in the number of infringement decisions and of fines against anti-

competitive behaviour would further strengthen its reputation, thus fostering deterrence and competition compliance, leading to better functioning of the leniency program, enhanced cartel detection and bid rigging prevention. The new Law on Public Procurement introduced important aspects to further align the legal framework on public procurement with the 2014 EU Directives. However, the economic challenges brought about by the COVID-19 pandemic may suggest focusing the advocacy efforts of the CPC on the promotion of competitive neutrality, with a view to expanding the role that the authority can play to contribute to a quick economic recovery of the national economy.

Looking at SOE polices, the adoption of a centralised strategy for state ownership and management of SOEs is an important step that could result in significant improvements. Its implementation should be further observed in the future, also regarding the streamlining of SOE's legal status. To ensure that SOEs operate efficiently and transparently, there remains a need to further minimise the risk of politicisation of SOE boards and to increase the transparency and professionalism of the board nomination process. While auditing practices are well-established, there is room for improving SOE monitoring and disclosure practices and making the information publicly available. Lastly, the new Law on State Aid Control has brought about positive changes, like the establishment of an independent authority for state aid control. Notwithstanding this improvement, gaps remain in monitoring, tracking and evaluating the impact of granted state aid – despite being crucial steps to guarantee that financial support is allocated fairly and used efficiently.

When taking into account the key recommendations made in this country profile, Serbia should pay particular attention to the energy and industry sectors. Due to their indispensability for public service delivery and their major contributions to GDP and employment, having well-designed policy frameworks for anti-corruption, competition and SOEs in place in these sectors is vital for the social and economic development. To increase transparency and competitiveness in the energy and industry sectors, emphasis should be put on ensuring transparent public procurement procedures, further decreasing regulatory barriers that reduce competition, monitoring the distribution of state-aid and professionalising SOE management.

In essence, the present country profile provides a guidepost for reforms that authorities can use to enhance their policy efforts in the policy areas of anti-corruption, competition and SOEs. It has to be reiterated that these policy areas are often interconnected so that reforms in one of them might influence processes in the others. Implementing the policy recommendations made in this country profile equips the authorities with additional and improved tools to fight corruption and to create fair market conditions. Eventually, this will help Serbia to establish a level playing field and to increase its competitiveness and economic growth.

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