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Joint Report

Rule of law and anti-corruption in the EU and negotiations with Serbia: state of affairs, challenges and recommendations

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1. Introduction

This report provides an overview of key policy issues, mechanisms, challenges and recommendations for enhancing the rule of law and the fight against corruption as part of the accession negotiations between the EU and Serbia, in the broader context of EU enlargement policy and its internal mechanisms for ensuring compliance with the rule of law and the fight against corruption. It is divided into three parts: (1) rule of law and anti-corruption in EU policies; (2) rule of law and anti-corruption in the EU-Serbia negotiations; (3) conclusions and recommendations.

The report is the result of a collaborative effort between the expert, Filip Hamro-Drotz, former EESC member from Finland and co-rapporteur on corruption in the EU,¹ Marina Škrabalo, EESC member from Croatia and rapporteur on the transparency and inclusiveness of accession negotiations,² and Sonja Stojanović Gajić, member of the EU-Serbia JCC representing Serbian civil society organisations, with expertise in the prEUgovor civil society coalition's³ monitoring of negotiations pertaining to Chapters 23 and 24. The report served as the basis for discussion and for the formulation of recommendations to the EU institutions at the second JCC meeting held on 4 February 2016 in Brussels, devoted to the topic of the judiciary and fundamental rights and focusing on the rule of law and the fight against corruption.

¹ EESC opinion on "Fighting corruption in the EU: meeting business and civil society concerns", CCMI/132, adopted on 16 September 2015, <http://www.eesc.europa.eu/?i=portal.en.ccmi-opinions.34276>

² EESC opinion on "Enhancing the transparency and inclusiveness of the EU accession process", REX/401, adopted on 10 July 2014, <http://www.eesc.europa.eu/?i=portal.en.rex-opinions.30766>

³ Information on the prEUgovor coalition available at <http://www.bezbednost.org/Networks/5260/prEUgovor.shtml>

2. Rule of law and anti-corruption in the EU

2.1. Upholding the rule of law

The concept of the rule of law in the EU should be understood as a “meta-rule”⁴ directing all institutional and social actors to fully respect democratically defined laws and other norms, enabling the democratic functioning of all state institutions, and allowing all citizens to enjoy the full exercise of human rights and protection from arbitrary use of power. In a nutshell, the rule of law is "about how power is constrained, in all its forms, to ensure that citizens are truly free from its arbitrary use".⁵ Sustained practice of the rule of law takes place at legal, institutional, political and social levels, requiring widespread political and social commitment.

According to **Article 2 TEU** the rule of law is one of the fundamental values within the EU: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights...". The rule of law means that every action taken by the EU is founded on treaties approved voluntarily and democratically by all EU Member States.

The right of citizens to live in circumstances free from corruption is generally considered to be part of the rule of law. **Articles 258-260 TFEU** grant the Commission infringement power and it may initiate an infringement action against a Member State which has failed to comply with its EU obligations, while **Article 7 TEU** gives the Council the power to sanction any Member State found guilty of a serious and persistent breach of EU values. Appropriate preventive sanctions may be taken.

In March 2014, the European Commission introduced a new "**pre-Article 7 TEU procedure**" with the intention of limiting the weakness in existing infringement procedures and Article 7. The new framework represents an "early warning tool whose primary aim is to enable the Commission to enter into a structured dialogue with the Member State concerned to prevent the escalation of systemic threats to the rule of law. This procedure is supposed to precede the eventual triggering of . . . Article 7 TEU".⁶ The procedure includes three stages: (1) the Commission's assessment and rule of law opinion, based on an alert about a systemic threat to the rule of law; (2) the Commission's public recommendation and regular contact with the Member State concerned; (3) follow-up, including monitoring of the implementation of the recommendation.

The new "**pre-Article 7 TEU procedure**" is seen as an important step forward in the EU's efforts to avoid backsliding in Member States in terms of their compliance with the EU rule of law. An increasing number of potential cases in past years have caused the procedure to be started. Its effectiveness is, however, in question, and improvements at all stages of the procedure have been

⁴ Nicolaidis, K. and R. Kleinfeld (2012), "Rethinking Europe's « Rule of Law » and Enlargement Agenda: The Fundamental Dilemma", SIGMA Papers, No. 49, <http://dx.doi.org/10.1787/5k4c42jmn5zp-en>, p. 26.

⁵ Nicolaidis, K. and R. Kleinfeld (2012), "Rethinking Europe's « Rule of Law » and Enlargement Agenda: The Fundamental Dilemma", SIGMA Papers, No. 49, <http://dx.doi.org/10.1787/5k4c42jmn5zp-en>, p. 35.

⁶ EUI working paper RSCAS 2015/24.

proposed. However, the Council seems to be reluctant to establish a more stringent procedure. On 13 January 2016, the Commission opened its first assessment, directed at Poland due to its recent decisions to control the media.⁷

2.2. Fighting corruption

The EESC understands corruption as "**any abuse of power for private gain**", and it is globally widespread, including in the EU. The European Commission estimates that corruption costs approximately EUR 120 billion per year in the EU, representing one percent of the EU's GDP. There is significant variation in corruption between the Member States, but in many of them corruption still penetrates all layers of public and private life, with particular concern being expressed both by EU citizens and the business sector: three quarters of EU citizens think that corruption is widespread, more than half of Europeans think that the level of corruption has increased over the past three years, and about half of EU companies think that corruption poses a problem to doing business, especially with regard to public procurement.

Corruption is perceived to be a major transnational problem across the EU. It damages the licit economy (fair trade, investments, competition) and is often connected with the informal economy and with organised crime; 3600 organised crime groups and networks have been identified as currently operating within EU borders, infiltrating all aspects of the economy and political life. As regards the EU's financial interests, in 2013 there were 16 000 reports of irregularities in the use of EU funds (EU taxpayers' money). Since 2009, the number of reported irregularities has increased by 22%, and in value by 48%; falsification of documents was the main source for this behaviour, which is often linked to corruption.⁸

EU Member States have their own anti-corruption legislation and they are party to a number of international anti-corruption treaties and conventions, including monitoring mechanisms, among which the most important are the United Nations Convention against Corruption (UNCAC), the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; the OECD Working Group on Bribery, the Council of Europe and GRECO Criminal Law Convention on Corruption (1999), the Civil Law Convention on Corruption, the Twenty Guiding Principles for the Fight against Corruption, and IMF, World Bank and international credit institutes' conditions as regards bribery.

Over the years, the EU has adopted its own legal instruments and measures to combat and prevent corruption, among which the most important are:

- Article 83(1) TFEU which provides a mandate for the EU to address serious crime with a European or cross-border dimension;
- Article 86 TFEU which provides a mandate to establish a European Public Prosecutor's Office (EPPO);

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European Commission Fact Sheet, 13 January 2016, http://europa.eu/rapid/press-release_MEMO-16-62_en.htm.

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EESC opinion on "Fighting corruption in the EU: meeting business and civil society concerns", CCMI/132, adopted on 16 September 2015, <http://www.eesc.europa.eu/?i=portal.en.ccmi-opinions.34276>.

- the Charter of Fundamental Rights, which has become binding;
- the 1997 Convention on the fight against corruption involving officials of the EU and EU Member States;
- Council Framework Decision (2003/568/JHA) on combating corruption in the private sector;
- the EU is also a signatory of the UNCAC.

In addition, the EU has adopted **numerous directives, communications and framework decisions which address matters related to the fight against corruption and fraud**, tax fraud and tax evasion, money laundering, corporate social responsibility, reporting on non-financial transactions, corporate governance, public procurement and auditing. The EU has also introduced anti-corruption and anti-fraud provisions in its funding programmes, both internal and external (including cohesion, regional, enlargement, neighbourhood and development policies). Since 2011, the EU has implemented, based on **Article 325 TFEU**, a comprehensive anti-fraud strategy – CAFS – to improve the entire anti-fraud cycle, including sectoral strategies. The European Parliament has recommended several actions against corruption, such as the action plan for 2014-2019 to tackle organised crime, corruption and money laundering.

In 2011, the European Commission took an important step to address and tackle corruption in Europe by adopting a comprehensive anti-corruption package including an EU anti-corruption reporting mechanism. In 2014, the first EU Anti-Corruption Report (COM(2014)38) was published. It aims to launch a wide stakeholder debate, including civil society, to support anti-corruption efforts and to identify ways in which European institutions can help the Member States to tackle corruption.

Key outstanding issues with regard to the protection of the rule of law and the fight against corruption in the EU, discussed in detail in the EESC opinion on corruption from December 2015, relate to the **lack of transparency in Member States** regarding corrupt practices; Member States' **insufficient measures to tackle corruption** or to enact, implement and enforce provisions of international and European anti-corruption instruments; and **widespread corruption and fraud in spending EU taxpayers' money**, especially EU funds.

2.3. Rule of law and anti-corruption in the enlargement process

Candidate countries' lack of institutional capacities to protect and guarantee the rule of law and to fight corruption effectively has been recognised as a major impediment to the enlargement process. Ever since the entry of Bulgaria and Romania into the EU, these issues have been at the very top of the political agenda of enlargement policy. As highlighted by the EESC, a weak rule of law and corrupt practices not only negatively affect the business and investment climate, but also directly affect citizens due to public services such as the judiciary, education and health services.

Stronger focus on these issues has been reflected in the continuous monitoring of compliance with **the first Copenhagen criterion**, set as the key condition for launching negotiations, which demands "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities". In addition, in 2005, the broad policy area of justice and home affairs was reorganised into two closely related negotiating chapters – **Chapter 23 (judiciary and fundamental**

rights) and Chapter 24 (justice, freedom and security) – to give more prominence to strengthening the rule of law. Moreover, the **new system of benchmarks** extended the scope of negotiations well beyond legal harmonisation to encompass administrative and budgetary actions, as well as the role of civil society and the media, critical for sustained implementation of EU rules and fostering a "rule of law culture".⁹

In its public communications on the fundamentals of the enlargement policy, the Commission highlights that aspiring countries must ensure: an independent, impartial, accessible and efficient judiciary; effective actions to fight against corruption reflected in both the stance of political leaders and institutional action; accountability of public officials and democratic institutions; transparent, fair and efficient legislative processes; and respect for fundamental rights and freedoms, as guaranteed by the *acquis* and by [the European Convention on Human Rights](#). As key benefits of the rule of law, the Commission recognises protection from crime, violence and discrimination, enjoyed by all segments of society: citizens, businesses, state institutions and vulnerable groups in particular, including victims of crime, minorities and persons fleeing persecution or serious harm in their own country and therefore in need of international protection.¹⁰

Based on lessons learned from Croatia, and negotiations with Montenegro and later with Serbia, **Chapter 23 has been repositioned as the key determinant of the entire negotiation process**, which – together with Chapter 24 (justice, freedom and security), covering other highly relevant issues for the rule of law – is opened first and remains under scrutiny until all other chapters have been closed. This critical innovation has been strongly endorsed by the EESC as a valuable tool that will help the negotiating countries to make necessary and sustainable efforts to strengthen the rule of law, recognised as a key challenge for most of the countries involved in the enlargement process, in particular in terms of improving the functioning and independence of the judiciary and in fighting corruption and organised crime.¹¹ In that context, the EESC considers the creation of an environment that fosters an independent and effective role for civil society, the media and social partners to be instrumental for the exercise of fundamental rights and freedoms, fighting corruption and holding political actors and institutions accountable.

3. Rule of law and anti-corruption in EU – Serbia negotiations

The EESC welcomes the fact that Chapters 32 and 35 were opened at the intergovernmental conference (IGC) in Brussels on 14 December; welcomes Serbia's preparations to effectively start accession negotiations with the conclusion of the screening process and the preparation of comprehensive action plans for Chapters 23 (judiciary and fundamental rights) and 24 (justice, freedom and security). It hopes that Chapters 23 and 24 can be opened early in 2016 and stresses that

⁹ Nicolaidis, K. and R. Kleinfeld (2012), "Rethinking Europe's « Rule of Law » and Enlargement Agenda: The Fundamental Dilemma", SIGMA Papers, No. 49, <http://dx.doi.org/10.1787/5k4c42jmn5zp-en>, p. 31.

¹⁰ http://ec.europa.eu/enlargement/policy/policy-highlights/rule-of-law/index_en.htm

¹¹ EESC Declaration of the 5th Civil Society Forum, adopted in Belgrade on 3 June 2015, <http://www.eesc.europa.eu/?i=portal.en.events-and-activities-5th-western-balkans-civil-society-forum-df.35978>

thorough negotiations on Chapters 23 and 24 are essential to address the reforms that have to be carried out and implemented in the areas of the judiciary and fundamental rights, and justice, freedom and security.

3.1. Democracy and the rule of law

The legislation and institutions needed to uphold international human rights law and democratic standards are in place. However, sustained efforts are needed to ensure they are effectively and consistently implemented across the country. Shortcomings particularly affect **freedom of expression, freedom of assembly, the right to health and a healthy environment, the right to legal protection and property rights of citizens concerned by major infrastructure projects, representation of labour interests and involvement of civil society in policy development**, especially in their watchdog role, which are also key factors for effectively preventing corruption and securing the rule of law.

Conditions for the full exercise of **freedom of expression** are still not in place and they hamper the media, which acts as a channel for checks and balances. A legislative package aimed at improving the situation in the media and clarifying the legal framework, particularly in relation to state financing and control of the media, has been adopted. However, **threats and violence against journalists remain worrying**, especially in relation to investigative journalists and their associations, such as KRIK, BIRN and CINS, investigating corruption and organised crime.¹² While criminal charges have been filed, final convictions are still rare. There are cases of prolonged police protection of several journalists, with no tangible action taken to remove the reasons for these security measures, which seriously hampers the exercise of the profession of journalism. There has been no progress in investigating a series of actions against websites that occurred in 2014. Efforts to identify and prosecute those suspected of violating internet freedoms are needed.

Opaque ownership, unregulated financing, covert and open political and economic influence on the media and money channelled to favoured media from various state sources continue to be features of the media environment. There have been reported cases of the rescheduling of tax debts for certain media outlets. The most common informal pressure on editorial policy is through advertising. Funding of the media from state sources at all levels continues to be a problem. It is not yet clear what the effects will be of introducing project-based financing of public interest content following privatisation and whether this method will be used by all other state actors that fund the media.

Regarding the **access to information that state bodies provide for the media**, the Commissioner for Information of Public Importance and Personal Data Protection has reported several cases in which state bodies resorted to paying fines rather than disclosing the information requested. In conclusion, the overall environment is not conducive to the full exercise of freedom of expression.

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<http://europeanjournalists.org/blog/tag/serbia?print=print-search> and <https://www.cenzolovka.rs/english/serbia-independent-media-increasingly-targeted-as-spies/>

Freedom of assembly and association is generally respected but the Law on Public Assembly needs to be fully aligned with the constitution as it was ruled unconstitutional by the Constitutional Court of the Republic of Serbia in April 2015. Along with the Law on Public Order, it should provide guarantees for the exercise of the democratic right to assembly, a key tool for both unions and civil society organisations. The proposed laws, in parliamentary procedure as of January 2016, do not provide adequate solutions and have been criticised by members of civil society, as well as the Ombudsman.¹³ The proposed Law on Public Assembly does not recognise the essence of the right to freedom of assembly, as it does not distinguish between public assemblies of a social, economic and political nature (at the core of human rights), and entertainment, cultural and sporting events. Moreover, it puts unjustified restrictions on the timing and venue of public assemblies. In many respects, the draft law reduces public gatherings to technical details, without recognising the direct link between freedom of assembly and freedom of expression. The proposed Law on Public Order stipulates high penalties for public disrespect of politicians, which might endanger freedom of expression and criticism of the government at public gatherings.¹⁴ Therefore, the JCC calls for the adoption of relevant legislation for freedom of assembly in line with the best European standards.

An **empowered civil society is a crucial component of any democratic system** and should be recognised and treated as such by state institutions. Serbian civil society organisations, especially watchdog and accountability organisations, play a key role in raising awareness of corruption risks and citizens' rights in a climate that is often hostile to criticism. Cooperation between the government and civil society still needs to be improved and a mechanism ensuring transparent dialogue with CSOs is needed. The authorities included civil society organisations in the accession negotiations process. However, the civil sector's participation in policy-making still takes place on an ad-hoc basis or in the later stages of the decision-making process when options for different policy solutions and infrastructure programmes have already been decided on, which undermines the very purpose of inclusive policy-making and prevents full use of the sector's potential. Consultation of the Socio-Economic Council on legislative amendments remains limited and poor respect of tripartite dialogue remains a matter of concern. The government fails to consistently implement its Guidance for Consultations with Civil Society in Legislative Process due to extensive use of urgent legislative procedures, including in the case of EU-related legislation.

Mechanisms to **ensure transparent funding of CSOs** need to be put in place. There has been a worrying trend of misusing budget lines for donations to and social contracts with non-profit organisations in order to extract public funding for private gain, especially at local government level. The most notable such case was a competition by the Ministry of Labour, Employment and Social Policy organised in 2014 when substantial grants were awarded to a number of newly established CSOs with no previous record in providing these services, as well as to CSOs managed by local officials and their family members. After criticism by a number of CSOs,¹⁵ the competition was cancelled, but was not investigated and funds were transferred to another public body.

13 http://www.ombudsman.rs/index.php/lang-sr_YU/2011-12-11-11-34-45/4544-2016-01-18-10-29-54

14 http://www.ombudsman.rs/index.php/lang-sr_YU/2011-12-11-11-34-45/4551-2016-01-22-10-38-52

15 <http://www.yucom.org.rs/rest.php?tip=vest&idSek=4&idSubSek=4&id=770&status=drugi>

3.2. Independent regulatory bodies

Independent regulatory bodies¹⁶ are instrumental for ensuring the accountability of the executive. Over the past year, **the attitude of the authorities towards independent regulatory bodies has deteriorated significantly**. It is a matter of concern when the government and members of the ruling party in the parliament act to undermine their work by denying their requests for information in connection with inquiries related to high political officials, ignoring their recommendations, conducting public campaigns against them and depriving them of resources for their work. The Prime Minister's initiative to hold regular meetings with the Ombudsman and the Commissioner for Information of Public Importance and Personal Data Protection to compensate for other parts of the executive blocking their work is an unsustainable practice, as it does not build an institutional system of checks and balances.

The prime example of this trend has been the Ombudsman's inquiry¹⁷ into the legality and regularity of the work of the security forces regarding the incident that took place during the 2014 Pride Parade. What soon followed was a **campaign against the Ombudsman that aimed to attack his integrity**, resulting in the rejection of all the Ombudsman's recommendations on the basis of his finding that the Ministry of Defence and the Military Security Agency had breached a number of laws and ignored the constitutional principle of the rule of law and the constitutional guarantee of democratic and civilian control of the Serbian Armed Forces. The government did not support the Ombudsman's recommendations and his inquiry was publicly attacked by MPs from the ruling party during the Defence and Internal Affairs Committee's session of the Serbian Parliament.

The authorities' negative attitude towards independent institutions is visible in **frequent refusals of the National Assembly to adopt or even discuss amendments to the laws submitted by these institutions**. In addition, the Serbian government continues to ignore its obligation to report to the National Assembly within six months on the measures taken in relation to the recommendations made by independent regulatory bodies, and the National Assembly has not held the government accountable in this regard. Government pressure on independent institutions was also confirmed by the adoption of the Law on the Method of Determining the Maximum Number of Public Sector Employees, several provisions of which contravene the Constitution of Serbia by granting powers to the parliamentary committee to determine the maximum number of employees in independent state institutions, as the Constitutional Court confirmed in its ruling in October 2015. The rhetoric employed by governing party MPs and state officials in parliamentary debates, especially at times when independent institutions are dealing with politically prominent cases, depicts independent institutions as “overly protected”, “overpaid” and “corrupt”, and “not working in the interest of citizens”, with the clear intention of limiting the action of independent regulatory bodies only to cases that are not politically sensitive. In this way, without formally abolishing these institutions, their function is rendered

¹⁶ Ombudsman, Commissioner for Information of Public Importance and Personal Data Protection, Anti-Corruption Agency, State Audit Institution

¹⁷ For more on this incident and the obstruction of the work of independent state institutions, see the report by prEUgovor available at: <http://www.bezbednost.org/All-publications/5965/Coalition-prEUgovor-Report-on-Progress-of-Serbia.shtml>

meaningless, external oversight of the executive is dramatically weakened, and the rule of law is jeopardised.

3.3. Fight against corruption

The **anti-corruption strategy and action plan** for 2013-2018 is being implemented, but several measures have been delayed. However, there has been confusion in the institutional set-up of oversight and coordination of the anti-corruption policy. This job is performed by the Anti-Corruption Agency, the Group for Coordination of Implementation of the Anti-Corruption Strategy led by the Ministry of Justice and the government's Coordination Body for Implementation of the Action Plan. Their tasks coincide. The inter-ministerial Coordination Body to coordinate action, set up in 2014, has only met once and hence has not had the intended impact.

The legal framework for the fight against corruption is broadly in place. Corruption offences, including passive and active corruption, are defined in the Criminal Code. The excessive recourse to the provision on abuse of office in the private sector in the Criminal Code is harmful to the business climate and legal certainty. The Criminal Code should be urgently amended (in particular Art. 234 on abuse of position by a responsible person) with a view to providing a sustainable legal solution to effectively prosecute cases of criminal economic offences. Serbia has ratified all major international instruments against corruption and is party to the UN Convention against Corruption, but has chosen not to criminalise illicit enrichment. It has signed and ratified the Council of Europe anti-corruption conventions. Lobbying is not regulated. Laws on conflict of interest need to be amended.

The provisions in the current law on the **Anti-Corruption Agency** on preventing conflicts of interest and declaring and checking on the assets of public officials should be amended to ensure its enforcement and deterrent sanctions in cases of proven infringements. There is no track record of judicial follow-up to the Anti-Corruption Agency's work, e.g. through in-depth checks on party funding, conflicts of interest and asset declarations. However, the Agency lacks adequate financial, material and human resources to play its role effectively. **The Anti-Corruption Council** analyses cases of systemic corruption and provides the government with policy advice. However, the Council is under-resourced and the government does not follow up and act on its recommendations often enough.

A **positive development is the adoption of the Law on the Protection of Whistleblowers**, enacted in June 2015. However, the fact that it categorically prevents whistleblowers from highlighting corruption as a criminal offence – given that this represents a gross violation of whistleblowers' rights – represents a major shortcoming of this law.

The **Law on Financing Political Activities** is in place, but needs to be revised to ensure its penalty provisions are applied. The OSCE/ODIHR recommendations on financing electoral campaigns have not yet been addressed. Serbia should develop more robust legal provisions and ensure deterrent sanctions are applied to proven infringements of the law on financing political activities, conflicts of interest and declaration and verification of assets of public officials, bearing in mind that parliamentary, provincial and local elections are scheduled for April 2016. Special attention should be

paid to public presentations of public officials during the campaign, advertising of state and political parties in media and criminal prosecution of organised "vote purchasing".

Independent supervision and capacity for early detection of wrongdoing and conflicts of interest in the management of state-owned companies, privatisation procedures, concessions, public-private partnerships and other related issues that have an impact on budget concessions are underdeveloped. It is worrying that it is exactly the areas with the highest risk of corruption that refuse requests for access to information most often. The Law on Access to Information does not ensure adequate enforcement of the decisions of the Commissioner for Information of Public Importance and Personal Data Protection.

There should be **greater accountability and transparency in the management of public enterprises**. Their internal control departments lack equipment, resources and qualified staff. Environmental organisations are particularly concerned about big unresolved corruption cases in the energy and transport sectors, a situation which is adding to the atmosphere of legal uncertainty, as well as indications that the projects of the Electricity Company of Serbia involving resettlement of local communities are highly exposed to illegal practices involving the undervaluation of private property.

On a more positive note, the Serbian Chamber of Commerce has adopted the Code of Corporate Governance and called on its members and the business community as a whole to apply the Code directly or develop their own codes and to implement integrity plans in their companies, although such plans are not legally binding as they would be for the public sector. While compliance with the Code is voluntary, members are obliged to inform the Chamber whether they apply it or not. Private businesses should use integrity plans to evaluate their own exposure to corruption and to implement rules and procedures that will help them to overcome these risks.

Two major representative labour unions (Savez samostalnih sindikata and UGS Nezavisnost¹⁸) have also highlighted **corruption risks stemming from inadequate tax policy that encourages employers to work in the grey economy**, failing to pay benefits to their employees and choosing to bribe their way out of inspections. Moreover, they have highlighted **the need for more effective inspection services and sanctions on employers**, as well as using social dialogue as a format to find economically sound solutions together with representatives of employers and employees. Based on their monitoring of a number of private projects in the energy sector, environmental organisations are calling for much stricter control of corruption risks relating to companies operating from tax havens without a clear legal status or transparent ownership structure.

Improving the **Public Procurement Law** was expected to be a milestone in preventing corruption in this field, with some innovative provisions aimed at enhancing transparency and reducing bureaucratic requirements for bidders.¹⁹ The effects of implementation of the existing anti-corruption

18 <http://www.nezavisnost.org/pages/posts/poreski-sistem-i-politika-neformalna-ekonomija-i-korupcija-u-republici-srbiji1110.php?p=50>

19 <http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/saoptenja/7789-nedovoljno-transparentna-procedura-neobrazlozene-promene-i-korisni-predlozi>.

provisions of this law are very limited, due to limited oversight capacities, primarily of the Public Procurement Office. In addition, the new **Strategy for the Promotion of the Public Procurement System** does not identify important problems in this area.²⁰ The president of the Republic Commission for the Protection of Rights handed in his resignation, but has not been relieved of his duties even four months later. To ensure the implementation of rules on free access to information of public importance in the public procurement field, it is necessary to enhance proactive publication of information on public procurement, in accordance with the latest version of the Public Procurement Law, primarily through the Public Procurement Portal and websites of individual contracting authorities.

There have been **delays in adopting regulations on the procurement of weapons and security equipment** that have hindered full implementation of the Public Procurement Law in this particularly sensitive area. There is **inadequate parliamentary oversight over procurements in the field of defence and security**, due to the lack of clarity on the competent parliamentary committee that would review annual reports on implemented public procurement procedures, including those exempted from the law. According to the National Assembly, the Committee on Finance, the State Budget and Control of Budget Spending (hereinafter: Finance Committee) was in charge of this task, but this creates a problem as under the Data Secrecy Law, members of this committee do not have automatic access to confidential data, nor have they so far received security certificates. Therefore, there is a need for a legal provision that would oblige the government to report to parliamentary committees in charge of defence and security on procurements in the defence and security field, or a procedure should be launched so that members of the Finance Committee receive security certificates, while at the same time encouraging them to consult, when considering the reports, with the committee overseeing the security sector.

As for **repressive actions against corruption**, there was a slight increase in the number of corruption cases discovered and prosecuted in 2015. So far there has been no final conviction in high-level political cases. Procedures for investigating corruption cases, especially cases of high-level corruption, are often prolonged due to lack of capacity and an inadequate legal framework for financial investigations and asset recovery. Most worrying has been the politicisation of the investigation of corruption cases, evident from the selective prosecution of political opponents, as well as repeated leaks to the media about ongoing investigations. As regards political influence on the police, judges and prosecutors, ongoing corruption investigations and court rulings continue to be publicly criticised by ministers and MPs/party members. Repeated leaks to the media about ongoing investigations, in breach of the presumption of innocence, are an issue of serious concern. A number of high-profile cases, including those where evidence of alleged wrongdoing has been presented by the media, have not been seriously investigated. Financial investigations are not yet being launched systematically in cases of corruption and organised crime. In a few corruption cases, assets have been confiscated. Policy-makers should ensure law enforcement bodies are fully empowered to act effectively and impartially when investigating corruption allegations.

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http://www.transparentnost.org.rs/images/dokumenti_uz_vesti/Javne_nabavke_najvazniji_nalazi_mart_2015.doc

Regarding the **involvement of civil society in the fight against corruption**, under the action plan for Chapter 23, the state has also committed to ensuring the involvement of civil society in the anti-corruption programme. Partial success is also reflected in the fact that the Anti-Corruption Agency conducted public competitions to grant funds to civil society organisations for projects in the area of anti-corruption, primarily alternative reporting on the implementation of the National Anti-Corruption Strategy in the Republic of Serbia for 2013–2018 and the action plan for its implementation. On the other hand, amendments and supplements to the Law on Public Administration were due in the fourth quarter of 2015, in order to harmonise standards of cooperation between the public administration and civil society with the standards of the Council of Europe and the UN Convention against Corruption. However, this initiative has not yet been implemented. One of the envisaged measures entails the implementation of a joint campaign in order to encourage citizen participation in the fight against corruption. The lead institution in this field is the Office for Cooperation with Civil Society.²¹ The implementation of this activity is limited to the fourth quarter of 2017, which is not the best solution as the campaign of involving civil society in the fight against corruption should be implemented continuously, without time limitations.

In December 2015, the parliamentary Committee for Culture and Information asked CSOs to suggest two candidates each for the Council of the Regulatory Body for Electronic Media. When the members of the Committee realised that this autonomous nomination procedure did not yield politically suitable candidates, some Committee members decided to exceed their competences and influence the voting procedures within civil society. The announcement that they published, which dictates the voting process in civil society, violates all democratic principles that the government claims to rest on.

4. Conclusions and recommendations

The EU-Serbia JCC reiterates and endorses the following recommendations, addressing the EU institutions and Member States, related to strengthening the rule of law and combating corruption in the context of EU policies and enlargement process. They have been devised and promoted in the EESC's opinions on corruption, transparency and openness of negotiations as well as in the Final Declaration of the 5th Western Balkans Civil Society Forum.

4.1. Recommendations related to EU policies on rule of law and anti-corruption

1. Ensure consistency in understanding, upholding and monitoring the rule of law and anti-corruption across all EU institutions, Member States and all countries in the process of association with and accession to the EU.
2. Enhance the political commitment to timely and thorough scrutiny of outstanding breaches of the rule of law in Member States, by means of new "pre-Article 7 TEU procedure" and, if necessary, the activation of Article 7 TEU, with a parallel evaluation of the potential

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<http://www.civilnodrustvo.gov.rs>.

weaknesses of this mechanism and proposals for making it more effective, involving civil society in the process of scrutiny and policy improvement.

3. Establish a consistent EU anti-corruption strategy and action plan, including clear objectives and follow-up, to be managed "from the top" and included in all relevant EU policies, with special attention paid to robust systems to control EU funds.
4. The Member States are on the front line in the fight against corruption and fraud; thus they must purposefully combat corruption at all levels in politics, society and the economy by introducing robust legislation, establishing a credibly functioning anti-corruption authority and undertaking effective public awareness and education campaigns. Transparency must be improved and civil society must be involved in these efforts.
5. Enhance transnational anti-corruption cooperation between the Member States and relevant agencies and networks, step up efforts to make national criminal legislation more similar and harmonise definitions of corruption and conflicts of interest, as well as institute a European Public Prosecutor's Office (EPPO) and the renewed regulation concerning Eurojust.
6. Improve transparency of financial flows, promote anti-corruption codes and standards in individual companies, prevent conflicts of interest and favouritism in public procurement, introduce debarment from public procurement in serious cases and promote protection of whistleblowers.

4.2. Recommendations related to the rule of law and the fight against corruption in the context of accession negotiations with Serbia

1. The JCC supports the particular emphasis placed by the Commission on the fundamentals in the accession process, with the need for enlargement countries to prioritise reforms relating to the rule of law, fundamental rights, the functioning of democratic institutions (including public administration reform), economic development and strengthening competitiveness. However, the JCC emphasises the importance of strict monitoring of the Copenhagen criteria related to the quality of democracy as a precondition for all other reforms in the accession process, and calls for more extensive consultations with civil society, social partners and independent journalists.
2. The JCC calls on Serbian authorities to create an environment that allows freedom of expression to be exercised without hindrance; threats, physical assaults and cases of incitements to violence against journalists and bloggers should be publicly condemned and sanctioned; the independence of the Regulatory Body for Electronic Media should be strengthened and adequate funding to public broadcasting services ensured.
3. The JCC calls for the adoption of relevant legislation for freedom of assembly and public order in line with the best international standards.

4. The JCC reiterates the importance of independent regulatory and oversight bodies, especially the ombudsman and inspectorate bodies, in ensuring oversight and accountability of the executive; calls on the authorities to provide the independent regulatory and oversight bodies with full political and administrative support for their work and to safeguard their right to do independent work and to follow up on their findings and recommendations.
5. Parliament should improve the practice of monitoring the implementation of parliamentary conclusions on annual reports of independent regulatory bodies. If a report indicates omissions on the part of the government or other executive authorities, the assembly should require the implementation of measures to correct these omissions, and initiate an accountability procedure for managers who failed to fulfil their obligations.
6. In light of upcoming parliamentary, regional and local elections in Serbia, the JCC calls on Serbian government to implement the recommendations of the OSCE/ODIHR election observation missions, in particular those related to ensuring transparency of party and campaign financing and the electoral processes; calls upon Serbian political parties to cooperate with the State Audit Institution and Auditor-General on these matters and calls on the authorities to properly investigate cases during extraordinary municipal elections and other campaign events which have been marked by violence and claims of intimidation and irregularities.
7. The JCC takes note that the consultation process in the parliament has been improved and that the government has increased the parliament's involvement in the negotiation process; remains concerned about the extensive use of urgent procedures in adopting legislation that hinder public consultations, including legislation related to the EU accession process; stresses that the parliament's oversight of the executive needs to be further strengthened and underlines the importance of the active participation of constructive opposition forces to a truly democratic society.
8. Public consultations need to be wider and deadlines more realistic to enable all interested parties to provide informed input into legislative and strategic proposals, but also in the context of monitoring and evaluation of public policies. This is especially necessary for draft legislation with major economic and social impact, and in the fight against corruption. More effective consultations are needed in the monitoring phase of the implementation of enacted legislation and strategic documents, especially ones related to implementation of Chapters 23 (judiciary and fundamental rights), Chapter 24 (justice, freedom and security) and Chapter 19 (social policy and employment).
9. The JCC supports the European Commission's recommendation to improve investigation and prosecution of corruption and organised crime. For this purpose, it is important to enable merit-based selection of senior positions in the police and prosecutorial service and let them initiate investigations without political interference. This should stop the current practice of

selective prosecution of only political opponents and lead to the establishment of a track record of investigations, indictments and final convictions in high-level corruption cases, including those relating to ruling parties.

10. The JCC calls for the creation of a robust system to coordinate and monitor implementation of the national anti-corruption strategy and action plan, ensuring that all key institutions have adequate capacity and resources to fulfil their remits effectively. It is especially important to swiftly adopt a new law on the Anti-Corruption Agency to strengthen its role as a key institution in a more effective fight against corruption and to ensure systematic follow-up by the government of recommendations made by the Anti-Corruption Agency and Anti-Corruption Council.