



SIGMA

Support for Improvement in Governance and Management

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STATE UNION OF SERBIA AND MONTENEGRO

POLICY-MAKING AND CO-ORDINATION

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Introductory Note

Almost immediately following the Montenegro referendum on 21 May 2006, the institutions of the State Union of Serbia and Montenegro began to disintegrate. In the referendum, Montenegro had voted to become an independent state. The referendum had been held on the basis of article 60 of the Constitutional Charter of Serbia and Montenegro (2003) and was generally judged to have been fair and open. Accordingly, the Parliament of Montenegro declared the country's independence on 3 June 2006. On 5 June, the Serbian Parliament adopted the "Decision on Transferring Jurisdictions from Serbia-Montenegro to Serbia", obliging the Government of Serbia to take, within 45 days, the necessary steps to establish Serbia as the successor state to Serbia and Montenegro (as foreseen in the Constitutional Charter). On 8 June, the Government of Serbia began to abolish the ministries of Serbia and Montenegro, announcing that only the Ministries of Foreign Affairs and Defence would continue to operate for the moment. In accordance with the decision of the Serbian Parliament, an Act of the Government of Serbia abolished the Serbia and Montenegro Parliament, the institution of the President of Serbia and Montenegro, the Council of Ministers, the Supreme Defence Council, and the Court of Serbia and Montenegro.

From that point on, for all intents and purposes, policy-making and co-ordination in the State Union no longer existed. A separate report on the details of the disintegration of the State Union is provided in the annex to this report.

For the record, the present report describes the policy-making and co-ordination situation in the State Union of Serbia and Montenegro as at March 2006. It has been largely overtaken by the events following the referendum.

1. Background (as at March 2006)

On 4 February 2003 the Federal Assembly adopted and proclaimed the Constitutional Charter of the State Union of Serbia and Montenegro and the Law on the Implementation of the Constitutional Charter. In terms of the executive branch, the Charter establishes the position of President of Serbia and Montenegro, who is to "chair the Council of Ministers and administer its work" (article 26). The Council of Ministers (CoM) consists of five ministers, each heading a ministry.

The Law on the Implementation of the Constitutional Charter specifies in some detail the disposition of the administrative institutions (ministries, agencies, services, etc.) of the Federal Republic of Yugoslavia (FRY). Articles 13-19 of this law specify which of the FRY institutions will be taken over by the member states, which will cease to exist, and which are to be incorporated into administrative structures of the State Union of Serbia and Montenegro (SU).

The SU administrative system is based on the Constitutional Charter of 2003 and on the law for its implementation. It is a limited system, comprising five ministries, four bodies under the Ministry of Internal Economic Relations, and eleven "independent" bodies, each reporting separately to the CoM.

The five ministries are:

- Ministry of Foreign Affairs
- Ministry for International Economic Relations
- Ministry for Internal Economic Relations
 - Institute for Intellectual Property
 - Accreditation Body
 - Standardization Office
 - Office for Measures and Precious Metals
- Ministry for Human and Minority Rights
- Ministry of Defence

The 11 organisations and services outside of the ministries are:

- General Secretariat of the Council of Ministers (and related organisations)
- Office of the President (Chair of the Council of Ministers) of Serbia and Montenegro
- Service for the Organisation and Status of Administrative Bodies of the Council of Ministers
- Service for Financing the Competences of Serbia and Montenegro

- Legislative Service
- Information Directorate
- Statistical Office
- European Integration Office of Serbia and Montenegro (OEI)
- Archives of Serbia and Montenegro
- Council of Ministers' Common Affairs Service
- Air Service

The governing and administrative institutions of the State Union of Serbia and Montenegro have now been in operation for about three years. At the time of writing (March 2006), the State Union is somewhat immobilised in anticipation of the Independence Referendum in Montenegro, scheduled for 21 May 2006. In addition, two highly political and emotionally charged issues — relations with the International Court of Justice (ICJ) in The Hague and the future of Kosovo — add to the difficulty of the State Union level to focus on day-to-day activities.

The position of the EU towards the State Union has also undergone some changes since 2003. The Union of Serbia and Montenegro is a prospective candidate for membership of the European Union if it can meet the conditions for starting the accession process. Due to disagreements between the constituent republics, progress on the Stabilisation and Association Agreement (SAA) has proved to be slow. As a result, the EU Council of Ministers and Serbia and Montenegro have agreed to a twin-track negotiations approach, which has transferred primarily economic competencies to the republics while the State Union has retained core competencies at the international level. This approach foresees a single SAA, with distinct negotiations for the republics on trade, economic and other relevant sectoral policies. At the same time, the Council reaffirmed its commitment to a strengthened State Union of Serbia and Montenegro based on the Constitutional Charter. This approach is now operational, but like other issues related to the SU, its future awaits the results of the Montenegro referendum.

2. Structure and Activities of the Present Centre of Government (as of March 2006)

The centre of government (CoG) in the SU is highly fragmented. About half of the 11 independent bodies within the administrative structure of the SU can be considered as performing CoG-related functions, sometimes in a very rudimentary fashion. These are:

The Office of the President (Chair of the Council of Ministers): This is a small political office (cabinet) servicing the Chair of the CoM.

The General Secretariat of the CoM: The General Secretariat performs some classical CoG functions, in particular the preparation of the meetings of the CoM, support for the working bodies and commissions of the CoM, and management of relations with parliament (a department of 25 staff performs these three functions). These functions are essentially well managed and run smoothly. The General Secretariat does not include any units related to strategic planning and policy co-ordination. At the same time, the General Secretariat is heavily burdened with management and administrative responsibilities, as well as with many issues related to the transition from FRY to the State Union of Serbia and Montenegro. These include serious and time-consuming issues, such as the division and disposition of properties of FRY, personnel issues, and other technical issues for which the SU does not have specific ministries.

Legislative Service: This office (12 staff) performs classical legal checking functions, harmonisation of the legal system, and some drafting, including the drafting of decrees to implement primary legislation.

Information Directorate: This large office (30 staff) is responsible for providing information to the public, as well as other functions, such as registration of material and certain correspondence. However, it is not engaged in strategic communications or in co-ordinating communications across the SU.

Service for the Organisation and Status of Administrative Bodies of the CoM: This office deals with organisational and personnel matters across the SU administrative system.

European Integration Office of Serbia and Montenegro (OEI): This independent body (15 staff) is responsible for management of the SU involvement in the SAA process. The twin-track system is now in place, and the OEI has set up the necessary structures to support this process. The OEI supports the Chair of the Council for European Integration (the President of SU and Chair of the CoM) and is the Secretariat for the Council, which also includes the prime ministers and presidents of the two republics. The OEI is also the support body for the Chief Negotiator and the Secretariat of the Negotiating Team. The OEI also chairs one

of the three working groups supporting the Negotiating Team, the Group for Legal Harmonisation. The other two groups – the Working Group for Visas, Asylum, and Integrated Border Management and the Working Group for General Principles and Political Dialogue – are chaired by the Ministry of Foreign Affairs. Finally, the OEI also maintains contacts with the working groups in the two republics (each republic has six working groups). Given the requirements of the twin-track structure, the system is quite complex, but it appears to be operational.

Since late 2003, the legal framework for the policy-making system — based on the Constitutional Charter — is in place, including the Law on the Council of Ministers (2003) and the Rules of Procedure (2003).

The Council of Ministers meets at least once every two weeks for about two hours. The first item on the agenda of each meeting is European integration, with information and materials for discussion prepared by the OEI. Working bodies of the CoM act as “funnel committees”, which discuss all items before they reach the CoM. Members of the working bodies are not ministers but senior officials who make suggestions to the CoM.

3. Projects Envisioned (as at March 2006)

In July/August 2005, Sigma assisted the EAR in preparing ToR for a TA project to support the central institutions of the SU. The ToR were seen as useful by both the General Secretariat of the CoM and the EAR. The implementation of the project was postponed to 2006, probably in anticipation of the Montenegro referendum.

A twinning project for the OEI with France and Slovenia is about to begin.

Recommendations

The only important issue at this time is to ensure, as much as possible, the orderly transfer of competencies and personnel from the State Union to the republics. Ideas for possible technical assistance in this respect are included in the annex (section 5).

ANNEX

Policy-Making and Co-ordination in the State Union of Serbia and Montenegro June 2006

DEVELOPMENTS/PLANNED ACTIVITIES IN THE STATE UNION OF SERBIA AND MONTENEGRO AFTER THE REFERENDUM, INCLUDING POSSIBLE NEEDS FOR TECHNICAL ASSISTANCE

1. Overview

In the aftermath of the Montenegrin referendum on independence that took place on 21 May 2006, a “silent disintegration¹” of the institutions of the former State Union of Serbia and Montenegro commenced. Without a common plan, each member republic of the former State Union conducted a number of activities related to taking over competencies and institutions that had been abolished following the referendum. Although legally speaking the State Union (at that moment) still existed, both Serbia and Montenegrin governments acted as if there had been a “shipwreck” after which they were supposed to collect what remained and what they considered useful. In that sense, there was no comprehensive assessment of the capacities of the State Union institutions (including the capacities of the staff), which would have brought about a more systemic transfer of their competencies and resources to the newly independent republics.

Soon after the popular vote for independence, the Republic of Montenegro did not seem to consider that the State Union de facto still existed. As the Republic of Montenegro had, for a long period prior to independence, created parallel institutions (such as the Ministry of Foreign Affairs), the government did not feel that there was much to be acquired from the disintegration of State Union institutions. Montenegro had covered only a small part of the State Union budget and did not have many personnel seconded to State Union institutions. However, given the rather drastic measures of the Serbian Government, the Government of Montenegro (as will be described below) had to respond more proactively.

On the part of the Serbian Government, three major initiatives took place:

- a) The budgetary inspection of the Serbian Ministry of Finance conducted immediately an inventory of property of the former State Union institutions;
- b) The Serbian Ministry of Finance also took full control over the accounts of State Union institutions, although in previous years it had basically already controlled the cash flow and resource allocation;
- c) On 8 June 2006 the Government of Serbia approved the Decree on the Status of Particular Institutions of Former Serbia and Montenegro and Services of the Council of Minister, which described immediate actions to be taken with regard to the takeover of institutions, staff and resources.

2. Transfer of Competencies and Institutions to Serbia

The Serbian Government approved the Decree on the Status of Particular Institutions of Former Serbia and Montenegro and Services of the Council of Minister, which assumed the disappearance of State Union institutions by 1 August 2006. Moreover, it provided 45 days for the Serbian administration to implement all of the decisions contained in the decree and to take over all of the competencies². Most probably the process will take a little longer, and there may be a number of challenges along the way, as the consequences of the decree do not seem to have been well assessed.

In accordance with the decree of the Government of Serbia of 8 June 2006, the Republic of Serbia assumed all competencies previously held by the State Union of Serbia and Montenegro. The financial resources for the implementation of the decree will be provided by the Serbian budget. The decree became effective the day after its publication in the *Official Gazette of the Republic of Serbia*.

Certain institutions merely changed their names and automatically became part of the Serbian Government/administration. The seven new institutions are as follows:

- Army of Serbia
- Co-ordination Centre of Serbia for Kosovo and Metohija

¹ In fact, the public is not quite aware of the details of this process and looking from the surface there seems that nothing is really taking place.

² Serbia is official successor of the State Union, while Montenegro is a new independent state.

- Co-ordination Body of Serbia for the Municipalities of Presevo, Bujanovac and Medvedja
- National Council of Serbia for Co-operation with the ICTY
- Accreditation Body of Serbia
- Institute for Standardization of Serbia
- Air Transportation Service of the (Serbian) Government

Certain institutions and services of the State Union have been abolished but will continue operating until 1 August 2006. The Government of Serbia will temporarily cease their financing until the new Serbian Law on Ministries is enacted.

The five abolished institutions are the following:

- Parliament of Serbia and Montenegro
- President of Serbia and Montenegro
- Council of Ministers
- Supreme Defense Council
- Court of Serbia and Montenegro

The archives and certain active proceedings of the abolished institutions are to be taken over by competent Serbian institutions. All other documents will be taken over by the Serbian Bureau for Common Affairs of the Republican Bodies.

The following seven services of the Council of Ministers have been abolished:

- General Secretariat of the Council of Ministers
- General Service for Organisation and Management of Government Bodies of the Council of Ministers
- Service for Financing of Competencies of the State Union
- Legislative Service
- Service for General Affairs of the Council of Ministers
- Directorate for Information
- Serbia and Montenegro European Integration Office

In addition, the Government of Serbia is to temporarily cease the financing of the following four ministries, until the new Law on Ministries is enacted:

- Ministry of International Economic Relations
- Ministry of Internal Economic Relations
- Ministry for Human Rights and Minorities
- Statistics Office of Serbia and Montenegro

The following actions are expected to be taken with respect to the above institutions:

Ministry of International Economic Relations of Serbia and Montenegro

There were 85 full-time employees in this ministry when the Serbian decree of 8 June was enacted. Part of the personnel and the archives will be taken over by the Serbian Ministry for International Economic Relations (department for foreign trade of arms, military equipment and dual purpose goods).

Ministry of Internal Economic Relations of Serbia and Montenegro

There were 35 full-time employees in the ministry at the time of enactment of the decree. Part of the personnel and the archives will be taken over by the Serbian Ministry of Interior (department dealing with inspections of small arms and ammunition) and by the Serbian Ministry of Science and Environment (standardization and accreditations).

Ministry of Human Rights and Minorities

There were 38 full-time employees in the ministry when the decree was enacted. The majority of employees, the archives and competencies will be taken over by the Serbian Ministry of Interior (personnel who worked on issues related to readmission), Serbian Ministry of Justice (extradition issues, international legal aid and

co-operation with the tribunal in The Hague) and the Serbian Ministry for Public Administration and Local Self-Government (Registry of Citizens' Associations and the National Council of Minorities)

European Integration Office of Serbia and Montenegro

There were 15 full time employees at the time when the decree was enacted. The current plans foresee that the archives and the competencies will be assumed by Serbian Office for European Integration. The future of the staff is not clear at this moment. Negotiations are under way to ensure transfer of employees to the Serbian Office (or alternatively to Ministry of Foreign Affairs, Directorate for EU).

3. Issues Related to Montenegro

As for the Montenegrin Government, it did not react in a similar way, especially as the Republic of Montenegro is not the successor of the State Union and has contributed to the State Union financially and in personnel only to a small extent. There was no official plan for taking over the Montenegrin personnel, and the actions of the Government of Montenegro were a consequence of the Serbian decree of 8 June. Apparently, the government took the decision to take on all Montenegrin citizens who would otherwise be laid off and who would be interested in moving to the Montenegrin administration. They would start receiving a salary from the Montenegrin Government budget for a period of six months until they were assigned to "appropriate posts". However, it seems that the government did not have the list of personnel with Montenegrin citizenship, but the number is probably very small and it is expected that most of the personnel would in any case not be interested in moving from Belgrade, where they had been settled with their families for a certain period of time.

4. Other Relevant Issues

4.1 Financial/budgetary Issues

All current financial commitments are to be taken over by the Serbian Government (including 60% of the salaries for Serbian citizens – see below). The accounts have still not been closed, but instructions have been given to keep current costs at a minimum, to not use phones excessively and to not carry out any procurement.

The financing of the institutions/ bodies that were taken over by the Serbian Government will be provided by the Serbian budget, which was mostly the case even before the referendum.

4.2 Staff Issues

The Serbian Ministries of Defense and Foreign Affairs are to take on all employees (with Serbian citizenship), recuperate the archives, and assume the competencies of the respective former State Union ministries. The same applies to the Accreditation Body of Serbia and Montenegro (renamed the Accreditation Body of Serbia), the Standardization Institute of Serbia and Montenegro (renamed the Standardization Institute of Serbia) and the Air Transportation Service of Serbia and Montenegro (renamed the Government Air Transportation Service).

According to the June decree, all employees having had a legal residence in Serbia for at least one year (i.e. at the latest as from 3 June 2005) are entitled to compensation for an amount equivalent to 60% of their net salary for the period 8 June 2006 – 1 August 2006. Personnel who do not have a legal residence in Serbia during that period and personnel whose residence was in Montenegro would not receive any compensation after 8 June 2006 and their employment would be terminated.

The appointed personnel (officials) who were delegated/seconded by the Serbian Government would also cease their employment, but they would have the same rights as the appointed personnel (officials) of the Serbian Government (in according to the still valid Law on Employment Relations in State Organs of the Republic of Serbia.)

The most critical group of employees is the service personnel in the Council of Ministers, the General Secretariat and the secretariats of line ministries. The majority of these employees will probably be made redundant.

Employees of State Union institutions who had been delegated/seconded by the Montenegrin Government should be taken on by Montenegro, while the future of those civil servants who are citizens with their legal residence in Montenegro is unknown (see above).

4.3 Redundancy Payments

There is a lack of clarity regarding the redundancy payments for the employees of State Union institutions who will be laid off. It is not clear which law should be applied. Namely, the ex-Yugoslavia federal law provides for 24 months of severance pay, whereas the Serbian legislation provides for six months of severance pay (plus compensation for the number of years of employment). The Serbian decree of 8 June, however, indicates that the severance pay would be paid in accordance with the Labour Law. It is more likely that the Serbian legislation will be applied. In addition, for employees who do not have Serbian citizenship it is not clear whether they would be granted any severance pay. The administration of this whole process, including decision-making on the right to severance pay, is to be carried out by the Serbian Ministry of Public Administration and Local Self-Government.

4.4 Premises

Although there is no official decision on the future status of the Federation Palace (where many ministries and all services were located), the current plan is that the building would probably host the Serbian Presidency, the Serbian Ministry of Defense and the Serbian Army General Headquarters.

5. Consequences and Technical Assistance

At this moment one can say that the disintegration of State Union institutions is a *fait accompli*. All major decisions have been made and the continuing existence of certain institutions will await the formal abolishment of those institutions that will not be taken over by the Serbian or Montenegrin Governments. In that sense, the State Union institutions de facto no longer operate as such and their fate is already sealed.

Going back to the past and reflecting on what could have been done differently, only one other scenario can be envisaged: if the Serbian and Montenegrin Governments had conducted a more comprehensive assessment of the capacities of the State Union and developed a joint plan for its disintegration. However, that scenario would not be possible given the political circumstances and, in particular, the firm expectation of the Serbian Government that the referendum for independence in Montenegro would fail.

The State Union institutions emerged from the institutions of the former Federal Republic of Yugoslavia (FRY), and some of them maintained continuity with the civil service system of the former Socialist Federal Republic of Yugoslavia (SFRY). The SFRY administration had been sound, competent and well structured in the sense that some of the ministries served as a showcase for the region and at the time represented the best of both worlds: Western democracies and the Soviet Union. In the period when Milosevic's rule destroyed the very core of the Serbian civil service, the administration of FRY was well preserved, taking into consideration the state of affairs in the late 1980s. A study conducted by UNDP (Preliminary Capacity Assessment of State Union Institutions, 2004) therefore indicated that there had been considerable individual and organisational capacities in many of the ministries and agencies that were based on the SFRY heritage and that these capacities were under-utilised during the short life of the State Union of Serbia and Montenegro.

One can therefore assume that those capacities could have been better used while the State Union was in operation and, likewise, better absorbed in the course of its disintegration. However, the particular political circumstances were not sufficiently favorable for that kind of exercise. Among the drawbacks of the State Union were the outdated legal framework for the public administration and the civil service and the excessive control of financial management performed by the Serbian Ministry of Finance. Those two factors prevented the consolidation of State Union institutions into a functional system and, consequently, prevented more a systemic takeover process. In essence, both in the previous period and soon after the Montenegrin referendum, the Serbian Government took particular individuals, institutions or parts of institutions that it felt would integrate into, and be of use to, the Serbian Government. While that action could be justified in the given conditions, some attention still needs to be paid to the ways in which transferred institutions would effectively integrate into the quite different public administration and civil service system of the Serbian Government.

Potential technical assistance should therefore focus on enabling a couple of institutions to adjust to the Serbian system and to become a functioning part of it. There is an assumption that the Serbian Government perceives that process in a rather legalistic and mechanistic manner. The 8 June government decree would not be sufficient to ensure that, for instance, the Ministry of Foreign Affairs becomes part of the system. The justification for that approach is an understanding that the institutions taken over are either very specific and constitute exceptional cases (e.g. Foreign Affairs and Defense) or they are technocratic bodies (e.g. Statistics Office) that can function in any system in the same way. There is of course that fact that in the previous

period many of the former State Union institutions were in fact functioning as an attachment or a closely related body to the Serbian Government. Nevertheless, their full integration into the Serbian system would not come about automatically. Despite all of the political and other circumstances, those institutions have been functioning in a quite different administrative environment, and some of them even remained quite unchanged during the last 15 years or so.

Another aspect that may be addressed by technical assistance is the take-over of competencies with or without the take-over of parts of institutions or even individual persons. For the Serbian Government this issue is relevant in relation to the State Union Ministry of International Economic Relations (some staff and archives to be absorbed by the Serbian Ministry of International Economic Relations), the State Union Ministry of Internal Economic Relations (some staff and archives to be absorbed by the Serbian Ministry of Interior and Ministry of Science and Environment), and the State Union Ministry of Human Rights and Minorities (some staff and archives to be absorbed by the Serbian Ministries of Interior, Justice and Public Administration and Local Self-Government). Those transfers would not be done adequately if there were no assessment of the compatibility of the staff and the newly acquired competencies and their effective integration into the Serbian legal and public administration reform system. As for the Montenegrin Government, the absorption of new competencies without taking over the staff and archives would become even more challenging.

Whatever the decision on technical assistance, it needs to be provided in a very short period, i.e. within the next three to six months. It should be focused on the provision of very particular outputs, separately for the Serbian and the Montenegrin Governments. Finally, it should take into consideration the fact that awareness by both governments of the potential challenges is low and that many aspects are not perceived by them as relevant.