

## 5 RECOMMENDATIONS

### 5.1 Background considerations

In the Constitutional Charter that created the State Union of Serbia and Montenegro (February 2003), it is provided that, "Upon the expiry of a 3-year period, Member States have the right to initiate the proceedings for a change in its state status or for breaking away from the state union of Serbia and Montenegro. The decision on breaking away from the state union of Serbia and Montenegro shall be taken following a referendum." (Article 60)

Thus, it is possible that the State Union might break up as early as 2006. However, the International Community, led by the EU, has expressed its wish to maintain the integrity of Serbia and Montenegro, linking this desire with the future stability of the region and the prospects for eventual membership of the Union. It is not clear that a referendum would be held or would necessarily lead to a break-up, especially if such a break-up were seen to be costly in terms of the Republics' European ambitions.

The uncertainty surrounding the status of Kosovo has political and governance effects on Serbia and Montenegro. The latter pertain, for example, to the development of the customs system and the composition of the civil service. In addition, there are concerns about possible separatist tendencies in Vojvodina.

The State Union, as specified in the Constitutional Charter, is not, in practice, a complete or functioning federal structure, as summarised below:

Common Characteristics of Federation	Serbia and Montenegro
Direct electoral legitimacy for the democratic institutions and the executive, independent of the constituent entities.	For the crucial first two years of its existence, when it should be building legitimacy, the State Union Assembly has only indirect legitimacy (the Assembly and the Executive are nominated by the constituent entities). The membership of the Assembly has fixed proportions for the two Member States – 35 from Montenegro and 91 from Serbia; i.e. Montenegro has 28% of the seats compared to 8% of the population. After two years it is foreseen to elect Members by direct ballot but in the same proportions.
The legislature is normally bicameral to represent directly and proportionately the interests of citizens (e.g. House of Representatives) and ensure protection of the interests of component entities (e.g. Senate).	The State Union assembly is unicameral, but with the same fixed proportions as described above.
All citizens of a Federation have the same	This is assured through Articles 7,8,9 and theoretically protected by the Court of Serbia

Constitutional rights	and Montenegro (Article 46)
Multiple component entities with some degree of comparability (size, economy etc) amongst them (there are historical exceptions such as the German city Länder. Belgium is the only comparable 2 part Federation, since the separation of Czechoslovakia)	The State Union is made up of only 2 entities which differ very significantly in population and economic weight.
A single international legal personality	This is assured by Article 14 of the Constitutional Charter
A common legal structure with a hierarchical system of courts; a superior court which is independent of the constituent entities, and endowed with a means to enforce its judgements.	The legal structures are rapidly diverging, and the State Union level structures are approximating to the structures of one of the constituent entities. The Court of Serbia and Montenegro (Articles 46+) has an appropriate remit and powers, but the Court has not been established. Its independence is at risk because the Judges of the Constitutional Courts of the Member States participate in decision making and the financing depends directly on the Member States. It has few mechanisms to enforce its judgements.
An independent source of revenue.	The budget of the State Union level is effectively determined by the Member States (Article 19) and paid 96% by Serbia.
A single internal market and currency, with policy responsibility at the Federal level (even if with co-decision).	The State Union has the competence (Article 3) to determine a "common market" but not the powers. As a result, market conditions are diverging and non tariff barriers to inter-State trade are emerging. Montenegro has adopted the Euro as its currency, while Serbia has the dinar. The external tariff structures operated by the Member States differ and the internal market is not complete. The situation is further complicated by the Kosovo question.
Relatively exclusive competence over foreign relations, which is recognised by the international community.	The State Union formally has competence (Article 3) but no means of enforcing it. The Member States frequently deal directly with the international community beyond their constitutional powers.
A perspective of longevity in which stable institutions can operate (although exit procedures may be specified).	The possibility of a referendum on independence 3 years after creation of the State Union.

## 5.2 General recommendations

Given the considerable reluctance of the Member States to accept and develop a coherent and workable federal system, the main thrust of these

Recommendations is to use the SAp context, and aspirations of European integration, to develop and strengthen the federal mechanisms of Serbia and Montenegro and thereby support an integrated and cohesive economic and social development. Since the scope for change in the existing structures is limited in the short term, the Recommendations focus on issues, which, while supporting the Federal structure, would support development towards Europe even if current arrangements were to change.

They are also geared to supporting local economic development. There are 4 key general recommendations, which are operationalised below:

1. Strengthen the institutional support for development and co-ordination of policy-making and SAp negotiation, at both the level of the State Union and the Republics, in particular by introducing the kinds of co-ordination structures and procedures common in most federal states;
2. Harmonise the legal frameworks for the administrations of the three jurisdictions (State level, Montenegro and Serbia);
3. Professionalise and upgrade the civil services at the State Union level and in the Member States, develop professional networks between the different civil services, and create supportive linkages amongst the bodies responsible for the overall development of each administration, particularly in the areas of Human Resource Management, Expenditure Management, and Expenditure Control, professional standards, and anti-corruption measures.
4. Use the SAp framework to ensure donor support for the principle of the State Union.

To succeed in these objectives three key reforms are necessary, each of which lies beyond the scope of this Assessment.

- Make the Court of Serbia and Montenegro an effective institution which is recognised and respected as the Superior Court for the country as a whole; consider the establishment of Supreme Courts also for other legal branches to ensure a common development of the legal systems;
- Create an independent fiscal revenue base for the State level (e.g. by introducing VAT) which does not depend on the discretion of the Member States, thereby allowing the long-term development of policy and administrative capacity of the State Union level;
- Consider a future territorial division of Serbia, which may provide a mechanism for making the Federal structure less imbalanced, and may also ease the situation in relation to Vojvodina, and possibly Kosovo.

Finally, as a more general political recommendation, the scope for developing “framework legislation” should be considered. Framework legislation if developed through consensus amongst the three jurisdictions, could be a mechanism to further legal harmonisation without unduly infringing on the prerogatives of the Member States.

### 5.3 For the Governments of the State Union and of Serbia and Montenegro

The following recommendations to the Governments of the State Union and the Member States, as well as to the European Union, are designed to support the general recommendations.

**1. Strengthen the institutional framework for development and co-ordination of policy making and SAp negotiation** on the State Union Level and the Republics, including federal co-ordination structures and procedures. The (re)establishment of an integrated common market within the borders of Serbia and Montenegro is a major pre-condition for EU entry. As SAp and entry negotiations can only be undertaken at the federal level, it is up to the federal level to ensure that component entities conform. The SAp process, and eventual EI negotiation, will demand a strong central policy capacity at the federal level working coherently with strong central policy capacities in the Member States. It will be necessary to strengthen general policy-making and policy co-ordination capacities and, in particular, EI capacities, and to establish sustainable collaborative processes between the ministries of the Member States and the State Union level.

#### ***Operational recommendations***

- Create professional capabilities in the Centres of Government of the three jurisdictions, with the capacity to support policy development and ensure policy co-ordination and evaluation; strengthen these capacities in all Ministries;
- Strengthen legal drafting and impact assessment capacities in the economic and other ministries on the State Union level and the Member States and develop close cooperation structures on the working level to enable the preparation of harmonised legislation, including identical drafts and framework legislation, aligned to the *acquis*;
- Increase staff capacities in the EI units at the centre and in the line ministries of the Member States and on the State Union level;
- Institutionalise the Council for European Integration, by providing an adequate professional support structure (secretariat) and setting up proper procedures, holding frequent regular meetings and promoting close co-ordination and cooperation amongst the EI Units.

#### **2. Harmonise and modernise the legal frameworks for administrations of the three jurisdictions (State Union level, Montenegro and Serbia).**

Because of the existing divergence of the economic regulatory systems, including the supporting administrative legal framework in the Member States; the internal market is fragmented and inefficient; effectiveness within a Federal system argues for commonality and mutual recognition so as to facilitate an internal market, data sharing and equal access and rights in administrative procedures and before courts; both the Member States need urgently to modernise their administrative legal frameworks, especially with respect to administrative procedures. Most special sectoral procedures

should be abolished and the amended general administrative procedures law should be applied.

### ***Operational recommendations***

- Set up sustainable institutionalised structures, including on the working level, to jointly develop administrative legislation and/or harmonise existing drafts or legislation; and rationalise administrative procedures legislation;
- Develop, jointly, a mix of identical legislation and “framework legislation” to foster the establishment of a harmonised legal framework and a functioning federal system.
- Strengthen the capacities of line ministries (and the government secretariat on the State Union level) to enable them to monitor and evaluate the implementation of laws after adoption and enforcement;
- Review the administrative justice system in the Member States and adapt it to the standards in EU Member States and strengthen the role of the Court of Serbia and Montenegro, capacities, powers and abilities to enforce its discussion.

### **3. Professionalise and upgrade the civil services at the State Union level and in the Member States and create the legal means for staff mobility across the three different civil services.**

The Civil Service in each of the three jurisdictions is weak and politicised, and the legal arrangements to improve professionalism and neutrality, (e.g. open competition on merit), do not work effectively. The State Union level is very reliant on the Serbian institutions and this may reduce its legitimacy with respect to Montenegro. The administrative management systems are only weakly connected, where they are connected at all, across the jurisdictions. In particular the State Union level has no financial management institutions: this will impede the development of any kind of financial autonomy. In all jurisdictions, salaries are too low to permit professionalisation and reduce corruption. Despite strict legislation, in practice too much discretion is available in the determination of salaries. Some donors have been providing the administration with local consultants in civil service positions on considerably higher salaries; this has significantly distorted the labour market and at the same time hampered continuity and sustainability of reform efforts.

### ***Operational recommendations***

- Strengthen central HRM capacities in each jurisdiction and create and/or strengthen HRM units in all ministries and other administrative bodies. Develop, under the leadership of the State Union Level HRM capacity, a network to support the consistent development of HRM;
- Develop and strengthen training capacities to increase professionalism and promote an understanding of the federal nature of the State; as a matter of urgency, develop and deliver training at all levels of government, including municipal self-governments, e.g. in organisation/public management, HRM, financial management,

financial control, public procurement, professional ethics standards, anti-corruption, and service delivery;

- Establish an adequate financial management (expenditure and control) capacity at the State Union level;
- Create and support sustainable professional horizontal networks across the different administrations, e.g. in organisation/public management, HRM, financial management, financial control, public procurement, professional ethics standards, anti-corruption, and service delivery, to promote cohesive development and exchange;
- Develop a joint approach to a civil service salary system with higher transparency and objectivity, and negotiate a medium term common approach to raising the salary levels

## 5.4 For the European Commission

**Use the requirements of the Stabilisation and Association process as framework for donor assistance and donor co-ordination, especially to support the creation of a functioning federal system.** Currently the countries and institutions making up the International Community support the maintenance of the State Union. But, as donors, with few exceptions, they support mainly the Member States in practice: very little support is provided directly to the State Union level. Furthermore donor support has tended to deepen the legislative and systems divisions between the republics of Serbia and Montenegro. Individual donors' actions should be consistent with the long-term goal of consolidating the political union of Serbia and Montenegro.

### *Operational recommendations*

- Support the State Union structures in developing and strengthening professional capacity and procedures to assume their federal role as a coordinator and policy leader, not only in EI but also in all other policy areas, in the interests of promoting a common level of development ;
- Create and use sustainable professional networks, including the EI units/ministry, to foster harmonisation of draft laws and policy, and other substantive co-ordination;
- Strengthen EAR-led donor coordination to ensure as far as possible that donor actions are coherent with the overall objective of maintaining the territorial integrity of Serbia and Montenegro;
- Promote exit strategies for salary supplementation by donors, and co-ordinate with the IFIs to provide budgetary space for salary increases (whether by relaxing constraints &/or through general budget supplementation against conditionalities on the execution of the salary system)