

3. GOVERNANCE & PUBLIC ADMINISTRATION

3.1 Key elements of the administrative environment

3.1.1 Administrative culture, law implementation and enforcement capacity

The administrative culture has a strong legal and Austro-Hungarian basis

The country's administrative culture is historically based on the Austrian tradition. There was a strong legal orientation, which was reflected in a rather comprehensive legal framework and the significant presence of law graduates among its civil servants. In the SFRY, this basically Austrian administrative tradition was modified by an overlay of strong, centralised party control. However, the past decade of authoritarian rule left an institutional culture and practices that foster opaqueness, inefficiency and politicisation in a large part of the public administration. In addition, many laws were promulgated which either ignored, or even deliberately violated, the provisions of the Federal Constitution of 1992 that the laws of the constituent republics should conform to federal legislation:- for example, the Serbian Government adopted measures unilaterally in areas still under the Federal competencies; while Montenegro did not implement important newly adopted Federal laws (e.g. Criminal Procedure Code, Law on Minorities)¹.

Law implementation and respect for the rule of law are made more difficult because the legal frameworks of the Member States of the State Union are diverging, often as a result of external assistance, and even depart from EU standards and the *acquis*. In addition, early legislative reforms within the Member States were not fully harmonised with existing legislation, which has led to a lack of clarity and certainty in the law.

The 2003 Constitutional Charter (Arts. 51) states "The Constitutional Charter, laws and the competences of Serbia and Montenegro and constitutions, laws and competences of the member states must be harmonized". Their conformity to existing laws and to the Charter is supervised by the Court of Serbia and Montenegro (Art. 46); however, this Court has not yet been established.

The difficulty of the Governments of the State Union and the Member States to fully commit themselves to respect the rule of law may be

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Commission of the European Communities, *Stabilisation and Association process Report*, 2003, pp. 13-14

illustrated by their attitude towards recent Constitutional Court decisions. There have been significant efforts by the Constitutional Courts to re-affirm their authority, but this has in practice been undermined by the lack of enforcement and attempts to exert political pressure².

Enforcement of ICTY rulings is still problematic

Enforcement of ICTY rulings by the FRY and constituent Republic Governments has also proved contentious and is another example of the lack of practical understanding of the rule of law. FRY's previous President was opposed to the extradition of Yugoslav citizens indicted for war crimes to the ICTY as contradictory to the Constitution. In addition, the Serbian Republic's Government tended to interpret strictly the Federal Law and to cite provisions of this law prohibiting the disclosure of state and military secrets, which delayed some trials before the ICTY³. Unlike in Bosnia and Croatia, cooperation with the ICTY is not regulated by domestic law and is not institutionalised. However, under pressure, Serbia's previous Government took a number of steps towards removing formal internal barriers to cooperation with the ICTY, e.g. it ordered all army officers to report any knowledge regarding the whereabouts of Hague indictees. This led to the surrender of key Milosevic regime figures⁴.

In both Member States, the court system and the law enforcement systems remain weak and politicised, although serious reform efforts have started.

In Serbia, the organization and management of law enforcement forces present some weaknesses. Appointments in the past to police positions were highly politicised. While some progress is being made, there remains a serious problem with present incumbents⁵.

The Court systems and law enforcement are still weak and politicised

Overall, law implementation and enforcement is deeply impeded by the weaknesses of the State Union institutions and lack of political will to reform within the Member States. This also favours legal uncertainty as, despite the mandate given to the State Union level to harmonise economic law, Constitutional law making-power is not clearly assigned as between the Member States and the State Union authorities.

3.1.2 Administrative legal framework and civil service

² European Commission, *Stabilisation and Association process Report*, 2003, p. 13

³ <http://www.cij.org/index.cfm?fuseaction=viewReport&reportID=318&tribunalID=1&languageID=1> : ICTY, Milosevic Trial – The Hague – Court Room One, Day 203, 17 June 2003, *Serbia and Montenegro's objections keep evidence out of court*

⁴ EIU, op. cit., note 1, pp. 17-18

⁵ Commission of the European Communities, *First Assessment Mission in the fields of Justice and Home Affairs in the Republic of Serbia, Kosovo, Republic of Montenegro*, 12-24 May 2002, Final Version April 2003, pp. 14-15

The administrative legal framework is here defined as all laws and bylaws necessary to ensure that the administration as a system functions in line with the generally accepted principles, e.g. rule of law, transparency, accountability, legal certainty, etc. This implies that the administrative legal framework includes besides general administrative laws, such as the law on administration, the law on administrative procedures and legislation on redress and appeal, also all laws regulating horizontal systems of the public administration. The most important of these laws are the law on civil/public service, the organic budget law, laws on financial control and internal audit as well as external audit. In addition it encompasses such laws as freedom of information, data protection legislation, law on the ombudsman, law on conflict of interest, i.e. “annex” legislation to ensure the implementation of the accepted administrative principles.

Under this section, only the general administrative laws, and to limited extent the civil service laws and some “annex” legislation will be discussed as the other main components of the administrative legal framework regarding public procurement, public expenditure management, financial control and internal audit and external audit are discussed in the context of the specific assessments.

The scope and tasks of public administration at all levels is defined in the Charter and the Constitutions

The Charter and the Constitutions of the Member States clarify the scope and tasks of public administration at each level of government.

The Charter (Art. 46) and the Constitutions of the Member States also guarantee the right to appeal against administrative decisions. The State Union and the Member States have laws on public administration, laws on administrative procedures and laws on administrative disputes. The review and adaptation of these laws to modern standards is at different stages. Though most of the legislation in place is still based on the former Yugoslav legislation with strong roots in the Austrian law, the influence of the international community in the drafting process has led to diverging developments in the legal framework of the Member States.

State Union Level

On the State Union level, the Decree on the Establishment of Ministries, Organizations and Services of the Council of Ministers (Official Gazette of the State Union No. 25/2003) and the Decree on the Principles of Internal Organization and Systematization of Job Posts at the Ministries, Organizations and Services of the Council of Ministers (Official Gazette of the State Union No 25/2003) replaces the former law on administration.

There is no civil service legislation at State Union level

A civil service law does not exist; a law on the Government Administration of Serbia and Montenegro has been drafted. This draft addresses some of the issues which would otherwise be regulated through a civil service law.

The protection of personal data and the right to receive all one's personal data gathered by public authorities is guaranteed by the Charter (Art 24 Charter on Human Right and Minority Rights and Civil Liberties. However, no laws to implement these constitutional requirements have been drafted or adopted.

Adequate conflict of interest legislation does not yet exist; however there are some very basic provisions in the existing law governing public employment and in the Law on the Council of Ministers.

An Ombudsman does not exist on the State Union level.

Serbia

The Constitution of Serbia must be redrafted and be made compatible with the Constitutional Charter

The previous legislature set up a Constitutional Commission to redraft the Constitution and align it with the Constitutional Charter.

The old Yugoslav laws -- on Administration, on Administrative procedures and on Administrative disputes – are still in force. These laws were based on the pre-Yugoslav Austrian legal framework. Although not fully adapted to the current standards, they form a workable base for reform.

New Laws on Civil Service, on Administration, Administrative Procedures and on Administrative Disputes are in the review and the drafting process is being supported by an EAR project.

A *Law on Freedom of Information* was passed in early autumn 2003. A draft Law on Conflict of Interest was proposed by the Minister of Finance but did not pass in the Council of Ministers.

A Law on the Ombudsman was under discussion in the Assembly but was not adopted before the elections.

The previous Government set up a Council for Data Protection and an Anti-Corruption Council. The latter is an expert advisory body that should monitor activities and propose measures to fight and prevent corruption.

Montenegro

A new administrative legal framework exists in Montenegro

Montenegro is, with the assistance of an EAR project, reviewing its general administrative legal framework. Thanks to the reform commitment of the Government and its comfortable majority in the Assembly some revised legislation has been swiftly adopted. Montenegro has now new legislation in the following areas:

Law on State Administration regulating issues of organization, manner of work and other issues related to functioning of state administration (Official Gazette of the Republic of Montenegro no: 38/2003)

Law on Inspection Control, regulating the status, responsibilities and authority of the inspections in the performance of control (Official Gazette of the Republic of Montenegro no: 39/2003)

Law on Administrative Proceedings, regulating judicial control over administrative decisions of the state administration authorities (Official Gazette of the Republic of Montenegro no: 60/2003)

Law on General Administrative Procedure, regulating the relationship between administration on the one hand and legal and physical entities on the other, concerning the exercise of their rights and responsibilities in administrative matters (Official Gazette of the Republic of Montenegro no: 60/2003) .Whether or not this new legislation is fully in line with general standards and if some harmonisation will be needed with the bills being prepared in Serbia will have to be assessed at a later date. Implementation of this new legislation has just started and cannot yet be evaluated.

The civil service is still regulated by the law of 1991 (the *Law on Civil Servants*), which regulates the position, rights and obligations of the employees in the administration and in other governmental agencies (Official Gazette of the Republic of Montenegro no: 45/91 i 50/91).

New laws on civil servants and state employees and on salaries of civil servants and state employees are being prepared.

An Anti-corruption Agency was set up by decree in 2001. There is no special legislation to regulate conflict of interest; the obligation to disclose assets applies only to officials involved in public procurement.

Freedom and information and data protection are guaranteed by the Constitution; but not yet by special legislation.

A *Law on the Ombudsman* was adopted in July 2003 and the Ombudsman has been elected by parliament and just started work.

Summary

A new general administrative legal framework is in place only in Montenegro; however it is not yet fully implemented. A workable base is in place in Serbia and it can be expected that, with the assistance of the EAR project, satisfactory bills will be prepared. However, their adoption and implementation will depend on the current Government's policies. The results of the elections in Serbia will have an impact on the State Union level – on the Serb membership in the State Union Council of Ministers and in the State Union Assembly.

3.1.3 Central policy capacity

State Union Level

3.1.3.1 *Legal Framework*

The governing institutions of the executive branch of the State Union are at an early stage of establishment. The Constitutional Charter establishes the position of President of the State Union, who is to “chair the Council of Ministers and administer its work” (Article 26). The Council of Ministers consists of five Ministers, each heading a Ministry. They are the Ministers of Foreign Affairs, Defence, Foreign Economic Relations, Internal Economic Relations, and Human and Minority Rights.

The *Law for the Implementation of the Constitutional Charter* specifies in some detail what is to happen to 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. Given the small number of Ministries in the State Union compared to FRY, the Law (Article 18.5) assigns to the General Secretariat responsibility for a large number of functions and administrative bodies.

3.1.3.2 *Institutional framework*

At the moment, it is too early to analyse the structure and activities of the State Union’s Centre of Government and to make specific recommendations. First, as was noted, the scope of activities of the General Secretariat is much broader than the normal core functions of a Centre of Government. 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. The General Secretariat and the Secretary General are not yet able to focus on core Centre of Government activities. Second, the role and responsibilities of the Executive Branch itself – the President and the Council of Ministers – have not been fully institutionalised. This means that it is premature to determine the type of support that will be required for the General Secretariat and the Office of the President. It would be reasonable to wait six months to one year before addressing these issues.

The General Secretariat is overburdened with operational responsibilities

3.1.3.3 *Coordination capacity*

At present, at the State Union level, the Rules of Procedure are temporary, and it is recognised that new ones have to be developed to deal with the new constitutional and legal role of the Council of Ministers (CoM) and the President.

The CoM meets once a week for about 2 hours. There are Working Bodies of the CoM that act as “funnel committees” in which all items are discussed prior to reaching the CoM. Members of the Working Bodies

are not Ministers, but they make suggestions to the CoM. The part of the General Secretariat that may be considered as performing CoG functions has 40 staff. It consists of a Sector for Preparation of the Meetings of the CoM, the Secretariats of each of the Working Bodies, and a Sector for Relations with the Assembly. In addition, there is an Office of Legislation, responsible for providing a legal review of all draft legal acts.

European Integration is an important co-ordination function from two perspectives:

- it is central to inter-ministerial co-ordination at the State Union level;
- because the EU recognises only the State Union as its interlocutor for future SAA negotiations⁶, EI is probably the most viable instrument through which the State Union level can co-ordinate with the Member States.

European Integration is the most viable coordination instrument at State Union level

“In July 2003, the Council for European Integration (CEI) was established at the State Union level. The CEI is headed by the President of the State Union. Its members are the prime ministers of Serbia and Montenegro, respectively, as well as the Deputy prime minister of Serbia and key ministers related to the EU integration process. The CEI is envisaged as the highest political authority capable of resolving the outstanding issues related to EU integration and EU requirements regarding the quality and substance of the State Union. Thus far [Nov 2003] the CEI has had three sessions, one of which was attended by the EU High Representative Javier Solana”.⁷

Within the Ministry of International Economic Relations there is a European Integration Office with about 20 staff, but its functions and operations are at a very early stage, and are yet to be clarified in relation to the activities of the Member States and the CEI.

3.1.3.4. Assessment

With the adoption and implementation of the Charter, the General Secretariat is burdened with a variety of functions which would normally be covered by line ministries. They widely exceed the normal core functions of a Centre of Government. The resulting management and administrative responsibilities leave the General Secretariat little capacity to focus on core Centre of Government activities.

⁶ Economic Reconstruction and development in South East Europe website:
http://www.seerecon.org/serbiamontenegro/documents/reforms_statement_serbia/annex4-1-serbia_eu_su.pdf

⁷ op cit

The process of policy development in the Ministries as well as the coordination capacity at the centre is weak and there is little willingness on the part of the Member States to have capacity at the State Union level increased.

The process of preparation for European integration is at its early stages. In response to EU pressure, it is focussed on the State Union level, although most substantive responsibilities are at the Member State level. Cooperation between the three EI offices (State Union and Member State) seems to have developed well in a very short time, and the setting up of the CEI is a welcome step. However, it is not fully in line with the political dynamics in the country as a whole and depends on external pressure. It remains to be seen how the Government of Montenegro and the incoming Government of Serbia will continue this process.

3.1.3.5. Recommendations

In pursuit of the EU policy that the State Union level is the sole interlocutor for negotiations on the SAA, we recommend that,

- a major upgrading of the co-ordination capacities of the General Secretariat and the EIO (in the Ministry of Foreign Economic Relations) are required, recognising that current absorptive capacity is very limited
- International and EU aid should be re-oriented to strengthen the State Union level for European integration and to ensure that Member State developments are in line with this over all objective
- the EAR establish working relations with the Secretary General, and indicate to him continuing willingness to assist in developing the General Secretariat as soon as this seems useful to him. The EAR should also strengthen its contacts to the political level of the State Union to create awareness for the need to improve the capacity of professional support structures and in particular of the General Secretariat.

It seems necessary that the EAR continue to liaise with the UNDP Capacity Building Fund to coordinate their efforts should the CBF project proceed to implementation. In preparation, for such an eventuality, EAR may wish to review with colleagues elsewhere in the region their assessment of similar CBF projects.

3.1.3.6. External Assistance

The UNDP Capacity Building Fund is preparing to assist the President of the State Union in defining his role and functions as Chair of the Council of Ministers, and in identifying the political and administrative

support he would need in this regard. The project is at an early stage of definition, and there are as yet no details on its scope or timing.

Serbia

3.1.3.7. Legal Framework

The legal framework underlying the policy development and decision-making system is set in the “Rules of Procedure of the Government of Serbia”. The latest version was adopted in 2002. The Rules of Procedure establish a sequential process for the preparation of material for the Government sessions: development and drafting by the proposing Minister; consultations with other concerned Ministries including the Ministry of Finance; review of legal drafts by the Secretariat of Legislation; scheduling of material by the General Secretariat of the Government; discussion by one or more of three Government Committees (each chaired by a Deputy Prime Minister and served by the General Secretariat); decision by the Government; where necessary, submission to the Parliament; and follow-up of parliamentary process by the relevant Minister.

The rules of procedure are insufficient to support the Prime Minister and Government

However, the process established by the Rules of Procedure is insufficient to support the Government and the Prime Minister in assuming collective leadership and responsibility in the pursuit of Serbia’s objectives. The main weaknesses in the Rules are:

- the Rules focus almost exclusively on legal drafts, not on policy matters;
- the information required from Ministries submitting material for the Government sessions is insufficient for informed discussion and decision-making;
- the role of the three permanent Committees/Boards (chaired by Deputy Prime Ministers), while useful, is too limited, especially in terms of enabling them to act as forums for in-depth policy discussion;
- the Rules do not establish a strategic planning system;
- the role of the General Secretariat and the Secretary General is too limited and technical, and does not involve coordination of the substance of material reaching the three Committees and the Government;
- there are no provisions in the Rules for monitoring the work of the Government;

the Rules do not deal with the role and responsibilities of the Prime Minister’s Office.

3.1.3.8. *Institutional framework*

The Centre of Government is fragmented

It is difficult to delineate precisely the organisations forming the Centre of Government in Serbia, because of the fragmentation noted above. The following four bodies perform functions normally belonging to the Centre of Government. Each of the four is managed as a separate organisation, and there are few, if any, linkages among them:

The Prime Minister's Office, headed by the Chief of Staff: In addition to the Chief of the Staff, the Office consists of 4 full-time advisers, and about 7-8 "freelance" advisers. This Office is formally part of the General Secretariat of the Government, but in practice operates entirely independently. It is concerned mostly with responding to the immediate needs of the Prime Minister, and is not involved in the preparation of items for decision by the Government.

The General Secretariat of the Government, headed by the Secretary General: The General Secretariat consists of three departments: Professional Matters; General Affairs (buildings, material, internal administration); and Republican Protocol. Of the three Departments in the General Secretariat, only one, the Department of Professional Matters, serves the decision-making process. This Department has a staff of about 20, who provide technical and logistical support to the Permanent Working Bodies (Committees/Boards and Commissions) and to the Government sessions. There are 6 Cabinets of the Deputy Prime Ministers (with two persons in each Cabinet). These cabinets, like the Office of the Prime Minister, are formally part of the General Secretariat, but in practice they are separate in all respects. The total personnel allotted to the General Secretariat, Prime Minister's Office and the six Cabinets is around 90, and there are presently around 70 persons actually employed.

The Secretariat of Legislation: As is the model in most of the ex-Yugoslav Republics, the Secretariat of Legislation performs a legal oversight role that in other countries may be carried out by Centre of Government and/or the Ministry of Justice. It is an independent organisation created by law. It reports directly to the Government, and its Head is appointed by the Government. The Secretariat of Legislation is allotted a staff of 30, and currently has a staff of 23 (20 lawyers and 3 secretaries). As in other former-Yugoslav countries, the Rules of Procedure require that drafts of all legal acts should be reviewed by this Secretariat in terms of constitutional and legal conformity and drafting style as well as harmonisation with EU law. The staff of the Secretariat does not provide opinion on any matters other than strictly legal questions. Staff members attend meetings of the Committees and the Council of Ministers, in order to answer legal questions and be able to produce the final draft following the meetings.

Communications Bureau: This is a small office, reporting to the Government (not part of the General Secretariat).

In addition to the four bodies listed above, two horizontal functions are closely linked to the Centre of Government:- European Integration and Public Administration Reform.

The European Integration function in Serbia is at its early stages of development, and its structure is not yet fully fixed. To some extent, the design of a complete system for managing the activities related to EI will depend on the final, real division of responsibilities between the State Union and Member State levels on negotiating and supporting the SAp.

The Department of European Integration is one of five Departments in the Ministry of Foreign Economic Relations (MFER), each headed by an Assistant Minister. It was established in May 2002, with an allocation of 23 persons. Currently, there are presently 8 persons in the Department, six of whom are government employees (the other two are funded by donors).

In addition to this Department, management of the EI function in Serbia includes:

- at the political level, the Advisory Council on European Integration, chaired by the Prime Minister. This Council is meant to provide strategic direction, but so far has met only twice;
- at the operational level, the Committee for Coordination of European Integration, comprised of one member from each Ministry, and headed by the Assistant Minister of European Integration in Ministry of International Economic Relations). It was established in October 2002, and has been meeting regularly but infrequently (about 5 times in 10 months).

In theory, there is also an Agency for Harmonisation of Legislation with EU Law, but the Agency is not operational.

The organisation of the PMO does not meet the Serbian needs to manage its part of the SAA negotiations

It seems clear that Serbia would need greater capacity – at both the strategic and operational levels – to manage its part in the preparation, negotiations, and implementation of an eventual SAA.

The previous Prime Minister announced that he would create and chair a State Administration Reform Council as a political body to give strategic direction to PAR (see section 4).

3.1.3.9. *Coordination capacity*

The conclusion seems inescapable that the policy-making system in Serbia is essentially devoid of coordination, planning and monitoring. The decision-making system is almost entirely focussed on the formalities of preparation of legal documents, legal review, and formal approval by Committees and the Government session. The Norwegian expert group noted, in early 2002, that “The Government acting as plenum stands out as a formal decision-making body and not as a

forum for strategic and political deliberation". Neither can the Government committees nor meetings held between the Prime Minister and deputy prime ministers be considered as possessing any strategic function. Consequently the Government appears to lack any kind of body that might fill this role".⁸

The formal process, as set in the Rules of Procedure, is generally followed in practice, and is logical as far as it goes. It allows the Government to discharge in an orderly fashion its role of approving the many legal and other documents that it is obliged to approve so as to ensure day-to-day governing. Since the official system in Serbia does not provide a process for political coordination or substantive inter-ministerial resolution of policy issues, such indispensable process must inevitably take place elsewhere, in an informal fashion. To some extent, all political systems use informal processes to supplement the formal ones. However, when policy is made only through informal processes, the risk increases that important decisions will be made without sufficient information and analysis, and that the capacity of the Prime Minister to lead, and the capacity of the Government to act collectively, will be seriously compromised.

3.1.3.10. Assessment

CoG structures are inadequate

The absence of CoG: For all intents and purposes, Serbia does not have a Centre of Government. No available organisation is able to provide strategic planning, policy coordination, and monitoring on a sustainable, professional basis. There are a number of individual offices and units, but they tend to have low capacity, limited competences, and small staff, and they are not linked to one another. Taken together, they are not able to provide to the Prime Minister and the Government the advice they need in support of Serbia's development aspirations. In Serbia, this issue is well recognised and is often referred to as "the lack of a strategic centre".

Tendency to create ad hoc structures to deal with strategic priorities: Serbia's Government (and Prime Ministers), rather than consolidate and instrumentalise existing structures, have a tendency to create new ones to deal with emerging strategic priorities. A number of recent examples include the Council on European Integration; the Agency for Harmonising Legislation with the EU; the plans of the team preparing the Poverty Reduction Strategy Paper to create a monitoring unit specifically for this Strategy; and the new State Administration Reform Council with a new Secretariat proposed to support it. It is likely that the absence of an operating CoG is at the heart of this problem, and that once an appropriate CoG is established, the perceived need to create new structures will diminish.

Overly legalistic approach: The focus of preparation of material for decisions, and the focus of review and decision by the Committees and the Government is overly legalistic, with insufficient concern with policy content. This approach is built into the Rules of Procedure of the Government, which would have to be revised as part of any reform to build a stronger policy development and decision-making system.

Low capacity in Ministries for policy development and European integration: The Ministries in Serbia are generally recognised to have very low capacity for policy development, including inter-Ministerial consultations and impact assessment. Most Ministries also lack sufficient capacity to engage in activities related to European integration. Efforts to supplement the Ministries' capacities with donor financed personnel has had mixed results, and is giving rise to concerns about the longer-term. A typical example is that the team preparing the Poverty Reduction Strategy for Serbia consists entirely of donor-paid personnel.

3.1.3.11. Recommendations

The Government of Serbia should mandate a comprehensive review of its system of strategic policy coordination and decision-making, with a view to unifying its CoG functions within the General Secretariat and improving its capacity to provide professional expert support to the Prime Minister, to the Government, and to the Committees. The review should propose specific reforms of: the procedures underlying the decision-making system; the capacity of the Prime Minister and the Government to agree, coordinate, and lead strategic priorities; the organisational structure and the functions to be performed by the CoG; the personnel needs and qualifications; and the links of CoG to Ministries, Parliament, and the Union Council of Ministers.

The improvement of the policy development and coordination in Serbia should extend beyond the CoG, to also encompass building sustainable capacity in the Ministries to formulate proposals, assess their financial and social impacts, and draft legislation.

Given the importance of strengthening policy capacities for European integration in general and the SAp in particular, the EAR should take a leading role in assisting the Prime Minister and the Government of Serbia to carry out a comprehensive review and implement the recommendations arising from it. The review and implementation should be viewed as a continuous process, with a minimum time horizon of three years. To the extent possible, the EAR's leading role should involve reaching agreement with other leading donor organisations to ensure that activities related to CoG reform are properly coordinated.

3.1.3.12. External Assistance

There is general recognition among the main donors of the urgent need to assist Serbia to develop its CoG.

Since late 2002, the UNDP, via the Capacity Building Fund (CBF), has tried to develop and implement a project to assist in reforming and strengthening the CoG (Prime Minister Office and General Secretariat). The former Prime Minister, prior to his assassination on March 12, was seen as supportive of such a project, and the previous Prime Minister has also shown some interest. Other donors participated in discussions with the CBF regarding the possibility of pooling resources to fund the project, but despite continuing efforts, the UNDP was not able to proceed. The main reasons for the failure appear to be the unsuitability of the CBF instrument to manage such a long-term project, leading to insufficient trust of the other main donors (EAR and DFID) and thus reluctance on their part to participate in a CBF-led project. In August 2003, the CBF is again attempting to start a project in the CoG, but seems not to have the funds to support it.

The EAR and DFID continue to be interested in designing an approach to supporting the development of the CoG, but thus far there are no concrete plans.

Montenegro

3.1.3.13. Legal Framework

The legal framework for the operation of the policy-making system is set in detail in the "Rules of procedure of the Government of Montenegro". The latest version was adopted in 2001, and revised in 2003. The Rules of Procedure establish a comprehensive and coherent system, with many good features. They set up a sequential process of preparation of decisions and the timeframe for each step: development and drafting by proposing Minister; consultations with other concerned Ministers including Justice and Finance; review of legal drafts by the Secretariat of Legislation; review of material by the General Secretariat of the Government; discussion by one or more of three Basic Government Commissions (Commission for Political System and Internal Policy, Commission for Economic Policy and development, and Commission for Financial System and Public Expenditure) each of which is chaired by a Deputy Prime; decision by the Government; where necessary, submission to the Parliament; and follow-up of parliamentary process by the relevant Minister.

The rules of procedure establish a coherent system

In addition, as an innovation not usually found in the region, there is a specific process of public discussion. "When the Government estimates that, in the procedure of adopting certain laws, there is a need for a

public discussion, it establishes the draft of law or other enactment, establishes discussion program, appoints the agency that carries it out, and sets time limits when the public discussion should be held and which cannot be shorter than 15 days” (Rules of Procedure Art. 44). This process is often followed. There are other useful features in the Rules, for example, procedure for resolving conflicts (through the intervention of the responsible Deputy Prime Minister), strict limitations on inclusion in the Council of Ministers sessions of items that have not been properly processed beforehand, and a requirement that submissions should not be longer than 10 pages, or should include a short summary.

A sensible system of work planning and monitoring is also set in the Rules, including a review of the plan by a joint meeting of the three Basic Government Commissions. These Commissions are served logistically by the General Secretariat, which also provides the Secretary of each Commission, who assists the Chair in issue management.

*Inter-ministerial
consultation could
be improved*

There are two areas in which the Rules of Procedure could be strengthened so as to improve policy formulation and decision-making. The first concerns inter-ministerial consultations, which at present are not generally required at the preparation phase. The second concerns the authority of the Secretary General to return items to proposing Ministers. The grounds on which items can be returned are only technical, formal and restrictive, and do not allow the General Secretary to return items on the basis of substantive policy considerations. Such authority would be needed if the General Secretariat were to develop greater capacity for policy coordination.

3.1.3.14. Institutional structures

The General Secretariat is established by a Decree of the Government, which also sets up its organisational structure. The Secretary General and the Chief of the PM Cabinet are now considering some reconfiguration of the organisational structure.

Presently, there are four Sectors in the General Secretariat of the Government:

*Secretary General
should develop
greater policy
formulation
capacities*

The Cabinet of the Prime Minister: This Sector is part of the General Secretariat only for administrative purposes, and is in practice independent of the Secretary General. It is headed by the Chief of Cabinet, who reports directly to the PM. The Cabinet is allotted about 12-15 positions, but currently includes only four advisers; it is planned to increase this number to a maximum of six or seven. The Cabinet is concerned primarily with supporting the PM in his strategic leadership role, and is not involved in the day-to-day management of the agenda for the Government sessions. Instead, political management of the agenda is largely provided by the Government Commissions, chaired by the Deputy Prime Ministers. To ensure coordination, the PM chairs a

meeting of the Deputy Prime Ministers every Monday morning, a meeting attended by the Secretary General and the Chief of the PM Cabinet.

The Sector of Legal and Expert Issues: This is the core of the General Secretariat, and is allotted 40-45 positions. The Sector is responsible for preparing the meetings of the Government and its Commissions, both logistically and substantively. This Sector is also responsible for preparing the work plan of the Government (on the basis of submissions from Ministries), and for monitoring performance according to the deadlines in the plan. Despite its name, much of the Sector's personnel are concerned with logistical and administrative tasks related to the meetings, rather than tasks related to the substance of plans and proposals. There continues to be a need for stronger capacity for policy coordination, strategic planning, and program monitoring in the General Secretariat.

The Public Relations Bureau: This unit deals with the ongoing information responsibilities of the Government, including informing the public on Government activities, and promoting the Government. The Bureau has about 20 persons

Bureau of Complaints: This small Bureau, with 4 persons, deals with complaints from the public that are submitted to the Government. It either responds directly or forwards them to the appropriate Minister.

In addition to the Sectors of the General Secretariat, two other bodies are worth noting:

The Secretariat of Legislation: As is the model in most of the ex-Yugoslav Republics, the Secretariat of Legislation performs legal oversight role that in other countries may be carried out by Centre of Government and/or the Ministry of Justice. It is an independent organisation created by law. It reports directly to the Government, and its Head is appointed by the Government. The role includes ensuring conformity with the Constitution, other legal acts, and harmonisation with EU law. The Secretariat has a staff of 15 lawyers. The Secretariat is also responsible directly for legal drafting of many laws, especially those that do not fall clearly under the competence of one Minister, e.g., acts related to property and privatization, procurement, anti-corruption, etc. In cases where Ministries draft legal acts, the Secretariat of Legislation is required to review drafts and provide an opinion to the drafting Ministry. Staff of the Secretariat also participate in all of the Working Groups established to prepare drafts of legal acts, in the meetings of the Government and the Basic Commissions, and in parliamentary consideration of acts. Given the large numbers of laws that need to be drafted, amended, or reviewed, the Secretariat is probably under-staffed, a problem that is aggravated by the shortage of lawyers in most Ministries.

European Integration: Recently, Montenegro began to set up its structure for coordinating activities related to European Integration (SAp). The Minister of International Economic Development and European Integration (who is also a Deputy Prime Minister) has begun the process of establishing EI capacity within that Ministry, and the plan is to second staff from other Ministries for this purpose. This, however, is at early stage of development, and is not yet operational. To some extent, the design of a complete system for managing activities related to EI will depend on the final, real division of responsibilities between the State Union and Member State levels on negotiating and supporting the SAp

3.1.3.15. *Coordination capacity*

The policy process in Montenegro is at early stage of development. There are some positive aspects; chief among them is the general recognition that a strategic plan should form the basis for Ministry and Government policy development and decision-making. Presently, the economic reform strategy, which was prepared with assistance from USAID and adopted by the Government forms this basis, and is referred to by all the players as the defining strategy. Both the Secretary General of the Government and the Chief of the PM Cabinet see it as an important part of their role to ensure implementation of the strategy.

Coordination capacities at CoG are adequate

The overall process of weekly decision-making appears to be orderly. Proposals are prepared by Ministries (often by inter-ministerial Working Groups, and often with some foreign assistance). Material is generally received and prepared in advance by the General Secretariat, and the three Basic Commissions of the Government perform the role of filter committees where issues can be debated and resolved prior to decision in the Government sessions.

3.1.3.16. *Assessment*

A lot of legislation is still drafted by foreign experts

The system is quite new, and would need time to take root and become fully institutionalised. The main weakness at this stage appears to be capacity and personnel in Ministries to develop policies and legal instruments, including impact assessment. As a result, a lot of legislation (probably too much) is prepared by foreign experts, sometimes without sufficient concern for local conditions and/or European standards.

The Rules of Procedure form a good basis for the policy and planning system, but they need to be strengthened in a number of areas, especially with respect to inter-ministerial consultations and the role of the General Secretariat in policy coordination.

A system to Manage EI is urgently needed

There is an urgent need to build up the system for managing European Integration, including political management, capacity in the Ministry of International Economic Relations and European Integration, capacity in all the relevant line Ministries, linkages to the economic strategy and the

PAR strategy, and coordination of the negotiations process. This must be accomplished in the context of the emerging division of responsibilities between the Member States and the State Union.

Donor coordination is very weak, risking a situation where donors pursue conflicting agendas rather than responding to Montenegro's strategic and operational priorities.

3.1.3.17. Recommendations

- The Government should strengthen the General Secretariat's legal basis and its operations, building on the existing system, which is presently in its early development stage.
- The Government should provide sufficient resources to the responsible Deputy Prime Minister to develop the structures and procedures for coordination of European Integration.
- A plan should be developed to strengthen policy capacity in Ministries, including impact assessment and legal drafting.

3.1.3.18. External Assistance

The main related project at the moment is the EAR PAR project. A general PAR strategy was adopted by the Government in March 2003. The strategy includes a detailed work plan, with steps for reforming the state administration in the next 4 years. The project is now preparing a number of basic laws related to the structure of the administration including a law on civil servants, law on salaries, law on general administrative procedures, and a law on administrative disputes.

There is presently no project in place or envisioned to assist the General Secretariat or Ministries in the area of policy development, planning, and coordination.

External assistance should focus on supporting the Government's implementation of the above recommendations.

3.1.4 Decentralisation process

The State Union does not play a role in the territorial system of the Member States

The State Union does not directly impact upon the territorial government system within the Member States. The State Union level is therefore not discussed here. Because there is much commonality between the self-government arrangements of the Member States, in this section they are discussed in parallel.

3.1.4.1. Legal framework

The situation of local government in the State Union has become more complex after the political upheaval of the last decade, and the constitutional framework is still evolving.

Constitutional developments with regard to local government and territorial organisation

Municipalities had an important role in the Socialist Federal Yugoslavia

In the former Socialist Federal Republic of Yugoslavia, local government was based on very large municipalities vested with a general competence. According to article 116 of the Constitution of 1974, all power and management functions were performed at the municipal level except those reserved to Republics, Provinces or the Federation by the Federal Constitution. The break-up of the former Yugoslavia precipitated a strong centralisation in FRY as in the other newly independent republics, but by contrast there was no explosion in the number of municipalities. One aspect of this centralisation process was the division, by government decree in 1992, of the territory of the Republic of Serbia into 29 districts, and the creation of a district state administration taking over a number of tasks previously carried out by municipalities and exercising supervision over municipalities (see: Law on the Territorial Division of Serbia, Official Gazette of Serbia 47/91 and modif., Law on the State Administration, ibid. 20/92 and modif.)

This centralisation process moved the republics away from the socialist concept of self-government.

As compared to the SFRY Constitution, the 1992 Constitution of the Federal Republic of Yugoslavia did not contain provisions on municipalities; this matter was left completely to the Constitution of each Republic, but with the duty to implement local self-government (Art.6, par.3). Such a requirement disappeared from the Constitutional Charter of the State Union of Serbia and Montenegro (proclaimed on February 4th 2003), but this is more the consequence of a looser association between the Member States than of denying the principle of local self-government. However several provisions of the Charter might have impact on local government legislation and practice: the guarantee of minority rights (Art. 47-54), and the requirement of harmonisation of legislations and competencies in the Member States (Art. 51).

Serbia

Serbia is still under the Republican Constitution of 1990. This contains a chapter (Chapter 6) on territorial organisation, which provides for autonomous territories and municipalities. A Constitutional Commission of the Serb National Assembly is discussing a draft new constitution, but at the end of November 2003 no agreement was expected in the short term. One of the most difficult issues is how to deal with the status of autonomous provinces and the particular situation of Kosovo.

Autonomous provinces (*autonomne pokrajne*) are formed in accordance with particular national, cultural and other characteristics of their area, and their territory is determined by law (Art. 108 of the Serbian Constitution of 1990). The statute is the highest legal act of a province (Art. 110); it determines the competencies and the organs of the province; it is subject to approval by the National Assembly of the

There are 2 autonomous provinces: Vojvodina and Kosovo & Metohija

Republic of Serbia. The province has rule-making power to perform its responsibilities, but no legislative power in the matters devolved (Art. 109). There are two Autonomous Provinces recognised in the 1990 Constitution of the Republic of Serbia – Kosovo and Metohija, and Vojvodina; however this status was not enacted in law for Kosovo and Metohija. From 1990 Chapter 6 of the Serbian Constitution applied to Kosovo only in theory. From 1999, Kosovo remains formally a Province of Serbia, but is administered by the UN (UNMIK). The question of the future status of Kosovo remains open and will be decided in due course by the Security Council of the United Nations.

The statute of the Autonomous Province of Vojvodina was adopted in 1991 by the National Assembly of the Republic of Serbia. In addition, a law on particular responsibilities of the Autonomous Province of Vojvodina (Official Gazette n°6, 7th February 2002) detailed and extended (as made possible by Art. 109 of the Constitution of the Republic of Serbia) the responsibilities of the Province, and its right to regulate them by ordinances; a number of them shall be performed as delegated responsibilities. The Province has no competence on the organisation of local government but the right to be consulted before any change in the territorial organisation (law of 2002, Art.59). This territorial autonomy can be qualified as a form of regional decentralisation.

Vojvodina is claiming greater autonomy

However, a new statute, significantly called a “basic law”, is being prepared by the Vojvodina Provincial Assembly which decided on 23rd October 2003 to submit the draft to the public at some future date. This draft is a claim for a much greater autonomy: the Provincial Assembly should have legislative power (Art.3) and organise the judiciary (Art.119sq); the competence of the Province would include practically all domestic affairs (Art.80sq), including the organisation of the social security (under republican law however) and local government (Art.145 sq). Furthermore, the Provincial Assembly would include two houses, one of which would be a Council of Communities, the members of which would be elected by the respective ethnic communities, the other one elected by all citizens. Only the latter would exercise the legislative power, but the government would be elected by a common session of both houses. The proposed “basic law” seems to aim at enshrining ethnic discrimination in a constitutional framework. Its compatibility with the Copenhagen criteria needs to be closely monitored.

According to article 7 of the Serbian constitution, “the municipality is a territorial unit in which local self-government is exercised”. Article 113 determines matters in the municipal competence, and refers to the law and the statute of the municipality for other affairs. According to article 115, the statute may include “other questions of interest to the municipality”. The law may establish a municipality as a city when its territory includes several municipalities or towns (Art.117). Article 118 provides for the status of the City of Belgrade, which includes city district

The 2002 Local Government Act is generally in line with the European Charter on Local Autonomy

municipalities, to which part of the responsibilities of the city are assigned by the City statute.

Whereas local government laws of 1991 and 1999 had a centralising purpose, the new Local Government Act of 14th February 2002 entails a new course oriented towards decentralisation, and is generally in line with the European Charter on Local Autonomy. Municipalities are governed by a Municipal Assembly, as representative body, and a President, as executive body; both are directly elected for four year terms. The Assembly elects a Municipal Council, the function of which is to co-ordinate its activity with the President and to oversee the municipal administration; the President appoints a Deputy (Art.30, 40, 43). The law retains the institution of *mesna zajednica* from the former Yugoslavia, as the lowest level of local self-government (for a village, a city district or neighbourhood) (Art.73-76). The Municipal Assembly may delegate assets and functions to *mesna zajednica*, which may be the owner of assets funded by voluntary contributions of its inhabitants approved by a local referendum (Art.73). The law provides for the representation of communities in ethnically mixed municipalities (Art.63), and organises the direct participation of citizens in decision-making (citizens' initiative, referendum, meetings: Art.65-69). The city has similar institutions (Art.45). The law provides for a legal framework for the municipal administration (Art.58 sq) and the financial basis of local self-government (Art.78 sq). It does not restore the property rights of municipalities (all municipal properties, including municipal enterprises were transferred to the Republic by a Law of 1995 (Off. Gazette 53/95) leaving to municipalities the right to use, manage and lease these properties, including the right to sell the usus right). Furthermore, the law regulates the relationships between Republic, autonomous territories and municipalities, and provides for cooperation between municipalities, included with those of other countries (Art.115). Lastly it provides for the oversight of municipalities (Art.105-112) and the guarantee of self-government rights (including with compensation) by courts. The new law will be applied from the next local elections (Art. 130).

Montenegro

Municipalities are the unique level of self-government

As in Serbia, municipalities are the unique level of self-government. The territorial division of Montenegro has remained unchanged since the law of 1990 on the division of the Republic in municipalities.

A local government reform has been pending for two years. It includes three bills: on local government; on the territorial division of the Republic; and on local finance. The local government bill is close to the Serbian law, but displays some noteworthy differences. It details the substance and the legal regime of different types of municipal properties (Art.40 sq); there is no municipal council between the Municipal Assembly and the Mayor, but the Mayor may appoint Deputy Mayors with the approval of the Assembly (Art.48 and 76); the chief administrator has the same legal position as the Mayor and the Chairman of the Assembly, i.e. the position of a local official, and not of

a civil servant although he is appointed by the Mayor with the approval of the Assembly (Art.82 and 93). The Constitutional Court has sole competence for judicial review on decisions or enactments violating self-government rights (Art.150-152). The bill on the territorial division seems to be a response to pressure to split up some existing municipalities creating a risk of sub-optimally sized units.

3.1.4.2. Institutional framework

In both Member States, municipalities are basic units of local self-government, and they largely follow the boundaries established under the former SFRY, with minor adjustments. In Serbia, territorial organisation is regulated by the Law on Territorial Organisation and Self-Government of July 1991. The Province is a level of territorial autonomy. Based on this Law, the full territory of Serbia, including Kosovo but not Montenegro, has been divided into districts (*okruzi*), as a jurisdiction of deconcentrated state administration

At present Serbia is divided into 18 districts, and, as a whole has 161 municipalities (not including Kosovo) of which 46 are in Vojvodina. The following table summarises the territorial organisation for the whole of Serbia and Montenegro.

Republics and provinces*	No. inhab.	Km ²	No. districts	No. municipalities
Serbia	7,498,001	77,755	18	160
Montenegro	650,575	13,812		21
* Excludes Kosovo				

With the creation of districts, the regions (*regioni*), which provided the forum for co-operation amongst municipalities, were suppressed.

Generally, municipalities are rather large units: on average more than 50,000 inhabitants in Serbia (45,000 in Vojvodina), but only 31,000 in Montenegro. At the end of the nineties, there were, in the whole FRY, only 10 municipalities with under 10,000 inhabitants, among which 4 were in Montenegro.

Municipalities are generally large units

The City of Belgrade performs also the functions of a district; the capital city has 1,6 million inhabitants, and is divided into 16 city municipalities, each with its own assembly, tasks and budget. Niš, Novi Sad, and Kragujevač are the bigger cities; the first two contain each two municipalities, and so qualify as cities according to the new Law on Local Government (all four were cities according to the Local Government Act of 1991, but lost this status in 1999). Inner city municipalities must not be confused with *mesna zajednica*, which is a

form of local self-government below the municipal level (for example, there are 66 in Kragujevač).

In Montenegro, a law of 1993 transferred the capital to Cetinje, the former residence of the King of Montenegro, a small historical city of about 20,000 inhabitants. Podgorica (the former Titograd), with more than 150,000 inhabitants, is the administrative and political centre, and is the only significant city. According to the Law on Local Government, Podgorica is the main city (*glavni grad*), whereas Cetinje is the capital city (*prestonica*). In addition to these, there are 19 municipalities. In practice, there are few differences between the capital and the main city, and the Law on Local Government is generally applicable to both.

Serbia

The main responsibilities of municipalities, according to the new Law on Local Government, can be summarised as follows. Municipalities are in charge, as their own tasks, of housing (building and maintenance), local public utilities (heating, public transport, water supply, sewerage, waste collection and disposal, green spaces, public lightning...), town planning, pre-school education, local roads and streets, culture and sport infrastructure of local scope, primary health care subject to further legislation, building maintenance and running costs of primary and secondary schools (although salaries are paid by the state). The same sharing of responsibilities obtains for social care, but municipalities may add to the legal obligations at their own cost. All together, this represents about 5.6% of GDP, which seems a reasonable level, considering that salaries for education and social care are paid by the state budget and that primary health care has not been actually transferred. For the first semester of 2003, investment expenditure was slightly in excess of 24% of the total expenditure of municipalities.

The implementation of the law of 2002 on Particular Competencies of the Autonomous Province of Vojvodina resulted in the transfer of a number of tasks from the districts to the Province e.g. major management functions such as education and health care. In addition, the new law grants the Province new decision-making and policy-making powers. Among these, the law distinguishes between competencies devolved to the Province (own competencies), and competencies delegated by the Republic to the Provincial authorities. The transfer of responsibilities gave rise to an additional financial transfer, voted by the Serb Assembly on June 19th 2002, of equivalent to €30m) from the budget of Serbia to the budget of the Province. According to the 2003 budget (as modified) of the Province it appears that education (including culture) is the major task: from a total expenditure of equivalent to €196m, more than equivalent to €138m are devoted to education, from primary education to university level, including personnel expenses. The second most important budget line is the development fund of the Province, with nearly equivalent to €25m) Other important budgets are for the department of health and social policy (.476 billion dinars, equivalent to €6.6m) and the department of

environment (equivalent to €7.9m). The Province has no authority over municipalities. The application of the law of 2002 raises the question of the future of the districts in the Province, as the law reduces their competences to a minimum.

Montenegro

The tasks of municipalities are regulated by the 1995 and the 1992 Law on the Transfer of Public Service Affairs to Municipalities. The latter delegated a number of tasks from the Republic to municipalities, on a ministry by ministry basis and provided for further transfers by subsequent laws. The Law on Local Government of 1995 enumerates particular rights and duties that municipalities have to exercise, by contrast with Serbian legislation, that enumerates fields in which municipalities have an authority, and refers to substantive legislation. Despite certain difference of approach in legislation, there is little difference between the Member States in the material competence of municipalities. The current interpretation of the law, despite the wording of article 16 of the Law on Local Government, of 1995, which includes a general clause, is that municipalities may not act in any matter without an explicit legal basis. Due to this interpretation, the lack of clarity of the distinction between own and delegated tasks becomes secondary, although it implies differences in the scope of state supervision. The new Law on Local Government includes a general clause (Art.30) but, unfortunately, it brings no clarity on the distinction between own and devolved and delegated activities.

3.1.4.3. Local financing

As regards local finance, Serbia and Montenegro are not at the same stage. Serbia has a working system of local finance, although some elements have to be improved; in Montenegro local finance is in need of reform.

Serbia

According to Article 109 of the 1990 Serbian constitution, the Provincial Assembly of Vojvodina shall “adopt the budget and the annual balance sheet”. In addition, funds necessary to finance the exercise of devolved competencies have to be transferred by the Republic. According to the law of 2002 on particular competencies of the Autonomous Province, the assets necessary to finance the competencies delegated to the Province have to be transferred under the authority of the Province (Art.65), and the funds assigned to institutions transferred shall be provided to the budget of the Province (Art.66). The Province will take over the employees assigned to activities transferred from the district offices of the ministries concerned (Art.67). These transfers have been implemented since the end of 2002. Otherwise, there is still no regulation on revenues collected by the Province. At present, the budget of the Province is mainly financed by transfers from the Republic calculated on the basis of the cost of the devolved and delegated

*Serbia has a working
system of Local
Finance*

functions. More than the equivalent of €144m, out of a total revenue equivalent to €195m, is provided by transfers from the Republic. They are assigned to salaries (equivalent to €106.7m) and to social transfers (equivalent to €18m). Own revenues of the province is estimated to amount to the equivalent of €44.3m. They mainly consist of income tax revenue (equivalent to €36m) and property tax revenue (equivalent to €7m).

As regards municipal revenues (including municipalities of Vojvodina), a major reform has been introduced from 2002 by the new Law on Public Revenues and Expenditures, voted at the end of 2001, the new Law on Local Government and the new Law on the Budget, both of 26th February 2002. As a result, municipal revenues increased from the equivalent to €475m in 2000 to the equivalent to €874m in 2002 and the equivalent to €922.7m in 2003 (modified budget of the Republic in 2002: equivalent to €3,016m).

Own revenues of municipalities, as determined under the previous legal framework, represented around 41% of the total revenues (without debt) in 2003. They consist of own taxes and communal fees; the latter represent 2% of total revenues.

The most important change in the reform was the introduction of the local payroll tax to be paid by companies as a percentage of their total outlay on salaries, at a maximum rate of 3.5%; all municipalities voted immediately the highest rate. This tax is expected to provide 20% of total municipal revenues in 2003.

The other own revenues of the municipalities are listed below, according to their decreasing share in municipal total revenues:

- the fee for the use of construction land,
- the fee for the development of construction land (related to public utility provision, these fees are collected by special purpose municipal companies, including water companies),
- the income from the lease of property managed by municipal governments (although the owner is the Republic),
- local communal fees,
- the so-called company fee;
- self-imposed contributions: representing under 2% of total revenues, they consist of a tax that local governments can impose on their citizens – through referenda - for specific programs and investments. It is entirely free from higher-level restrictions and is widely and frequently used by Serbian local

governments (71% of municipalities in 2002). It can be used to repay or maintain debt incurred to finance investments.

As a consequence of the reform of 2001-2002, municipalities have been granted wider discretion over the rates of fees.

Additionally, municipalities receive a share of several taxes collected on their territory but controlled by the Republic of Serbia, for an amount equal to 43% of total revenues ("unlimited shared taxes"). They receive 8% of the sales tax (but cities 10% and Belgrade 15%), and, since the 2002 reforms, 100% of several taxes on income. The reforms also increased the local government shares of a number of other taxes: the local government share of the property tax went from 25 to 100%; the share of the tourist tax was increased from 8% to 10%, and the shares of the agricultural tax, the property transfer tax (with a higher tax rate, collected on the transfer of any valuable property, not only immovable), the gift and inheritance tax, and the tax on income earned from the leasing of property, were increased from 50 to 100%.

Lastly, so called "limited shared taxes" are tax shares determined yearly by a special law and allocated to municipalities on the basis of need. This amounted to between 12 and 18% of total municipal revenues from 2000 to 2003. The resource base for these "limited shared taxes" is the tax on wages, and an additional share of the sales tax. Surprisingly, there is neither grant nor subsidy in the local finance of Serbia; this makes it difficult to assign resources for expenditures carried out locally in fulfilment of policies decided at higher levels.

According to article 30 of the Local Government Act 2002, the municipal assembly has to pass any acts for municipal public borrowing. According to article 58 of the State Budget Act 2002, local governments can borrow only for the capital investment part of their budgets. They can borrow for this purpose from domestic or foreign lenders, subject to meeting special criteria determined by the Government. The amount of borrowing depends on the capacity for repayment of the principal and interest of the local government unit from its own revenues; this implies an assessment of the financial situation that entails a central government control, although this is not explicitly mentioned in the law. Furthermore, the total short-term and long-term borrowing of a local government during the fiscal year may not exceed 20% of the total realised revenues during the previous year. Local governments may not issue guarantees.

Short-term loans can be granted by Serbia from its budget in case of budget deficit resulting from unbalanced movements in revenues and expenditures; they have to be repaid before the 30th of November of the fiscal year.

The local finance system of Serbia will have to evolve soon as a consequence of tax reforms that are going to be implemented. First,

VAT will be introduced and sales tax abolished from 1st January 2004. Prior to this, sales tax provided 30% of the total revenues of municipalities, but VAT cannot be shared on the basis of the local yield. Secondly, the Government is contemplating the introduction of a general personal income tax instead of the several taxes on income depending on the nature of the income. Thirdly, property tax, although fully assigned to municipal budgets, is controlled by the Republic and is under-collected (only 40% according to estimates). Lastly, equalisation is not working well partly because the legal criteria are not clear. However analysis of the existing disparities suggests the influence of political bargaining.

Montenegro

Montenegro system of local finance is about to be reformed

Less information is available on Montenegro. A reform of local finance is pending. The present system is regulated by the Law on Local Government of 1995 and the Government Revenues Act of 1996. The basic structure of the present system is close to the Serbian model.

Own revenues result from a number of taxes, fees and property revenues: a communal tax, a local administrative tax, self-imposed contributions⁹, compensations for the use of municipal property, fees. Own revenues are in excess of 43% of total revenues (data of 1998).

Municipalities receive shares of the following taxes controlled by the state: property tax (50%), property transfer tax, residence tax, inheritance duties and gift tax, personal income tax (15% of the local yield). Other revenues ceded to municipalities are: revenues collected out of compensations for construction, maintenance and use of local roads and other objects of public importance, revenues from interests collected on bank deposits. Altogether these revenues amount to 49% of total revenues; the main source of revenue is the income tax share (78%), followed by the property tax (17.3%).

Lastly, there is a government support grant that is allocated to 11 under-developed municipalities (7.7% of total revenues of these municipalities). Otherwise there is no budgetary grant in the local finance system.

The budget law also regulates municipal budgets, but local government debt is regulated only through a provision on keeping a record of existing municipal debt, loans granted and short term borrowing (Art.42), and the obligation to maintain budget appropriations for the repayment of the debt (Art.43). The present local government finance bill provides for the possibility for municipalities to take long-term loans for infrastructure projects and purchasing major assets, in accordance with

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They consist of a tax that local governments can impose on their citizens – through referenda - for specific programs and investments.

an approved capital investment plan; however, they are not allowed to borrow abroad; by contrast with Serbia they may grant guarantees (Art.62).

The draft Local Government Finance Bill is aimed at increasing the share of own tax revenues and diminishing the weight of self-imposed contributions and of tax shares. According to the bill, 10% of the local yield of the income tax should go to the municipality, but the municipality would be allowed to add a surtax at a maximum rate of 13% (15% in Podgorica and Cetinje), and 10% of the national yield would be channelled to an equalisation fund. The draft needs considerable improvement.

3.1.4.4. Conclusions

Although there are similarities, Serbia and Montenegro are evolving differently. Both have escaped the fragmentation of local government that has plagued many countries of the region. Future reforms should try to preserve this legacy.

Serbia

Serbia has a sound system of local self-government and local finance, including a high level of financial autonomy. The large size of municipalities will make it possible to decentralize more functions, if the government finds it appropriate. The survival of former Yugoslav institutions such as the mesna zajednica as a form of decentralisation within municipalities and the self-imposed contributions will be useful to strengthen local democracy and accountability in the new context.

Nevertheless some reforms are necessary at the municipal level. The first one is to clarify municipal property rights. Although municipalities may use and lease freely the properties at their disposal, only the Republic may dispose of them. In European countries municipalities usually have full property rights, although their properties may be subject to specific constraints. Serbian legislation should strengthen the guarantees of the property rights of municipalities, even if the Republic should maintain certain controls over their management. Secondly, the Serbian Government has to replace local government revenues that are going to disappear with the planned tax reforms. This could be done either through tax shares or budgetary grants. The second solution would give the opportunity to introduce grants either as matching grants for specific functions or for equalisation. The present equalisation system is not satisfactory because of the lack of transparency. Due to the large size of Serbian municipalities, disparities are not too deep, and should permit simple equalisation criteria.

Another issue is the Statute of Vojvodina. The implementation of the Law on Particular Competencies of the Autonomous Province of Vojvodina (2002) increased the autonomy of the Province in major policy domains such as education and health care. This accumulation of

responsibilities should be accompanied by a new Law to clarify and develop the Province's own revenue powers; further discussion is also needed concerning the Province's internal administrative structures. The Statute of the Province would need to be re-examined in the context of the Constitutional debate in Serbia. The draft "basic law" of the Province is a claim for very substantial autonomy and could be potentially in conflict with the Copenhagen criteria especially in terms of minority rights and ethnic representation.

Montenegro

The distinction between own, delegated and devolved responsibilities needs to be clarified.

In respect of municipal property, the situation in Montenegro is, to some extent, similar to Serbia. However, Montenegrin legislation recognises the existence of municipal property. On the other hand, there are pressures to divide some municipalities; the argument is that in some municipalities separate settlements have developed, in particular on the seaside, and these should be recognised as municipalities in their own right. These arguments seem not justified as the existing local self-government institutions within municipalities are able to leave sufficient autonomy to these settlements, and to facilitate consideration of their needs and interests in municipal government.

The present draft law on local finance suffers several important drawbacks. If the proposal for a municipal surtax on personal income is approved, it would be inadvisable to leave its introduction to the discretion of municipalities. It would also probably be a mistake to give up the voluntary contributions since they seem to be widely accepted.