



## SIGMA

### Support for Improvement in Governance and Management

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## SERBIA

### POLICY-MAKING AND CO-ORDINATION

ASSESSMENT MAY 2008

#### Introduction

The assessment mission for this report was carried out in April 2008, following the collapse of the coalition government, and during an election campaign. There was a general consensus that the prospects for changes in the machinery for policy-making and co-ordination depended largely on the results of the election.

It is important to understand, however, that uncertainty has for some years been a feature of the landscape in which the central governmental institutions of Serbia have operated. For the past two years, the political system has undergone institutional upheaval and repeated crises, partly as a result of the dissolution of the united state of Serbia and Montenegro and the subsequent unilateral declaration of independence of Kosovo. The Serbian Government that ended in January 2007 had been an unstable coalition, repeatedly torn apart by crises. The elections of that month were followed by five months of caretaker government, during which time policy-making and budget-making were stalled. The coalition subsequently formed was also unstable and crisis-prone, collapsing after 10 months in 2008. This seriously disrupted the conduct of government business, including the budget-making process. Not surprisingly, attempts to strengthen the central machinery for policy-making and co-ordination have made no progress, and in some cases have moved backward.

#### 1. Coherence of the Policy-making Framework

**A positive development in recent years has been the renewal of the legal framework underlying the policy** development and decision-making system. The Law on Government (2005) and the Rules of Procedure of the Government of Serbia (2006) provided many of the elements required for an effective system.

In particular, the Rules of Procedure established 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; public hearings; 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 served by the General Secretariat; decision by the government; where necessary, submission to parliament; and follow-up of the parliamentary process by the relevant minister.

Other notable improvements in the Rules of Procedure were:

- Clarification of the roles, responsibilities, working procedures, and membership of the three government committees that make recommendations on normative and policy items going to the government, and of four commissions that can make decisions in administrative matters;

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- Specification that the explanatory note accompanying draft laws should include some policy considerations, such as the rationale for the law, alternatives to enacting the law, and the cost of implementation;
- Requirement that the proposer of a draft law append a “statement to the effect that the draft law is harmonised with the European Union regulations in its form adopted by the government, or statement to the effect that the issue addressed by the draft law is not governed by any European regulations, as the case may be”;
- Requirement to append to the submitted item a comprehensive “regulatory impact assessment”;
- Requirement that the government specify “its main business activities in its Annual Business Plan”; and
- Requirement of public consultation on significant legislation.

However, there remain a number of weaknesses in the Rules of Procedure:

- The focus of preparation of material for decision, and the focus of review and decision by the committees and the government is overly legalistic, with insufficient concern for policy content;
- The role of the General Secretariat and the Secretary General when reviewing material remains too limited and technical, focusing on compliance with procedures rather than on quality of content;
- The Rules of Procedure set no deadline by which materials must be submitted to the General Secretariat before going to the government, permitting ministers to submit materials at the last moment, which allows the General Secretariat little or no time to review the materials;
- The annual planning process, while welcome, is defined too narrowly as a process for pooling together input from individual ministries rather than a planning process designed to achieve collective priorities; and
- The Rules of Procedure do not establish a strategic planning system.

Furthermore, many aspects of the Rules of Procedure are not operative, for the reasons listed above.

**The legal framework provides many of the elements required for an effective system, but there remain serious weaknesses, and many aspects of the Rules of Procedure are not operative.**

## **2. Inter-ministerial Consultation on Policy Proposals**

There is very little consultation between ministries (and sometimes within ministries) when laws are being devised and drafted.

Once a draft law exists, the Rules of Procedure require the ministry initiating it to consult any public administration body whose activities might be affected, including specifically the Secretariat for Legislation, the Ministry of Finance, the Ministry of Justice and the European Integration Office. Ten days must be allowed for a response (20 in the case of systemic laws).

In practice, it seems that these requirements are rarely observed. The Rules of Procedure allow any minister to suggest that "the agenda include a certain issue where the failure to discuss the issue could have detrimental effects". As a result, most of the items are circulated at the last moment, or are tabled directly at the meeting. The agenda circulated for the government and its committees will usually contain a small number of items, but the meeting can end up considering any number up to 40 items. A surprisingly large number of laws are circulated to committee members without comments, but in the hope that comments from the ministries affected will be delivered orally at the meeting. As a result, a very high proportion of draft laws undergo no proper consultation between ministries at all.

The consequence of this approach is that much legislation is of poor quality and requires subsequent amendment. This amendment process adds to the expense of implementing legislation and creates uncertainties for those who have to comply with it. .

One aspect of this process that does appear to work better is consultation with the Serbian Office of European Integration (SOEI), which reports that it is given one or two weeks to comment on the conformity of legislation with the *acquis communautaire*. However, this successful consultation may be due to the fact

that SOEI staff have a close working relationship with ministries and are often aware of legislation being put forward that has a European dimension.

**The rules for inter-ministerial consultation on draft laws are usually broken, either by circulating them late for comments or by not circulating them at all. Consequently, much of the legislation passed is flawed and in part ineffective. These rules work slightly better in the case of consultation with the European Integration Office.**

### 3. Work Planning

There appears to be no effective mechanism for planning the business of the government or its committees in the short or medium term.

The Rules of Procedure require that the government specify “its main business activities in its Annual Business Plan”. The Rules also require that the achievements in carrying out these business activities be evaluated in a performance report. The Annual Business Plan should specifically list all bills and proposals of other enactments that the government will put forward to the National Assembly, with a brief overview of the reasons why each individual enactment is required (article 79).

The first such document, compiled at the beginning of 2007, was long and unrealistic. Ministries included all conceivable legislative proposals, whether likely to materialise that year or not. As a result, only between 30% and 50% of all items were enacted.

Compilation of the Plan for 2008 was completed in March 2008, although obviously it was open to extensive revision by an incoming new government. It was a shorter and more realistic document. It set out proposed legislation and dates for action, but it left to the government committees the allocation of a priority to each item.

The Annual Business Plan is a step forward, but it has severe limitations:

- it is not published;
- it is not compiled by means of a consultative process, and consequently ministries generally do not know what other ministries are putting forward, which increases the chances of duplications and gaps;
- it is a compilation of submissions from ministries;
- it is not at present linked to the budgetary process;
- a large proportion of issues decided by the government in 2007 had not actually featured in the 2007 Plan.

Given the signing of the Stabilisation and Association Agreement, if implemented, a substantial proportion (probably the majority) of the government's Annual Business Plan will be related to the implementation of that agreement. It will, therefore, be necessary to develop much closer links between this process and the work of the Serbian Office of European Integration (SOEI).

**There appears to be no effective mechanism for planning the business of the government or its committees in the short or medium term. The Annual Business Plan is a positive development, but it is still in the experimental stage.**

### 4. Dispute-resolution Mechanisms

The main mechanisms for resolving disagreements between ministers are the meetings of the government and its committees. As the inter-ministerial consultation process required by the Rules of Procedure is largely inoperative, there is no way of identifying or resolving inter-ministerial disagreements at an earlier stage of the process.

On the positive side, the three committees envisaged by the new Rules of Procedure are operational and, between them, cover the full range of government business. The Rules of Procedure require that any item be considered by a committee before being submitted to the full government meeting. However, because most business is effectively tabled at the committee meetings, their effectiveness is very severely impaired. Furthermore, because the committees usually meet only two days before the government meeting to which

they report, there is little or no time to reconcile disagreements between ministries in the intervening period. The committees can order that items be returned to the proposer for more work, but often ministers circumvent this command.

**There is no way of identifying or resolving inter-ministerial disagreements until a very late stage in the process, when it is usually too late to do so effectively.**

## **5. Central Co-ordination Capacity**

As has been observed in previous Sigma assessments, for practical purposes there is no centre of government in Serbia; in its place, supporting the government meeting, are the Prime Minister and Deputy Prime Minister, together with a constellation of small units with limited remits and capacities.

Administrative and secretarial support to the government and its committees is provided by the General Secretariat, headed by the Secretary General. Within this body, two departments are concerned with the policy-making and co-ordination system. The Section for Expert Work compiles and circulates documents before meetings, and it records and circulates decisions. It is generally regarded as doing its work effectively, as far as the lack of proper inter-ministerial co-ordination permits. Its role is entirely logistical and technical. It has neither the remit nor the capacity to review the substance of proposals put forward by ministries.

The creation of the Section for Co-ordination, Follow-up, and International Co-operation in 2005 was a positive step, but to date its role has been restricted to the compilation and monitoring of the government's Annual Business Plan.

To a limited extent, some co-ordination was carried out under the last two governments by the cabinets of the respective Deputy Prime Ministers. However, this co-ordination was limited and unsystematic and, since the staff of the cabinets change with the minister, created no sustainable capacity for co-ordination.

Part of the reluctance to create a stronger centre of government in Serbia is commonly attributed to the reluctance of politicians to confide such sensitive tasks to civil servants rather than political appointees. In this regard, a minor but welcome development is that the posts of Deputy Secretary General and Assistants to the Secretary General, which were previously political appointments, have now been made semi-permanent, on five-year contracts.

An influential role is played by the Secretariat of Legislation, an independent organisation with a relatively large staff that reports directly to the government, and whose head is appointed by the government. As in other countries of former Yugoslavia, the Secretariat is the legal adviser of the government, and the Rules of Procedure require that drafts of all legal acts be reviewed by the Secretariat in terms of constitutionality, legal conformity and drafting style. Staff of the Secretariat do not provide an opinion on any matters other than strictly legal issues. The Secretariat is consulted on all draft legislation (but often at short notice), and staff members attend sessions of the committees and the government, in order to answer legal questions and to be able to produce the final legal drafts following the meetings. However, their support consists of opinions on the legality and legal format of items, not on their policy adequacy.

The Rules of Procedure place on the Secretary-General of the Government the duty of motoring and enforcing the decisions of the government. In practice, the General Secretariat lacks the capacity to do this.

**This fragmented group of units does not constitute an effective centre of government. The General Secretariat provides secretarial and administrative support to the government and its committees, but there is no capacity for policy review. There is no monitoring of the implementation of government decisions.**

## **6. Central Capacity to Advise on Policy and Strategic Matters**

The Prime Minister's Cabinet is staffed by political appointees (not civil servants) and has its own Regulation. It is not formally part of the General Secretariat of the Government. The Cabinet is concerned mostly with responding to the immediate needs of the Prime Minister; it provides him with some policy advice but plays no strategic role. It is not involved in the preparation of items for decision by the government.

The General Secretariat of the Government plays no policy or strategic role. The Annual Business Plan that it produces is not a strategic document and is not currently linked to the budget process.

There is no central capacity for strategic planning, and a notable deficiency has long been the absence of any strategic framework within which the budget or the Annual Business Plan can be prepared. As is common in the region, there is no shortage of sectoral or cross-sectoral strategies, but the lack of an over-arching strategic framework – within which these strategies could be drafted – leads to inevitable conflict.

Several attempts have been made in recent years to tackle this problem indirectly. The Poverty Reduction Strategy Paper (PRSP), prepared at the prompting of the World Bank, provided an approximation of a strategic framework for quite a wide span of government activity, but this work was led by a group of externally-funded advisers based in the Cabinet of the Deputy Prime Minister. This framework is now quite dated, in the sense that much of the PRSP has been implemented. Also, more recently there was an attempt to elaborate a national investment plan. This plan was originally conceived as a strategic framework, and after some analysis and debate the government did adopt a set of investment priorities, but attempts to implement this plan as a government-wide strategy have proved to be difficult.

An initiative that emerged as a spin-off from the PRSP was the ministry strategy project project (GOP), which sought to build strategic capacities from the bottom up, by giving line ministries the capacities to develop ministerial strategic plans, which made coherent sense of the multiplicity of sectoral strategies in existence, placing them within ministries' overall needs. This work has survived the demise of its original political sponsor because ministries found it helpful and asked for the work to continue. It now covers 17 line ministries, 12 of which had produced strategic plans by March 2008.

In a fragmentary way, matters are improving. The Ministry of Finance appears to be drawing on line ministries' GOP plans to shape the budget memorandum, and the management of the GOP project is scheduled to move to the Ministry of Finance in the autumn of 2008. The PRSP, the national investment programme exercise, and the need to plan for implementation of the IPA have all induced ad hoc networks of civil servants to work together across ministries for strategic purposes, but these efforts remain fragmentary and poorly organised in the absence of any central mechanism.

**There is no strategic planning system, and no capacity for policy or strategic advice at the centre of government. However, there are some useful initiatives at ministry level on which a system could be built.**

## **7. Co-ordination of European Affairs**

The main co-ordinating body in this area is the Serbian Office of European Integration (SOEI), which reports to the Deputy Prime Minister.

The inter-ministerial coordination arrangements are as follows:

- At political level, the "co-ordinating body", chaired by the Deputy Prime Minister and consisting of the Ministers for External Affairs, Interior, Finance, Regional Development, Justice and Agriculture; this body meets to discuss the most important EI issues;
- At operational level, the "expert group", consisting of the state secretaries of all ministries (state secretaries are political appointees in Serbia); This group meets regularly, usually monthly, to discuss more practical and technical issues;
- 32 working groups, corresponding to the various chapters of the *acquis communautaire*, each chaired by a state secretary;
- European Integration units in all ministries, which vary in size from 1 to 20 staff; it is widely acknowledged that ministries lack EI staff with the necessary skills.

The 32 working groups indicated above are now undertaking the preparatory measures for setting up the technical framework that will in effect become a programme for the adoption of the *acquis*. Well-publicised uncertainties surround the date on which the Stabilisation and Association Agreement (SAA) might be signed by Serbia, permitting the application of these technical measures.

**There is an effective mechanism for the co-ordination of EI matters. Its' staffing and capacities will need boosting once an SAA is signed.**

## 8. Involvement of the Council of Ministers in Budget Decisions

The Law on Government (articles 35 and 44) requires that the government collectively approve the budget memorandum, which sets a strategic framework at the beginning of the budget cycle, and also approve the final draft budget before it is submitted to parliament. While this is done as a matter of form, in practice the political upheavals of recent years have prevented serious political discussion of budget priorities and decisions (as a result the country operated with an emergency budget for the first half of 2007), and decisions have been taken in an extremely ad hoc way.

## 9. Impact Assessment

Article 38 of the Rules of Procedure require that there be attached to all draft legislation an "Explanation" for the proposal. While most of this explanation relates to legal issues, article 38 (4) stipulates that the explanation attached to draft legislation is to contain an estimate of the financial resources required for implementation. In practice this requirement is complied with, but the costing provided is often inadequate and the Ministry of Finance is often allowed little time – often only a few hours – to comment on the explanation.

Article 39 of the Rules of Procedure sets out a requirement that all draft legislation be accompanied by a comprehensive regulatory impact assessment (RIA), analysing the effects of the legislation, including “who and how would most likely be affected by the provisions of the law, what costs would the citizens and the industry (in particular small and medium-sized enterprises) incur due to the implementation of the law, whether the benefits of adoption of the law would be such as to justify the costs, whether the law supports the creation of new economic operators and free competition in the market, whether all stakeholders have had a say in the drafting process and which measures would be undertaken in the course of implementation of the law in order to reach the goal of its adoption”. This requirement is usually met in the case of draft laws, but not in the case of secondary legislation. In practice, the quality of RIA analysis prepared by ministries varies greatly, partly because capacities in some ministries are weak, and the majority of draft laws circulated have little or no real RIA analysis attached to them.

A Council for Regulatory Reform has been established, chaired by the Deputy Prime Minister and consisting mainly of state secretaries. The Council itself rarely meets, and in practice RIA is being driven forward by the Council's energetic secretariat, with support from the Deputy Prime Minister. The secretariat's principal activity is to review draft laws, checking them against the list of questions quoted in the previous paragraph and providing comments. It focuses primarily on draft laws with important economic effects, and its comments on key laws can be very detailed.

The comments of the Regulatory Reform Council's secretariat are forwarded to both the originating ministry and the relevant government committee. According to the secretariat, the committee is making increasing use of this information, and to date half a dozen laws have been referred back to the originating ministry in the light of the secretariat's comments. In addition, the secretariat carries out one or two detailed pilot RIAs every year in order to develop the methodology and popularise its use. The Council's secretariat has plans to revise and extend the system and to provide greater guidance and training to ministries.

The Council is a temporary body, and is currently supported by the World Bank under Swedish funding. Within two years, it is expected to be absorbed into a line ministry, funded from the state budget. At that stage, there is a clear danger that key staff will not transfer with the programme, which would lead to a considerable loss of experience and institutional memory that could seriously damage the regulatory reform process.

**The only requirements for impact assessment are a costing of all draft laws (which operates in an ineffective way) and a promising, still-developing system of regulatory impact assessment for which the institutional base is nevertheless at risk.**

## 10. Better Regulation

*There is no better regulation strategy*, but the secretariat to the Council for Regulatory Reform has prepared a regulatory reform strategy, which will be submitted to the new government once it is formed.

## 11. Transparency, Consultation and Communication with the Public

### *Consultation*

There is a requirement in the Rules of Procedure for public debate on draft laws “that substantially alter the way in which a specific issue is regulated or that govern an issue of particular relevance for the public.” The “Explanation” that must be attached to all draft legislation requires it to state “whether all stakeholders have had a say in the drafting process”. This requirement is to be supervised by the relevant government committee. In practice, there remains within the administration a strong cultural bias against consultation. There have been examples of serious and effective consultation, notably a structured process for civil society inputs into the PRSP process, and some consultation exercises undertaken as a result of the regulatory impact assessment process. However, these are relatively isolated examples, and consultation as a systematic practice is largely absent.

### *Procedures for informing the public of the government’s work*

Article 9 of the Law on Government requires the government to keep the public informed of its activities, and the Rules of Procedure specify various means by which this must be done, including press conferences, press releases, and the Internet. It also specifies that the Deputy Prime Minister and ministers are responsible for informing the public of their decisions. In practice, mechanisms for informing the public of the work of the government are poorly developed. A Communications Bureau reports to the Prime Minister, but mechanisms in most ministries are weak and so journalists often direct their inquiries to the State Secretary. The willingness of ministries to provide information proactively and to respond to inquiries from the media varies markedly. A weekly press conference follows the government meeting.

### *Public access to laws and government decisions*

Laws and other decisions of importance (e.g. those taken by the Prime Minister) are published in the *State Gazette*. However, the unsatisfactory nature of the law-making process means that laws frequently have to be amended, often using inappropriate or questionable legal instruments (e.g. the amendment of parliamentary laws by using presidential decrees). As a result, it is extremely difficult for a citizen – even an expert lawyer – in Serbia to determine which law is operative on a particular subject.

**Arrangements for public consultation and for the provision of information to the public on the work of the government are underdeveloped. The implementation of the Law on Free Access to Information of Public Importance is being frustrated by the government, in a blatant breach of the rule of law. Weaknesses in the national law-making process make it difficult for citizens to ascertain what the law is in a particular area at any given moment, which is also inimical to the rule of law.**

## 12. Summary and Next Steps

There have been some limited positive steps in recent years of to improve Serbia’s system for policy-making and co-ordination, including a better legal framework, an Annual Business Plan of the Government – which is in its experimental stages, a developing system for regulatory impact assessment, and an effective mechanism for the co-ordination of EI matters.

However, the system is essentially very weak. There is in effect no centre of government, and the small constellation of units at the centre lacks capacity for policy review, strategic thinking or effective work-planning. Key requirements of the government’s Rules of Procedure relating to inter-ministerial consultation on draft laws are usually not met, and consequently much of the legislation passed is flawed and partially ineffective, and inter-ministerial disagreements are not effectively resolved.

The tendency to build some strategic and policy/advisory capacity in political cabinets (especially in the Cabinet of the Deputy Prime Minister) cannot, in the longer term, provide a sustainable solution.

However, understanding of the need for improved policy-making and co-ordination appears to have strengthened in recent years, and there is a developing consensus in favour of action. The main obstacle to progress appears to lie at political level.

## **Principal Recommendations:**

1. The Rules of Procedure should be revised:
  - to prevent any proposal from being submitted to the government meeting or its committees before full consultation with other ministries has been carried out, except in cases of genuine and immediate urgency;
  - to require any proposal to be submitted to the meeting of the government or one of its committees to be sent beforehand to the Secretary General and to the Secretariat of Legislation five days before the government/committee meeting at which it is to be considered, so as to allow proper checking of the material;
  - to address the weaknesses in the Annual Business Planning process, as identified above in this report.
2. The General Secretariat of the Government should be developed as the central focal point of policy-making and co-ordination. In particular:
  - The legal competencies of the General Secretariat should be strengthened to enable it to enforce the Rules of Procedure; to review proposals submitted to the government and its committees in terms of their policy substance; to provide substantive advice to the Prime Minister, Deputy Prime Minister and the government; to manage effectively the policy planning system; and to ensure high quality strategic planning;
  - The institutional structure of the General Secretariat should be revised so as to provide it with the capacities to undertake the above work.

As recommended in previous assessment reports, donors should consider setting up a two or three-year technical assistance project to support the restructuring and development of the General Secretariat and to strengthen the capacity of ministries to prepare high quality plans, policies and legislation.

## **Other Recommendations:**

3. The government should enforce the decisions of the commissioner in relation to the Law on Free Access to Information of Public Importance.
4. The government should strengthen the systems for public consultation and for the provision of information to the public, specifying the duties of ministries and providing guidance on how to fulfil them.
5. A secure institutional base should be provided for the regulatory impact assessment system, conserving as far as possible the expertise that has already been developed in the Regulatory Reform Council's secretariat.