

Alternative Report

**on the Implementation of the National Anti-corruption Strategy
2013 - 2018 and of the Action Plan**

- September 2013 - December 2015 -

Belgrade, January 2016

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SUMMARY

I (Lack of) Implementation of measures and activities envisaged in the Anti-corruption Strategy and the Action Plan

Inconsistent and unsystematic implementation of measures and activities in the Action Plan, failure to implement certain measures and activities, as well as the implementation of measures and activities in a manner that is generally not consistent with the purpose of the Anti-corruption Strategy – this sums up the results of the observation of the anti-corruption efforts of state institutions undertaken in the observed period (September 2013 - December 2015).

There are many causes to this situation, and their nature is diverse.¹ Here, we will take a closer look only at certain ones and particularly to those most closely connected with the relevant strategic documents.

In alternative reports on the implementation of the Action Plan that accompanies the Anti-corruption Strategy for 2013 and 2014,² civil society organizations have already identified certain challenges in the implementation of the Action Plan, as well as the challenges related to the mechanism of control of implementation of its measures and activities.

Those reports highlighted the inadequate control over the implementation as one of the major challenges of the implementation of the Action Plan. Among other, it leads to the situation that the responsible subjects (institutions) fail to meet the implementation deadlines as a rule.

During 2015 no significant actions were taken to eliminate the problems in coordination of the implementation of the Anti-corruption Strategy and the Action Plan.³ The precise and efficient mechanism for determining the responsibility for potential failures in the implementation of measures and activities still does not exist.

Significant changes occurred neither in the quantity nor in the quality of implementation of tasks assigned to responsible parties in the Action Plan.

During the reporting period, legislation containing risks of corruption was adopted. As an example, among them are the solutions elaborated in *Spatial Planning and Construction* area (legalization of objects legislation). In addition, deficiencies in certain laws noted during the

¹ I.e. (non)existence of political will; extension of deadlines imposed by the Anti-Corruption Plan in the process of drafting of the Action Plan for Chapter 23, etc

² See Alternative Reports of Civil Society Organizations on the Implementation of the National Strategy for Combating Corruption and of the Action Plan, Anti-Corruption Agency of the Republic of Serbia, available at <http://www.acas.rs/alternativni-izvestaji/>

³ The drafting of the Chapter 23 Action Plan for Serbia was in progress, during the reporting period. Particular attention to the accountability issue was paid in the Plan, and so-called early warning mechanism (in case of a delay in the implementation of the Plan) has been set up. See Draft AP, September 2015, page 10

previous reporting cycle remained – no changes and/or amendments were made. Such regulations continue to contain risks of corruption. Examples of those can be found also in *Spatial Planning and Construction* (planning and construction regulations).

The deadlines set in the Action Plan have not been respected in a string of activities. One of the most notable examples of this is the failure to adopt a set of regulations related to political activities (legislation on lobbying, on the Anti-corruption Agency, on financing of political activities).

Waiting for the adoption of the "umbrella laws" delayed or prevented the implementation of a number of measures envisaged in the Action Plan. As an example, awaiting the adoption of the umbrella regulations related to scrutiny by inspection reflected itself in the (lack of) implementation of relevant measures and activities related to the scrutiny by the inspection envisaged in following areas: *Health Care, Spatial Planning and Construction, Education*.

Similar was the fate of a number of measures and activities that have not been implemented due to their accessory nature. Namely, failure to adopt the legislative or a strategic framework, affected the (lack of) implementation of a number of actions envisaged to be implemented subsequently. Most evident example is the failure to adopt the new Anti-corruption Agency legislation (in the field of *Political Activities*). Similar situation was also identified in *Judiciary* as well as in *Education and Sport*.

Often inadequate or inaccurate content (wording) of the Action Plan did not help the responsible subjects in the implementation of their tasks either. Specific challenges in this regard were noted in *Media* and in *Sport*.

Identified challenges in the perceptions of the Action Plan by the responsible subjects - and in their perceptions of other responsible subjects as well - for the second year in a row, lead to question whether the implementation of certain measures and activities prescribed in anti-corruption documents is at all possible. The views of the competent ministry in the field of education represent a vivid example in this regard.

For reasons not related solely to the (non) implementation of envisaged in the strategic documents, yet for this reason also, there were no tangible results in the fight against corruption in the observed areas, in the observed period.

II Overview of the (lack of) implementation of Anti-corruption Action Plan measures with key recommendations

Political Activities (3.4)

In this area, more than 62% of prescribed anti-corruption measures have not been implemented. Circa 33% was implemented or partly implemented.

The implementation rate (based on available data) in the observed period in *Political Activities*:

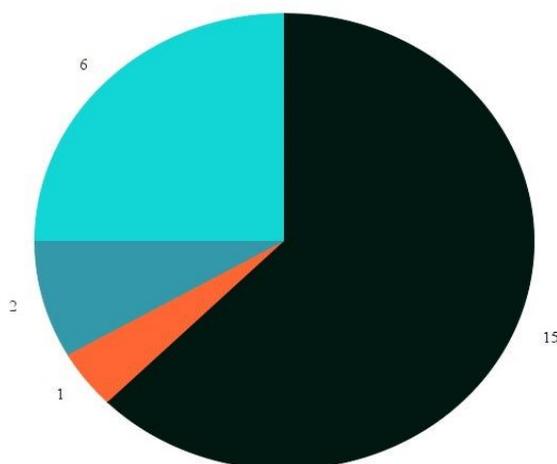
Total: 24 measures

Not due for implementation: 1

Implemented: 2

Partly implemented: 6

Not implemented: 15



Key recommendations:

- Amend the Law on Financing Political Activities so as to clearly identify and divide the responsibilities of the Anti-corruption Agency, the State Audit Institution and of the other bodies competent for control procedures of political activities and political subjects; Amend the Law on Financing Political Activities so as to accurately determine the duties and mechanisms for transparency of financing of political subjects, in accordance with the qualitative analysis of the Law on Financing Political Activities' provisions implementation
- Amend the Law on the Anti-corruption Agency, in accordance with the deadlines and with the activities defined in the Chapter 23 Action Plan
- Adopt the bylaw that contains a directory of public offices

- Adopt effective legislative framework regulating lobbying and legislative framework regulating public participation in rulemaking process
- Amend the Law on Public Enterprises so as to establish clear and objective criteria for selection and dismissal of directors as well as for the evaluation of their work at all levels, and so as to introduce accountability mechanisms for the full implementation of these criteria
- Strengthen the capacities of the Anti-corruption Agency for the control of financing of political activities
- Strengthen the capacities of the State Audit Institution for effective auditing of political parties in the Parliament
- Adopt provincial and local anti-corruption action plans; monitoring of their implementation to be conducted by permanent working bodies of provincial or local assemblies.

Judiciary (3.4)

In this area, more than 51% of prescribed anti-corruption measures have not been implemented. Circa 31% was implemented or partly implemented.

The implementation rate (based on available data) in the observed period in *Judiciary*⁴:

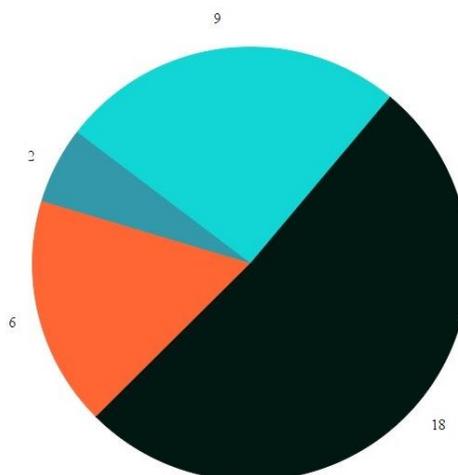
Total: 34 measures

Not possible to assess: 6

Implemented: 2

Partly implemented: 9

Not implemented: 18



⁴ In comparison with the prescribed in the Action Plan, certain modifications of certain activities took place in practice. (Lack of) Implementation was assessed and evaluated solely in relation to the wording of the Action Plan and in relation to the purpose of the Anti-Corruption Strategy.

Key recommendations:

- Amend the Criminal Code so as to introduce the crime of illicit enrichment
- Adopt the planned changes of regulations on the work of expert witnesses as soon as possible
- Extend the validity period of the Financial Investigation Strategy 2015 - 2016, which was adopted in May 2015. Coordinate the implementation with related strategic documents. Adopt an action plan to make the Strategy operative. Carefully define the extent of activities and subjects responsible for accomplishment of strategic objectives.
- Change and amend the Law on Seizure and Confiscation of the Proceeds from Crime so as to introduce the duty for MOI to submit a report on the financial investigation along with the criminal report to the Prosecutor
- Establish clear and precise criteria for the selection of managers in courts and in prosecutors' offices
- Build the capacities of the High Judicial Council and of the State Prosecutorial Council for planning and for execution of an independent budget
- Conduct a thorough research on the needs of judicial offices holders for continuous training; develop a detailed training program based on the research results.
- Define strict criteria for mandatory training in cooperation with professional associations. Adopt the envisaged amendments to the Law on High Judicial Council and to the Law on State Prosecutorial Council.
- Establish a working group - with mandatory participation of the Commissioner for Free Access to Information of Public Importance and Personal Data Protection - to execute the analysis on what data should be considered confidential in the personal file. Change the regulations in accordance with the results, if necessary.
- Improve the cooperation and coordination of activities aiming to suppress corruption among relevant institutions
- Establish the unified records (electronic register) for crimes with the element of corruption, in accordance with the regulations of personal data protection

Spatial Planning and Construction (3.6)

In this area, 15% of prescribed anti-corruption measures have not been implemented. Circa 31% was implemented or partly implemented.

The implementation rate (based on available data) in the observed period in *Spatial Planning and Construction*:

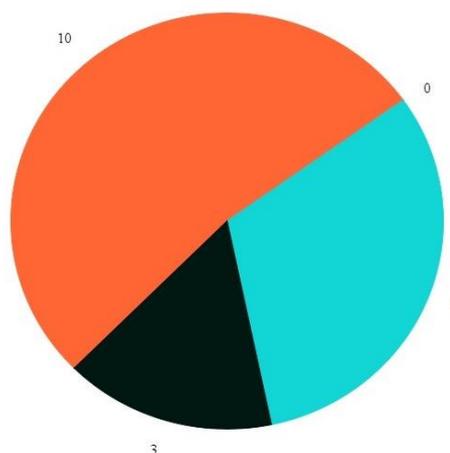
Total: 19 measures

Not possible to assess: 10

Implemented: 0

Partly implemented: 6

Not implemented: 3



Key recommendations:

- Change and amend the Law on Planning and Construction so as to eliminate the loopholes that create possibility for corruption (among other, the criteria for changing the purpose of public space and who should define them, the deadlines for the adoption of planning documents, provisions that regulate public scrutiny, provisions that regulate the planning commission, etc.)⁵
- Change and amend the regulations so as to unambiguously highlight that objects built in zones of sanitary protection of water-supply sources (or in other areas, if it harms public goods - particularly public health and medical welfare of the citizens), could not be subject of legalization.

⁵ See also the *Implementation of the National Strategy for Combating Corruption in the Republic of Serbia for the period from 2013 to 2018 and the Action Plan for its implementation - Alternative Report for 2014*, Belgrade Centre for Human Rights, January 2015, page 10

- Amend the regulations so as to introduce the duty to clearly indicate (during registration) in the real estate cadaster that the object was legalized in accordance with the Law on Legalization of Objects and that it was not subjected to the prescribed procedure of technical verification
- Ensure monitoring of the implementation of provisions on integrated procedures and on the obligation to issue building licenses within 28 days, in a systematic manner by making publicly available the data on the number of applications filed and the number of permits issued.
- Make publicly available the number of applications filed for building permits and the number of building permits issued at the municipal level.
- Make a plan and program of training for employees to properly provide information and free legal assistance to companies and individuals registering objects in the real estate cadaster.
- Ensure that information on the number of parties that requested free legal assistance and the number of parties which were provided FLA is a mandatory part of the annual / periodical reports of the Republic Geodetic Authority
- Strengthen the capacities of the organizational units in the Real Estate Cadastre, as well as the internal control units within the Sector for Professional and Administrative Supervision of the Republic Geodetic Authority
- Expand and strengthen the network of building inspection units

In the observed period, numerous activities related to so-called "Belgrade Waterfront" project were carried out.

The entire process related to this project was highly controversial and numerous deficiencies were noted. It is particularly important to note the insufficient transparency of the process as well as the absence of dialogue in the community on the need for such project.

Also, the manner in which certain project-related activities were carried out reinforced the doubts of the expert public that the "Belgrade Waterfront" represents an example of the *investor urbanism*.

In order to describe the circumstances in chronological manner (from 2014 to 2015) and to highlight all controversial points of this process, a detailed case-study on the "Belgrade Waterfront" project was developed and is attached to this Report.

Health Care (3.7)

In this area, circa 54% of prescribed anti-corruption measures have not been implemented. Circa 36% was implemented or partly implemented.

The implementation rate (based on available data) in the observed period in *Health Care*:

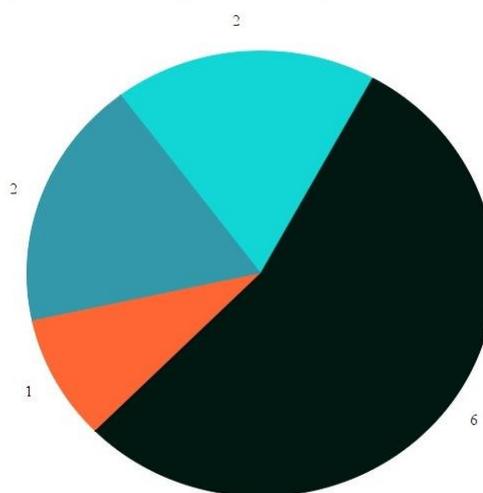
Total: 11 measures

Not possible to assess: 1

Implemented: 2

Partly implemented: 2

Not implemented: 6



Key recommendations:

- Establish the unified private medical practice directory, available to the public
- Establish the database of health care professionals employed in state institutions working additionally in private medical practice
- Establish unique and transparent mechanisms for scrutiny over performance of health care institutions
- Change the articles 68, 69 and 70 of the bylaw regulating the manner and the procedure of exercising rights stemming from the compulsory health insurance
- Establish an uniform system of scheduling of appointments for accessing medical services in health centers

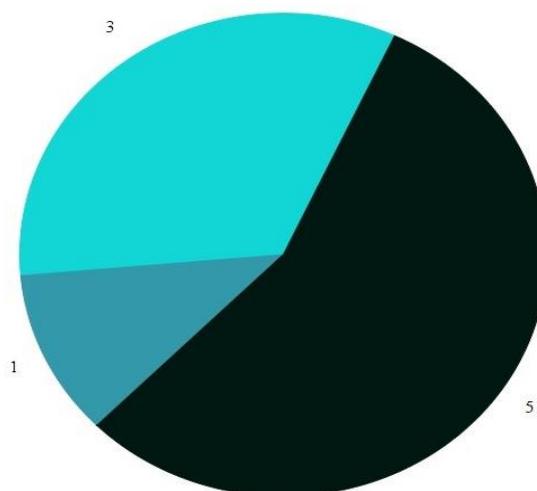
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- Establish an uniform system of publishing and updating of waiting lists (health institutions should have an unique form for submitting information to the National Health Insurance Fund)
 - Improve the control mechanisms of the waiting lists' creating and updating process.
 - Establish an uniform method of financing of health institutions, which will include funds received from all sources specified by the law
 - Define the system / form of financing of salaries of health care professionals so that it is aligned with the functioning of the health care system, but encompasses a work results-based mechanism as well
 - Change the Regulation on the Plan of Health Institutions' Network in accordance with the needs of the population, according to the information available in the Institute of Public Health of Serbia "Dr Milan Jovanovic Batut"
 - Harmonize all laws in the field of health care in terms of receiving medical appliances as donations and in terms of the amount and the treatment of received gift, as well as in terms of the conflict of interest in regard to health care professionals and associates, and persons holding offices
 - Change the Law on Donations and Humanitarian Aid so as to regulate, in a clear and transparent manner, the process of donating medical appliances, drugs and medical devices, as well as to impose establishing of assessment commissions in cases of donations to the health care sector with purpose to evaluate the justification, costs and the profitability of donations
 - Improve (the working conditions of) the Health Council of Serbia (Allocate funds for the work of the Council; evaluate the performance Council (both qualitative and quantitative assessment); assess the expertise and the performance of each member of the Council; implement measures that will make the work of the Council more transparent)

Education (3.8)

In this area, circa 55% of prescribed anti-corruption measures have not been implemented. Circa 44% was implemented or partly implemented.

The implementation rate (based on available data) in the observed period in *Education*:

Total: 9 measures
 Implemented: 1
 Partly implemented: 3
 Not implemented: 5



Key recommendations:

- Adopt the draft changes and amendments to the Law on the Foundations of the Education System in order to regulate the election procedure of school directors
- Adopt the new Law on Higher Education that will provide for the establishment of the Agency for Quality Assurance
- Assess the quality of data, improve the quality of reports and provide for the start of work of the educational Central Information System

Sport (3.8)

In this area, circa 60% of prescribed anti-corruption measures have not been implemented. Circa 20% was partly implemented.

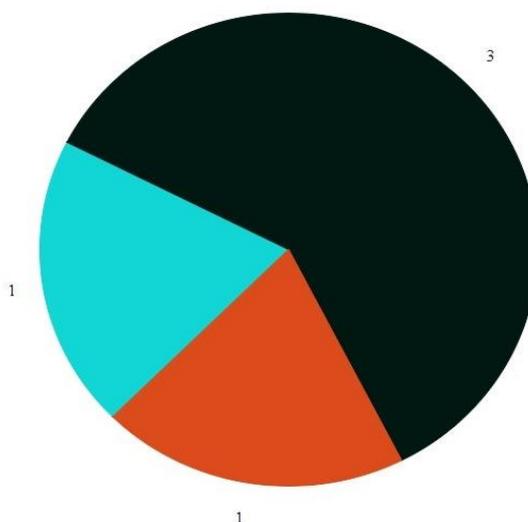
The implementation rate (based on available data) in the observed period in *Sport*:

Total: 5 measures

Not possible to asses: 1

Partly implemented: 1

Not implemented: 3



Key recommendations:

- Adopt legislation to adequately regulate the status of sports federations and associations, the issues of property ownership and the issue of financing from the public funds at national and local level
- Establish an effective mechanism to prevent allocation of funds for sport from public enterprises' funds based on unclear (or lack of) criteria
- Establish an effective mechanism to eliminate the arbitrariness connected with the competence of the directors of public enterprises to allocate money from the company budget to sports organizations
- Provisions of the Draft Law on Sport regulating conflict of interest should be amended to include persons performing sports management activities.

- Draft Law on Sport should be amended so as to include provisions or guidelines concerning the financial segments of the work of persons performing activities of sports management, in order to ensure full transparency of those operations.
- Public debates, especially in cases of key laws or umbrella legislation, need to be more inclusive and more transparent.

Media (3.9)

In this area, circa 25% of prescribed anti-corruption measures have not been implemented. Circa 50% was partly implemented.

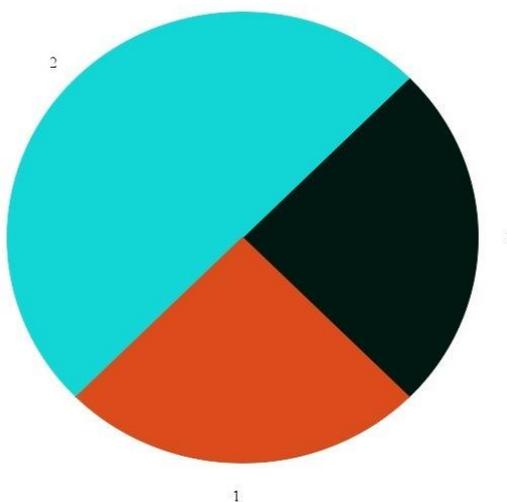
The implementation rate (based on available data) in the observed period in *Media*:

Total: 4 measures

Not possible to assess: 1

Partly implemented: 2

Not implemented: 1



Key recommendations:

- Change the Law on Public Information and Media in relation to media concentration so as to establish mechanisms to regulate the concentration of the media content and not only the concentration of ownership.
- Change the Law on Public Information and Media in the part referring to the Register of the Media, so as to precisely prescribe the duties of the Serbian Business Registers

Agency and / or the competent ministry related to the update of data on media and to the means of their display.

- Change the Law on Public Information and Media so as to authorize the competent body to adopt plans and procedures relevant for data-on-media update, to define ways of exercising control in connection with the data-on-media update related duties and to envisage penalties for violations of those provisions.
- Amend the Law on Public Information and Media so as to provide penalties in respect of obligations related to project co-funding, to establish the effective control mechanisms, and also to authorize the competent body to issue a bylaw to envisage in-detail procedure for allocation of funds via project co-funding.
- Consider the possibility to amend the Law on Public procurement so as to exclude the implementation of this law for "procurement of media services"; consider the possibility of amending the Advertising Law or the possibility of adopting of a separate law to regulate every aspect of advertising of public entities

For full text of the Report visit: <http://www.acas.rs/wp-content/uploads/2016/02/Pravni-skener.pdf>