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**IMPROVING THE REGULATORY AND ADMINISTRATIVE ENVIRONMENT FOR
PRIVATE SECTOR DEVELOPMENT IN SERBIA**

Prepared by
Scott Jacobs, Managing Director, Jacobs and Associates
Under contract to the Department of SME Development
Ministry of Economy and Privatization, Republic of Serbia

15 June 2002

Jacobs and Associates
International Trade Center, Suite 700
1300 Pennsylvania Avenue, NW
Washington, DC 20004 USA
Tel: 1-202-204-3060
jacobsandassociates@regulatoryreform.com
See our website at www.regulatoryreform.com

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SUMMARY:

Structural and economic policy reforms have accelerated in Serbia over the past year in areas such as taxation, privatization, labor relations, and pensions, and the macroeconomic stabilization package has reduced inflation from over 100 percent in 2000 to a projected 20 percent in 2002. However, the reforms carried out to date have as yet barely changed most regulatory constraints affecting private sector activity by domestic SMEs. The overall domestic policy environment is still hostile to private enterprise start-ups, investment, and innovation. In this area, Serbian reforms lag as much as ten years behind those of other countries in the region.

Wider and faster reform of the regulatory framework to stimulate private sector investment and create jobs is an urgent matter. Economic growth in Serbia in the short and medium-term will be largely dependent on private sector growth fuelled by domestic entrepreneurs, mostly in the SME sector during the transition period when larger state-owned companies are restructuring and privatizing. New jobs must be created as restructuring deepens to avoid destabilizing increases in unemployment, and to reduce the risk that poverty and income inequality will actually increase in Serbia, as seen in some other countries in the region. New allies for reform among SMEs will help overcome resistance to change inside and outside the public administration.

Despite its late start, Serbia could, in four years, become a frontrunner in the region in establishing a transparent and efficient regulatory environment for the private sector. This gain in competitiveness would be possible with a sustained action program that starts promptly and focuses on results, enjoys political commitment, adapts a range of tools proven in other countries facing similar problems, and invests in institutional capacities and human resources. Such is the program recommended in this report. It is ambitious, but not unprecedented, as demonstrated by experiences in other countries. It is consistent with the World Bank's conclusion that, for transitional countries, "decisive and sustained reforms are important for recovery of growth...encouraging an investment climate attractive for new entrants and meeting the policy and institutional challenges of encouragement should be the highest priorities for policymakers in transition economies."²

Improving the business environment means, at bottom, creating markets that work. Therefore, these reforms are a vital part of the larger structural reform program – in areas such as SOE reform, privatization,

¹ This Report, provided under the terms of Contract no. 108/2001 for Deregulation Policy Advisory Services financed by the World Bank, presents findings and policy recommendations to improve the environment for private sector development in Serbia. It is a final report and is based on an earlier Concept Note discussed with Serbian authorities.

² World Bank (2002) "Transition: The First Ten Years. Analysis and Lessons for Eastern Europe and the Former Soviet Union," Forward.

financial sector restructuring, regulation of network industries, competition policy, and corporate governance -- that is establishing the scope and framework for market competition.

This report focuses on improving the over-all regulatory environment for private enterprises and simplification of business formalities through strategies that are widely tested in other countries. These strategies will move Serbia toward international norms of rule-based governance and reduce opportunities for corruption in administrative decisions, one of the current government's top priorities. In short, they will improve the institutional basis of the new market economy. These tools will also support more effective social policies, in areas such as environmental protection and human safety and health, which are highly dependent on regulatory instruments. The recommendations in this report are intended to address two major reform challenges:

- *The challenge of reviewing and eliminating or revising the large body (the stock) of existing laws, rules, and formalities at Republican and Federal levels that have built up over years of socialist and nationalist governments. This body of rules is often inefficient, outdated, and inconsistent with market principles and the role of the state in a market economy. Without systematic and well-organised reform, this legal legacy will pose a major barrier to the performance of the market economy;*
- *The challenge of creating new disciplines and capacities to ensure that the continuing and large stream (the flow) of laws and other regulations is drafted with an adequate understanding of market needs and impacts, and through more transparent and consultative processes. Without diligent attention to the quality of new laws and rules, and under pressure for rapid reform, the regulatory environment in Serbia could worsen, as has already occurred with some new laws.*

The recommendations affect institutions, policies, and procedures.³ They are designed both to produce short-term, visible benefits meeting the immediate needs of businesses and citizens – what the World Bank calls “near-term growth” -- and to build new capacities that will have medium-to-longer-term benefits for Serbian development. The recommendations are organised into four objectives and 14 strategies, each with implementation steps divided into four time periods: within three months (by end-July 2002); 6-8 months (by end 2002); 8-20 months (by end- 2003); and longer-term (2004 and 2005).

The recommendations are summarized below, and with the implementation steps in the following table:

1) Speed up and broaden reform through stronger political oversight, strategic planning, and incentives for results

1.a) Improve political oversight and ministerial accountability for private sector development by establishing a ministerial-level Committee of the Government for Regulatory Reform and SME Development.

1.b) Improve technical capacities to coordinate, analyze, and promote a government-wide reform program by strengthening the Inter-ministerial Working Group on Deregulation. If results are unsatisfactory, establish a higher-level unit in the Office of the Prime Minister.

³ The recommendations cover specific deregulatory and simplification targets (piecemeal reforms), broad strategies to rapidly update the stock of rules (systematic reforms), institutional reforms to improve political commitment, accountability for results, and skills inside the civil service to assess and manage regulatory impacts on the private sector (capacity-building), and procedural reforms to boost transparency and consultation, reduce the scope for arbitrary decision-making, and establish incentives to better use regulatory powers.

1.c) *Over the next two years, improve strategic planning and coherence of reforms by developing a government-wide strategy for private sector development*

1.d) *Continue to exploit international pressures, benchmarking, and good practices to promote reforms in Serbia*

2) Simplify and speed up formalities, red tape, and dispute resolution for businesses

2.a) *Reduce the costs of business registration and its related formalities through deregulation of the Company and Entrepreneurs Laws, followed by comprehensive reform of business registration*

2.b) *Develop a simplification “hit list” of priority measures and prepare, each six months, a consolidated simplification law containing business simplification measures from across all ministries*

2.c) *Introduce the “silence is consent” principle*

2.d) *Simplify business permits and licenses and, over the next two years, plan and implement a one-stop shop for business formalities*

2.e) *Explore more efficient and credible means of contract dispute resolution and administrative appeals for SMEs*

2.f) *Assess regulatory barriers to inter-regional trade and investment, and develop an action plan to eliminate such barriers to move toward a regional single market*

3) Improve capacities to assess need for and quality of regulations and market impacts of proposed rules

3.a) *Create a system of forward planning for new laws and regulations*

3.b) *Implement, step by step, a program of regulatory impact analysis within the ministries. The first step should be an agreement by ministers to require an expanded justification statement for all new laws and other regulations.*

4) Enhance the transparency of laws and regulations through consultation and a legal registry

4.a) *Establish procedures for government-wide consultation with major affected groups on new draft laws and other major regulations.*

4.b) *Rationalize the Serbian legal system by creating a central regulatory registry with positive security.*

Two areas not covered by this report, but that merit further study and close attention in future, are i) the potential impact of administrative decentralization on the business environment for investment and growth and the implications for preparation for decentralization. The role of municipal authorities in regulating and taxing business entry should be examined in more detail. It is likely that some of the regulatory disciplines recommended for the Serbian authorities should be extended to municipalities; ii) the problem of undue discretion and lack of accountability in regulatory enforcement and administration. Part of the solution lies in the recommendations in this report for simplification and transparency, but this problem will be ultimately resolved only through civil service reforms based on adequate pay, training, cultural change, an ethics infrastructure backed up with monitoring, and accountability mechanisms reaching from the top to the bottom of the administration. Here, the activities of the Civil Service Institute will be the key factor.

Recommendations for Serbia on regulatory reform and simplification of business formalities

OBJECTIVES AND STRATEGIES	ACTIONS AND RECOMMENDED TIMETABLE FOR IMPLEMENTATION			
	Within three months (by end-July 2002)	6-8 months (by end 2002)	8-20 months (by end-2003)	Longer-term (2004 and 2005)
<i>1) Speed up and broaden reform through stronger political oversight, strategic planning, and incentives for results</i>				
<i>1.a) Improve political oversight and ministerial accountability for private sector development by establishing a Committee of the Government for Regulatory Reform and SME Development</i>	<p>-- Create a ministerial-level Committee of the Government for Regulatory Reform and SME Development, backed up by the Inter-ministerial Working Group on Deregulation Department of SME Development in the Ministry of Economy and Privatization.</p>	<p>-- The Committee of the Government should establish explicit quality standards for regulations based on market principles, and should require by Government decree that Serbian laws and other rules shall be designed so that they:</p> <ul style="list-style-type: none"> ▪ Are necessary to achieve clearly-defined public policy objectives; ▪ Are practical, clear and simple for regulated parties and implementing officials; ▪ Generate benefits that justify costs and reduce as far as possible costs to consumers and businesses, particularly SMEs; ▪ Are consistent with a competitive market that maximizes consumer choice, encourages innovation and investment, and permits free entry and exit for private businesses. <p>The Committee should require that ministries prepare justification statements for all new draft laws and other regulations (see below). The regulatory reviews of the Inter-ministerial Working Group on Deregulation (recommended below) will help establish respect for the quality standards and improve the quality of the justification statements.</p> <p>-- The Committee should have as its other top priorities in 2002: 1) comprehensive reform of the Company Law, the Law on Entrepreneurs, and the business registration system; 2) adoption of the first consolidated simplification bill integrating deregulation reforms from across the ministries. Completion of the simplification of land permissions and building construction approvals is a high priority.</p>	<p>-- The Committee of the Government for Regulatory Reform and SME Development should approve the two-year action plan on regulatory reform (see below) and monitor its implementation.</p>	<p>The Committee of the Government for Regulatory Reform and SME Development should approve the revised two-year action plans on regulatory reform and should continue to monitor implementation.</p>

<p><i>1.b) Improve technical capacities to coordinate, analyze, and promote a government-wide reform program by strengthening the Inter-ministerial Working Group on Deregulation. If results are unsatisfactory, establish a higher-level unit in the Office of the Prime Minister.</i></p>	<p>-- Enlarge the Inter-ministerial Working Group on Deregulation so that its membership includes all ministries with regulatory responsibilities, and the Civil Service Institute.</p> <p>-- Create a dedicated 4 to 6 person Secretariat for the Inter-ministerial Working Group on Deregulation by increasing the staff of the Department SME Development of the Ministry of Economy and Privatization, partly through new hires and partly through secondments from other ministries, such as the Ministry for International Economic Relations.</p>	<p>-- The Inter-ministerial Working Group on Deregulation should be able to review all proposed laws and other major regulations affecting businesses. Within the schedule for preparation of new laws and other major regulatory instruments, the Working Group should have at least four weeks before a law is submitted to the Government to conduct its review, unless the Government explicitly allows a shorter review period at the request of the responsible ministry.</p> <p>-- The Chair of the Working Group should transmit a summary of the Committee's views and recommendations on a draft law and other rules, including its views on whether the justification statement is adequate and correct, to the responsible ministry and to the Committee of the Government for Regulatory Reform and SME Development. Responsible ministries should accept the Working Group's recommendations or explain why they could not. When a law is submitted to the Government, the responsible ministry should include a statement explaining its response to the views of the Working Group.</p> <p>-- To develop reform proposals and draft instruments on crosscutting issues, the Inter-ministerial Working Group on Deregulation should establish subcommittees. The subcommittees should include representatives of major outside interests, such as entrepreneurs. Using these subcommittees, the Inter-ministerial Working Group on Deregulation should produce proposals to implement crosscutting reforms. A subcommittee will be needed for reform of the company law, the entrepreneurs law, and the business registration system.</p>	<p>-- After developing the integrated government-wide action plan on private sector development, with timetables and identification of training needs (see below), the Inter-ministerial Working Group on Deregulation should report frequently (at least monthly) on reform progress to the Committee of the Government for Regulatory Reform and SME Development.</p> <p>-- If the Inter-ministerial Working Group is unable to adequately coordinate among the ministries and speed up progress, a higher-level expert unit for regulatory reform and SME development should be created within the Office of the Prime Minister. This unit should report to the Committee of the Government. This unit should replace the Inter-ministerial Working Group on Deregulation.</p>	<p>The Inter-ministerial Working Group on Deregulation or its replacement should periodically report to the Government and to the Parliament on the quality of laws and regulations, and the performance of the ministries on reform progress</p>
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<p><i>1.c) Over the next two years, improve strategic planning and coherence of reforms by developing a government-wide strategy for private sector development</i></p>			<p>-- Each ministry should develop a two-year action plan, with timetables, identifying priorities to stimulate private enterprise start-ups and growth. The action plans should also identify training needs for civil service staff. The ministerial action plans should be forwarded to the Inter-ministerial Working Group on Deregulation.</p> <p>-- Simultaneously, the Inter-ministerial Working Group on Deregulation should identify crosscutting and inter-ministerial issues and develop a two-year action plan to address them.</p> <p>-- The SME Advisory Board should be fully consulted in the development of the action plans.</p> <p>-- Using the action plans, the Inter-ministerial Working Group on Deregulation should develop an integrated government-wide action plan on private sector development, with timetables and identification of training needs. The integrated action plan should be approved by the Committee of the Government.</p>	<p>-- The ministries should produce the reform proposals needed to implement the first tranche of reforms in the action plan. The reform proposals should be reviewed by the Inter-ministerial Working Group on Deregulation for coherence with the action plan, and then sent to the responsible Ministry or to the Committee of the Government for Regulatory Reform and SME Development for action.</p> <p>-- On a rolling basis, Ministries should develop revised action plans extending two years.</p>
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<p><i>1.d) Continue to exploit international pressures, benchmarking, and good practices to promote reforms in Serbia</i></p>		<p>-- Use the WTO accession process to promote use of harmonized standards and regulatory impact analysis and to establish more transparent practices</p> <p>-- Use EU and OECD good practices as benchmarks for Serbian regulation. For example, the Government should adopt OECD Principles of Corporate Governance as non-mandatory guidance for Serbian corporations, pending development of a law on corporate governance.</p>	<p>-- Use the EU convergence process to adopt best European practices, rather than the minimum standards.</p>	
<p>2) Simplify and speed up formalities, red tape, and dispute resolution for businesses</p>				
<p><i>2.a) Reduce the costs of business registration and its related formalities through deregulation of the Company and Entrepreneurs Laws, followed by comprehensive reform of business registration</i></p>	<p>Delete the most onerous and unnecessary requirements of the Companies Law and the Entrepreneurs Law. These revisions are now being considered by Federal and Serbian parliaments.</p>	<p>Develop and adopt a bill and financing plan for the integration of the two business registration systems under the Companies Law and the Law on Entrepreneurs to produce a unified and simplified business registration system. This reform should be coordinated with a comprehensive rewriting and integration of the Company Law and the Law on Entrepreneurs to establish a simple, modern, efficient and cost effective framework for carrying out business activity in Serbia.</p>	<p>Implement the action plan for a unified and simplified business registration system. The new system should be operational by end-2003.</p>	<p>Increasingly shift to Internet registration and Internet access to database information.</p>
<p><i>2.b) Develop a simplification “hit list” of priority measures and prepare, each six months, a consolidated simplification law integrating business simplification measures from across all ministries</i></p>	<p>As part of the government-wide action plan, develop a “hit list” of reforms to specific regulatory barriers to businesses. Serbia can profit from two business surveys that will be completed in Spring 2002, one by FIAS and the Economic Institute, and the other by G17. These surveys should be combined with other ideas to produce a well-founded target list.</p>	<p>Prepare, within the Inter-ministerial Working Group on Deregulation, a consolidated simplification bill integrating measures from across the ministries and submit it to the Committee of the Government for rapid action.</p>	<p>Continue with a rolling simplification program by proposing simplification bills every six months</p>	<p>Continue with six-month rolling simplification program</p>

<p>2.c) <i>Introduce the “silence is consent” tool</i></p>		<p>Produce a concept paper on implementing the “silence is consent” principle in Serbia, as it is applied in other European countries such as Italy..</p>	<p>Implement the “silence is consent” rule for the widest possible number of permits and approvals, with a time limit for response of two weeks.</p>	<p>Progressively widen the scope of “silence is consent” as the default option for new permits and approvals.</p>
<p>2.d) <i>Simplify business permits and licenses and, over the next two years, plan and implement a one-stop shop for business formalities</i></p>		<p>The Inter-ministerial Working Group on Deregulation should compile a comprehensive list of all approvals, permits, and inspections of businesses carried out at Republican and municipal levels.</p>	<p>The Inter-ministerial Working Group on Deregulation should produce a plan of action for implementing the one-stop shop for business permits and other formalities</p>	<p>Implement the one-stop shop.</p>
<p>2.e) <i>Explore more efficient and credible means of contract dispute resolution and administrative appeals for SMEs</i></p>		<p>-- The Ministry of Justice should examine the efficiency of administrative appeals mechanisms, in consultation with business interests, and propose alternatives that could speed up independent review of administrative decisions.</p>	<p>--The Inter-ministerial Working Group on Deregulation should establish a subcommittee to examine alternative forms of contract dispute resolution for SMEs.</p>	<p>An action plan should be prepared.</p>
<p>2.f) <i>Begin to assess regulatory barriers to inter-regional trade and investment, and develop an action plan to eliminate such barriers to move toward a regional single market</i></p>		<p>The Inter-ministerial Working Group on Deregulation should establish a subcommittee to examine regulatory barriers to the free movement of goods, services, and labor between Serbia and the other current and former republics of Yugoslavia.</p>	<p>An action plan should be developed and discussed with regional trade partners, and an agreement should be reached on moving progressively toward an elimination of regulatory barriers. New cooperative mechanisms are need at ministerial-level to implement this program.</p>	<p>Progressive implementation of the action plan.</p>

3) Improve capacities to assess need for and quality of regulations and market impacts of proposed rules				
<i>3.a) Create a system of forward planning for new laws and regulations</i>	-- Each ministry should establish a continuing six-month schedule for preparation of new laws and other major regulatory instruments, updated periodically, and submit it to the Committee of the Government for Regulatory Reform and SME Development, along with the plans for consultations with major stakeholders. These schedules and consultation plans should be made public so that stakeholders can prepare for the consultations.	Update the six-month schedule	Update the six-month schedule	Update the six-month schedule

<p><i>3.b) Implement, step by step, a program of regulatory impact analysis within the ministries. The first step should be an agreement by ministers to require an expanded justification statement for all new laws and other regulations.</i></p>	<p>The Serbian government should require by decree that ministries prepare a justification statement for all laws and other regulations that explains the expected benefits and costs of the actions, and the results of public consultations. For each new law and other regulatory instruments such as decrees and orders, the responsible ministry should prepare a justification statement containing the following sections:</p> <ul style="list-style-type: none"> ▪ What is the problem being addressed? ▪ Why is government action needed to correct the problem? ▪ What are the objectives of government action? ▪ Which options for dealing with the problem are being considered? Why is the proposed option the best approach? ▪ Is the proposed option consistent with the regulatory quality standards adopted by the government? ▪ How will the proposal affect existing regulations and the roles of existing authorities? ▪ Is the proposal clear, consistent, comprehensible and accessible to users? ▪ Do the benefits justify the costs? Who is affected by the problem and who is likely to be affected by its proposed solutions? What are the likely costs for consumers and businesses, including SMEs? What are the impacts on market entry and exit, and on market competition? ▪ How will the proposal be implemented? 	<p>-- A training program should be set up on preparation of the justification statement. More detailed training is needed to develop a cadre of regulatory analysis specialists in each ministry. To provide further support, the Ministry of Economy and Privatization, perhaps in the enlarged Department for SME Development, should consider setting up a help desk to assist ministries in specific cases.</p> <p>-- As recommended above, the justification statements should be reviewed by the Inter-ministerial Working Group for Deregulation for accuracy and quality, supported by the enlarged Department for SME Development in the Ministry of Economy and Privatization.</p> <p>-- The justification statements should be integrated with public consultation processes to reduce costs and increase quality. The statements should be made available as key inputs to participants in consultation and the results of consultation should be used as inputs for refining and developing the statements.</p>	<p>The government should adopt a universal benefit-cost principle, with a step-by-step strategy to gradually improve the quantification of regulatory impacts for the most important regulations, while making qualitative assessments more consistent and reliable. Regardless of the type of analysis, regulators should always ask the question: "Do the benefits of this action justify the costs of this action?"</p>	<p>Move to more quantitative analysis through increasing use of the benefit-cost test for new laws and other regulations.</p>
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4) Enhance the transparency of laws and regulations through consultation and a legal registry				
<p><i>4.a) Establish procedures for government-wide consultation with major affected groups on new draft laws and other major regulations.</i></p>	<p>Each ministry should establish a consultation plan to ensure that all major interests have early and meaningful access to draft laws and regulations. This plan should involve the SME Advisory Board, other groups representative of business interests, and NGOs to the extent possible.</p>	<p>-- The ministries' consultation plans should be discussed by the Inter-ministerial Working Group on Deregulation, and published for public comment. The final consultation plans should be integrated and published as a Government commitment, and oversight of ministerial compliance should be carried out by the Committee of the Government for Regulatory Reform and SME Development.</p> <p>-- In the course of its reviews of proposed regulations, the Inter-ministerial Working Group on Deregulation should ask the SME Advisory Board and other business associations for views on the draft text and the justification statement. Their views should be incorporated into the Working Group's reviews. Discussions of the SME Advisory Board on proposed laws and other rules, as well as the draft instruments and justification statements, should be open to the general public.</p>	<p>-- Consultation practices should be evaluated and broadened to include a wider range of interests, as the private sector and civil society evolve.</p> <p>-- Practices on consultation and transparency should be coordinated with WTO discussions and obligations.</p>	<p>-- Consultation practices should continue to be evaluated and broadened to include a wider range of interests.</p>
<p><i>4.b) Rationalize the Serbian legal system by creating a central regulatory registry with positive security</i></p>			<p>The government of Serbia should adopt a law enacting a comprehensive legal registration program, based on the guillotine strategy, with a time limit for registration of one year.</p>	<p>-- At the end of the deadline all unregistered legal instruments should be annulled and a formal legal registry should be established. The legal registry should have positive legal security, and should include laws, government decrees, and all ministerial regulations affecting businesses.</p> <p>-- The comprehensive legal registry should be held and maintained by a central unit.</p>

I. IMPROVING SERBIA'S REGULATORY AND ADMINISTRATIVE ENVIRONMENT FOR PRIVATE ENTERPRISE: AN URGENT AGENDA

1. A more efficient and market-oriented policy environment is needed in Serbia if privatization, SOE reforms, and trade and investment liberalization are to support longer-term economic growth. This agenda is particularly urgent since Serbia is lagging well behind most other countries in the region – as much as ten years -- despite the raft of reforms already completed, now in process, and planned for coming years. Without determined action to catch up, the lost decade of the 1990s will prove even more costly in terms of the country's future competitiveness, regional integration, and appeal to investors, as neighboring countries forge ahead. Indeed, without a comprehensive reform strategy, the private sector environment could worsen in Serbia. Already, some new laws impose requirements not consistent with competition, consumer choice, and business stimulation.

2. Regulatory reform in all its aspects – deregulation, re-regulation, simplification, and institution building -- will be a key element of the future reform agenda. As part of the macroeconomic stabilization and structural adjustment policies already underway, regulatory reform and business simplification, properly designed and implemented, can increase private investment (domestic and foreign), business start-ups, job creation, and incentives for efficiency among both private and state-owned enterprises. These effects should boost over-all productivity performance and potential long-term growth, and comprise a valuable tool in the national strategy for poverty reduction.

3. An effective supply-side strategy is particularly important at this stage of Serbian development. A recent World Bank study of transition experiences in Central European and former Soviet countries emphasizes “the key role of the entry and growth of new firms, particularly small and medium-size enterprises, in generating economic growth and creating employment.”⁴ Regulatory reforms can also help Serbia meet the legal obligations of the international trading system by removing barriers to trade and investment; improving transparency, neutrality, and due process; and building new institutions and practices expected by international norms. Effective regulatory reform can be a useful benchmark for credible commitment to the international trading system, and so stimulate inward investment.

4. In an economy weighted down with a legacy of SOEs and social ownership, Serbia's private entrepreneurial energies are among its greatest assets for economic recovery, and already contribute significantly to growth. The private sector, including the informal sector, by 2001 accounted for two thirds of GDP, although it employed less than 10% percent of capital. Formal SMEs employed about 610,000 workers in Serbia by end 2000, or about 44 percent of all formal employment.⁵ A very large informal economy has emerged, accounting for perhaps one-third of GDP, and employing as many as one million workers. By all measures, the private sector is far more efficient and profitable than firms under state, mixed or social ownership. The pace of future Serbian economic growth will depend primarily on private sector performance, most likely based on domestic rather than foreign capital, and preferably in the formal rather than the informal sector.

5. Private sector growth, particularly among SMEs, is essential not only to create new wealth and to increase standards of living in Serbia, but also to absorb assets and labor resources shed from restructuring and privatizing SOEs over the medium-term. In a country where social stability is a continuing concern and where social safety nets function poorly, a fast-growing domestic private sector will be essential to offset the

⁴ World Bank (2002), op cit.

⁵ Source: National Bank of Yugoslavia - Payment Service (ZOP)

social and economic costs of structural adjustment. Business failures and unemployment will increase as structural reform accelerates. Without a comprehensive strategy to improve the policy environment for private business startups, investment, and job creation, reforms of the state-owned sector through privatization, restructuring, reductions in state aids, and market opening could be destabilizing and unsustainable. In other countries in the region, “market-oriented policy reform not only speeded up economic recovery and promoted growth in the medium term, but it also mitigated the effects of the transitional recession in the short term,” concluded the World Bank’s study.

6. Hence, this is the right time to implement a comprehensive strategy in Serbia to improve the domestic business environment, despite continuing political uncertainty and constitutional confusions that magnify regulatory risks for investors. Delays in improving the domestic business environment will increase the pain of structural change and the risks of costly market failures. Creation of the Inter-ministerial Working Group on Deregulation in the Ministry of Economy and Privatization late in 2001 was a good step toward recognizing the need for a coordinated, government-wide strategy to reduce business barriers, but the Working Group needs to speed up activity, deepen its expertise, and take a broader view of its function – stimulation of private sector development – to have real impacts that will be felt on the ground by the business community.

7. Regardless of the future of constitutional arrangements, the Republic of Serbia can take substantial steps over the next four years to improve its domestic business environment in order to:

- accelerate economic growth, job creation, and regional development, with particular focus on SMEs, and thereby ameliorate the social costs of restructuring in state-owned enterprises;
- promote foreign and domestic investment, and reinforce confidence among investors that business interests are well-represented within policy processes; and
- reduce the size and scope of the gray economy by improving the business environment and reducing disincentives for businesses to enter the formal economy.

8. Private sector performance is partly a static question of how many new firms enter domestic markets, the speed of growth of firms, the level of private investment, the number of jobs created, and the level of returns on assets. But private firms hold no guarantee of generating social benefits. The real aim of reform should be to create competitive markets that reward value-added, re-allocate resources, and adapt to changing opportunities and risks. Such markets themselves stimulate more investment and boost capital productivity. As seen in Russia, and to a lesser extent in Eastern Europe and China, changes in ownership are not enough. Poor and inadequate regulatory structures permit abuses and corruption to flourish in emerging markets, undermine investor and consumer confidence, and destroy rather than create economic value. Improving the business environment means, at bottom, creating markets that work.

II. CONTINUING BARRIERS TO PRIVATE SECTOR DEVELOPMENT IN SERBIA

9. Regulatory reform is not new to Serbia. Serbian and Yugoslav federal authorities have taken many positive steps to construct the framework of credible rules, legal systems, and institutions needed for a market economy. However, the dominant role played by the Serbian private sector in generating wealth is a sign of its great resiliency rather than of a supportive business environment. The domestic policy environment in Serbia continues to be hostile to private investment. Serbia’s potential economic performance

is undermined by severe regulatory problems, including monopolization and state ownership, over-regulation, under-regulation, inefficient and outdated regulation, and overt barriers to competition:

- A major task is broad and systematic deregulation and withdrawal of the state from inappropriate intervention into business decisions, along with institutionalization of quality controls inside the public administration to ensure that future regulatory decisions are consistent with the needs of competitive markets. Entrepreneurs in Serbia are hobbled by substantial regulatory and administrative barriers to entry, exit, and competition. In capital, labor, and land markets, and in many sectors, regulations distort commercial incentives and misallocate resources. Despite the change in government, the situation in 2002 in this respect is not very different from that in 1997, when a business survey found that small-sized firms “experienced great difficulty in starting their business, struggled to meet a myriad of intrusive and costly government regulations, and had no access whatsoever to external finance.”⁶
- Deregulation is only part of the solution, since there is also substantial under-regulation and lack of enforcement. Serbia suffers in many sectors from too little market regulation, poor enforcement, and under-institutionalization. This has been noted in policy areas such as competition policy, bankruptcy, consumer and environmental protection, taxation, procurement, intellectual property rights, and prudential regulation in the financial sector. Serbian Finance Minister Bozidar Djelic noted in 2002 that Serbia is “a ravaged country, whose economy is a mixture of black market and quasi-monopolies, with very little healthy economic activity evident.”⁷ Insufficient regulatory safeguards reduce investment in many sectors because of the lack of certainty of market rules, and reduce confidence in markets by consumers and investors. Moreover, a lack of market mechanisms and appropriate state interventions slows the economic transition, because it justifies a continued reliance on inappropriate and non-market state interventions in the economy.
- Reform is slowed by the fact that the Serbian government has not yet distinguished the appropriate roles of the state and the market sufficiently clearly to guide reformers. Because there is little agreement on the new roles of the state, reforms are sometimes half-hearted. Even after the recent proposed reforms, for example, the Entrepreneurs Law will still require that business owners prove their “health fitness” to the government, an approach to consumer protection more suited to a command economy than to a market economy. Adapting to new roles is not an issue for only the public sector. Semi-private institutions, notably the Chamber of Commerce, have not yet adapted to their new roles as service providers to businesses and voices of competition, and continue to function as organizers of businesses and voices of protection.
- Regulatory risks are high in Serbia, reducing investment and competition by increasing the cost of capital. The legal system is chaotic. Fundamental framework issues in commercial law, competition policy, and corporate governance are undecided, and the implementing institutions to carry out new laws are inadequate. Corruption is endemic – a survey in early 2001 found that over half of private entrepreneurs claimed that bribery was a regular event when dealing with public officials.⁸ Regulatory risk is exacerbated by the uncertainty of constitutional arrangements between the Federal

⁶ World Bank and European Union (2001) *Breaking with the Past: The Path to Stability and Growth*, Volume 2, Assistance Priorities and Sectoral Analyses, p. 99.

⁷ “Transition in Serbia,” text contained on the Website of the Serbian Government, http://www.serbia.sr.gov.yu/transition/djelic_e.html

⁸ Center for Liberal-Democratic Studies (2001) “Corruption in Serbia,” Narrative Report #2, January-March, mimeo.

and Republic governments, and the consequent paralysis and confusion about responsibility for decisions. In general, the more uncertain and risky is the legal/administrative environment in which economic activity occurs, the more likely it is that aggressive rent seeking and short-term profit taking will replace longer-term investment in a competitive climate. That is, regulatory risk reduces the value of investment.

- Transactions costs are high due to inefficient government, and an overly complex, multi-layered, often arbitrary, and interventionist regulatory environment that is vulnerable to corruption. Reforms in this area can be critically important in encouraging the emergence of new business and employment opportunities. The average time needed to get all permits for greenfield investments is two years, according to Serbia's Investment and Export Promotion Agency. Costs, delays and bureaucratic obstacles to setting up a business have been identified as barriers to innovation, entrepreneurship and growth in many countries. Red tape such as costly inspections and registrations from all levels of government has disproportionately high costs for SMEs, discourages entrepreneurship, and promotes the large informal economy.
- Nontransparent and unaccountable administration further raises investment risks and risks of capture and corruption by established interests inside and outside the public sector. Decentralization of the Serbian state, while possibly reducing centralized controls, risks further eroding the business environment by adding more layers and inefficiencies in business regulation. For example, municipal authorities in Belgrade in 2001 introduced new inspections affecting all restaurants and shops, ostensibly to try to upgrade quality for tourists, but without any assessment of business costs or impacts.
- Checks and balances, such as an efficient and independent judiciary to ensure application of the rule of law and efficient dispute resolution procedures between the state and market entities, are weak, reducing the capacity of outsiders to challenge market insiders. Courts have generally seen themselves as agents of the government rather than as checks of government authority under a rule of law.
- Infrastructure bottlenecks and high costs, partly due to the lack of market-oriented regulatory regimes, raise production costs and reduce business opportunities throughout the economy. In utility sectors where investment and higher productivity are desired, pro-competition regulatory regimes and independent regulators are needed to curb abuses by state-owned and dominant firms, and to encourage new market entry.

10. These problems will not be overcome quickly. Legal and regulatory inefficiencies and risks will be high in Serbia for the foreseeable future. Many problems arising in Serbia's regulatory system are purely transitional issues normal during rapid change to a market system, but other problems are structural, and will be resolved only with continued, steadier, more co-ordinated, and more comprehensive reforms. Full resolution of the interlocked institutional, political, and structural weaknesses that undermine the legal system will require reforms that are well beyond the scope of this report. Ultimately, for example, private sector development will depend on the consolidation of the rule of law throughout Serbia's complex governing structures, including federal, republic, and municipal administrations. Development of a truly independent judiciary will not be done quickly. Some countries in the region (for example, Hungary) have overhauled their judicial systems and created procedures for independent review of administrative practices, and their experiences might be of interest to Serbia in its own reforms.

11. Regulatory reforms and simplification are part of the larger structural adjustment program that is addressed, for example, by the World Bank’s current Private and Financial Sector Adjustment Credit that aims to (i) strengthen the financial system; (ii) private and restructure socially-owned enterprises; and (iii) improve the investment climate and environment for the private sector. Other reforms aim at improving the institutional capacity for SME support, and a newly-established SME agency could be useful in supporting market-oriented reforms.

12. As noted, boosting private sector development requires, first and foremost, that domestic markets function. Considerable progress has been made in Serbia to establish the legal framework for markets, but in many areas more progress is needed. Many of the reforms needed for development of the Serbian private sector are beyond the scope of this report, but they are summarized below (Table 1) to establish the context for targeted reforms aimed at establishing the regulatory and administrative environment for effective market functioning. As was found in the transition process in the Czech Republic, neglected parts of the agenda, such as establishing the rules for corporate governance, prudential oversight of the financial sector, and the privatised utility sectors, were more important than originally perceived. Delays in these areas made the transition process more risky, and reduced the benefits of privatisation and market functioning.⁹

Table 1: Major market constraints in Serbia and reforms outside of the scope of this report

Conditions for good market performance	Actions taken, underway, or to be taken
<p><i>Market scope.</i> The scope for free market entry and private sector competition on the basis of price and quality should be broad and economy-wide. State monopolies should be restricted to those very few areas where a clear public interest would be served.</p>	<ol style="list-style-type: none"> 1. The FRY and Serbia have opened domestic markets to competition, trade, and investment, but with significant exceptions, such as the media and minerals. Much progress has been seen in freeing prices. In 2000, over 70 percent of prices were state-controlled. This liberalization program has had substantial positive effects in reducing economic corruption. Today, the prices of only a few items, such as bread, pharmaceuticals, and utilities, are controlled. While these prices have been raised closer to cost-recovery levels, including the more than doubling of power prices in 2001, these are important areas for further deregulation. 2. The privatization law enacted in June 2001 prescribes privatization by sale of 70 percent of equity to strategic investors under international tenders and auctions. Some first sales have been completed, and the government hopes to complete privatization in four years. Privatization of SOEs should further clarify the distinction between private and public sectors, and might stimulate competition in sectors dominated by SOEs. Care should be taken that privatization does not result in private monopolies, undue concentration, or control of essential facilities. 3. Little progress is seen yet on demonopolizing and privatising infrastructure sectors – telecommunications, energy, utilities, and transport infrastructure. Confused federal/republic authorities must be clarified in these areas. New institutions such as independent regulators are needed. Transition plans are

⁹ OECD (2001) Regulatory Reform in the Czech Republic, Paris.

	<p>needed to open these sectors up to private investment and competition while protecting USOs. Municipalities should be required to open for competitive tenders all services they currently provide directly (a Republican procurement law contains this requirement, and capacity-building is needed at the municipal level). Exclusive concessions should be strictly limited, monitored and controlled.</p>
<p><i>Property rights.</i> Markets require a clear definition of property rights that can be exclusively enjoyed and transferred to other parties. Serbia has made considerable progress in this area. Reforms now underway in Serbia are aimed at constructing the laws and commercial codes that define such rights, and the institutions that make them credible. However, the range of commercial forms used in Serbia – state, mixed and social ownership – still confuses property rights in firms.</p>	<ol style="list-style-type: none"> 1. Commercial codes, such as the secure transactions law, collateral law, etc should be completed as quickly as possible. Recent attempts to clarify Federal-Republican relations by delegating competences on commercial law to the Republican level are likely to be beneficial in speeding up reform. Federal and Serbian authorities are working with donors to do this. However, the institutions to carry out commercial laws are not strong. In the Commercial Courts, most judges do not have the confidence of the business community because they are not informed on business and commercial issues or because they often bring an excessively legalistic rather than practical solution to disputes. Judges are not well remunerated. Institutional reform must accompany legal reform. 2. The bankruptcy law is now being modernized. A new Law on Compulsory Composition, Bankruptcy and Liquidation is scheduled for completion soon. 3. Enforcement problems, for example, with respect to creditors, raise large risks for investors. Judicial reform is medium to long-term plan, but in the shorter-term alternative dispute resolution procedures can help, as discussed below.
<p><i>Factor inputs.</i> Businesses require inputs – capital, labor, and land. Functioning markets in allocating these resources will stimulate private sector development. Serbia has largely corrected the previous labor regime that was almost unworkable, but is still suffering from problems in the other areas. Financial sector reform is underway, but financing for small businesses will not emerge on commercial capital markets for some time. Lack of property rights on urban land is hampering reconstruction and foreign investment.</p>	<ol style="list-style-type: none"> 1. A modern and much-needed labor law was enacted in December 2001, permitting more flexible contracts between employers and employees. This reform was essential to enable Serbian businesses to adjust to market opportunities and create new jobs in the formal sector. 2. Access to financing by SMEs is likely to be a continuing constraint pending whole-scale reform of the insolvent financial sector to place it on healthy footing. However, current expansion of SMEs indicates private or informal sources of financing that partly offset capital market problems. 3. Land registries require fundamental overhauls. Reform to permit urban land ownership and transfer is a top priority.
<p><i>Market behaviour.</i> Rules for market behaviour should be provided by economy-wide frameworks such as competition policy and corporate governance. These frameworks are undeveloped in Serbia, and, as formal markets develop, their absence will increasingly stunt and distort market development.</p>	<ol style="list-style-type: none"> 1. Work has begun at the federal level on development of a competition law and institutions to prevent and correct market abuses in a small domestic economy. This is a high priority as part of the privatization process to ensure that concentration problems are corrected before privatization. The Federal Antitrust Law, enacted in 1996, has no explicit provisions regarding mergers and non-economic barriers to entry. There is no distinction between regulation of natural monopolies and the protection of competition in competitive markets. A Federal

	<p>Anti-Monopoly Commission was established in 1997, but has never been operational.</p> <p>2. Serbia badly needs a modern company law. Modern companies are one of the pillars of economic development, and private sector development will require that Serbia has a framework of company law that is up-to-date, facilitates enterprise, and promotes transparency. Serbia should launch a thorough and wide-ranging review of the federal Company Law and the Republican Law on Entrepreneurs, with an aim of integrating them into a single, simplified framework that converges with good European practices in key areas such as limited liability, business form, registration, and disclosure of information about the financial state of the business.</p> <p>3. Other than a law on modern accounting standards, Serbia does not need to expend substantial resources to set up a separate corporate governance regime at this time, but should adopt as formal guidelines for all registered public corporations the OECD Principles of Corporate Governance. This is important in parallel with reform of the business registration system. This could be done quickly and easily, and would provide corporations with a benchmark for their behaviour.</p>
<p><i>Infrastructure services.</i> Rules are needed to establish rights and correct market failures in the network infrastructure sectors.</p>	<p>1. Little has been done in Serbia to establish regulatory regimes that will attract private investment into infrastructure. The political sensitivity of pricing in utilities means that a transition period will be needed to complete price rebalancing, with adequate financing of USOs.</p>
<p><i>Capable public sector.</i> Reform of state organs is necessary to firmly establish the rule of law through which rights are made operational, and to improve governance capacities so that the state can operate consistently with a market environment.</p>	<p>1. Planning is underway to reform the state administration, under the supervision of the Civil Service Institute. A civil service law that will upgrade the human resources and management within the public administration is under preparation. Budget reform is the most advanced due to its contribution to fiscal policy.</p> <p>2. Decentralization of the state could worsen the business environment in the short to medium term.</p>

III. POLICY RECOMMENDATIONS FOR A STRATEGY TO IMPROVE PRIVATE SECTOR DEVELOPMENT IN SERBIA

13. Regulatory reform in a transition country is not essentially a deregulatory task, but a mix of new regulation, deregulation, and re-regulation, backed up by legal and institutional reforms, to support increasingly competitive markets. The priorities are: 1) creating a strong legal system and credible, effective institutions that protect property rights and market competition against abuses, establish a level playing field for new market entrants, and promote appropriate incentives for efficiency, and 2) reducing barriers to entry, unnecessary regulatory costs, and regulatory risks for investors. The principles of such a policy environment are transparency, neutrality, and competition, and protecting these principles requires positive state action. Successful reform depends on clear reform plans, long-term and credible commitment, and continuing investment in building strong institutional capacities in governments.

14. There is no universal model for the right regulatory system, since appropriate solutions must be designed to fit within the specific circumstances of Serbia's values and institutions, and its stage of economic development. However, since Serbia is competing in European and global economies for capital and markets, international expectations and experiences for high-quality regulatory regimes can provide valuable benchmarks for action. Many of the recommendations below are based on good regulatory practices accepted in European countries, and will help Serbia converge with European market standards.

15. With a sustained action program that starts promptly and enjoys political commitment, Serbia could, in four years, become a frontrunner in regulatory quality in the region. Benefits could appear relatively quickly. In the short-term (three to 18 months), Serbia can take many useful steps to simplify and improve the environment for business to stimulate development of its domestic private sector. These steps would be helpful not only to domestic entrepreneurs, but would also boost confidence among international investors that the Serbian government understands business needs and is undertaking a structured, results-oriented reform process.

16. The recommendations below are based on practical reforms implemented by many other countries in Europe, both countries in transition and members of the European Union. Most of these recommendations address regulatory reform from a broad perspective, focusing on systemic issues of institutional capacities and interactions that cut across economic sectors, layers of government administration, and ministerial jurisdictions. Such an approach is necessary because many barriers facing Serbian businesses can be resolved only with a coordinated and strategic approach based on market principles applicable across the whole of the governing system. Changes are not easy, since they usually face deep resistance by the institutions being reformed and by their clients. Most countries have found that a clear accountability, a strong central reform body and a comprehensive strategy are useful in overcoming sectional interests and jurisdictional battles.

1) Speed up and broaden reform through stronger political oversight, strategic planning, and incentives for implementation of reforms

17. Serbia should take a more systematic approach to reforms to stimulate private sector development. Effective reform is dependent on the development of systematically organised procedures with explicit and sustained political backing and adequate resources, including staffing and expertise.

1.a) Improve political oversight and ministerial accountability for private sector development by establishing a Committee of the Government for Regulatory Reform and SME Development

18. Experience in many countries shows that the most important ingredient for successful regulatory reform is the strength and consistency of support at the highest political level. Ministers have a direct role to play in assuring that strong political leadership will overcome vested interests in both public and private sectors that benefit from the status quo and resist beneficial change.

19. Serbia's deregulation work is currently proceeding at the level of the ministries, coordinated by a working-level inter-ministerial group (see below) chaired by a Deputy Minister. There is currently no process for reviewing at the political level the concrete results achieved by the ministries, against priorities established by the government. A more systematic oversight of results by the Government, through a ministerial Committee of the Government, could reinforce incentives for results within a decentralised network of initiatives among the ministries. Such a ministerial committee could also set measurable targets to assist in focussing reform resources on priority issues such as reducing business costs and barriers to entry, or supporting the rapid introduction of new technologies into the Serbian market.

20. There are positive precedents in the Serbian Government for Government-level coordination of crosscutting agendas. A Committee of the Government for WTO Accession is working to coordinate that complex agenda. A Committee of the Government for Investment Incentives was recently established, supported by the Ministry of International Economic Relations, which provided an expert Secretariat, coordinated a network of contact points in each ministry and produced a background study of barriers to foreign investors and an action plan that was adopted at Government level. These two Committees should coordinate their work with the Committee of the Government for Regulatory Reform and SME Development.

21. A Committee of the Government for Regulatory Reform and SME Development should be established to guide the sensitive, urgent, and difficult agenda of reforms needed across the government. It should be supported by the Inter-Ministerial Working Group on Deregulation and an enlarged Department of SME Development in the Ministry of Economy and Privatization. At Parliamentary level, the Parliamentary Committee for Development and Foreign Economic Relations could act as the counterpart of the Committee of the Government for Regulatory Reform and SME Development, in order to reach parliamentary consensus on the multi-year action plan and supervise the passage of relevant legislation.

22. The Committee of the Government should not be only reactive to proposals, but should also be proactive by providing ministries with clear guidelines on the directions for reform (see Box 1). To provide a firmer basis for efforts in the ministries and regulators and to hold ministries more accountable for performance, a clearer and unified statement of principles for good regulation would be useful. Most governments today have issued instructions to regulators about how they are expected to exercise regulatory powers. Such a statement contributes to changes in the culture of regulation by reversing the burden of proof for regulation (by, for example, ordering that regulations not be issued unless regulators showed that benefits

justified costs). Under such decision criteria, regulators themselves must show why they should regulate, and demonstrate that regulation is the most beneficial feasible approach. The Hungarian government, for example, found that its civil servants needed new principles of behaviour and new standards of quality for their performance.

23. For example, the Government should require by decree that Serbian laws and other rules shall be designed so that they:

- Are necessary to achieve clearly-defined public policy objectives;
- Are practical, clear and simple for regulated parties and implementing officials;
- Generate benefits that justify costs and reduce as far as possible costs to consumers and businesses, particularly SMEs;
- Are consistent with a competitive market that maximizes consumer choice, encourages innovation and investment, and permits free entry and exit for private businesses.

24. This would help ensure that reform principles are applied consistently to new and old regulations, by all ministries. Such principles could provide a solid basis for training programs for civil servants with regulatory responsibilities.

25. The new Committee of the Government should pursue other priorities in 200, including comprehensive reform of the Company Law, the Law on Entrepreneurs, and the business registration system; and adoption of the first consolidated simplification bill integrating deregulation reforms from across the ministries.

26. The recommendations are as follows:

▪ **By end-July 2002:**

- Create a ministerial-level Committee of the Government for Regulatory Reform and SME Development, backed up by the Inter-ministerial Working Group on Deregulation and the Department of SME Development in the Ministry of Economy and Privatization.

▪ **By end 2002:**

- The Committee of the Government for Regulatory Reform and SME Development should establish explicit quality standards for regulations based on market principles, should require by Government decree that Serbian laws and other rules shall be designed to comply with those standards, and should require that ministries prepare justification statements for all new draft laws and other regulations (see below). The regulatory reviews of the Inter-ministerial Working Group on Deregulation (recommended below) will help establish respect for the quality standards and improve the quality of the justification statements.
- The Committee should have as its other top priorities in 2002: 1) comprehensive reform of the Company Law, the Law on Entrepreneurs, and the business registration system; 2) adoption of the first consolidated simplification bill integrating deregulation reforms from across the ministries. Completion of the simplification of land permissions and building construction approvals is a high priority.

▪ **By end 2003 and beyond:**

- The Committee of the Government for Regulatory Reform and SME Development should approve the revised two-year action plan on private sector development (see below) and should monitor its implementation.

Box 1: Principles of good regulation

OECD country experience shows that quality standards and an effective regulatory management institution are interdependent. Central oversight is more effective if objective quality standards for regulation are specified to regulate quality. But quality standards and principles are often not enough to improve regulatory habits and counter incentives. An expert government-wide institution should be accountable for overseeing compliance. A concrete and market-oriented set of quality standards could be based in the OECD principles accepted by ministers in 1997, which reads:

“Establish principles of “good regulation” to guide reform, drawing on the 1995 OECD Recommendation on Improving the Quality of Government Regulation. Good regulation should: (i) be needed to serve clearly identified policy goals and effective in achieving those goals; (ii) have a sound legal basis; (iii) produce benefits that justify costs, considering the distribution of effects across society; (iv) minimise costs and market distortions; (v) promote innovation through market incentives and goal-based approaches; (vi) be clear, simple, and practical for users; (vii) be consistent with other regulations and policies; and (viii) be compatible as far as possible with competition, trade and investment-facilitating principles at domestic and international levels.”

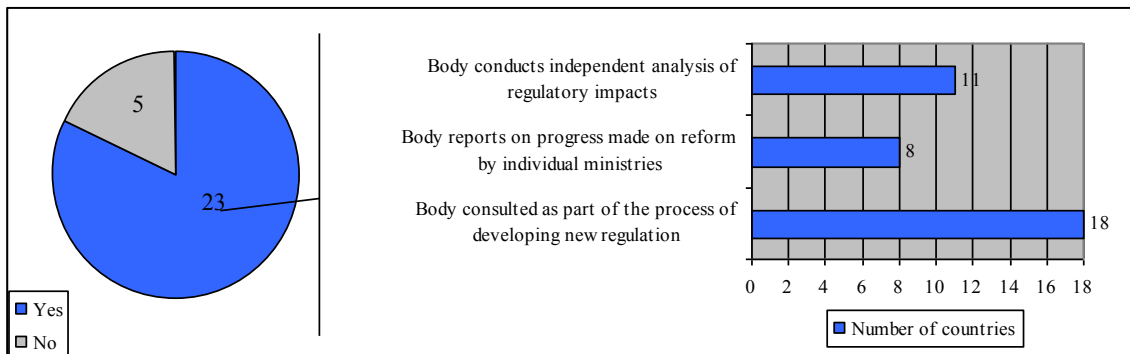
Source: OECD Report to Ministers on Regulatory Reform, 1997

1.b) Improve technical capacities to coordinate, analyse, and promote a government-wide reform program by strengthening the Inter-ministerial Working Group on Deregulation. If results are unsatisfactory, establish a higher-level unit in the Office of the Prime Minister.

27. International good practice recommends the creation of expert and credible mechanisms inside the government for managing and co-ordinating complex reforms. A well-organised and monitored process, driven by “engines of reform” with clear accountability for results, is important for success. Managing a broad reform program over several years – even over several governments -- is one of the most difficult tasks of governments, yet those countries that have succeeded, such as Hungary and Mexico, have shown the fastest transitions and the greatest gains in economic development. There are several reasons for this. It is often difficult for regulatory bodies to reform themselves, given countervailing pressures and capture. Maintaining consistent and systematic approaches across the entire administration is necessary if reform is to be broad-based. This is particularly the case in transition economies, where many public officials are unfamiliar with market principles.

28. Promoting reform requires the allocation of specific responsibilities and powers to agencies at the centre of government to monitor and promote progress across the whole of the public administration. All countries agree that the primary responsibility for reform must be at the level of the ministry, department, or independent regulator. That is where the expertise lies, and where policies are formulated. Yet most governments have also established important central regulatory co-ordination and management capacities, supported by ministries with horizontal responsibilities. Figure 1 shows that 23 out of 28 surveyed OECD countries¹⁰ had, by end-2000, established a dedicated unit to play a role in managing regulatory quality. These bodies include inter-ministerial committees, specialist regulatory reform agencies within prime ministers’ offices, advisory commissions, regulatory reform committees of Cabinet, or parliamentary committees.

Figure 1. Responses by OECD countries to the question: Is there a dedicated body responsible for encouraging and monitoring regulatory reform and regulatory quality?



Source: Public Management Directorate, OECD, 2001

¹⁰ Luxembourg and Slovakia are not included in this figure.

29. This report has already recommended that the Serbian government establish a ministerial-level Committee of the Government for Regulatory Reform and SME Development to oversee reforms at the political level. But a ministerial-level committee cannot review all the technical issues. To complete the institutional infrastructure for reform, a dedicated and expert group is needed at the working level, where most of the substantive discussion will occur. Serbia has already established several inter-ministerial and expert institutions that, within a more structured and better-resourced framework, could be capable of driving a government-wide program to improve the private sector environment:

- An Inter-ministerial Working Group on Deregulation was created in September 2001 with the mandate to coordinate deregulation among the ministries. Membership of the Working Group includes most of the major ministries. The Working Group is chaired by the Deputy Minister of the Ministry for Privatization and Economy.
- Its supporting Secretariat has been, informally, the tiny Department for Development of Small and Medium-sized Enterprises in the Ministry of Economy and Privatization, which has the mandate to monitor and analyse the performance of SMEs, suggest measures and instruments to develop SMEs and stimulate investments in SMEs. An Assistant Minister heads the Department, but its staff has been limited to one person and two recently-hired part-time legal experts.
- A long-standing central Secretariat for Legislation, established by the Republic Law on Ministries (*Zakon o Ministarstvima*), reviews all laws and government decrees for consistency with the constitution, with other laws, and with drafting standards.
- A Centre for Legal Reform in the Ministry of International Economic Relations plans and promotes an agenda of economic legal reforms at Republican and Federal levels.
- An Agency for the Development of Small and Medium Enterprises was created in 2001 to participate in the preparation of the strategy of development and proposal of the economic policy measures for the stimulation of the development of SMEs and entrepreneurs and give professional assistance to investments and operation of SMEs.

30. Each of these institutions has its role, but the role of the Inter-ministerial Working Group is key, because it is the only body now working in Serbia with the mandate and capacity to coordinate policy reforms promoting the interests of domestic entrepreneurs. Establishment of the Working Group was an important step forward, and the Working Group has made significant contributions. For example, the Inter-ministerial Working Group coordinated the simplification of land permissions and building construction approvals. This is a high priority area for reform – currently, 51 different organisations are involved in issuing permits. The Ministry of Building and Construction is now preparing a government decree to simplify the area.

31. If Serbia is to organise and sustain the kind of broad and effective reform program needed to “catch up” in the region, the Inter-ministerial Working Group must be strengthened. There are three preconditions to improved performance for the Working Group:

- ***Sustained political support and guidance***, which would be provided by the recommended ministerial-level Committee of the Government for Regulatory Reform and SME Development;
- ***A dedicated expert staff of 4-6 fulltime people, both lawyers and economists***. The Working Group has had, up to now, no capacity to develop technical projects or assess the reform proposals.

Members of the committee do not have time or expertise to judge adequately the need for reforms or the quality of reform proposals. Its role has been seen as coordination of issues, while assessment of issues and drafting of reform proposals have been left to the ministries. This has crippled its capacity to identify solutions and formulate proposals for action. The Secretariat for the Working Group should be based in the Department for SME Development in the Ministry of Economy and Privatization, which should be enlarged to 4-6 fulltime staff. These staff could be in part hired directly, and in part seconded from other ministries and the Agency for the Development of Small and Medium Enterprises. In the short-term, the Working Group should have more resources to access existing capacities in universities, think tanks, and other ministries.

- ***A mandate to identify problems, develop solutions, initiate action, and monitor results.*** The Working Group should develop and monitor the government-wide action plan for private sector development, and should review new laws and rules to ensure that they are consistent with Government priorities for private sector development. Until now, the Working Group has operated by identifying projects, determining who is responsible, and perhaps establishing a working group to study the matter. The project then becomes the responsibility of the ministry with jurisdiction, which makes a proposal to the Government. This is the right model for ministry-specific reforms, but not for multi-year, government-wide reforms involving coordinated and consistent actions by multiple ministries. A more directive and expert leadership role is necessary.

32. Depending on its resources and the Government's priorities, the Working Group should consider also accepting the following responsibilities:

- In parallel with the review of the Secretariat for Legislation, review all draft proposals of law, Government decrees, and ministerial regulatory decisions to determine if they are consistent with development of a market economy, and are designed so that businesses can implement them as efficiently as possible; work directly with the ministries to improve draft regulations; and, after review, transmit its views on draft laws and regulations to the Government for its consideration. The workload for such review seems manageable. The number of new laws in Serbia in 2001 will be less than 30, with the addition of around 40 government decrees. The number of ministerial-level regulatory actions to be reviewed would be fewer than 100.
- Develop an action plan to simplify and reduce business permits and licences, and begin planning for the implementation of a one-stop shop for business start-ups and growth, including creation of a central registry for all business approvals, licenses, and paperwork; coordination among ministries to reduce duplication and overlap; promotion of information-sharing among ministries; and, ultimately, establishment of a single office where all business licenses and approvals can be obtained;
- Assess recommendations from businesses and their representatives on ways to improve regulatory and administrative barriers that impede start-ups, efficient business operation, investment, job creation, and growth, and develop periodic packages of legislative proposals to remedy identified problems, in consultation with the responsible authorities, the Government, and the Parliament;
- Investigate complaints from businesses about possible abuses and implementation problems by state authorities, and intervene with the responsible state authority to clarify and remedy the problem;
- Consult with and support the SME Advisory Board as it reviews draft regulations and laws and provides its advice to authorities on improving policies and regulations;

- Reach a consensus among ministries on how to coordinate business inspections to minimize the burdens of multiple inspections.

33. The Inter-ministerial Working Group will not be able to do it alone. Coordination between the various institutions with reform tasks will be critical. The Inter-ministerial Working Group will need to work closely with other committees working on related areas such as judicial reform. The work of the Centre for Legal Reform in the Ministry of International Economic Relations is valuable and the Centre might want to be represented on the Inter-ministerial Working Group. The Civil Service Institute should be represented on the Inter-ministerial Working Group, since civil service capacities and training needs will be an essential part of any government-wide reforms and should be coordinated with, for example, projects to implement regulatory impact analysis or impose regulatory quality standards. Reviews should be coordinated with the legal reviews carried out by the Secretariat for Legislation to avoid delays in the process. The expertise and contacts of the Agency for the Development of Small and Medium Enterprises will be useful in defining the agenda for action.

34. A relentless focus on results in the market is necessary, and hence flexibility and redirection will be necessary to continually improve the reform program. An issue that may need rethinking in Serbia is whether a higher-level reform unit is needed to achieve the necessary speed and depth of reform. The Inter-ministerial Working Group is placed within a line ministry, and hence may find it difficult to take on a more directive role vis-à-vis the other line ministries. In other countries, reform bodies have tended to be placed in the center of government, such as in the Prime Minister's Office. The effectiveness of these bodies' monitoring, co-ordination and management functions is enhanced by their being directly linked to the centres of political and administrative authority. If results are not visible, the Serbian government should be prepared to move quickly – by the end of 2002 – to replace the Inter-ministerial Working Group on Deregulation with a unit in the Prime Minister's Office.

35. The recommendations are as follows:

▪ **By end-July 2002:**

- Enlarge the Inter-ministerial Working Group on Deregulation so that its membership includes all ministries with regulatory responsibilities, and the Civil Service Institute.
- Create a dedicated 4 to 6 person Secretariat for the Inter-ministerial Working Group on Deregulation by increasing the staff of the Department SME Development of the Ministry of Economy and Privatization, partly through new hires and partly through secondments from other ministries, such as the Ministry for International Economic Relations.

▪ **By end 2002:**

- The Inter-ministerial Working Group on Deregulation should be able to review all proposed laws and other major regulations affecting businesses. Within the schedule for preparation of new laws and other major regulatory instruments, the Working Group should have at least four weeks before a law is submitted to the Government to conduct its review, unless the Government explicitly allows a shorter review period at the request of the responsible ministry.
- The Chair of the Working Group should transmit a summary of the Working Group's views and recommendations on a draft law and other rules, including its views on whether the justification

statement is adequate and correct, to the responsible ministry and to the Committee of the Government for Regulatory Reform and SME Development. Responsible ministries should accept the Working Group's recommendations or explain why they could not. When a law is submitted to the Government, the responsible ministry should include a statement explaining its response to the views of the Working Group.

- To develop reform proposals and draft instruments on crosscutting issues, the Inter-ministerial Working Group on Deregulation should establish subcommittees. The subcommittees should include representatives of major outside interests, such as entrepreneurs. Using these subcommittees, the Inter-ministerial Working Group on Deregulation should produce proposals to implement crosscutting reforms. A subcommittee will be needed for reform of the company law, the entrepreneurs law, and the business registration system.

- **By end-2003 and beyond:**
 - After developing the integrated government-wide action plan on private sector development, with timetables and identification of training needs (see below), the Inter-ministerial Working Group on Deregulation should report frequently (at least monthly) on reform progress to the Committee of the Government for Regulatory Reform and SME Development.

 - If the Inter-ministerial Working Group is unable to adequately coordinate among the ministries and speed up progress, a higher-level unit for regulatory reform and simplification of the business environment should be created within the Office of the Prime Minister. This unit should report to the Ministerial Committee for private sector development. This unit should replace the Inter-ministerial Working Group on Deregulation.

 - The Inter-ministerial Working Group on Deregulation or its replacement should periodically report to the Government and to the Parliament on the quality of laws and regulations, and the performance of the ministries on reform progress

1.c) Over the next two years, improve strategic planning and coherence of reforms by developing a government-wide strategy for private sector development.

36. The current process of deregulation in Serbia is rich in ideas. Lists are being produced of likely targets, and consultation with businesses is improving understanding of day-to-day constraints faced by enterprises. Donors are supporting a wide range of reforms. However, the process continues to be uncoordinated, fragmented, and nontransparent, and risks exhausting its resources in trivial and short-term issues. Since individual ministries propose most reforms, inter-ministerial issues are difficult to identify and implement, even with the activities of the Inter-ministerial Working Group on Deregulation. And because each issue is dealt with individually, reforms are vulnerable to blocking or delaying by vested interests. This piecemeal approach slows reforms and reduces the value of the reforms achieved. Private investors are more reluctant to enter the market when reform is unpredictable and there are risks of reversals and delays. Entrepreneurs are frustrated at the lack of concrete results.

37. To speed up reform and boost results, the Serbian government should produce over the next year a multi-year private sector development strategy backed up by an action plan with accountable results. The size and complexity of the task means that reform requires careful management and prioritisation. The strategy should include elements of deregulation, re-regulation, and institution building, as needed to resolve defined problems. It is also important that the reform strategy be coordinated with training services offered by Serbia's proposed public administration institute. New skills and concepts will be needed in re-orienting the role of the public sector to meet the needs of enterprises in competitive markets. The World Bank emphasizes that investing in people is a key to growth, and this is particularly the case when civil servants unfamiliar with market principles are responsible for regulating market behaviour.

38. There are a number of advantages to medium-term strategic planning. An explicit plan is politically valuable in signalling the government's commitment to reform. Development of an articulated and transparent program -- either government-wide or for individual sectors -- can underpin political commitment, result in more coherent and carefully planned reform, mobilise constituencies for reform, and focus a public debate on the reasons for reform.¹¹ A multi-year strategy, if implemented, strengthens market confidence and boosts long-term investment. The credibility of reform is heightened by clearly laying out the path forward, which is vital if the private sector is to invest and workers are to accept that they will reap some of the benefits rather than simply bearing the risks. Of course, if not implemented, a multi-year strategy will undermine Government credibility. Hence, realism and practicality are necessary in drawing up the plan.

39. A planning process can also contribute to public communication. It helps show politicians and the public why the policy objectives are important. The need for political support means that the relevance of regulatory reform to larger social and economic goals must be clarified, and the public must accept that reform is in its interest.

40. On the managerial level, a strategic program can establish priorities, keep reform moving to produce results more quickly, identify gaps, identify emerging risks of market failures during the transition due to regulatory inadequacies, and suggest synergies, linkages, and sequencing across reforms. By establishing a general framework, a policy enhances the effectiveness of co-ordination and co-operation across jurisdictional barriers divided by narrow policy missions and differing regulatory cultures. This helps ensure coherence and comprehensiveness in reform. For example, strategic planning – in which regulatory reform is seen as a process of reducing regulatory distortions of markets and providing frameworks in which effective

¹¹ OECD (1997) The OECD Report to Ministers on Regulatory Reform: Synthesis, Paris

competition can operate -- can help develop links between individual reforms and competition policy. Similarly, synergies between regulatory reform and trade and investment policy can be increased.

41. Conversely, reforms that are fragmented, episodic, or compartmentalized are likely to be incomplete, inconsistent, and vulnerable to capture by vested interests. This increases the risks of disappointment and costly policy failures. Moreover, some reforms are nearly impossible to introduce gradually without careful and transparent advance planning.

42. There are good examples of how strategic planning and coordination supports longer-term policy objectives. The Hungarian approach is presented in Box 2. In Korea, the Comprehensive Regulatory Improvement Plan requires that ministries and the high-level Regulatory Reform Committee prepare annual plans. These plans are focused on driving the pace of reform and maximising accountability by creating short to medium term objectives and targets that exist within the broader strategy of reform.

Box 2: Organising a regulatory reform program in Hungary

The Hungarian government-wide regulatory review of 1995-1998 was co-ordinated by a central unit, the Government Commissioner, assisted by a small secretariat and advised by a Deregulation Council. The review was based on a three-year planned schedule of ministerial submissions and included subordinated regulations as well as laws.

The revision was divided into two stages. The first 18 months concentrated on laws and regulations existing before 30 June 1990; the next 18 months focused on the review of regulations enacted after that date. An important element of the program was the preparation by the Ministry of Justice of a precise inventory of existing laws and regulations. Based on this inventory, the Government Commissioner and the horizontal ministries presented a detailed schedule covering the whole three years government's period. A submission process was designed which in theory included a RIA checklist (albeit seldom used). A special justification memorandum was requested for maintaining regulations enacted before 23 October 1989. The Government Commissioner could recommend that the government reject such regulations or could ask for further analysis. Last, the Ministry of Justice was charged with preparing a specific "deregulation instrument" to be issued by the government or presented to the Parliament listing unnecessary regulations abrogated.¹²

In parallel to this item-by-item approach, the government took a comprehensive approach to a few key policy areas vital to the proper functioning of democratic and market-oriented systems. For example, the civil code was reviewed in its entirety under the "deregulation of merit" process. Due to the size, complexity and impact of such codes or "codex", the revision was organised through working groups that work for two or three years. The reviews consisted not only of amending and replacing whole sections but also of re-organising texts which in some cases, like the Civil Code of 1959 had been reformed more than twenty different times since 1990.

According to the government, the 1995-1998 review was more successful than earlier attempts. Clear timetables and program objectives, leading up to omnibus "deregulation measures," concentrated ministries' efforts and provided greater visibility and accountability to achievements. Mechanisms were used to boost the outreach of the program and implicate a wider public in the national effort. The Deregulation Council and the Government Commissioner commissioned from academics and researchers a series of studies on deregulation.

Source: OECD (2000) Regulatory Reform in Hungary, Paris.

43. The recommendations are as follows:

▪ **By end 2003:**

¹² Hungarian Council of Ministers Decrees 39/1990, 44/1990, 88/1990, 45/1991, and the Deregulation Act (XXII/1990).

- Each ministry should develop a two-year action plan, with timetables, identifying priorities to stimulate private enterprise start-ups and growth. The action plans should also identify training needs for civil service staff. The ministerial action plans should be forwarded to the Inter-ministerial Working Group on Deregulation.
 - Simultaneously, the Inter-ministerial Working Group on Deregulation should identify crosscutting and inter-ministerial issues and develop a two-year action plan to address these issues.
 - The SME Advisory Board should be fully consulted in the development of the action plans
 - Using the action plans, the Inter-ministerial Working Group on Deregulation should develop an integrated government-wide action plan on private sector development, with timetables and identification of training needs. The Government's action plan should be reviewed and approved by the Committee of the Government for Regulatory Reform and SME Development.
 - The ministries should produce the reform proposals needed to implement the first tranche of reforms in the action plan. The reform proposals should be reviewed by the Inter-ministerial Working Group on Deregulation for coherence with the action plan, and then sent to the responsible Ministry or to the Committee of the Government for Regulatory Reform and SME Development for action.
- **By end-2003 and beyond:**
- On a rolling basis, Ministries should develop revised action plans extending two years.
 - The ministries should produce the reform proposals needed to implement the second tranche of reforms in the action plan.
 - The Inter-ministerial Working Group on Deregulation should produce proposals to implement the cross-cutting reforms in the government's action plan.

1.d) Exploit international pressures, benchmarking, and good practices to promote reforms in Serbia

44. International rules and disciplines aimed at improving regulations and regulatory processes help promote reform at the national level. The FRY has rapidly rejoined many international organizations (the UN, IMF, World Bank, EBRD, EIB, and FAO) with interests in good regulatory practices. Reform is easier today thanks to support from these institutions, the growing body of evidence and experiences from many countries, and the impact of international benchmarks in highlighting the need for reform. Such information can reassure people that the risks of moving in unfamiliar directions are acceptable, given demonstrated benefits.

45. Domestic reforms can be reinforced in a variety of ways by international commitments. A policy of convergence should set into motion a whole set of downstream reforms. Putting reform into the international arena attracts higher levels of political attention at home. Peer pressures enhance the transparency of reforms and can help countries sustain momentum. The perceived "fairness" of multilateral action can help to reduce resistance to reform, compared to going it alone, and co-ordinated reform can help avoid "spill over" effects and impacts on other countries. There is a valuable learning process. International co-operation; and commitments reached under OECD guidelines, WTO agreements, and other international approaches are based on a depth of analysis not easily available to individual countries.

46. As it moves in future years to adopt the body of EU legislation called the *aquis communautaire*, the Serbian government should aim to exceed EU regulations, rather than to simply comply with them. The EU accession process has acted as a strong impetus for market reforms in many transition countries. However, as shown by the very different economic performance of EU member states, the *aquis communautaire* is not a sufficient basis for good market performance. Reforms should not be limited to meeting EU standards, but rather to using them as a foundation for deeper reforms. If Serbia is to converge with the rest of Europe, it must move faster than the average European country. The accession process offers a good opportunity to move with the frontrunners of Europe by preparing the economy for vigorous competition and innovation.

47. The recommendations are as follows:

▪ **By end 2002:**

- Use the WTO accession process to promote use of harmonized standards and regulatory impact analysis and to establish more transparent practices
- Use EU and OECD good practices as benchmarks for Serbian regulation. For example, the Government should adopt OECD Principles of Corporate Governance as non-mandatory guidance for Serbian corporations, pending development of a law on corporate governance.

▪ **By end-2003 and beyond:**

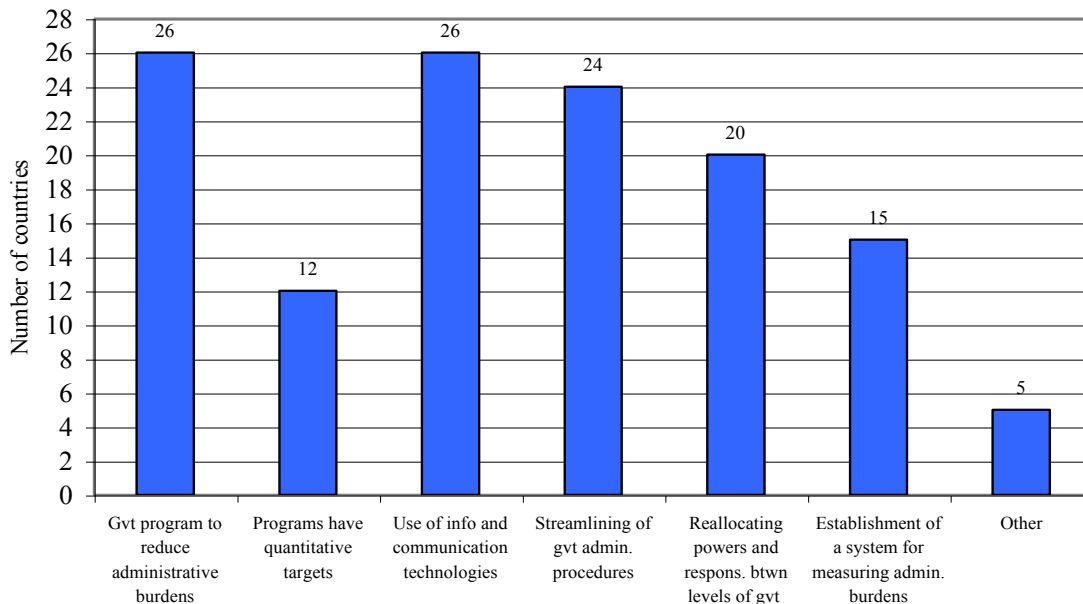
- Use the EU convergence process to adopt best European practices, rather than the minimum standards.

2) Simplify and speed up formalities, red tape, and dispute resolution for businesses

48. Few regulatory reforms are more popular than promises to simplify government red tape. One of the most common complaints from businesses and citizens is the complexity and number of government formalities and paperwork, and here Serbia is no exception. Government formalities, so-called “red tape,” are important tools used by governments to carry out public policies in many policy areas, including safety, health, and environmental protection. However, if they are poorly designed or applied, inefficient, or outdated, they can impede innovation, entry, investment, and create unnecessary barriers to trade, investment, and economic efficiency. They can create opportunities for corruption. Often, procedures are used as anti-competitive measures giving ‘insiders’ protection in some markets. Red tape is disproportionately costlier for smaller businesses than for larger businesses. The result of poor regulation and formalities is that national economies are less able to grow, compete, adjust, and create jobs.

49. Reducing red tape and government formalities can produce substantial payoffs in government efficiency and economic cost-savings. Reducing the operating and dynamic costs of *ex ante* permissions and licences is a high priority for governments that wish to increase business start-ups and improve competitive pressures throughout the economy. By end 2000, 26 out of 28 OECD countries had launched programs to reduce administrative burdens, using a variety of methods (Figure 2).

Figure 2. Strategies for administrative burdens reducing programs in OECD countries



Source: Public Management Directorate, OECD, 2001

50. The costs of administrative burdens can be very large. According to a World Bank estimate, without considering transaction and opportunity costs, opening a business in Mexico could take up to a year and a half, while the costs of complying with all the formalities governing business operations in some cases account for about 3% of a large firm's operating expenses.¹³ The existence of an unspecified number of formalities – sometimes regulatory agencies did not know how many formalities they were responsible for – created a state of uncertainty and opportunities for corruption. A report published by the OECD in 2001 presents results from a multi-country business survey covering almost 8,000 small and medium-sized enterprises (SMEs) in 11 countries. The survey shows that administrative compliance costs for SMEs are substantial for businesses and for the economy as a whole. Administrative compliance costs represent around 4% of Business Sector GDP across the countries surveyed. On average, each SME declared that it spent around 4% of the annual turnover of companies on paperwork. A dramatic “regressive effect” is confirmed. Regulatory and formality costs have an increasingly disproportionate impact on smaller companies.

¹³ World Bank (1990), Mexico Industrial Policy and Regulation, pp. 23-28.

2.a) Reduce the costs of business registration and its related formalities through deregulation of the Company and Entrepreneurs Laws, followed by comprehensive reform of business registration

51. Simplifying business registration has been among the first reforms in most transitional countries to stimulate business formation and entry. Like other countries in the region, Serbia needs a modern business registration system that reduces burdens on businesses and gives the government the tools to enforce rules, control criminality and collect taxes. Currently, Serbia's business registration systems satisfy neither need. They are costly for new businesses, semi-regulatory in a manner inconsistent with market needs, and ineffective in supporting legitimate public policies such as tax collection, avoiding fraud, and improving safety and health. The data produced are too unreliable for the statistical and economic analysis needed to underpin policy-making in Serbia.

52. Two separate business registration systems are in effect, and the two databases are not integrated:

- the Yugoslav Company Law requires registration of legal companies, which is carried out through the Republic's 13 Commercial Courts;
- the Republic Law on Private Entrepreneurs requires registration of small firms that are sole proprietors, which is carried out by 189 municipalities (including Kosovo). Over 200,000 entrepreneurs are now registered.

53. The distinction between these two registration systems is based almost entirely on differences in treatment of liability. Entrepreneurs are personally liable, since there is no legal commercial entity, while companies are liable as a separate entity. This distinction is valid and can be seen in several EU countries, yet differences between the two kinds of firms are blurring as the economy becomes more flexible, innovation, and dynamic. Small businesses grow more quickly and need more business services such as credit. A wider variety of business forms – including nonprofits -- will probably be needed in Serbia, and can be defined in the fundamental revision of the two laws. In addition, SOEs should be included to complete the database.

54. Many databases of businesses now exist in Serbia. Registration data under the Republican Law on Private Entrepreneurs is reported by municipalities to the Serbian statistics office, but the statistics office does not receive the information from the Commercial Courts. The ZOP maintains its own list. Other databases of firms are kept locally by individual ministry inspectorates to schedule their inspections.

55. A key problem is that the current registration system still functions as a regulatory and control system suited for a command economy, rather than as a streamlined information system compatible with a market economy. This is in part due to an outdated understanding of the purpose of business registration, which does not distinguish sufficiently between the rules needed to create an enterprise and the rules needed to operate an enterprise. Business registration in Serbia is sometimes justified as a means for the state to provide sufficient information to the public so that a firm's potential partners and clients can judge the firm's reliability, stability, and financial strength.¹⁴ Business registration, in other words, is often seen as a system of consumer and investor protection that requires the government to screen new business applicants. According to Booz Allan Hamilton experts, some have also commented that the present system is based on an outdated concept that starting a business is not a right but a "privilege" to be "granted" only after extensive investigation and "approval" by the government and courts.¹⁵

¹⁴ According to interviews conducted by Booz-Allen and Hamilton. October 2001.

¹⁵ Unpublished communications.

56. Such market information is far better provided by the private sector itself, and in fact no one in Serbia actually relies on the business registration system as an indicator of company quality. In a market, such information is far better obtained through company filings (this calls attention to the need for better corporate governance rules in Serbia) and investor research, and is backed up by efficient contract law and dispute resolution. Risks for poor information should fall on investors, not on the public sector.

57. Partial solutions to improve the existing system will have only marginal benefits. A solution must address the many problems inherent in this current system:

- The large body of data collected in these lists is not reliable. Estimates of the proportion of data that is incorrect or outdated in the Commercial Courts' databases range from 60 percent to 80 percent. Updates are onerous and incomplete. Companies have 15 days to report any changes, but this is widely ignored since there are no sanctions. Some municipalities do not submit updates on entrepreneurs to the Serbian statistical office for a year or more after receiving the information. A key problem is institutional – too many institutions are involved, data collection is too complex, incentives are not always toward rapid and accurate collection of data, and coordination and compilation is difficult.
- Due to various standards and practices, various databases are impossible to reconcile. For example, while the Serbian statistical office has nearly 113,000 enterprises in its register, only 63,000 submitted balance sheets to ZOP.
- The databases are expensive for the government to maintain. In the commercial courts, 30-40 judges work fulltime on business registration. Each of the 189 municipalities keeps its own registration staff.
- Standards of confidentiality differ depending on who holds the information. Identical information made public by municipalities must be held confidential by the statistical office.
- The process of registration is time-consuming and uncertain. Some forms are standardized, but numerous documents have no standard form. The Commercial Courts have no instructional booklet or manual available for the public.
- Article 18 of the federal Company Law poses a particularly heavy burden because it requires 5-7 preliminary inspections in areas such as health and safety, fire, and trading capacity for each business, for which the business is charged 500 to 1000 DM. These inspections confuse registration with compliance, and in any case do not appear to contribute to higher compliance, since they are in addition to normal inspections.

58. The Serbian and Yugoslav governments began the reform of the business registration system in March 2002 with submission of several deregulatory proposals to their respective parliaments. The proposed revisions to Article 18 of Federal Company Law would eliminate the requirement for pre-inspections of most firms before they begin activities. This change will significantly reduce the cost and delays of business start-ups and free up inspection resources to focus on the most serious health, safety, and environmental risks. However, to ensure that risks are appropriately controlled, firms in activities with particular risks to consumers, workers, or the environment would be pre-inspected. Firms in these areas would be pre-inspected

by the relevant inspectorates according to the regulations promulgated by those inspectorates.¹⁶ In addition, proposed revisions to other articles of the Republican Law on Entrepreneurs would reduce start-up and operating burdens on entrepreneurs, and expand operating and managerial flexibility in investing, expanding, finding new premises, and creating jobs.

59. If adopted, the proposed revisions will be useful and will help stimulate start-ups, but they will not resolve the major problems with business registration. Comprehensive reform is needed. The relevant authority, presumably the Republican government, should prepare a draft law replacing the registration systems in the Yugoslav Law on Enterprises, the Law on the Procedure for Insertion in the Court Register, and the Republican Law on Private Entrepreneurs with a single unified business registration system that improves the accuracy, completeness and filing times of registrations; harmonizes how generic business information is recorded across government; and improves services to businesses that require access to data from multiple programs. The Yugoslav Chamber of Commerce has suggested that registration should be a simple notification procedure in which firms publicly announce their existence and a few basic facts (such as name, address, legal form, identity of owners and directors, and business classification). This would be consistent with standard practices within the European Union, as shown by the summary below of business registration practices in Italy and Germany (Table 2). In the system redesign, a number of other issues could be examined, such as the integration of protection of business names with the registration system, and the potential for privatizing the whole system.

60. Drawing on practices in Europe, Serbia's unified registration system should be designed around the following 12 principles. The new system should:

1. create a unified Republican registration system (integrating the Yugoslav Law on Enterprises, the Yugoslav Law on the Procedure for Insertion in the Court Register, and Republican Law on Private Entrepreneurs) that is applicable to all business activities and based on an comprehensive range of company forms, including socially-owned companies, nonprofits, and other forms of business activity;

¹⁶ Existing Article 18 of the federal Company Law:

An enterprise may begin its activities, may carry out its activities, and may change the conditions under which its activities are carried out only after a competent authority issues a decision confirming that conditions have been met regarding technical equipment, safety at work and protection and promotion of environment, as well as other conditions established by rules.

Proposed text for revised Article 18:

An enterprise may perform business activities or change its conditions or premises if it fulfills conditions related to technical equipment, safety at work, protection and promotion of the environment and health protections, and other conditions established by rule.

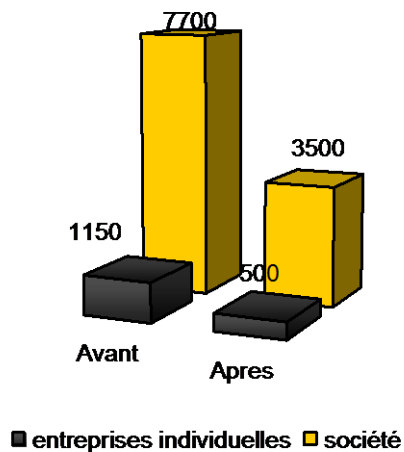
Exception: An enterprise may initiate production, trade, distribution and storage of explosives and explosive material, inflammable liquids and gasses, nuclear energy, leather, drinking water, production and transport of toxic agents, drugs, narcotibs and supplementary therapeutic remedies, production of instruments and medical equipment that emit ionized radiation, production of chemical substances, glues, solvents, paints, products for disinfection and insecticides, activities in hospitals and other health facilities, food production, trading in fresh meat, and offering services in the hospitality industry, or may change conditions for performing these activities, only if the competent authority has determined that conditions related to the technical equipment, safety at work, protection and promotion of the environment and health protection, and other conditions established by rules, are met.

2. shift administration from courts, municipalities, and the statistics office to a Republican ministry to reduce costs, free up scarce judicial resources, and ensure consistency, data accuracy, and coordination among government bodies using the data (the administrative register will, however, be the main source of information for the statistics office, which must define its own data needs more precisely to meet the evolving demand for economic data in Serbia's new economy). The administrative office could be largely self-financing through a small fee on new registrations, and for fees for other services such as certified copies;
3. for each business, create a single unique identifying number that serves all government needs (Italy has a unique number since March 2001, Germany is moving to adopt a unique number). Serbia is close to this already, since each business is assigned an 8-digit identifier that could be universally used;
4. create a unified electronic national database that is accessible to all who need it, is updated continually, and is eventually accessible by Internet;
5. code businesses using the "Statistical Classification of Economic Activity (NACE) Codes" used in the European Union (NACE rev 2);
6. streamline data requirements for each class of business to a standardized list of 6-10 data elements that include only information needed to
 - a. Assign business liability,
 - b. Clarify corporate governance arrangements if different from the *de fault* options,
 - c. Code accurately under NACE,
 - d. Determine a company's registered office for legal purposes,
 - e. Inform ministries that a business has been created, allowing them to schedule any needed inspections, and to meet the needs of the ZOP or other tax system.
7. data requirements will differ according to the complexity and type of business. Data requirements aimed at ensuring the quality of the firm or determining its compliance with other regulations – such as requirements for training, physical fitness, certification, and suitability of physical location – should be eliminated from the registration process (although some basic information such as whether the firm has filed for bankruptcy might be included). By illustration, Italy's business registration includes the following data elements:
 - a. Name of the entrepreneur and personal data (data of birth, place of birth, nationality, address, tax number);
 - b. Object of the activity;
 - c. address and place of the firm;
 - d. capital;
 - e. kind of firm (kind of company);
 - f. name of partners and their personal data (data of birth, place of birth, nationality, address, tax number); business management; time of life;
 - g. tax number;
 - h. name of the notary and his tax number (if necessary);
 - i. other licences (if necessary).
8. allow businesses to start activities immediately after registration, as in Germany and Italy. In effect, this changes registration into a notification rather than an approval. Registration should be immediate when basic identifying information about the firm and other necessary documents (such as company articles of association) have been submitted. A final determination should be made within 15 days, signalled by receipt of the official certificate. Entry of the company into the registry may be denied only if the filed documents are incomplete or the information is on its face false, mistaken or contradictory, and a written explanation is received within 15 days;

9. allow updating of data by mail, phone, or and email to reduce non-reporting and improve data quality;
10. permit electronic filing from several locations in the Republic;
11. assign to the responsible ministries responsibility for deciding on when and how to conduct inspections. No general policy on timing and frequency of inspections is likely to be efficient, since these variables should be based on risk and cost, and hence they should not be part of the registration process. Businesses should be legally responsible for ensuring that they obtain the necessary permissions, either *ex ante* or *ex post*, as required by relevant rules.
12. closely co-ordinate reform of the business registration system with reforms to corporate governance and creation of a one-stop shop for licenses for new businesses, as in Italy and Germany.

61. A less ambitious reform to improve registration procedures in 189 municipalities and 13 courts may seem to be faster, but is actually likely to be more costly and time-consuming, and deliver a less efficient and accurate registration system. A fundamental re-engineering of the whole system is needed, and preparation and implementation of a new law may well require international financial support. It will be important to move business registration out of the Commercial Courts into an administrative agency. Scarce judicial resources are better spent on justice rather than administering a registration system, and potential efficiency improvements in the Courts seem marginal at best. Several countries in Europe are moving business registration out of courts into administrative bodies, with significant efficiency gains. Italy carried out this reform in the late 1990s, and by 2001 had seen dramatic changes in the costs of setting up new corporations, which had previously been handled by the commercial courts. Italian officials attributed much of this cost reduction to the move out of the courts, whose registration procedures had been particularly costly. Greece recently carried out the same reform.

Figure 3: Costs of the creation of a new business in Italy, 1999 and 2001 (in euros)



Source: OECD (2001) Regulatory Reform in Italy, Paris.

62. Reform of the business registration system should replace the current mandatory *ex ante* inspections with discretionary *ex post* inspections, that is, for most businesses, inspections should be done at the discretion of the ministries after the business has begun activity, rather than before. *Ex ante* inspections may still be needed for the limited categories of businesses that pose very substantial safety and health risks, such as gas stations and chemical plants, and these facilities should be explicitly identified in the new system. All

other businesses should simply start operations as soon as registration is completed, but should be liable to fines or closure if they do not comply with applicable rules. This reform – widely underway in many countries – preserves the legitimate capacity of the ministries to ensure compliance with important rules such as those on worker safety and other requirements, but eliminates the *ex ante* barriers to start-ups. This reform should improve public health and safety, as well. By giving the ministries more discretion to target their limited inspectors at the highest-priority businesses, it should increase their effectiveness in achieving their missions. Inspectorates are currently over-burdened by *ex ante* inspections, and have too few resources to spend on genuinely dangerous firms.

63. Licenses may be needed for some activities, such as the medical profession, but these should be obtained separately from business registration. Here, the one-stop shop will become more important with reform of business registration.

64. As part of this reform, the federal government should complete the move to replace the *Federal Regulation on Classification of Business Activities, Art and Old Crafts and Handicrafts* with the *General Industrial Classification of Economic Activities within the European Communities* (NACE). The Serbian statistics office already uses NACE Rev.1.

65. The recommendations are as follows:

▪ **By end-July 2002:**

- Delete the most onerous and unnecessary requirements of the Companies Law and the Entrepreneurs Law. **These revisions are now being considered by Federal and Serbian parliaments.**

▪ **By end 2002:**

- Develop and adopt a bill and financing plan for the integration of the two business registration systems under the Companies Law and the Law on Entrepreneurs to produce a unified and simplified business registration system. This reform should be coordinated with a comprehensive rewriting and integration of the Company Law and the Law on Entrepreneurs to establish a simple, modern, efficient and cost effective framework for carrying out business activity in Serbia.

▪ **By end 2003:**

- Implement the unified and simplified business registration system. The new system should be operational by end-2003.

▪ **2004 and 2005**

- Increasingly shift to Internet registration and Internet access to database information.

Table 2: Overview of business registries in Italy and Germany*

Issue	Italy	Germany
<p>When and where does a new firm register?</p>	<p>All businesses must be registered in the Trade Registry (<i>Registro delle imprese</i>), managed by the <i>Ufficio del Registro imprese</i>, an office of the provincial Chamber of Commerce.</p> <p>Businesses in Italy must register before beginning business, and also must notify within 30 days after activity is effectively started.</p> <p>For certain kinds of businesses requiring more complex forms of financing or credit, such as stock companies, it is possible to start a business without prior registration if a certificate of a notary is obtained. Registration within 30 days of starting the business provides legal status to activities already started.</p>	<p>Businesses in Germany are divided into two categories for registration:</p> <p>-- All firms (trades, industry and commercial activities) are covered under the business law and must notify the Local Business Notification Unit (an office of the municipality) for entry into the Business Registry (<i>Gewerberegister</i>). Business notification is done before activities begin.</p> <p>-- Under the commercial law, about 20% of firms (those who require financing and credit) must be also registered in the Trade Register (<i>Handelsregister</i>), including limited companies (GmbH) and transport activities. Offices of the Trade registry are located at the local Court (<i>Amtsgericht</i>). Trade registration is done before or after activities begin, with different consequences for liability. The later the registration, the more liability the business owner accepts.</p> <p>-- Some activities (lawyers, doctors, architects, tax consultants, artists) register at special councils or the Chamber of Handicrafts.</p>
<p>What other registrations are needed for a business to start up?</p>	<ul style="list-style-type: none"> ▪ A tax number is required from the Inland Revenue office (<i>Partita IVA</i> from the <i>Ufficio IVA</i>). This number can be requested during the registration procedure for the Trade Registry. ▪ For some kinds of firms, such as stock companies, a certificate and statute of the notary is required. ▪ All business activities must also provide information to the Administrative and Business registry (<i>REA</i>, within the Chamber of Commerce), which includes other administrative, economic and statistical data and information not necessary for the main registry. ▪ For certain regulated activities (i.e., selling food and drinks or tourism activities such as hotels, guesthouses, campsites), registration is also required in a Business Registry (<i>REC</i>) also managed by the Chamber of Commerce). ▪ Notification when the activity has effectively started. ▪ For some activities, using dangerous tools and machines, registration at the 	<p>Depending on the kind of activity:</p> <ul style="list-style-type: none"> ▪ Notification to the Chamber of Handicrafts ▪ Specific licenses, depending on the kind of activity (handicrafts, transport, bars and restaurants) ▪ Registration at the insurance office (<i>Berufsgenossenschaft</i>) for workplace accident ▪ Tax number issued by the Inland Revenue Office

	<i>INAIL</i> (office for assistance and insurance for work accidents). This is done by the Chamber of Commerce.	
Who is responsible for accepting the information, putting it in the database, etc?	The Director of the office of the provincial Chamber of Commerce is responsible for accepting data and putting it in the database. National database is in unified national REA database.	Public servants responsible for the procedure.
Does anyone verify the accuracy of the information?	The notary in the case of stock companies and public servants receiving the forms mostly check for completeness rather than accuracy.	Controls are made by the accountable officer for the accuracy of information and data.
Are different parts of government involved? If so, how do they work together?	Forms and information received by the Trade office are given also to the pension authority (<i>INPS</i>). The Trade office is under control of a judge of the local Court (<i>Giudice del registro</i>) to whom it is possible to apply if the registration is denied.	The Local Business Notification Unit sends information to other public authorities (Chamber of commerce or handicrafts, Import office, Insurance office, Inland Revenue office, Environment office, Labor office, Statistical office, etc).
Can private services register businesses?	Private services help new firms with administrative procedures.	Private services help new firms with administrative procedures.
Can registration be done electronically? From where?	Data and forms are given to the office manually or by mail, but data can be written on a floppy disk. Electronic procedures are used for putting information in the database and to place forms on file. In the near future, registration will be possible also by internet.	No, registration has to be done by the entrepreneur, whose original signature is needed.
Who issues the registration number for the business? How is it issued? (Certificate of registration, by letter, by email).	The Registry office immediately gives a receipt that allows the business to start its activities, but it takes 5/7 days to obtain the certificate of registration.	Once notification is done and papers are accepted, the business can start up immediately. No number or certificate is issued from the Local Business Notification Unit. The Trade office issues an “activity license” and a registration number, both by certificate.
Cost of registration? How is registration financed?	Registration costs between € 20 and € 144 (costs are lower if forms are filled electronically). There are public initiatives to finance new start-ups, especially if entrepreneurs are young people or women.	A notification costs about € 30, depending on the business and the legal form. Cost elements are taxes and administrative fees.
Is there a unique national number for each firm, or are there multiple numbers? For example, an employers number, a tax number, etc.	From March 2001, for all new firms, there is one unique national number. The tax number is the same as the registration number and the business number. Existing firms maintain several different numbers.	There are several numbers. Every office gives a different number (trade, tax, social security). A law project has begun for a unique enterprise number. In 2002, the Ministry for economics and technologies will launch a test to explore if a unique number for enterprises is possible (only one authority responsible for issuing the number, identification of the enterprise by each authority, electronic transfer of information between authorities while safeguarding data

		security,). If the test is successful, a unique number will be introduced in 2005.
8. Does the registration process include the protection of business names, or is that a separate process?	In part: the name of the firm (but only the name, not trademark or logo) cannot be used by anyone else.	Different administrative procedures apply under the trademark law. Officers of the Business registry, however, check to see if the proposed new name is the same of an existing name. If so, they ask for a change.
Content of registration (list all data elements).	<ul style="list-style-type: none"> ▪ Name of the entrepreneur and personal data (data of birth, place of birth, nationality, address, tax number); Object of the activity; ▪ address and place of the firm; ▪ capital; ▪ kind of firm (kind of company); ▪ name of partners and their personal data (data of birth, place of birth, nationality, address, tax number); business management; time of life; ▪ tax number; ▪ name of the notary and his tax number (if necessary); ▪ other licences (if necessary). 	<ul style="list-style-type: none"> ▪ Personal data of the business person (date of birth, name, hometown, town of birth, etc.). ▪ Details of the kind of business (kind of firm, capital, ▪ Address, owner, name of partners, business management
Are there requirements for a minimum amount of start-up capital?	Depends on kind of company. For entrepreneurs, no minimum standards. For a stock company, € ????	For a limited company (GmbH), € 25,000 .
Confidentiality: What information does the general public have access to?	All information (for a fee)	Usually, registries are fully open, especially for stock companies. In practice, only information on enterprises registered in the trade register (~20%) is really accessible.
When is the business re-registered, if at all? Must the registration be renewed? When is the information updated?	Information must be updated when there are changes during the life of the firm in the activity, partners, address, capital, business management, statute, kind of firm, within 30 days from the change.	Registration lasts during the life of the firm. New administrative procedures are needed to update data, such as change of place, change of object of the activity, change of capital, end of activity, etc.
Is a time limit set for when the government must issue a number? How long does it take to process an application for business registration?	The time limit is 10/5 days, (depending on if the registration form is on paper or floppy disk). The Registry office takes usually 3/7 days. If a notary certificate is also needed, the procedure lasts about 20 days.	There is no time limit, but usually there are also no delays for the registration (business activity is a fundamental right, and cannot be limited). The average time needed for business notification is 5 minutes; for trade registration: 4 weeks
What kind of checks is done, if any, before a firm is	The notary and the Chambers of Commerce make formal checks on the accuracy of information and data. The	Checks depend on the business. For example, if the entrepreneur is not from EU, the Court checks his right to be in Germany.

registered?	Trade office verifies if the entrepreneur has been bankrupt in the past and still has debts to creditors.	
Is business registration linked to getting other necessary business licenses and inspections, such as food handling or toxic chemicals, or are these handled separately? Are safety and other inspections coordinated with registration? Do tax authorities use business registrations? Do statistics authorities use business registrations? How?	<p>Registration is not linked to any other licenses, even if they are required for specific activities (i.e., registration at the <i>REC</i>); often those licenses are obtained by “self-certification” and “silence is consent” mechanisms.</p> <p>Safety and health inspections are not coordinated with registration. For example, businesses that sell food or drink require a specific food license and an approval from the health office.</p> <p>Registration data are used by “Pension authorities” and statistics offices. They exchange information (the Chamber of Commerce gives them its data and registration forms).</p>	<p>For certain activities, other licenses are needed but they are not coordinated (apart from transport activities).</p> <p>Certain businesses require special licenses for regular inspections. For example, dangerous business like chemical plant and houses for prostitutes need specific approvals.</p>
Is registration simply a notification, or is it an approval?	It is substantially a notification, even if the accuracy of forms is checked.	It’s usually simply a notification; some activities need specific approval. There are also checks on the accuracy of information and data.
Can a government withdraw a business registration as a penalty?	No, but the Court can withdraw the registration if the entrepreneur did not have right to obtain it.	The Government can withdraw the registration if necessary, such as if the business is connected to illegal activities.
Are business registrations connected at all with one-stop shops or other SME support services?	“One-stop shops” support new firms when registering, and also coordinate the whole process of starting the activity (integrating different procedures for different licenses in just one operation). Chambers of Commerce support SMEs with info-points, web sites and specific assistance.	The Local Business Notification Unit is almost like a one-stop shop.

* Source: © Scott Jacobs and Mario D’Adamo for Jacobs and Associates, 2002

2.b) Develop a simplification “hit list” of priority measures and prepare, each six months, a consolidated simplification law integrating business simplification measures from across all ministries

66. Serbian enterprises expect, justifiably, rapid action on issues important to them. As the Serbian government moves forward with institutional and procedural reforms, it should also begin to address the specific constraints on businesses. A credible list of priorities and strategies for action on specific regulatory barriers to businesses has not yet been developed, but there is clearly a long list of potential targets for simplification or deregulation. For example, 16 different forms are required for every employee for every month for every company. The Inter-ministerial Working Group on Deregulation has begun to address licensing for building construction, an area that is pervaded with red tape and a high priority for reform. Other areas that would be candidates for fast action include:

- A coordinated program to reduce and simplify all business permits and licenses, including and going beyond construction permits;
- simplification of taxes and tax forms for SMEs, including the calculation of lump sum payments by enterprises registered under the Republican Law on Entrepreneurs;
- comprehensive overhaul of business registration (recommended above);
- continued examination of labor law, including the impacts of the new labor law on SMEs;
- continued examination of government procurement regulations, particularly the impacts of the new law on access to procurement markets by SMEs;
- review of the laws and regulations on road traffic and safety to improve enforcement and reduce barriers to entry;
- review of the procedures and laws for SMEs to go out of business;
- review of procedures for connecting to utilities such as water and communications;
- lowering of minimum required foundation capital for new enterprises (already under discussion in the Inter-ministerial Working Group on Deregulation);
- automobile registration and inspection system for citizens.

66. Serbia can profit from two surveys now being completed to identify priorities for action. A business survey being conducted by the Foreign Investment Advisory Service (FIAS) of the IFC will develop a baseline for administrative and regulatory costs faced by businesses in Serbia. This useful exercise will help reformers understand and target priorities, and should be followed up with the detailed analysis of remedies planned by the Working Group. The G17 is also completing a business survey. By Summer 2002, these surveys should produce a well-founded target list.

68. There are other useful sources for developing a deregulation “hit list.” The SME Advisory Board intends to identify issues critical to SME companies, and has the ability to draw in experts to discuss particular topics. The Inter-ministerial Working Group on Deregulation is tasked with reviewing commercial regulations and assistance with development of deregulation initiatives, particularly in the areas of streamlining business registration, permitting, and licensing, and elimination and simplification of administrative barriers and cumbersome procedures of all kinds, including controlling administrative discretion in inspections and applications. On the basis of consultation and its own expertise, the Working Group has identified several targets, and intends to do detailed analysis in areas such as simplifying building permits. Another approach was taken by Hungary. To encourage public involvement in the program, the Government launched massive public campaigns to “turn deregulation into a national event”, through hearings and consultation meetings at national and regional level. It arranged a national contest in the newspapers where nearly 400 proposals were presented. Prizes of up to 100 000 Forints rewarded for useful ideas. “Deregulation days” were launched, with the participation of regulators, professional organisations,

and citizens, where the best presentations and proposals were published in the “Deregulatory Forum” column of the “Magyar Közigazgatás” newspaper.

69. But it would be a mistake to continue to address problems one by one in separate legislative proposals. This approach is too slow and uncertain, and is highly vulnerable to vested interests. A faster vehicle is needed to package groups of reforms together and deal with them more quickly. An approach used by many countries with rapid simplification programs – Hungary, Korea, Italy -- to overcome resistance by special interests is to package individual reforms into omnibus laws that can win broad support. In Italy, the Government’s annual program on consolidation and administrative simplification, prepared by the Minister for Public Administration, fixes priorities and identifies procedures to be simplified during the next 12 months.

70. This approach could be rapidly implemented in Serbia. The Inter-ministerial Working Group on Deregulation could, in consultation with ministries, prepare periodic legislative packages (perhaps two per year) to push through the many individual reforms that are needed. It would be important to establish some rules for this process. For example, the simplification bill should not include any new regulatory procedures or formalities. It should be intended solely for simplification and deregulation measures.

71. The recommendations are as follows:

▪ **By end-July 2002:**

- As part of the government-wide action plan, develop a “hit list” of reforms to specific regulatory barriers to businesses. Serbia can profit from two business surveys that will be completed in Spring 2002, one by FIAS and the Economic Institute, and the other by G17. These surveys should be combined with other ideas to produce a well-founded target list.

▪ **By end 2002:**

- Prepare, within the Inter-ministerial Working Group on Deregulation, a consolidated simplification bill integrating measures from across the ministries and submit it to the Committee of the Government for rapid action.

▪ **By end 2003 and beyond:**

- Continue with a rolling simplification program by proposing simplification bills every six months

2.c) Introduce the “silence is consent” tool

72. Delays in obtaining regulatory approvals, and therefore being able to commence or alter operations, constitute a major source of regulatory costs on business. Traditionally, legislation in most countries has been largely silent on the question of timely responses by the administration to requests for regulatory approvals. In fact, there is a rule of “presumed rejection,” where silence means “no.” However, this is changing. Imposing a statutory time limit on decision-making enforces a degree of accountability in the use of regulatory discretions. Under a procedure called “silence is consent,” legislation deems an authorisation to be granted if no formal decision is made and notified within the specified time period. Serbia adopted this approach in reforms to the Republican Law on Private Entrepreneurs, which holds (Articles 16, 18, 19) that municipalities must register a new business within 3 or 7 days, depending on what proof of premises is required. If the municipality is silent, the business can begin work.

73. The “silence is consent” approach has the advantage of being transparent, self-implementing, and inexpensive to implement. Lack of action does not prevent the reform from taking effect. For that reason, it is popular among businesses frustrated by non-responsiveness in the administration, or accustomed to paying bribes to speed up applications. “Silence is consent” is more difficult to apply when approval must be conditioned on the specific case.

74. The “silence is consent” rule should be broadly applied to most licenses and permissions in Serbia. This would be in the mainstream of regulatory reforms. Hungary’s General Rules of Public Administrative Procedures Act require that within 30 days from the submission of an application or from launching a procedure *ex officio*, a decision must be made. Exceptions to this rule can only be granted by law or government decree. Spain has gone further than most countries in pursuing the “silence is consent” initiative. The Common Administrative Procedure Law incorporates this rule and a review was begun which aimed to ensure that it was explicitly contained in all administrative formalities subject to that law. Italy has adopted the silence is consent procedure as part of larger effort to improve accountability and efficiency of official decisions. The principles of the law are applicable to all levels of governments and include critical obligations requiring administrations responsible for procedures:

- To establish a time limits for the end of a procedure;
- To implement if possible the ‘silence is consent rule’. That is, if the authority does not reject a request after 30 days, the applicant can consider it authorised;
- To identify an accountable officer for every procedure responsible for providing information to applicants;
- To prepare a resolution where the administration gives legal and factual reasons for its decisions;
- To communicate the start of the procedure, to provide the right to intervene, to provide additional information and comments to the applicant, and to permit appeals if these principles are not followed.
- To institutionalise the ‘right of access’ where the public and the applicant have the right to access administrative information, and where the authorities are required to explain and reveal, whenever possible, the internal actions that led to the decision.

75. Results in Italy have been positive. The ‘silence is consent’ rule together with the establishment of a conference of services has permitted a dramatic reduction in time for business start-ups.

76. The recommendations are as follows:

- **By end 2002:**
 - Produce a concept paper on implementing the “silence is consent” principle in Serbia, as it is applied in other European countries such as Italy.
- **By end 2003:**
 - Implement the “silence is consent” rule for the widest possible number of permissions and approvals, with a time limit for response of two weeks.
- **2004 and 2005**
 - Progressively widen the scope of “silence is consent” as the default option for new permissions and approvals.

2.d) Plan and implement a one-stop shop for business formalities

77. One of the reasons why Serbian businesses suffer high costs from extensive red tape is that ministries do not communicate. There is little coordination among multiple ministries in imposing reporting requirements on businesses. The central regulatory registry recommended below will be an essential mechanism in coordinating red tape and establishing a database of permits and licenses, but a more significant solution will be development of a one-stop shop for permits, licenses, approvals, and inspections.

78. The “one-stop shop” creates an easily accessible source of information for businesses on regulatory requirements, and should be accompanied by a determined effort to eliminate unneeded and costly approvals, licenses, and permissions, of which there are many in Serbia. The one-stop shop focuses on licences, approvals, and permits, and produces a list of such requirements applicable to businesses. Lists of applicable laws and lower-level rules are also now available in some countries, while delivery mechanisms have broadened to include CD-ROM copies of the database for purchase, access in public spaces such as libraries through “information kiosks” and use of the Internet. It can provide information in the form of application forms and contact details, or it can issue a single consolidated license if inter-governmental co-operation allows licence and permit requirements for all ministries to be issued from a single point. At its best, the one-stop shop “makes the documents walk, not the client.”¹⁷

79. One-stop shops are difficult to set up, since they require extensive upfront coordination and planning among participating ministries, but where they have been well designed, they deliver good results. In Italy, the one-stop shop operated by municipalities replaced 43 authorizations needed to start up a new business, and reduced the time required from 2-5 years to 3 months on average, and 11 months maximum for big investments.¹⁸

80. The Serbian government should commit to establishing a one-stop shop for businesses. As a first step, the Inter-ministerial Working Group on Deregulation should compile a comprehensive electronic list of all approvals, permits, and inspections of businesses carried out at the Republic and municipal levels. The list should be organized and made public. The Inter-ministerial Working Group on Deregulation should identify those requirements that could be coordinated or consolidated, and should initiate such actions among ministries where possible. A plan should be developed for establishing one-stop shops offering, at minimum, a list of licences/permits applicable to businesses, application forms and contact details, and delivery mechanisms such as information kiosks in local governments and the Internet. The plan should include further proposals to establish a single point of issue/renewal for all licences, by having the “one-stop” shop function as a clearing-house for licence applications and subsequent communications between applicants and ministries.

81. The recommendations are as follows:

▪ **By end 2002:**

- The Inter-ministerial Working Group on Deregulation should compile a comprehensive list of all approvals, permits, and inspections of businesses carried out at Republican and municipal levels.

¹⁷ Statement by Lars Grava at the Workshop on **Toward a business-friendly environment in Serbia: International experiences in simplification of regulations and government formalities**, hosted by the Serbian Ministry of Privatization and Economy and Ministry of Foreign Economic Relations, 10-11 April 2002, Belgrade

¹⁸ Luigi Carbone, Italy, at the Workshop on **Toward a business-friendly environment in Serbia: International experiences in simplification of regulations and government formalities**, hosted by the Serbian Ministry of Privatization and Economy and Ministry of Foreign Economic Relations, 10-11 April 2002, Belgrade

- **By end 2003:**
 - The Inter-ministerial Working Group on Deregulation should produce a plan of action for implementing the one-stop shop for business permissions and formalities.
- **2004 and 2005**
 - Implement the one-stop shop.

2.e) Explore more efficient and credible means of contract dispute resolution and administrative appeals for SMEs

82. It will be particularly important in Serbia in the coming years for the government and courts to provide an effective and practical judicial infrastructure for dispute settlement, since the government's role as mediator and arbitrator among interests will gradually diminish as its economic intervention is reduced. Yet settling disputes through the courts seems to be costly, uncertain, and lengthy. The lack of effective judicial review in Serbia combined with expanding market needs for clearer rules should encourage development of a range of alternatives for contract mediation:

83. Arbitration procedures for foreign investors in Serbia are increasingly built into private contracts. Accession to the WTO will give FRY and its trading partners the opportunity to use the WTO Dispute Settlement Mechanism to resolve major problems. While such arbitration has clear advantages over the current court system, the fact that larger and foreign firms are increasingly using international arbitration mechanisms to avoid long judiciary procedures may discriminate against smaller and domestic entities who must rely on domestic courts for redress. International arbitration is not the solution for SMEs. A mediation system could be set up through an administrative court or tribunal could help expand and speed up review of administrative decisions.

84. Many other disputes arise over disagreements with enforcement and administrative decisions by the ministries. This in part reflects an enforcement problem. Serbia is rich in rules, but adopting a rule is easier than implementing it. The loss of credibility in state institutions has generated a culture of non-compliance in Serbian society. There is room for considerable progress throughout the entire enforcement structure – from regulatory drafting to administrative enforcement to adjudication. The simplification, deregulation, and public consultation initiatives suggested in this report will help address this problem by ensuring that rules are well-justified, practical, and the minimum necessary to achieve legitimate policy objectives.

85. A major problem is excessive discretion at Republican and lower levels of administration. Provincial, county, and municipal levels of administration exercise liberal powers of interpretation of regulatory requirements, imposing unnecessary costs and uncertainties on the market, and allowing scope for unethical behaviour. Essential coordination between the public administration, the judiciary, and the police in enforcing laws does not always work well. Some commentators have indicated that a double standard exists in the enforcement of some regulations, differentiating SOEs from foreign firms and new market entrants. Poor enforcement and hence low regulatory compliance undermines confidence in the rule of law.

86. Improving regulatory enforcement is a multi-faceted, political, and longer-term task that goes beyond regulatory reforms into consolidation of the rule of law, but useful progress could be made by certain legal and institutional reforms. Judicial review is still a weak link in Serbia, and its enforcement personnel are remarkably free from external judicial accountability under principles of administrative law. For example, under the Republican Law on Protection for Work, an employer who disagrees with an inspector must appeal directly to the ministry that signs the order. If not satisfied, the employer must go to the Supreme Court. More credible and independent review of enforcement actions is essential within the overall structure of interlocking institutions that should establish the incentives and pressures for high-quality administrative action.

87. The lack of effective judicial review in Serbia combined with expanding market needs for clearer rules should encourage consideration of a range of alternatives for independent checks on administrative

discretion in enforcement actions. An administrative review system could be set up to expand and speed up review of administrative decisions. Ultimately, the Administrative Procedure Law may require revision.

88. The recommendations are as follows:

- **By end 2003:**
 - The Ministry of Justice should examine the efficiency of administrative appeals mechanisms, in consultation with business interests, and propose alternatives that could speed up independent review of administrative decisions.
 - The Inter-ministerial Working Group on Deregulation should establish a subcommittee to examine alternative forms of contract dispute resolution for SMEs.
- **In 2004 and 2005**
 - A report and action plan should be prepared on contract dispute resolution for SMEs.

2.f) *Begin to assess regulatory barriers to inter-regional trade and investment, and develop an action plan to eliminate such barriers to move toward a regional single market*

89. A number of factors argue strongly for government policies that favour trade and larger markets in the region. Serbian domestic markets – indeed the markets of all the current and former Yugoslav republics - - are small relative to European and international standards. Regional economic integration will enhance incentives for investment by increasing the size of the potential market. Integration would enhance scale economies, and lead to more efficient production and marketing. Competition problems will be reduced when domestic enterprises face competition from other parts of the region. To the extent that it is integrated into the regional economy, the Serbian economy will be more efficient, will grow faster, and be less vulnerable to external shocks. The World Bank has reached the stark conclusion for FRY as a whole that “it is simply not possible for FRY to establish a competitive market, promote growth, and increase employment and incomes of the poor behind protective barriers which limit imports of goods or services.”¹⁹

90. Serbia and the FRY have already taken significant steps to cut tariff levels and liberalize trade activities by mostly eliminating licensing and quotas. Yugoslavia has negotiated and signed free trade agreements with Macedonia, Bosnia, Hungary, and has a previously existing free trade agreement with the Russian Federation. Intentions have been announced to pursue other free trade agreements with Croatia, Bulgaria, and other countries in the region, with the aim of creating a South-eastern European free trade zone. This is the right target, but there is much work to be done. As is perhaps natural in the aftermath of conflict, economic integration in the former states of Yugoslavia has been disrupted by a range of tariff, non-tariff, border, and behind-the-border barriers. Many of these are regulatory in character.

91. A cooperative program of reform among entities of the former Yugoslavia to identify and dismantle regulatory barriers could produce substantial economic benefits for participating economies. The agenda is not only deregulation, but also includes positive steps to construct co-operative and even shared regulatory structures, particularly for network industries such as telecommunications, transport, energy, and water, and perhaps for policies such as environmental quality. Optimal regulatory frameworks for Serbia will in some cases extend beyond Serbian borders into neighbouring jurisdictions. This may be the case, for example, with electricity generation, where the small scale of Serbia’s electricity system raises the question of whether a competitive market in generation is feasible. Facilitating competition from generation in other jurisdictions, such as through transmission infrastructure investments and compatible regulatory regimes, would benefit consumers and user industries, and accelerate growth rates in Serbia.

92. The recommendations are as follows:

- **By end 2002:**
 - The Inter-ministerial Working Group on Deregulation should establish a subcommittee, perhaps chaired by the Ministry of International Economic Relations, to examine regulatory barriers to the free movement of goods, services, and labor between Serbia and current and former republics of Yugoslavia.
- **By end- 2003:**

¹⁹ World Bank and European Union (2001), p. 48.

- An action plan should be developed and discussed with regional trade partners, and an agreement should be reached on moving progressively toward an elimination of regulatory barriers. New cooperative mechanisms are needed, and here the experience of Ireland can be useful. Following agreements between conflicting parties in Northern Ireland, Ireland established a North/South Ministerial Council to bring Ministers, north and south, together to develop consultation, co-operation and action within the island, including through implementation on an all-island and cross-border basis. The Ministerial Council has a range of modes of operation, including exchanging information and consulting, reaching agreement on adoption of common policies, and taking decisions by agreement on policies and actions at an all island and cross-border level to be implemented either (a) separately in each jurisdiction, North and South or (b) by implementation bodies operating on a cross-border or all-island level. This mechanism could be tailored to the situation in the region, through establishment perhaps of Ministerial Council for Ministers of Yugoslavian and former Yugoslavian Republics.
- **Longer-term (2004 and 2005):**
- Progressive implementation of the action plan.

3) Improve capacities to assess need for and quality of regulations and market impacts of proposed rules

93. Domestically and internationally, Serbia would gain enormous benefits from better assessment of the need for regulation and the costs of regulation before new rules are adopted. It certainly is not alone in this. There is little doubt that most governments could substantially reduce regulatory costs while increasing benefits by making wiser regulatory decisions. A wide range of evidence supports the conclusion that governments often regulate badly, with too little understanding of the consequences of their decisions, and with little or no assessment of any alternatives other than traditional forms of law and regulations.

94. However, a powerful trend toward more empirically-based regulation is underway in Europe, including some of the transitional countries in the region, such as Hungary and the Czech Republic. This trend signals a growing concern about efficiency and competitiveness. High-quality regulation is seen as that which produces the desired results as cost-effectively as possible. Concepts of efficiency are becoming more complex, evolving from static concepts of compliance costs to dynamic concepts such as effects on innovation, trade, and competition.

95. Better empirical justification of regulatory decisions is also strongly supported by international trade rules. In the Uruguay Round, for instance, the General Agreement on Trade in Services (GATS) requires that standards on the supply of services be "based on objective and transparent criteria" and be "not more burdensome than necessary to ensure the quality of the service." The proportionality principle used by the European Court of Justice carries much the same impact for EU Members. Hence, the movement toward more efficiency- and results-oriented regulation reduces barriers to international trade and investment by establishing a more transparent standard for national decision-making.

3.a) Create a system of forward planning for new laws and regulations

96. The first challenge in improving the quality of new laws and other regulations is better tracking and management of the flow of new rules and laws from multiple sources across the public administration. Without a clear sense of what is being prepared, by whom, and on what schedule, it will be impossible to systematically improve regulatory quality.

97. An approach used by almost 20 countries is preparation and publication of lists of laws and other regulations planned for the next six months to a year. This planning process provides a means to co-ordinate regulatory decisions, to schedule public consultations, to carry out impact analysis and review. The participation of interested parties in consultation is fostered as early as possible in the process. Serbia has an advantage here, because the Secretariat for Legislation already has a process in place to examine new laws before they are submitted to Cabinet, and this process could assist in drawing up the six-month forward plans.

98. A large range of approaches is possible, each with different characteristics and expected outcomes.

- Hungary has developed two forward regulatory planning procedures. Its Act on Legislation requires that the government establish a five-year program listing all the laws and major government decrees to be prepared. In addition, the government has developed shorter-term legal programs spanning from six months to three years. These plans are important tools for internal and external consultation. By law, the government consults with the Supreme Court, the Public Prosecutor, social and business representatives and local governments, in addition to the central administration. After approval, the

government makes public the programs in the official gazette and in the mass media. Each six months the Ministry of Justice updates the legislative plan, reporting progress to the Parliament.

- In the Czech Republic, the government approves the Plan of Legislative Works of the Government for the year based on the Outlook of the Legislative Works of the Government for the remaining years of its term, from one to three years. The program statement of the Government is worked out in detail and incorporated at the end of every year into the resolution of the government, which specifies the plan of legislative work for the next year and is issued every 6 months. Based on this schedule, a time is set for each department to present the Government with either the material intent or a draft of the law for evaluation.
- The Mexican “National Development Plan” is somewhat similar to the Hungarian system in containing both a long-term, strategic strand plus regular, short term reporting requirements. The Plan sets the economic, political and social objectives of the government actions and is published at the beginning of each 6-year presidential term. From the Plan, a series of different programs are developed for different sectoral policies, including regulatory activities. These programs are drawn up in consultation with interested parties and set out the major activities that individual Ministers will undertake during their terms. The President must submit a yearly progress report to Congress. The National Development Plan and sectoral programs can be downloaded from the Internet.
- The United States takes a more specific or “instrumental” approach. The U.S. Unified Agenda of Federal Regulatory and Deregulatory Actions, published twice yearly in the national gazette, is the most comprehensive such publication. It contains outlines of regulatory proposals, or plans, covering the entire administration and includes detail on the regulation’s priority, its impact on SMEs and on other levels of government and a timetable for action. The Unified Agenda also includes ex post reporting on the status of regulation proposed in previous editions.

99. The models discussed above are all centralised, but some countries have adopted more decentralised approaches. In these models, each regulating ministry conducts its own notification. In Sweden, each ministry notifies other government bodies and interest groups twice a year about regulatory proposals that will be issued in the next six months. The notification usually takes the form of lists sent to concerned parties.

100. The recommendations are as follows:

- **By end-July 2002:**
 - Each ministry should establish a continuing six-month schedule for preparation of new laws and other major regulatory instruments, updated periodically, and submit it to the Committee of the Government for Regulatory Reform and SME Development, along with the plans for consultations with major stakeholders. These schedules and consultation plans should be made public so that stakeholders can prepare for the consultations.
- **By end 2002 and beyond:**
 - Update the forward planning on a six-month schedule

3.b) Implement, step by step, a program of regulatory impact analysis within the ministries. The first step should be an agreement by ministers to require an expanded justification statement for all new laws and other regulations.

101. One of the most important capacities of a modern regulator is the ability to assess the market impacts of a regulation before it is adopted. The method used by most OECD countries to assess potential market impacts in advance is regulatory impact analysis (RIA). Improving the empirical basis for regulatory decisions through impact analysis of new regulatory proposals has been accepted by developed countries as critical to regulatory quality.²⁰ There is nearly universal agreement that RIA, when it is done well, improves the cost-effectiveness of regulatory decisions and reduces the number of low-quality and unnecessary regulations. RIA has also improved the transparency of decisions, and enhances consultation and participation of affected groups.

102. Although only two or three OECD countries were using RIA in 1980, by 1996, more than half of OECD countries had adopted RIA programs. By October 2000, 14 out of 28 OECD countries had adopted universal RIA programs, and another 6 were using RIA for some regulations. Serbia does not have any RIA equivalent. The central Secretariat for Legislation, established by the Republic Law on Ministries reviews all laws and government decrees for consistency with the constitution, with other laws, and with drafting standards, but there is no corresponding review for economic, business, or SME impacts.

103. As Serbia moves to a market-led growth strategy fully integrated with Europe, adopting a RIA program will speed up economic transition and reduce the costs of transition. In particular, enhancing the capacities of regulators to choose efficient regulatory solutions consistent with market needs will reduce the risks of costly mistakes and market failures. In the current transition phase, when markets are changing quickly, the risk of making bad regulatory decisions is very high. Impact assessments will be critical in ensuring that government actions are consistent with market-oriented principles of quality regulation.

104. RIA is a decision tool, a method of (i) systematically and consistently examining selected potential impacts arising from government action and of (ii) communicating the information to decision-makers.²¹ Both the analysis and communication aspects are crucial. Contrary to most expectations, the most important contributor to the quality of decisions is *not* the precision of calculations, but the action of asking the right questions -- questioning, understanding real-world impacts, exploring assumptions. This is particularly important in a civil service where there is little experience with competitive markets. In 1995, the OECD adopted a formal Recommendation on Improving the Quality of Government Regulation, applicable to all of its Member countries, that begins with two questions:

- *Is the problem correctly defined? The problem to be solved should be precisely stated, giving clear evidence of its nature and magnitude, and explaining why it has arisen (identifying the incentives of affected entities).*

²⁰ A list of RIA best practices is discussed in detail in the OECD's 1997 report, *Regulatory Impact Analysis: Best Practices in OECD Countries*, Paris. Much of the country detail in the following sections is taken from the OECD's country reviews of regulatory reform in its Member countries. A total of 12 in-depth country reviews were published from 1999-2001.

²¹ The following paragraphs are adapted from Jacobs, Scott (1997) "An overview of regulatory impact analysis in OECD countries," in OECD, *Regulatory Impact Analysis: Best Practices in OECD Countries*, Paris.

- *Is government action justified? Government intervention should be based on clear evidence that government action is justified, given the nature of the problem, the likely benefits and costs of action (based on a realistic assessment of government effectiveness), and alternative mechanisms for addressing the problem.*

105. RIA has proven to be the best tool to address these issues. Defining the problem properly is essential. Many regulatory failures stem from faulty understanding of the problem and from inadequate attention to indirect effects of government action that can undermine results. The increasing use of regulatory impact analysis has meant that consultation is needed for collecting empirical information for:

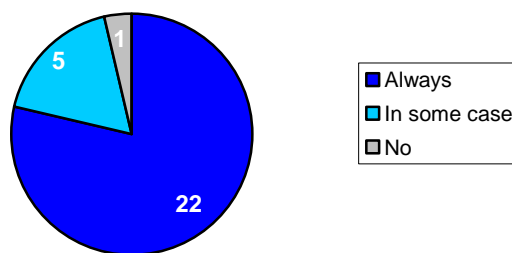
- Problem identification;
- Regulatory impact analysis to measure the expected impacts of policy options; and
- Identification and consideration of policy options (regulatory or non-regulatory).

These tools are information intensive. Data gathering is inherently costly, and much data relevant to policy-making is held by regulated entities. Public consultation is a highly cost-effective means of information collection, though the quality of information must be carefully managed and assessed.

106. Figure 4 below shows that, by October 2000, 22 OECD countries had adopted the practice of always explicitly justifying the need for government action before taking a regulatory decision, and only one country reported that this justification was not performed. These justifications are almost always linked to RIA, since RIA provides a useful framework for assessing the options and consequences of action. In Korea, for example, regulatory agencies must, as part of their RIA, seek views from experts, and on that basis, “define the object, scope and method” of the proposed regulations. Canada and the Council of Australian Governments call for a two-step inquiry. Step one is answering the threshold question of whether any regulatory action can be expected to help, and step two is analysis of the benefits and costs of alternatives.

Figure 4: **Defining the problem and justifying government action in OECD countries, 2000**

Are regulators required to provide a written justification of the need for new regulation?



Source: Public Management Directorate, OECD

107. The Serbian government should implement a step-by-step approach to regulatory impact analysis to identify major market impacts for major laws. The Inter-ministerial Working Group on Deregulation,

working jointly with the Civil Service Institute, could develop such an approach. There is no universal model for the right RIA system, since appropriate solutions must be designed to fit within the specific circumstances of Serbia's values and institutions, and its stage of economic development. However, since Serbia is competing in European and global economies for capital and markets, international expectations and experiences for high-quality regulatory regimes can provide valuable benchmarks for action. RIA, a good regulatory practice accepted in European countries, can help Serbia promote vital private sector development, and converge with European market standards.

108. RIA is difficult to put into practice, due to complexity of analysis, resistance by interest groups, lack of capacities and resources in ministries, fear of delays in the legal system, and pressures to make decisions quickly before analysis is done. Careful program and institutional design can avert most of these problems.

109. A RIA program could be built in five steps. The recommendations are as follows:

▪ **By end-July 2002:**

- First, the Serbian government should require by decree that ministries prepare a justification statement for all laws and other regulations that explains the expected benefits and costs of the actions, and the results of public consultations. For each new law and other regulatory instruments such as decrees and orders, the responsible ministry should prepare a justification statement containing the following sections:

JUSTIFICATION STATEMENT

- *What is the problem being addressed?*
- *Why is government action needed to correct the problem?*
- *What are the objectives of government action?*
- *Which options for dealing with the problem are being considered? Why is the proposed option the best approach?*
- *Is the proposed option consistent with the regulatory quality standards adopted by the government?*
- *How will the proposal affect existing regulations and the roles of existing authorities?*
- *Is the proposal clear, consistent, comprehensible and accessible to users?*
- *Do the benefits justify the costs? Who is affected by the problem and who is likely to be affected by its proposed solutions? What are the likely costs for consumers and businesses, including SMEs? What are the impacts on market entry and exit, and on market competition? (In this section, identify the expected benefits and costs of the proposal. Determine which groups are likely to experience these benefits and costs, and the size of these impacts.)*
- *How will the proposal be implemented?*

▪ **By end 2002**

- Second, a training program should be set up on preparation of the justification statement. More detailed training is needed to develop a cadre of regulatory analysis specialists in each ministry. To provide further support, the Ministry of Economy and Privatization, perhaps in the enlarged

Department for SME Development, should consider setting up a help desk to assist ministries in specific cases.

- Third, as recommended above, the justification statements should be reviewed by the Inter-ministerial Working Group for Deregulation for accuracy and quality, supported by the Department for SME Development in the Ministry of Economy and Privatization, or their replacements.
- Fourth, RIA should be integrated with public consultation processes to reduce its costs and increase its quality. RIA should be made available as key inputs to participants in consultation and the results of consultation should be used as inputs for refining and developing RIA.
- **By end 2003:**
 - Fifth, the government should adopt a universal benefit-cost principle, with a step-by-step strategy to gradually improve the quantification of regulatory impacts for the most important regulations, while making qualitative assessments more consistent and reliable. Regardless of the type of analysis, regulators should always ask the question: “Do the benefits of this action justify the costs of this action?”

4) Enhance the transparency of laws and regulations through consultation and a legal registry

110. Transparency is key to regulatory quality.²² In addition to democratic values of openness, transparency in regulatory decisions and applications helps to cure many of the reasons for regulatory failures - capture and bias toward concentrated benefits, inadequate information in the public sector, rigidity, market uncertainty and inability to understand policy risk, and lack of accountability. Transparency at any stage has powerful upstream and downstream effects in the policy process – it encourages the development of better policy options, and helps reduce the incidence and impact of arbitrary decisions in regulatory implementation. Moreover, transparency helps create a virtuous circle - consumers trust competition more because special interests have less power to manipulate government and markets. Transparency is also rightfully considered to be the sharpest sword in the war against corruption, and will be an essential element of the Serbian government's current battle against corruption in the civil service.

111. Transparency has democratic as well as economic implications. An increase in the activity of civil society – such as non-governmental organizations (NGOs) -- in many countries has put a higher value on government transparency. Governments are seeking to accommodate these changes by developing improved models and approaches for better informing and involving citizens in the policy-making process.

112. Domestic trends toward openness have been reinforced by a widening set of international trade-related disciplines on regulatory transparency, such as GATs requirements. Foreign firms, individuals, and investors seeking access to a market must have adequate information on new or revised regulations so they can base decisions on accurate assessments of potential costs, risks, and market opportunities, but have greater difficulties than domestic market players in obtaining information. Regulatory transparency has also been improved by the growing use of international standards, which reduce search costs and increase certainty for consumers and market players.

113. Regulatory transparency is improving in Serbia, due to increasing use of consultation with the private sector. Yet it is still far from satisfactory. Two major reforms could place Serbia within the mainstream of good international practice.

4.a) Establish procedures for government-wide consultation with major affected groups on new draft laws and other major regulations

114. Public consultation (the active seeking of the opinions of affected groups) while developing new laws and regulations is used in all developed countries to improve transparency and quality. Serbia had a legacy of consultative policymaking in the 1970s and 1980s,²³ but the system broke down in the highly centralized governing approach of the 1990s. Even today, some important laws (for example, the new law on the Chambers of Commerce) are pushed through without any consultation at all. Concepts of open access to government legal drafts are not widely accepted in the Serbian administration. Indeed, ministry officials actively resist sharing draft regulations even with other ministries. Drafting is done by small groups of experts inside ministries, and the public often sees new rules only after adoption and publication. As a result, many laws and rules are poorly informed, inefficient, and not consistent with market principles or normal business practices.

²² This paragraph is adapted from Jacobs, Scott, "The Second Generation of Regulatory Reforms," Paper presented at **IMF Conference on Second Generation Reforms**, 8-9 November 1999, Washington, D.C. The paper can be found at www.imf.org/external/pubs/ft/seminar/1999/reforms/jacobs.htm

²³ World Bank and European Union (2001), p. 77.

115. The traditional consultation approach in Serbia was similar to the European corporatist system of installing industrial representatives from the Chamber of Commerce on advisory bodies dealing with industry matters. This kind of corporatist approach can be useful in achieving a level of consensus among some major interests, but is unsatisfactory as the primary consultation method because of the danger of capture and bias, and the lack of representation of consumers and other interests such as local governments and advocates for environmental protection. In Serbia, the corporatist approach developed in the 1990s into close and corrupt links between government and business interests. Most European countries have supplemented the corporatist approach with more accessible forms of consultation. Other forms of Serbian consultation are more problematic. Well-connected interests are sometimes given special access to drafts or are invited to the ministry for discussion, a dangerous practice inconsistent with neutrality in a competitive market.

116. Public consultation is gradually improving in Serbia. Although no general policy on consultation has been adopted, new forms of consultation are being used on a case-by-case basis. The 2001 law on local self-government set new standards for openness. The law went through many stages of public debate, including circulation of two successive drafts to all units of local government, followed by a public debate through regional seminars before the law was submitted to the Government (this law is currently pending before Parliament). More recently, a committee of stakeholders was set up to advise on the drafting of the secure transactions law. This *ad hoc* approach can be useful, but must be conducted carefully and openly due to risks of bias and capture. A tripartite process is also sometimes used, as for example, the Council (*savet*) for the Safety and Health Protection of Employees, which worked on the new employment law. Again, this approach can be useful, but must be open to all interests and carefully managed to avoid bias and resistance to reform. A few draft laws have been circulated on the Internet for comment.

117. The Ministry on Privatization and Economy has established a conceptually better approach -- a SME Advisory Board with 14 business members – that is more and more active in providing its views. However, the Advisory Group must be strengthened to have significant impact. While the Advisory Group is reviewing a few draft laws, it is weakened by the fact that it is established at the ministry level and other ministries are not required to consult with it. It is still considered to be “outsider” in the regulatory process rather than a part of good and open decision-making. Hence, the Advisory Group is unlikely to be effective in bringing business views into other ministries.

118. Efficiency of public consultation is critical, since Serbia needs to move forward with legal reforms without delay. Ministries need a consultation system that collects as much relevant information as possible, as quickly as possible. In the short-term, the most efficient approach to bringing in the expertise of affected groups is through targeted focus groups. More systematic roles for groups such as the SME Advisory Board would be useful. This is the approach taken by the European Commission and several of its members. The current SME Advisory Board should probably be enlarged, and its review and advice on draft rules should be part of the consultation plan for ministries regulating enterprises. All meetings of the SME Advisory Board and its recommendations should be public.

119. Consultation should not be *ad hoc*, but carefully organised. The Serbian government will need to move toward a systematic public consultation strategy that is clear about i) the design of public consultation and the involvement of major affected interests, ii) the time period of consultation, and iii) the treatment of comments from the public. A wide range of consultative tools is used in other countries (see Box 3) that could be adapted to Serbia’s needs.

120. Development of consultation strategies that suit each ministry's needs should be the first step. A clear consultation plan has several advantages. First, clear procedures provide guidance and training for civil servants and also provide benchmarks to all parties as to whether consultation has been properly undertaken, and so protects all interests. This enhances confidence in the consultation process, and means that it is likely to be better balanced, in terms of the range of interests participating, and less prone to capture by small, highly organised groups with major interests in the outcome. Second, clear procedures enhance the participation of a wider range of stakeholders. There will be a faster and wider learning process for both regulators and interest groups. Third, adopting a consistent process across ministries permits better co-ordination for regulatory quality initiatives across a wide range of policy areas.

Box 3: Methods of public consultation for new laws and regulations in OECD countries

The design of public consultation methods must recognise the specific cultural, institutional and historical context of the country, as these factors are crucial in determining the effectiveness and appropriateness of particular approaches. OECD countries use several major approaches to public consultation:

Informal consultation includes all forms of discretionary, *ad hoc*, and un-standardized contacts between regulators and interest groups. It takes many forms, from phone-calls to letters to informal meetings. Access by interest groups to informal consultations is entirely at the regulator's discretion. Informal consultation is carried out in virtually all OECD countries, but it is not acceptable as a standard means of consultation, since it is vulnerable to capture and corruption, and risks "locking out" important interests that are not a part of the ministry's usual network.

Circulation of regulatory proposals for public comment. A straightforward way to consult is to send regulatory proposals directly to affected parties and invite comments. This procedure differs from informal consultation in that the circulation process is more systematic, structured, and routine, and may be based in law, policy statements or instructions. Groups on the circulation list expect to receive drafts of important regulations. This flexible procedure can be used at all stages of the regulatory process. Responses are usually in written form, but regulators may also accept oral statements, and may supplement those by inviting interested groups to hearings. The circulation-for-comment procedure is among the most widely used forms of consultation. The Internet is increasingly being used for this purpose. Circulation-for-comment is a relatively inexpensive way to solicit views from the public and, being targeted, it is likely to induce affected parties to provide information. It is flexible in terms of timing, scope and form of responses. The weakness of this procedure is deciding who will be included. Circulation for comment is likely to be unsatisfactory in dealing with new and shifting interest groups, since it increases the risk of neglecting key interests.

Public notice-and-comment. Public notice-and-comment – publication of draft legal texts for public scrutiny and comment -- is more open and inclusive. Publication permits all interested parties to be aware of the regulatory proposal and to comment. Notice-and-comment was first adopted in the United States in 1946. By 1998, 19 OECD countries were using notice and comment in some situations. Procedures vary widely. The U.S. model is the most procedurally rigid: comments are registered in a formal record and regulators are not permitted to rely on factual information not contained in this public record. Notice and comment is, theoretically, more open and inclusive than other approaches. The openness of notice-and-comment procedures means that policymakers are more confident that significant views have been heard and that the risks of policy failure are known. However, many countries have found that levels of participation are low. Participation depends on the ease of response, the effectiveness of the publication, the time allowed for comment, the quality of the information provided, and the attitudes and responsiveness of regulators in their interactions with commenters.

Public hearings. A hearing is a public meeting on a regulatory proposal for interested groups. Regulators may also ask interest groups to submit written information and data at the meeting. A hearing usually supplements other consultation procedures. By 1998, 16 OECD countries used public meetings. Hearings are, in principle, open to the general public, but effective access depends on how widely invitations are circulated, its location and timing, and

the size of the meeting room. Public meetings provide face-to-face contact in which dialogue can take place between regulators and wide range of affected parties. A disadvantage is that they are likely to be a single event, which might be inaccessible to some interest groups, and require more planning to ensure sufficient access.

Advisory bodies. The use of advisory bodies to improve the flow of expert advice and information to regulators is the most widespread approach to public consultation in OECD countries. Advisory bodies are involved at all stages of the regulatory process, but typically early to define positions and options. There are many different types of advisory bodies -- councils, committees, commissions, and working parties. Their common features are that they have a defined mandate or task within the regulatory process (either providing expertise or seeking consensus) and that they include members from outside the government. Their relationships to regulatory bodies can vary from reacting to a regulator's proposals to acting as a rulemaking body. Advisory bodies may carry out extensive consultation processes involving hearings or other methods.

Most countries combine different consultation tools throughout the regulatory process. Informal consultation and circulation for comment approaches are likely to be used to test the views of limited numbers of key players at an early stage, while an *ad hoc* advisory group of experts may be created to gather reliable data before moving to notice and comment or public hearing processes which allow input from the general public.

121. The recommendations are as follows:

- **By end-July 2002:**
 - Each ministry should establish a consultation plan to ensure that all major interests have early and meaningful access to draft laws and regulations. This plan should involve the SME Advisory Board, other groups representative of business interests, and NGOs to the extent possible.
- **By end 2002:**
 - The ministries' consultation plans should be discussed by the Inter-ministerial Working Group on Deregulation, and published for public comment. The final consultation plans should be integrated and published as a Government commitment, and oversight of ministerial compliance should be carried out by the Committee of the Government for Regulatory Reform and SME Development.
 - In the course of its reviews of proposed regulations, the Inter-ministerial Working Group on Deregulation should ask the SME Advisory Board for its views on the draft and the justification statement. The views of the SME Advisory Board should be incorporated into the Working Group's reviews. Discussions of the SME Advisory Board on proposed laws and other rules, as well as the draft instruments and justification statements, should be accessible to the general public.
- **By end 2003:**
 - Consultation practices should be evaluated and broadened to include a wider range of interests, as the private sector and civil society evolve.
 - Practices on consultation and transparency should be coordinated with WTO discussions.
- **2004 and 2005**

- Consultation practices should continue to be evaluated and broadened to include a wider range of interests, as the private sector and civil society evolve.

4.b) Rationalize the Serbian legal system by creating a central regulatory registry with positive security

122. Businesses in Serbia require a more transparent, accessible, and legally-secure regulatory environment. The current Serbian legal system is nothing less than chaotic, according to business interests and most ministries. There is no reliable legal code, nor any secure central accounting of government implementing decrees (*uredba*) nor of the myriad forms of ministerial regulations and decisions (although a few private legal entrepreneurs have assembled their own lists for clients). As a result, businesses and citizens must bear high costs to discover their legal obligations, and in any case exist in a state of perpetual legal uncertainty. Worse, the abuse of certain forms of government regulation under the previous regime means that many of the rules that exist today have no legal basis.

123. The Secretariat for Legislation says that it has a full code of Serbian laws and other legal instruments, but no other ministry and no private sector entities seem to use it or be aware of it. In practice, Serbia has, as in many countries, simply published new laws and rules in official gazettes as they were adopted, and enterprises rely on private lawyers to conduct the research they need. Publication in official journals, while important, is not adequate for legal security. Particularly in a time of rapid regulatory change, there is an increasing need for new efforts to permit the public to identify quickly the complete set of regulatory requirements.

124. To establish legal security, the government of Serbia should create a complete and official list of all laws and decrees affecting businesses, with positive security (meaning that only laws and rules on the list can be enforced). In most countries that have established central regulatory registers, the rule of “positive security” has been adopted. Positive security has two advantages. For the user, positive security provides certainty that, if all rules on the register have been met, full compliance with the law is met. The regulator cannot demand compliance with rules not contained on the register, and the register is the authoritative source where any dispute arises as to different variants of a rule. Positive security also provides strong incentives for regulating bodies to ensure that all rules are registered and thereby ensures the integrity of the register.

125. There are several approaches to improving legal security, but the fastest and easiest way is to establish a central registry through a comprehensive registration procedure such as the one used by Sweden. In 1984, the Swedish government found that it was unable to compile a list of regulations in force. The accumulation of laws and rules from a large and poorly-monitored network of regulators meant that the government could not itself determine what it required of private citizens. To establish a clear and accountable legal structure, it was decided to compile a comprehensive list of all agency rules in effect. The approach proposed by the Government and adopted by the parliament in a law was simple. The Government instructed all government agencies to establish a list of their ordinances within one year. As these agencies prepared their lists (over the course of a year), they culled out unnecessary rules. Ministry officials also commented on rules that they thought were unnecessary or outdated, in effect reversing the burden of proof for maintaining old regulations. After one year, any laws and rules not registered were automatically cancelled without further legal action. All new regulations and changes to existing ones were henceforth to be entered in the registry within one day of adoption.

126. This approach was considered a great success. In the education field, for example, 90% of rules were eliminated. The government had for the first time a comprehensive picture of the Swedish regulatory structure that could be used to organise and target a reform program. The registry may also have had the indirect effect of slowing the rate of growth of new regulations.

127. The recommendations are as follows:

- **By end 2003:**
 - The government of Serbia should adopt a law enacting a comprehensive legal registration program, based on the guillotine strategy, with a time limit for registration of one year.
- **2004 and 2005**
 - At the end of the deadline all unregistered legal instruments should be annulled and a formal legal registry should be established. The legal registry should have positive legal security, and should include laws, government decrees, and all ministerial regulations affecting businesses.
 - The comprehensive legal registry should be held and maintained by a central unit.