NACIONALNA ALIJANSA ZA LOKALNI EKONOMSKI RAZVOJ
NALED
NATIONAL ALLIANCE FOR LOCAL ECONOMIC DEVELOPMENT

# Report for the I and II quarter on regulatory reform status

# 2017


## ADOPTED LAWS

- Set of tax laws
- Law on amendments to the Water Law
- Decree on electronic office operations of state authorities

## LAWS UNDER PREPARATION

- Draft Law on E-Government
- Draft Law on E-Commerce
- Set of draft laws aimed at improving the training of public administration
- Draft Law on Cadaster Registration
- Draft Law on the Planning System

## BUREAUCRATIC PROCEDURES AND LAW IMPLEMENTATION

- Grey Book
- By-Law Barometer

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# Regulatory reform status in the first and second quarter of 2017

- Even though from January to June 2017 the Assembly adopted 40 laws, none of these laws were of major significance for businesses, while 35 referred to verification of international agreements
- Over the first half of 2017, draft regulations significant for e-government and e-commerce have been presented to the public: Draft Law on E-Government and Draft Law on Electronic Document, Electronic Identification and Trusted Services in Electronic Operations (Law on E-Commerce). A Working group was formed, which should enable electronic payments in procedures performed by public administration, which is a pre-requisite for smooth implementation of electronic procedures.
- Implementation of the National program for countering shadow economy has been initiated. A new service was announced - E-inspector, making the year 2017 a turning point in countering shadow economy. The Working group for fiscalization started working on a Draft Law on Fiscalization.
- The amendments to the Law on General Administrative Procedure stipulate full implementation of provisions ensuring electronic exchange of information among individual public administration institutions, which is still not the case in practice.
- Amendments to the Law on Local Government and Law on Public Administration have been prepared, which should enable higher transparency in decision-making and closer networking of local governments with the aim of shared use of resources, i.e. the optimization of capacities in order to efficiently perform their original and assigned jurisdictions, primarily the electronic procedures.
- Amendments to the Law on Planning and Construction have been prepared, and they need to be placed in procedure simultaneously with the Law on E-Commerce, so that the repeal of the Law on Electronic Document does not result in blocking the unified procedure, due to inability of transferring paper documentation into electronic form.
- A set of draft laws aimed at improving the public administration training have been prepared. NALED welcomes the initiative to establish the National Academy, thus raising the level of expertise within the entire public administration, but also urges the line ministry to ensure that the accreditation system does not impede the implementation of sectorial and special training programs for managers and employees in public administration.
- The Draft Law on Cadaster Registration, which should improve the efficiency of this procedure, primarily through e-counters and formalization of this procedure, has been presented to the public.
- The adoption of the Law on Planning System and accompanying by-laws is still pending, even though the content was supported by the IMF and European Commission, as well as the LGs and NGO sector during the public debate organized in January 2017 – the regulations should introduce standards in the planning procedure and the planning documents content, and enable monitoring of the implementation of national-level public policies.
- With even four years passed, the Ministry of Finance has still not adopted a Law to establish the Public registry of fees, prescribing that holders of public authority (LGs, public enterprises...) cannot charge fees and charges which had not been reviewed in the course of their entry into the registry, which would efficiently terminate the uncontrolled introduction of para-fiscal charges. The Ministry shows no intention to abolish the percentage-expressed fees within the Law on Republic Administrative Fees, primarily the 0.2% fee for issuing construction permits, permits from Article 145 and use permits, even though these fees are contrary to Article 17 of the Law on Budgetary System.

# INTRODUCTION

The first and second quarter of 2017 confirmed the rule of lower intensity of regulatory activities during the first half of a calendar year. In addition to 35 laws verifying international agreements or guarantees for international loans, the National Parliament adopted only five additional laws, specifically: Law on Biomedical Assisted Fertilization, Law on Transfusion Medicine, Law on amendments to the Law on Judges, Law on amendments to the Law on Deposit Insurance Agency. The last two laws enable the Deposit Insurance Agency, in case of significant changes occurring in international finance market caused by negative interest rates for deposits in foreign banks, to invest up to one fourth of foreign currency intended for deposit insurance fund into foreign currency securities issued by the Republic of Serbia or the National Bank of Serbia. The reduced intensity of regulatory activities was certainly influenced by a break in the work of the Parliament due to election-related activities.

However, bearing in mind the announcements on expected regulations, primarily those influencing the implementation of administrative procedures and e-commerce, we can expect a very intense and hopefully fruitful second half of 2017 which should give momentum to public sector reforms to be implemented in the following two or three years. Specifically, the authorities announced the adoption of the Law on E-Government and Law on Electronic Document, Electronic Identification and Trusted Services in Electronic Operations, the Decree on office operations of public administration authorities, and the launching of E-inspector service, to make 2017 a turning point in the Year of countering shadow economy. It has also been announced that a Working group will be formed which should enable electronic payments in public administration procedures, as a pre-requisite for smooth implementation of electronic procedures – this is one of the main reasons e-procedures have not been implemented in Serbia so far.

The implementation of information system eZUP (ZUP - Law on General Administrative Procedure) will start from mid-2017. The system should enable electronic exchange of information among public administration authorities, resulting in simplified administrative procedures and enabling the introduction of modern e-government in Serbia. This system acts as a pre-requisite for performing the obligations of public administration prescribed in Articles 9 and 103 of the new Law on General Administrative Procedure, stipulating that an institution may require a party to submit only the data necessary for their identification and the documents verifying the facts on which no official records are kept, while institutions are obliged to obtain and perform insight ex officio into the data needed for decision-making, when such data are kept in official records. We remind that this obligation came into force back on 7 June 2016, but it became possible to efficiently implement only upon the launching of this information system. We hope that public notaries will recognize their obligation to act in line with this provision, bearing in mind that they were the only ones not complying with the provision in practice, requiring parties to bring certificates and documents from public registries (Cadaster, birth records, Business Registers Agency etc.).

NALED also eagerly awaits the adoption of already prepared amendments to the Law on Local Government and Law in Public Administration, which should enable closer connection of local government units with the aim of shared use of resources i.e. optimization of capacities, bearing in mind the lack of resources in smaller LGs, both for the implementation of electronic unified procedure, and all other electronic procedures to be introduced on this level, and primarily the obligation of LGs prescribed in Article 56 Paragraph 2 of the Law on General Administrative Procedure to enable parties to engage in electronic communication, which came into force on 1 June 2017.

During the first half of 2017, initiative was launched for continuing the construction permitting reform, in line with the recommendations made within the European PROGRES project, which will be presented in this report. We stress that there is also an urgent need to adopt the already drafted amendments to the Law on Planning and Construction, simultaneously with the Law on Electronic Document, Electronic Identification and Trusted Services in Electronic Operations, so that the repeal of the Law on Electronic Document does not lead to a block in implementing the unified procedure due to inability to transfer paper documentation into electronic form.

Businesses also eagerly await the implementation of Cadaster registration process, which will lead to improved efficiency of this procedure, primarily by using e-counters and formalization of this procedure.

One of the most significant reforms in the public sector is the reform of planning system in the Republic of Serbia, which should be conducted upon the adoption of already prepared Law on Planning system and accompanying by-laws: Decree on methodology for

developing mid-term plans and the Decree on methodology of public policy management, regulatory impact analysis for public policies and regulations, and the content of individual public policy documents.
Therefore, some fundamental reforms lay ahead of us, which should be accompanied with the adoption of already drafted laws. We will reflect on these regulations in more detail within the report, and also mention several important regulations adopted in late 2016, as well as some regulations whose implementation started during the period covered in this report.

**THE QUARTERLY REPORT DEALS MORE CLOSELY WITH [1]:**

**Adopted regulations:**
- Regulations which led to changes in tariffs and fees;
- Law on amendments to the Water Law;
- A set of tax laws;
- Decree on electronic office operations of public administration authorities;

**Implementation of special-importance regulations:**
- Law on Planning and Construction – III phase of implementing unified procedure for issuing construction permits;
- Law on General Administrative Procedure;
- Negative effects of the Law on Transport of Passengers in Road Traffic on businesses providing point-to-point van transport services;

**Draft laws undergoing public discussion:**
- Draft Law on E-Government;
- Draft Law on Electronic Document, Electronic Identification and Trusted Services in Electronic Operations;
- A set of draft laws aimed at improving the public administration training;
- Draft Law on Cadaster Registration;
- Expected amendments to the Law on Public Administration and Law on Local Government;
- Draft Law on the Planning System

**Bureaucratic procedures and law implementation:**
- Grey Book and
- By-Law Barometer

1) We announce that the next quarterly report will focus on analysis of laws which were being drafted or expected to be prepared and adopted by the end of the year, which were very important but were not included in this report:
- Draft Insolvency Act;
- Draft Law on Fees for Use of Public Goods;
- Draft Law on Local Government;
- Draft Law on Work Engagement of Seasonal Workers in Selected Industries.

# ADOPTED REGULATIONS

## REGULATIONS WHICH LED TO CHANGES IN TARIFFS AND FEES

The first half of 2017 was marked by the alignment of certain tariffs and fees with the inflation. The amendments significant for businesses include:

· Decree on the amount of water fees for 2017 ("Official Gazette of RS", No. 36/17, page: 3 of 13/04/2017), which reduced the fee by 12% thus returning to the amount from 2012 – a significant contribution for improving competitiveness of the producers of water, juices and non-alcoholic beverages, which is something NALED advocated for. Bearing in mind that the Decree is aligned with the new Water Law, which will be further analyzed later in the report, the amount of fee for using aquatic land has not been determined.

· Decree on the amount of fee for using non-metallic raw materials for generating construction material for 2017 ("Official Gazette RS", No. 98/16)

· Decision on the amount of special fee for the use of public road, its part and road facilities (toll) ("Official Gazette of RS", No. 56/06, 42/07, 126/07, 20/08, 12/09, 78/14, 93/15, 95/15, 95/16, 109/16).

· Decree on the amount of special fee for incentives to privileged electricity producers in 2017 ("Official Gazette of RS", No. 7/17)

· Aligned RSD amounts of fees from the single tariff used for services performed by the Treasury ("Official Gazette of RS", No. 7/17) and Decree on single tariff for fees for Treasury services ("Official Gazette of RS", No. 116/13, 80/14, 12/15, 12/16, 7/17)

· Decree on the manner of payment and the conditions for delaying payment of debt based on the fee for use of mineral and geothermal resources ("Official Gazette of RS", No. 16/16, 8/17)

· Aligned amounts of fees from Article 32 Paragraph 3, Article 40 Paragraph 3, Article 45 Paragraph 1 Item 4) and Article 54 Paragraph 3 of the Law on Tobacco ("Official Gazette of RS", No. 8/17)

· Tariff for exercising the right to a special fee ("Official Gazette RS", No. 43/13, No. 8/17), which increased the amount of fee from 0.5% to 1% of the value of technical devices such as CD and DVD burners. In spite of this significant improvement, we do not expect that the costs of paying this para-fiscal charge would be transferred to final users, nor significantly influence the retail prices of these products.

· Decision on the amount and manner of paying port and dock fees ("Official Gazette of RS", No. 31/15, 74/15, 13/17).

## LAW ON AMENDMENTS TO WATER LAW

On 16 December 2016, the National Parliament of the Republic of Serbia adopted the Law amending the Water Law ("Official Gazette of RS", No. 30/10, 93/12).

The Law amendments define more specifically the term aquatic land. New articles have been added – Articles 10a, 10b, 10v, 10g, 10d and 10đ of the Law, which regulate the lease of public-owned aquatic land. According to the new provisions, the public-owned aquatic land can be leased to legal entities, entrepreneurs and individuals. Therefore, instead of a use fee determined by the Government for each calendar year, from now on, entities using public-owned aquatic land will pay a rent which cannot be lower than the market value of the rent.

These amendments have harmonized the regulation with the provisions of the Law on Planning and Construction. Particularly, the regulation governs more specifically the water related documents, the jurisdiction for issuing these documents, provision of information about the documents issued within the unified procedure. It is particularly important that Article 65 of this Law prescribes that water approval is not a pre-requisite for issuing construction and use permit. Even though such practice was explicitly imposed by the Instructions on the practice of line institutions and holders of public authority implementing unified procedure related to use of water documents in the procedures for exercising the right to construction, issued back on 19 May 2015, the instructions have not been fully applied in practice, so the adoption of this Law acts as a major step in improving the unified procedure implementation.

## A SET OF TAX LAWS

On 28 December 2016, the Parliament adopted amendments to regulations governing tax and customs procedure, as well as VAT and excise taxes.

The new Law on amendments to the Law on Tax Procedure and Tax Administration entrusted the jurisdiction for conducting second-instance proceedings to the Ministry of Finance, instead of Tax Administration which used to be in charge of this process. The Law on amendments to the Customs Law transferred the jurisdiction for conducting second-instance proceedings from the Appeal Commission of Customs Administration to the Ministry of Finance as well. These provisions are being applied from 1 July 2017. This way, the state adopted the initiative of business

associations to have different institutions deciding in second-instance proceedings than the institutions which adopted the initial administrative act. Namely, one of the main issues regarding the work of Tax Administration and Customs Administration so far was the impression that these institutions are "distanced" from the line ministry, which, among other things, is manifested by these institutions acting contrary to the opinions issued by the Ministry of Finance. Such practice resulted in proposing a measure of relocating the second-instance proceeding from the administration to the line ministry. However, special focus needs to be paid to the efficiency in conducting second-instance procedures before the Ministry of Finance, so as to avoid the negative experience of transferring the second-instance proceeding from the Republic Geodetic Authority to the ministry in charge of construction issues, which led to returning the second-instance proceeding to RGA.

Amendment to Article 26 of the Law on Tax Procedure and Tax Administration is also important, which enables that upon a request by the insolvency judge, the Tax Administration may return a temporarily withdrawn TIN to a business entity undergoing insolvency procedure (new Article 18). The only thing that remains unclear is why the Tax Administration was left to decide whether or not they would act upon a request made by an insolvency judge. We believe that instead of a word "may", the regulation should use the word "will", thus enabling insolvency judges to manage the insolvency procedure, which basically represent their jurisdictions rather than the jurisdictions of Tax Administration.

Another important change includes the amendments to the Law on Tax Procedure and Tax Administration, prescribing extremely high fines from Article 180 of the Law for an entire new type of misdemeanor, introduced with new Article 180b of the Law, defining a penalty for a TAXPAYER WITH NO REGISTERED SEAT OFFICE (a fine imposed to legal entities – 100,000 to 2,000,000 RSD), I.E. RESIDENCE in the Republic of Serbia (a fine imposed to physical persons, 50.000 RSD), UNLESS THEY APPOINT A TAX ATTORNEY-REPRESENTATIVE AND REGISTER AS TAXPAYERS. We draw attention that the so far practice of avoiding registration of a tax attorney came as a result of Tax Administration's practice to transfer solidary liability for the debts incurred by taxpayers to the attorneys representing them – therefore, internal instructions within Tax Administration should avoid the practice of establishing such liability. If not, responsible businesses will be deprived of a possibility to do business in Serbia, while we would make room for speculative companies which could easily find fictional and unreliable tax attorneys, thus the provision would not generate the desired effects.

Law on amendments to the Law on Excise Tax prescribes the increase of excise duty's specific component every six months, as well as a change of excise tax policy for coffee. The Law prescribes that the excise tax should also include the coffee being further processed or refined in the territory of Serbia, so the it would be imposed not only to importers but all entities engaging in coffee processing, roasting and packing – certainly, with the right to refund the previously paid excise tax for the coffee they imported themselves. The Law prescribes that the stated changes regarding the coffee excise tax would be applied starting from 1 January 2018, which is a good solution as it enables the taxpayers to adapt their operations to these amendments.

## DECREE ON ELECTRONIC OFFICE OPERATIONS OF PUBLIC ADMINISTRATION AUTHORITIES

In early May 2017, the long expected and significant amendments to the Decree on electronic office operations of public administration authorities (Official Gazette of RS 42/2017) were adopted, overcoming imperfections of the previous version of this Decree. Namely, the Decree was originally adopted at the time when public administration authorities had not worked with electronic procedures. After, for the first time, we experienced consistent application of the Law on Electronic Document, starting from 1 January 2016 when the Law on amendments to the Law on Planning and Construction ("Official Gazette of RS", No. 132 of 9 December 2014) introduced electronic one-stop shop systems for unified construction permitting procedure (with significant contribution provided by NALED), the need to align this Decree with practical demands stood out as a priority.

First of all, there is a change of the outdated solution from Article 4 of the Decree on electronic office operations of public administration authorities, prescribing the obligation of public institutions to form and print the electronic record of documents on a daily basis, as well as to make backup copies of all electronic documents received during a working day. These shortcomings were partially resolved with the adoption of the Rulebook on performing unified procedure in electronic form („Official Gazette of the Republic of Serbia" No. 113/15) and the Rulebook on the manner of electronic exchange of documents and applications and the defined form for submitting documents related to unified procedure („Official Gazette of the Republic of Serbia", No. 113/15), which acted as lex specialis and excluded the application of provisions from Article 4 of this Decree, governing the handling of documents in electronic office operations, and Article 5 governing electronic archive. However, these regulations have been inconsistently applied in practice, so the line ministry had to issue an official opinion that the stated provisions of the Decree shall not be applied to unified procedure, unless differently prescribed in the stated regulations. The cause for issuing such an opinion was the practice of public institutions to daily print the electronic book of documents, even though it had no purpose whatsoever given that the information system enabled more efficient search of cases and received documents. Additionally, the provision stipulating the obligation of forming electronic case file was confusing, bearing in mind that the case file includes the case-related

documents, while electronic management maintains an entirely different logic of entering data into the electronic database and the storage of electronic documents within the database.
Even though a direct cause for these amendments were the problems faced by the line ministry and local governments in electronic unified procedure for construction permitting, these amendments will have substantial positive effects on establishing electronic procedures in all other fields, which is an imperative for modernization and improved efficiency of public administration, primarily state administration. It should be borne in mind that e.g. in addition to the Central registry of unified procedures, the Business Registers Agency also keeps numerous other electronic registries – within which there are a million processes being performed in various other procedures, on an annual basis. With these amendments, all of these procedures can be established in electronic form, without the need to print or archive paper documentation. Therefore, calculations show that these amendments would enable annual savings of ca. 1 million working hours for BRA only, which is the time currently spent on scanning and archiving paper documentation, not to mention the savings which could be enabled if paper documentation archives were eliminated etc. With these amendments, the Decree will be aligned with the changes introduced in our legal system with the new Law on Office Operations, currently in procedure.

## IMPLEMENTATION OF SPECIAL-IMPORTANCE REGULATIONS - EX POST ANALYSIS

Law on Planning and Construction – III phase of implementation of unified procedure for construction permitting
Even though the analyses of the implementation of unified procedure for construction permitting indicate that the procedure is being performed without major delays, there are some evident, serious problems which need to be resolved as soon as possible, so as to establish efficient and uniform system for conducting this procedure in all local governments.
Let us remind, the first phase of the reform was marked by the establishment of one-stop shop systems for performing the unified procedure on the local government, line ministry or provincial secretariat level, and the introduction of holders of public authority into the system (throughout 2015). The second phase was marked by the establishment of Central Information System for electronic operations used to perform the unified procedure – being unified on the national level and operated by the Business Registers Agency (the entire 2016 and the first half of 2017). It is high time to start the Third phase of the reform, which should establish standards ensuring efficiency in conducting the procedure, aligned practice at the highest level, and efficient control of construction works in the entire Republic of Serbia. Without such finalization, it is impossible to establish long-term sustainability of the construction permitting system. The further course of this reform should focus on implementing systemic measures which would counter the practice of efficiency achieved through improvisation, while sacrificing the quality. Primarily, it is highly important to establish the local government capacities for implementing the unified procedure, but equally important is the efficient control of the course of construction (efficient inspection oversight) – without it, the entire unified procedure concept can be called into question. Namely, the formalization of unified procedure must not result in having no control over construction in Serbia, as the reform, i.e. the amendments to the Law on Planning and Construction, moved the control on-site, now being performed during construction. In this regard, improving the capacities of construction inspection and maintaining its efficient work have become one of the major priorities in the further course of reform.
Below we provide the main recommendations for resolving the problems occurring within the implementation of unified procedure:
- There is a need to establish inter-municipal cooperation, i.e. conclude MoUs among LGs for the purpose of shared use of resources (capacity optimization) in performing unified procedure, as the number of procedures in smaller LGs does not justify staff specialization for this purpose only;
- Amendments to the Law on Public Administration and the Local on Local Governments should stipulate obligatory cooperation among LGs, with the purpose of implementing their main/original and entrusted jurisdictions;
- Changes in LG personnel policies should be made so as to ensure a higher share of officers working on unified procedure tasks, compared to the total number of LG employees;
- The Rulebook on the organization and systemization of jobs in LGs and the employees' job assignment certificates should be changed so as to include the unified procedure tasks and establish a chain of command among LG officers for implementing the unified procedure;
- Determine the optimal number of LI officers for dealing with specific requests, and re-assign employees for specific tasks within the unified procedure, in line with the defined norm;
- Provide qualified electronic signatures for all employees conducting the procedures, and organize internal trainings on electronic procedures and the creation of electronic documents;
- On a line institution level, establish the jurisdictions for signing documents, in a manner ensuring that the head of line institution is the one controlling the process, rather than a person not responsible for unified procedure according to LPC, which is often the case in practice;
- Make sure that hierarchy in line institutions is established in line with the legal jurisdictions, tasks and responsibilities, and avoid possible situation of having an officer supervising its own work, due to covering several job tasks;
- Urgently increase the number of construction in-

spectors – this is an absolute priority as the practice indicates the lack of field control in construction sites due to low human capacities;
- Establish supervision of the Administrative Inspectorate over the work of LGs in the implementation of unified procedure, as this is the only national institution which may control the work of LGs in all aspects of procedures they implement;
- Ensure an adequate mechanism enabling parties within the unified procedure to file anonymous reports about irregularities in the work of line institutions (LI) and holders of public authority (HPA), which will also consider the possibilities of filing criminal charges for abuse against responsible persons in LI and HPA – it is not realistic to expect investors and project designers to risk the realization of investment, or their professional career, to stand up to such behavior;
- Eliminate fees and charges charged by HPAs for issuing conditions for project design and utility connections, given that these fees are being uncontrollably increased, while HPAs, due to collection interests, avoid issuing the separate which could be used by LIs to issue the conditions themselves (there is a noticeable tendency of establishing HPAs on the local government level, exclusively with the purpose of shifting collection tasks and multiplying the fees for project design and utility connections);
- Adopt a Law which would establish a Public registry of fees, prescribe that public utility companies and local governments cannot charge any fees that are not in line with the cost arising from service provision, while control of fees and charges could be performed in the course of their entry into the registry (NALED has been advocating such solution for a long time, but, for unknown reasons, the authorities opted for a Law on Fees for Use of Public Goods, which has been announced but hasn't been adopted for 4 years; furthermore, this Law would not be able to encompass all fees and charges important for this and many other procedures performed by public administration);
- Harmonize the Law on Republic Administrative Fees with Article 17 of the Law on Budgetary System – eliminate charges expressed in percent – 0.2% for issuing a construction permit, permits from Article 145 and use permits;
- Simultaneously start the Parliament procedure for the Bill on Electronic Document, Electronic Identification and Trusted Services in Electronic Operations and the Bill on amendments to the Law on Planning and Construction, to make sure that the unified procedure is not blocked;
- Clearly define the limitations of the LG Council jurisdictions – the second-instance authority in the procedure for obtaining location conditions, to ensure that the institution does not interfere with the LG jurisdictions and issues meaningful decisions, with clear instructions for the first-instance authorities on the activities they need to take in order to fix the shortcomings which caused the application to be returned for reconsideration;
- Prescribe consequences for non-reporting the finalization of foundations and a facility's basic construction, bearing in mind that these tasks are often avoided in practice, which prevents the construction inspection from performing regular controls of a construction site;
- Amend the Regulation on the electronic implementation of unified procedure, to simplify and specify the procedure of connecting facilities to certain infrastructure lines;
- Establish a uniform practice of county-district offices of the MoCTI in implementing the unified procedure and the LPC;
- Develop models of standard acts issued within the unified procedure (location conditions, construction permit, use permit), to standardize the forms in all local governments, due to major deviations in practice;

## LAW ON GENERAL ADMINISTRATIVE PROCEDURE

Even though the key provisions of the Law on General Administrative Procedure ("Official Gazette of RS", No. 18 of 29 February 2016), aiming to end the agony of submitting evidence from public records in various administrative procedures for citizens and businesses, came into force back on 7 June 2016, certain holders of public authority, primarily public notaries, still fail to act in line with these obligations. Let us remind, Articles 9 and 103 of the Law explicitly prescribe that an authority may require a party to submit only the data needed for their identification, as well as the documents on which official records are not kept, while being obliged to ex officio obtain and inspect the data relevant for decision making, on which official records are kept. Article 207 of the Law prescribes misdemeanor liability for authorized representatives of an institution if it fails to comply with the stated obligation, as well as for authorized representatives of institutions keeping the official records if they fail to submit the data from such records. In such cases, a fine ranging from 5,000 to 50,000 RSD is prescribed. Even though there is not explicitly prescribed jurisdiction for filing the stated misdemeanor charges, Article 209 Paragraph 2 of the Law indicates that administrative inspection should perform inspection oversight in terms of implementation of these provisions as well – hence, we appeal to the line ministry to ensure that the inspection can act in line with these jurisdictions.
On 1 June 2017, Article 57 Paragraph 2 of the Law came into force, prescribing that: „A party may communicate with a public institution electronically, if previously approved by the party, or if governed by a special regulation." Given that such formulation practically prescribes an obligation of public administration to enable parties to communicate electronically, i.e. to establish their procedures in electronic form as well, it is highly important that public administration and local governments improve their electronic services as soon as possible, raising them on a level which would enable them to act in line with this obligation. This is primarily important given that, as we already mentioned, the laws in procedure include the Draft Law on E-Government and the Law on Electronic Document,

Electronic Identification and Trusted Services in Electronic Operations, which will remove any dilemmas on possible non-compliance with this obligation.

## NEGATIVE EFFECTS OF THE IMPLEMENTATION OF THE LAW ON TRANSPORT OF PASSENGERS IN ROAD TRAFFIC ON BUSINESSES PROVIDING POINT-TO-POINT VAN TRANSPORT SERVICES

During the first quarter of 2017 the Law on Transport of Passengers in Road Traffic ("Official Gazette of RS", No. 68/2015 - hereinafter: Law) came fully into force, which caused a major revolt of businesses providing van transport services, as the provisions of this Law would no longer allow them to perform point-to-point road transport of passengers. Namely, Article 96 Paragraph 1 of the Law is problematic as it prescribes that "a domestic carrier is forbidden from performing international point-to-point, special point-to-point and custom route transport in a passenger vehicle", where Article 2 Paragraph 1 Item 32) defines a passenger vehicle as "a vehicle for transport of passengers with a maximum of nine seats, including the driver's seat", thus including the majority of vehicles used for this purpose so far.

A compromise with the carriers was partially achieved without amending the law and postponing its full application, which had been awaited for 18 months, by indicating that businesses providing these services can also register for providing vehicle renting services with or without a driver. However, the provisions referring to this type of services should be re-examined in the upcoming period, and a new regulation should be adopted based on the best comparative practices, which would not impose unreasonable limitation to a wide range of tourism and passenger transport services on one hand, while protecting the passenger safety on the other. The stated problematic provision is a typical example of a regulation having negative effects when the regulation drafting process does not include adequate impact analysis of the proposed solutions (RIA) nor consultations with the regulated entities. In this concrete situation, the consultations should have been performed through a survey of transport service providers and focus groups with their most representative members.

# DRAFT LAWS UNDERGOING PUBLIC DISCUSSION

## DRAFT LAW ON E-GOVERNMENT

The Draft Law on E-Government regulates the manner in which the authorities communicate via information-communication infrastructure, establish and keep registries, electronically manage data and documents, set up and use portals and websites, provide information electronically and perform other administrative procedure activities in electronic form. The Draft Law particularly governs the national, i.e. the central e-Government portal, a single electronic mailbox for accessing e-government services, electronic file registry, electronic filing and confirmation of receipt of electronic application. The Draft Law defines the terms such as: metadata (the data which structure, locate or otherwise enable the use of data), meta-registry (public electronic registry about all established registries), open data (the data available for reuse), reuse of data (the use of open data and/or documents of an institution, by individuals or legal entities, for commercial and non-commercial purposes other than the original purpose for which they were developed) and the Open Data portal (a collection of open data used for collection, categorization and distribution of open data owned by institutions, enabling easier search and reuse). The lawmaker failed to define the notion of basic registries, even though the term is used in the Draft Law (Articles 30, 58 and 63), so we recommend that basic registries should be defined so as to include the registries of citizens, property and businesses. Article 3 prescribes that the regulations governing the protection of personal data shall apply accordingly to the processes of handling personal data in electronic administrative procedures, activities and communication. We must state an impression that this, generally widely used nomotechnical solution, though unnecessary as appropriate application is certainly implied even without an explicit norm, is used for declarative protection of these rights, even though practice denies that these rights should be given priority compared to the protection of general values such as legal certainty, transparency etc. For example, the Commissioner for Information of Public Importance and Protection of Personal Data has questioned the public availability of personal identification numbers (JMBG) in public registries, even though this is the only data that can be used to determine with certainty that e.g. we are signing an agreement with the authorized representative of a legal entiy, or that we are buying an apartment from the real owner etc. In this regard, JMBG is the only guarantee that a legal transaction is concluded with the proper one among thousands of persons named e.g. Ana Petrović or Jovan Jovanović, who can change their registered place of residence within a single day in Serbia, but they cannot change their JMBG, which unfortunately signals the date of birth and the gender indication – the data protected by the Commissioner. The delicacy of this matter and the possible effects of regulations protecting personal data were best seen in early 2014 when, at the Commissioner's initiative, we were unable to use the Courts portal, which had been largely used by parties and lawyers to efficiently learn about the course of their case. Upon relaunching of the system, the available information and search options were reduced to a level which made lawyers and parties go back to the court registry offices. Therefore we appeal that the effects of this provision must not in any way include the prevention of accessing data within the public registries needed for identification, primarily the JMBG. If this is controversial, it is now high time, 12 years following the establishment of Business Registers Agency when a real „war" emerged regarding the issue of JMBG availability in public registries kept by BRA, to launch an initiative for assigning citizens a different kind of reliable identification number, to be provided to all citizens of Serbia. A logical solution could be to use the existing social security number, assigned by the Central Registry of Mandatory Social Insurance.

In order to provide e-government services, an institution needs to establish an electronic registry office and it is obliged to enable automatic recording of received files, creation of case files, entry of notes

into a document, records on document path and status, electronic management of the entire process, electronic document signing and sending, as well as automatic recording of a receipt as part of the document. This is a particularly important provision as it clearly indicates that the receipt of electronic applications no longer needs to be recorded in a manner performed so far in the institutions' registry offices, and there is particularly no need to make double records of electronic applications, which should significantly simplify the work of public administration and eliminate double tasks. Bearing in mind the recent adoption of amendments to the Decree on electronic office operations of public institutions, certain practical problems have already been eliminated in case of institutions already implementing the procedure electronically, but the adoption of these legal provisions will further set up clear standards to be applied when providing e-government services.

Article 29 of the Draft Law prescribes that an institution is obliged to publish the open data from their jurisdiction within the Open Data Portal, in a manner which enables their easy search and reuse. Access to these data is usually provided free of charge, unless stipulated differently by the law. Such practice would mean a major step forward for Serbia in harmonizing the domestic legislation with the EU Directive 2003/98/EU about the reuse of information from the public sector (Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information, amended by Directive 2013/37).

Article 30 of the Draft Law regulates another, even more significant issue – the obligation of institutions to establish and manage the electronic registry based on the official records they manage and to provide data from official records in line with the law determining ex officio insight to other institutions managing electronic registries. This indicates clear commitment towards eliminating registries in paper form, while confirming the commitment states in the provisions of Articles 9 and 103 of the Law on General Administrative Procedure regarding the procedure for obtaining the data on facts included in official records. This was additionally confirmed in Article 31 of the Draft, stipulating that an institution shall collect the data from electronic registries without additional verifications, and the legal effect of data collected this way is the same as for the data obtained from parties in the procedure. The Draft Law prescribes that the users can use the e-government services if they register for this purpose. The registration is performed within a local government unit, based on accepted terms of use of e-government, when an institution creates an account for the user on the E-Government or another portal (Article 39). What remains unclear is how this provision would be applied in practice for persons who already registered their accounts for some of the existing electronic administrative procedures (construction permits, financial statements), and the manner in which local governments should perform this new obligation. A certain degree of centralized registration for e-government services is certainly necessary, but it remains unclear why user registration is conditional on accepting the conditions before the local government, particularly given that other provisions of the Draft Law clearly indicate that the users can also register via the e-Government portal, the same as so far, while many users are already registered for the currently available services offered by Business Registers Agency. The Draft also keeps an unclear distinction between the national/central e-Government portal and other portals used for performing administrative procedures or providing public services (e.g. Tax Administration's portal e-Taxes, electronic unified procedure system used for issuing construction permits etc.).

The Draft Law prescribes that, if user identity is not determined based on the registered scheme of highly reliable electronic identification, the electronic application shall be signed with qualified electronic signature, if the user assumes certain obligations or waives their rights this way, while the institution may require a confirmation of an application's authenticity in other situations as well, asking that the application should be signed personally or with the user's qualified electronic signature. We find that this provision should be further specified, so as to avoid institutions demanding applications to be signed with qualified electronic signature or digitalized version of personal signatures, for all types of electronic administrative services. This would also prevent the interpretation that the obligation of paying a fee or charge, even if it occurs after a document has been issued, also means undertaking responsibilities related to this Law, or that the submission of electronic applications, such as scheduling a term in an institution or participating in a public discussion on the e-Government portal should be conditioned by use of personal/manual or qualified electronic signature. On the other hand, given that other laws and by-laws prescribe the cases when the applications need to be signed – such as the request for accessing information of public information, we believe that Paragraph 2 of this Article needs to be amended, to prescribe that an institution may require electronic confirmation of application authenticity in other cases as well, when explicitly prescribed in other laws or by-laws.

Article 49 of the Draft Law prescribes the rules on electronic delivery, which needs to be formulated more clearly. Namely, Paragraph 1 of this Article prescribes that an electronic document shall be deemed personally received when a user confirms receipt with a qualified electronic signature, which automatically generates an electronic return receipt to the institution, while Paragraph 3 of the same Article prescribes that an electronic document or data shall be deemed personally received when an institution confirms the receipt of automatically generated return receipt with an advanced electronic stamp. On one hand, we can understand the lawmaker's need to align the rules on electronic delivery with the rules on the delivery of written documents in paper form, but we believe that a confirmation of user's receipt of electronic

document with a qualified electronic signature is a requirement which complicates the e-government and is contrary to some solutions, e.g. the unified procedure for issuing construction permits, whose efficiency could be called into question by such practice. This is particularly important if we consider a wide range of services that can be provided to citizens and businesses, such as the scheduling of appointments with institutions etc. This provision is also inconsistent with the existing software solutions, and the Draft Law on Electronic Document, Electronic Identification and Trusted Services in Electronic Operations, which explicitly stipulate the option of qualified electronic delivery, which is used to issue a confirmation of electronic message receipt by the service provider, and a confirmation of delivery by the recipient, which is, in the sense of this Draft Law, considered an electronic delivery receipt. Therefore we find it would be better to keep only the provision from Paragraph 3 of Article 49 of the Draft Law on E-Government, and that there is a need to make further references and harmonization with the provisions of the future Law on Electronic Document, Electronic Identification and Trusted Services in Electronic Operations, particularly if the lawmakers' intention is to adopt these regulations as a package of measures for improving the e-commerce and electronic administrative procedures.

The Draft Law stipulates relatively long deadlines for adopting by-laws relevant for the implementation of this law – 6 months, while the deadline for establishing a unique ICT network of an institution, the service bus for institutions to exchange data, the electronic registries and application solutions for submitting all types of forms is 12 months from the date of entry into force, which may jeopardize efficient implementation and transparency of by-laws adoption procedure (Articles 60-66). We believe that the by-laws should, at least generally, be prepared and presented jointly with the Draft Law, as we know that by-laws are the ones providing key reform effects.

We welcome the lawmaker's clear commitment to enable further development of e-services within a relatively short period since the enactment, and we indicate that it is essential that these deadlines are not extended. We also believe it would be useful if, parallel with the public discussion, the line ministry would define some sort of guidelines for developing application solutions for e-services, based on the existing best practices. We think this would significantly contribute in having a larger number of institutions developing and offering electronic administrative services.

## DRAFT LAW ON ELECTRONIC DOCUMENT, ELECTRONIC IDENTIFICATION AND TRUSTED SERVICES IN ELECTRONIC OPERATIONS

We expect that the adoption of the Draft Law on Electronic Document, Electronic Identification and Trusted Services in Electronic Operations, created by the Ministry of Trade in continuous and constructive dialogue with the representatives of private and civil sector, will enable further improvement of electronic operations. The Law regulates the electronic document, electronic identification and trusted services in electronic operations, and upon its entry into force, the provisions of the Law on Electronic Signature and Law on Electronic Document would cease to apply.

The aim of adopting this law is further development of trusted services market, by prescribing the legal framework for modernization and improved efficiency of public authorities and other entities. The key legal solutions include the following:

- Article 3 of the Draft Law, governing the scope of Law application, has been more precisely specified in cooperation with NALED, by prescribing that the Law provisions shall not apply to trusted services provided within a closed system, i.e. within a limited circle of participants which can be defined by an agreement, internal act or regulation, but it cannot bind third parties outside the system. This exception avoided the trap of having a general regulation needlessly limiting the rights of public administration and businesses to govern electronic operations within their systems, by adopting internal acts;
- Article 7 of the Draft Law explicitly prescribes that validity and probative force of an electronic document cannot be challenged only because of its electronic form. This provision, as well as the related provisions on recognizing electronic signature, require consistent application, particularly by public authorities which are not always trained, equipped and willing to recognize the electronic document and electronic signature – therefore, we believe that the law should stipulate penalty provisions for public officers who fail to comply with these provisions, in order to ensure their consistent application;
- Article 11 prescribes the manner of converting a „paper" document into electronic form. We are pleased to note that the content of this Article has been aligned among NALED, Ministry of Justice and Ministry of Trade, Tourism and Telecommunication, expanding the circle of people who can perform such digitalization, in line with the needs of implementing numerous electronic procedures before public administration institutions, primarily bearing in mind the experiences with implementing electronic unified procedure for construction permitting and the procedures implemented by Serbian Businesses Registers Agency. Initially, the Draft Law stipulated that a document could be digitalized only by the institution which issued it, which would entirely block the implementation of e-procedures in case of insolvency, death or other reasons leading to unavailability of this person, or in case of not having a qualified electronic signature. Upon NALED's intervention, the circle of persons was expanded to include persons authorized to perform transcript verification (Paragraph 1 Item 1) Sub-item (2) – public notaries) and persons authorized to perform such transformation by a special law governing this procedure (Paragraph 1 Item 1) Sub-item (3) – e.g. lawyers, project designers, accountants etc.), as well as the holders of public authority for the procedures they perform (Paragraph 2 – public administration institutions, public enterprises...);

- Article 12 prescribes the manner of converting an electronic document into a „paper" document form, with identical authorizations as stipulated in Article 11, except the possibility of authorizing persons other than public notaries for this transformation by a special law. Namely, there will be no need for such transformation in procedures with public administration, as all authorities will be obliged to accept e-documents, while special laws even explicitly forbid submitting „paper" documentation in certain procedures;
- Article 15 governs the delivery of electronic documents among public authorities and parties via e-mail, using e-mail address designated by public authorities, using qualified electronic delivery service or other electronic means, in line with the regulations.
- Section III of the Draft Law governs Electronic identification – Electronic identification is the procedure of using electronic form for personal identification data which determine a legal entity, natural person or a natural person acting as a registered entity. The Law prescribes that, various identification schemes can be used to identify a party which uses an electronic service, providing high, middle or basic level of reliability in electronic identification, depending on whether the procedure uses one-factor or multi-factor authentication and their reliability. Highest-level reliability usually means that one authentication factor includes a card or another device that is impossible to copy. The Draft Law also stipulate establishing and maintaining a Registry of electronic identification schemes and service providers, with records of service providers and schemes of electronic identification. Article 20 of the Draft Law prescribes that electronic identification schemes which are included in the Registry can be used for determining a party's identity in communication with a public authority, and that the identity of each party is determined via a registered high-reliability identification scheme. Such identification shall have the same validity and effect as a party's signature made on paper. The Article also prescribes that middle or low reliability identification schemes can also be used for identification, provided that the risk of abuse and possible damage arising from abuse are such that high reliability scheme is not required. Certainly, such limitation requires the institution processing a regulation to assess this risk during the development of a special regulation and cannot lead to relativization of a regulation's effects. Following NALED's remarks, another provision was included in Article 20, stipulating that electronic identification schemes which are not included in the Registry can also be used to determine one's identity in electronic operations – this would apply to business operations, of course.
- Section IV of the Draft Law governs the provision of trusted services in electronic operations. These services are based on service provider guaranteeing the authenticity of certain data, specifically in the field of electronic signature, electronic stamp, electronic time stamp, electronic delivery, website authentication and electronic storage of documents. This section prescribes the responsibilities of trusted service providers and the conditions they need to fulfill in order for their services to be considered trusted services. It also prescribes that the trusted services can also be provided as qualified trusted service providers, and in this case the qualified service provider needs to fulfill special technical, organizational and safety conditions, to ensure higher level of reliability of the service provided. Qualified trusted services ensure the legal effect and probative force of the documents and data used in electronic form. In order to perform a qualified trusted service, the qualified trusted service provider is obliged to register in the Registry kept by the ministry responsible for the implementation of this law, and the Ministry is obliged to publish the list of qualified trusted services, derived from the Registry. Article 40 of the Draft Law prescribes that a qualified trusted service provided by a foreign trusted service provider is equal to the one provided by a domestic one, if this is regulated and confirmed with an international agreement. We believe it is highly important to ensure efficient implementation of this provision in practice, so as to avoid limitation of the scope of electronic operations.
- Section V of the Draft Law – Certain types of trusted services - is crucial for implementation, as it contains provisions about the key instruments of electronic operations (e-signature, e-stamp, e-certificate, time stamp), as well as the legal effect of using these instruments, and delivery and storage of electronic documents created through such operations.
- Article 42 of the Draft Law prescribes an „advanced" electronic signature, and also introduces the key novelty compared to the Law on Electronic Signature – the introduction of „advanced" electronic stamp, even though this term has been around u in our legal system for some time, being introduced back in 2009, with the adoption of the current Company Law which eliminated the stamp as a long-outdated form of verifying the legal personality and identity of a legal entity. According to the Draft Law, the sealer is a legal entity, natural person or a natural person acting as a registered entity, on whose behalf an electronic stamp is created, and whose identification data are stated in the certificate used as a basis for creating the seal. Such definition of electronic stamp is not exactly in line with the relevant Regulation 910/2014 of the European Union, which stipulates that an electronic stamp is issued to legal entities only, and that the legal entities use it to prove the origin and integrity of electronic documents. The „advanced electronic stamp" is therefore prescribed in line with the EU regulations, but we cannot escape the impression that the quoted EU provision came as a compromise solution among the member countries, with some being unwilling to waive the bad habit of using a seal, even though the identification of a legal entity's authorized representative using qualified electronic signature is more than reliable. The Draft Law stipulates that a qualified electronic signature has the same legal effect as a personal signature, and that a qualified electronic stamp on an electronic application in an administrative procedure has the same

legal effect as a personal signature, as well as that an administrative act issued in the form of electronic document, can contain qualified electronic stamp of the institution, instead of the stamp and signature of an authorized person. (Articles 50 and 51 of the Draft Law). Such formulation creates confusion in terms of obligation to simultaneous use of both qualified electronic signature and qualified electronic stamp in corporate and administrative communication, particularly in situations when sectorial regulations require both the personal signature and the stamp to achieve full validity of the paper document (administrative acts, bank agreements, payment orders...). In other words, it will not be clear when the rules require the use of electronic signature, electronic stamp or both. Regardless of the motive for introducing this provision and the stated EU Regulation, we suggest that the use of qualified electronic stamp should not be prescribed as a condition for full validity of a legal transaction, nor should institutions insist on the use of such stamp in practice. Therefore, the use of qualified electronic stamp in our legal system should maybe be required from public administration only, while businesses should be asked to use it only when performing public jurisdictions or performing „licensed tasks" (public notaries, project designers, lawyers etc.). Businesses, on the other hand, should be left free to decide whether or not they wish to use qualified electronic stamp in addition to qualified electronic signature, while stressing that doing business with other countries might require the use of such stamp for full validity of such transaction;

- Article 50 of the Draft Law prescribes the legal effect of electronic signature, stipulating that qualified electronic signature has the same legal effect as a personal signature. We are pleased to note that the authorities accepted NALED's suggestion to narrow down the scope of legal transactions that cannot be performed in the form of electronic document. Namely, Paragraphs 4 and 5 of this Article prescribe that the form of electronic document cannot be used only for the legal transactions where special laws prescribe the form of verified signature, solemnized documents or public notary documents. The electronic form cannot be used for wills, bills of exchange, checks and other legal transactions where special laws prescribe prohibition of electronic form. If this suggestion had not been accepted, leaving the formulation that qualified electronic signature cannot be used for all legal transactions where mandatory written form is prescribed, the electronic operations would be made entirely pointless. It is also highly important that the lawmaker accepted NALED's suggestion for prescribing the possibility of having a special law defining the situations when qualified electronic signature can replace a verified personal (Article 50 Paragraph 3), as such provision respects the fact that the identification of a qualified electronic signature user is performed by a certification body which issued the signature in performing their public jurisdictions, so there is no need to have another holder of public authority additionally confirming the signature (e.g. a public notary).

- The Draft Law also prescribes the conditions for electronic storage of documents. It regulates the preparation of documents for reliable electronic storage, which ensures that all important elements of the original documents are transferred to the electronically-stored document, i.e. that the electronically-stored document is faithful to the original document. Reliable electronic storage enables the possibility of proving the validity of qualified electronic signature or stamp throughout the entire storage period. When it comes to storing public archive material and documentary material in electronic form, the Law prescribes their storage in line with the conditions for reliable electronic storage of documents, so as to ensure long-term storage of electronic archive material, its maintenance, migration/transfer to new carriers in the prescribed forms, to submission of the archive material to a competent archive – as a rule, when the databases become closed and electronic documents fully finalized. What is particularly important for reducing the costs of both public administration and businesses, is prescribing the possibility of destroying the original documents following their digitalization and entrusting them to a service provider for qualified storage of electronic documents, except when otherwise defined by a different regulation (Article 65). To make this provision feasible in practice, the regulations governing archiving need to specify that this provision can be applied to all originally paper documents which do not represent archive material, and precisely define the concept of archive material in a manner which makes clear that archive material includes the documents for which permanent storage is stipulated. This would enable the destruction of miles-long paper documentation, which is even now not considered archive material and is being kept for 3 to 10 years (invoices, delivery notes, payment orders etc.), and its further storage and use in legal transactions in digital form. We certainly hope that the implementation of provisions from the stated laws will reduce the paper documentation in due time, while popularizing the originally electronic documents, which would make digitalization of paper documents an increasingly rare situation.
- The Draft Law stipulates the adoption of by-laws within one year, which will further prolong its implementation in practice. Therefore we appeal to the Ministry of Trade, Tourism and Telecommunications to adopt the by-laws as soon as possible and we offer the capacities and assistance of NALED's E-Government Alliance.

## SET OF DRAFT LAWS AIMED AT IMPROVING THE PUBLIC ADMINISTRATION TRAINING – NATIONAL ACADEMY

With the aim of fulfilling one of the goals from the Strategy of Public Administration Reform in the Republic of Serbia (Official Gazette of RS, No. 9/14 and 42/14 – correction), establishing a harmonized merit-based civil servants system and improved human resource management in public administration - a set of draft laws has been prepared focusing on work

improvement - training provided to public administration, specifically: Draft Law on amendments to the Law on Civil Servants ("Official Gazette of RS", No. 79/05; 83/05; 64/07; 67/07, 116/08, 104/09, 99/14); Draft Law on amendments to the Law on Local Government and Autonomous Province Employees ("Official Gazette of RS", No. 21 of 4 March 2016) and Draft Law on the National Academy for Professional Training in Public Administration.

The Law on National Academy for Professional Training in Public Administration establishes the Academy as the central institution of professional training for all civil servants in the Republic of Serbia (Article 3 Paragraph 1 of the Draft Law), while amendments to the Law on Civil Servants and Law on Local Government and Autonomous Province Employee prescribes a comprehensive professional training program for civil servants, starting from general training, including introductory training programs , general and sectorial continuous training programs, through training programs for managers, to special training programs for employees and officials, in line with the specific needs of authority related to certain positions and tasks or specific groups of users. The stated law amendments assign a large scope of jurisdictions to the National Academy for Professional Training in Public Administration (hereinafter: National Academy), from the selection and accreditation of lecturers and other practitioners of all professional training programs for civil servants, through accreditation of these programs, to their evaluation and verification. The National Academy is also entrusted with providing previous opinions–approvals on the mandatory elements of special training programs, defined by the head of a local government unit. With such wide scope of jurisdictions, there is a question whether the selected organizational form – administration body/special organization with a legal entity status, led by a director with very broad jurisdictions – can ensure sufficient control and transparency in the work of such institution.

NALED is aware of the need for improving professional capacities of the entire public administration, and therefore welcomes the initiative for establishing the National Academy, thus ensuring systemic conditions for providing training to all public administration employees. However, we believe that the role and place of the National Academy in the existing education system of Serbia needs to be carefully balanced, also taking into account the continuous and dynamic reform process of the Government of Serbia, requiring urgent and very specific trainings which, as a rule, are funded through projects.

Namely, if there is a standpoint that the National Academy should be entrusted with professional development of public administration in its broadest sense, which in addition to state administration, local governments and AP, and their institutions, organizations and services, also includes independent regulatory institutions, public agencies, institutions, public enterprises, and even individuals entrusted with certain public jurisdictions (public notaries, bankruptcy trustees, enforcers...), there is a question of whether it is justified to assign them with such a broadly defines scope of jurisdictions and possibilities of their implementation. In this regard, it is primarily questionable whether the National Academy should and can accredit and approve the sectorial continuous training programs and special training programs for employees and managers in the entire public administration, or the adequate measure would be to entrust them with such jurisdictions only for the introductory training programs and general continuous training programs for public administration employees and managers. Otherwise, a question would arise whether the National Academy, due to its status and rules of accreditation, can be quick and efficient in responding to the training needs imposed by the reform processes and specificities of certain public administration segments – the accreditation rules, as defined at the moment, take less care about the quality, and more about formal requirements (facilities, equipment). Furthermore, there is a question whether experts for specific fields that should be included in the sectorial training programs should attend trainings with the aim of being accredited by the National Academy and whether such requirement would exclude certain experts from the programs – such as foreign experts, university professors and members of working groups for drafting regulations and implementing reforms – who have specific knowledge that should be transferred to civil servants. We also note the need to review the provision which makes the materials of accredited programs an integral part of the program records, kept by the National Academy, bearing in mind that some lecturers, particularly foreign ones, insist on the availability of these materials only to training participants, which is their condition primarily for the implementation of specialist trainings. Additionally, it should be ensured that the accreditation system does not block the trainings financed from donor funds, bearing in mind that the project funding is performed through donor procedures, which exclude the implementation of valid regulations of the Republic of Serbia.

Finally, we once again welcome the initiative to establish the National Academy, thus improving the expertise level of the entire public administration. However, we appeal to the line ministry to review certain proposed solutions, so as to ensure that the National Academy primarily enables continuous training to public administration employees, keeping in mind that the future academy's capacities are inevitably limited when it comes to independent realization of determined programs, as well as the accreditation of lecturers and trainings for acquiring specific knowledge.

## DRAFT LAW ON CADASTER REGISTRATION

NALED actively participated in the Cadaster reform, which generates great expectations in terms of improving the legal certainty in the most important public registry, primarily through improved efficiency of RGA in keeping and updating the registered data.

The situation in this field was more than inadequate.

Applications were often handled with major delays, due to the slowness of territorial offices of the RGA, and due to misuse of parties' rights to provide notes, which caused delays in the realization of previously filed requests. The situation was further complicated by the lobbied priority of registering enforcement procedures, which called into question the Cadaster's reliability. The principle that cadaster registration can be performed exclusively at a party's request made cadaster an outdated registry, where item ownership is often registered to deceased persons, investors who have not registered sale of real estate they constructed or to legal predecessors of buyers who did not register in the cadaster. Additionally, court verdicts were not registered ex officio upon court filing but with delays, which allowed for possible abuse and deception of fair buyers.

The Draft Law on Cadaster Registration, presented in May 2017, separates the issues of Cadaster registration and Cadaster's work into a special law, introducing the following key novelties in this field:

- The key novelty is brought by Article 47 of the Draft Law, prescribing initiation of registration procedure via e-counter. It prescribes that e-counter users include public notaries, courts and public enforcers, who are obliged to submit the final decisions issued within their jurisdictions to the Cadaster ex-officio via e-counter, while public notaries also need to submit the documents they verify. We believe that the Law should have stipulated a single 24-hours deadline for submission, as there is no need to have different deadlines for different entities. Paragraph 4 also prescribes such obligation for state institutions, local governments and other entities which have a legally prescribed obligation to submit a decision the issue to the line institution, for the purpose of registration. Possibility of submitting documents via e-counter is also provided to lawyers, entrepreneurs and legal entities registered into the registry of real estate brokerage, as well as to geodetic organizations. The Law also prescribes that the taxpayer is always considered the person being registered for ownership, and that the payment of fee is not considered a pre-condition for the registration, as up-to-date Cadaster is found to be more important than the fee collection. Paragraph 9 prescribes broad jurisdictions for transferring paper document into electronic form by all previously mentioned users of e-counters, who are obliged to archive the paper document in line with the law, thus ensuring efficient implementation of this electronic procedure. The provision from Paragraph 12 is also highly important, prescribing the obligation of RGA to ensure public availability of data about the submitted applications, from the point of filing an application, continuously and free of charge, via its website;
- The most problematic provisions are the ones governing the order of registration decisions (Article 51 of the Draft Law), primarily because of the priority registration of enforcement decisions (enforcement procedure), which was lobbied for in the previous amendments to the Law on State Survey and Cadaster. The problem is that the problem will not be solved by simply omitting this priority in the Draft Law, as Article 155 Paragraph 2 of the Law on Enforcement and Security ("Official Gazette of RS", No 106/15, 106/16) prescribes that "the institution which maintains the Real Estate Cadaster is obliged to register a note on enforcement decision, within 72 hours from receiving the application for registration, or the note will be considered registered following a period of 72 hours from the receipt of registration request." Introducing the rule „silence of administration means approval" in such delicate matter (influencing the acquisition of real estate ownership right) is rather inappropriate, so this problem needs to be urgently addressed either through urgent amendment to the Law on Enforcement and Security – erasing the provisions from Article 155 Paragraph 2 of the Law, which is the only consistent solution, or by relativizing the entire problem by including all requests for changes in property registration into Article 51 of the Draft Law as a priority;
- Another important novelty is presented in Article 52 Paragraph 4 of the Draft Law, which reduces the Cadaster service's handling of a document submitted by a public notary to a mere formal verification of the fulfilment of registration requirements, i.e. the verification of facts from Article 38 Paragraph 2 of the Draft Law (proper designation of the real estate and complete data about the transferor and acquirer). We believe there is a need to review the possibility of extending the formal verification practice to documents submitted by other types of holders of public authority, primarily the courts, which also know the law so there is no need to have the Cadaster service additionally checking the lawfulness of such registration. The benefit from formalizing this procedure is also reflected in shortening the deadlines for acting upon such application to three days (Paragraph 10.)

## DRAFT LAW ON THE PLANNING SYSTEM

The reason for adopting this Law is the need to establish an efficient, transparent, coordinated and realistic planning system in the Republic of Serbia and its local governments, covering all major aspects of social and economic development policy and regional and spatial development, with optimal use of budget resources, ensuring sustainable growth and development of the Republic of Serbia, including the local government, as well as efficient implementation of the European Union accession process, particularly in the context of requirements stemming from Negotiation chapters 17 – Economic and monetary policy and 22 – Regional policy and coordination of structural instruments.

The Draft Law prescribes the forms and mandatory contents of various planning documents, with the purpose of harmonizing the practice, as this is the only way to ensure the establishment of a consistent, efficient and transparent planning system. The current regulations do not enable the planning system participants to distinguish situations requiring a strategy from those calling for a program, nor do they define

the kind of content that needs to be included in public policies or action plans. Additionally, the Draft Law does not regulate the level of detail for elaborating public policy measures and their implementation, depending on the type of public policy documents, nor the manner of determining the effects of their implementation. A concept document is not recognized as a special type of public policy documents, which deprives the practice from using this highly useful and efficient instrument for determining public policies. Development planning documents which, in their essence, represent planning documents with the broadest scope and highest significance for the institutions adopting them, are not clearly defined and positioned in the planning system, nor does the system prescribe how the goals defined in these documents, including the Government priorities, should be transposed into public policy documents, so the Draft Law resolves this issue in an optimal manner. It also takes into account the fact that the planning documents prescribed by the law governing the budgetary system and the law governing spatial and urban planning have certain specificities and already distinguished names, so the Draft Law also stipulates the possibility of making exceptions to the general rules prescribed in the Draft Law. Every segment of the Draft Law is created making sure that the original and constitutionally guaranteed jurisdictions of the local government in terms of planning are not threatened in any way, while ensuring that the local planning documents smoothly fit in with the consistent planning system, thus ensuring full transparency of the planning system in Serbia, and monitoring of public policy implementation at all levels.

The Draft Law provides for a delicate merging of mid-term public administration planning with the budget planning, and the reporting on mid-term plans realization should ensure both the transparency of public administration and the collection of data on implementing the determined public policy measures by all levels responsible for their implementation. Particular efforts were made to ensure that the obligations related to mid-term planning are implemented in line with the realistic capacities of public administration, thus prescribing delayed effect of these provisions on the local governments and autonomous province.

The Draft Law also explicitly introduces the obligation of monitoring and evaluation of the adopted public policies and regulations. Such obligation is not explicitly prescribed by any law, and we are witnessing a situation where regulations and public policy documents (strategies and programs) are rarely changed or „fixed" which, as a rule, should be performed following a period which allows to perceive the initial effects, rather than waiting until the moment when public policies, i.e. the key measures for their implementation, are changed essentially. In practice, regulations' provisions are reviewed and changed only upon an initiative made by businesses or an institution implementing the regulation, and only when certain solutions generate major problems for daily operations, halt the implementation of an administrative procedure, or block the implementation of regulation which generates major public attention. Such situation stems from the fact that there is no obligation of performing ex-post regulatory impact analysis, involving continuous revision of regulation effects and evaluation of public policy implementation, aimed at their improvement. The absence of such obligation leads to accumulation of inefficient, excessive and even harmful regulations, burdening the work and life of businesses and citizens, up to a moment when regulatory framework in a certain field is found to be so unfavorable, that it requires the most expensive and most traumatic regulatory instrument for overcoming such situation – the comprehensive analysis of all or a set of regulations and the abolition of harmful and excessive regulations, the so-called Guillotine of Regulations, performed in Serbia in 2009-2010, under the name Comprehensive Regulatory Reform (CRR). Comprehensive revision of regulations is characteristic for the countries which fail to perform the ex-post regulatory impact analyses. This palliative regulatory measure is good for announcing a new reform direction and the beginning of a reform process, but its frequent use is not a good recommendation to the investors, expecting a predictable and consistent legal framework for their work. With this in mind, the Draft Law prescribes the obligation of conducting ex-post regulatory impact analysis, for both public policies documents and regulations. This is not, by any means, a new obligation, as it is already considered a usual thing, but hasn't been explicitly prescribed. Claiming otherwise would be the same as saying that, following the adoption of regulations and public policy documents, the institutions that issue and propose them are not to monitor their implementation.

The establishment of a Unified Information System, to include public policy documents, mid-term plans and reports on their implementation, will ensure efficient and consistent planning at all levels, as it will involve precise identification of measures for implementing public policies, the public institutions implementing these measures, the deadlines for their implementation and the indicators used to measure their effect. This way, the general goals of development planning documents, expressed through general and specific goals of public policy documents and measures for their implementation, and further through elaboration of activity plan by the planning system participants who determine the public policies, and implemented in practice through mid-term plans of planning system participants who perform these activities. The establishment of this unbroken planning chain is enabled by consistent implementation of solutions from the Draft Law, and their full implementation and control, as well as the transparency of the system, will be ensured by the information system itself. Though electronic information systems often spark concern among the public officers, fearing that existing procedures would be further complicated, in this specific case, the system will ease the planning-related activities, as it will enable them to automatically generate

certain parts of planning documents and the reports on their implementation. We would like to indicate that the local government representatives who took part in the public discussion properly considered all the benefits of the measures prescribed in the Draft Law, and asked to be consistently included in the Planning system established by this regulation. It was by their request that the scope of local mid-term planning obligations was expanded, while the local authorities were left to govern their own system of control, within the local documents and in line with their abilities, aimed at controlling the implementation of regulatory impact analysis when drafting public policies and regulations, and the mid-term planning on the local level. In order to expand the obligation of performing regulatory impact analysis to other regulations and public policy documents with significant effects, including the ones adopted by local governments, and in order to ensure the implementation of ex-post regulatory impact analysis and prescribe the obligation of mid-term planning in a manner ensuring monitoring of public policy implementation, such obligations need to be explicitly prescribed by the law. The Government could have introduced such obligations in its Rules of Procedure for the ministries, but the law is the only institute which can make this obligation apply to all institutions creating regulations and planning documents for determining and implementing the public policies, all with the aim of establishing an efficient planning system and a stimulating regulatory framework at all levels of authority, which is the only right approach if we wish to achieve substantial and systematic progress in this field.

Draft methodologies to be adopted after the law is passed have also been prepared, and they will determine the level of detail for the impact analysis to be performed in the course of drafting regulations and public policies, as well as the situations when an impact analysis will not be required, due to limited effects or urgency reasons.

The Draft Law also governs the obligation of conducting consultations in the course of drafting public policies and regulations, while by-laws will govern the consultation methods, to ensure that optimal consultation methods are selected for various specific situations, all with the aim to ensure the needed input for developing god and efficient regulation. It can be noted that the difference between consultations and public discussion, and their purposes, is not always clear – therefore, the Draft Law clearly defines their essence and obligations in their implementation. The obligation of conducting a public discussion is prescribed in Article 77 of the Law on State Administration ("Official Gazette of RS", No. 79 of 16 September 2005, 101/07, 95/10, 99/14) and Article 41 of the Government's Rules of Procedure and it refers to laws only. However, the obligation needs to be expanded to include the public policies and by-laws, for the very reasons stated above.

It can also be noted that regulatory activities are often non-coordinated with public policy planning, which leads to public policies, primarily strategies and programs, not being properly implemented. Furthermore, many regulations, which should serve as instruments for implementing the public policies, are adopted without a clear image on the effects they should accomplish, which ultimately makes them excessive and harmful regulations. Therefore, failure to align public policy planning and regulation drafting within a single process leads to inefficient planning system and regulatory framework for the life and work of citizens. Hence, the Draft Law prescribes the obligation of performing impact analysis when drafting all public policies, and linking the process with the regulatory impact analysis, when public policy measures are implemented through regulations. Such system ensures that the legal framework for life and work of Serbia's citizens is aligned with the development vision contained in the state's highest planning documents and measures defined in public policy documents. In other words, it ensures an efficient planning system and favorable regulatory framework for development of the society.

# RESOLVING THE PRIORITY DEMANDS BY BUSINESSES

## GREY BOOK 9 – OVERVIEW OF RESULTS

Over the first and second quarters of 2017, no major progress was made in implementing the recommendations from Grey Book 9. Still, there is some encouraging information, but also some worrying attitudes of certain ministries, which find that there are no grounds or no will to improve the regulations causing unnecessary burden to businesses or legal uncertainty. However, we welcome the announcement of the Ministry of Finance that they will review the new content of the Rulebook on the form, content and manner of keeping the VAT records, which should be implemented from 1 January 2018, and we hope it will fully appreciate the Grey Book's recommendation, so as to simplify the accounting and calculations . The Ministry of Finance also indicated that the Working group for designing Draft Law on Fees for Use of Public Goods has been established, whose draft version should be developed during 2017. We are hopeful that the years-long standstill with the adoption of this highly important regulation for businesses will be terminated, so that we can finally achieve legal certainty in the field of public fees. We also welcome the Ministry's announcement that they will work on adopting recommendations on the reciprocity of VAT refund. Nevertheless, there is a discouraging position of the Ministry of Finance in terms of defining shorter deadlines for the refund of excessive VAT paid, reducing labor taxes and contributions and precisely defining the deadlines for issuing Tax Administration decision on the tax amount for lump-sum taxpayers, as we remain firmly convinced that these recommendations would have a significant contribution in establishing a business friendly environment.

The Ministry of Labor, Employment, Veteran and Social Affairs also indicated that the recommendation from NALED's Grey Book 9 on eliminating the obligation of submitting a form for registering employees' years of service to the Republic Pension and Disability Insurance Fund, i.e. employers' obligation to submit M4 form to the Fund, is already included in the

GREY BOOK 9: OVERVIEW, JUNE 2017

| № | Line institution | Total number of recommendations | Resolved problems | Partially resolved problems | Unresolved problems | New recommendarions |
|---|---|---|---|---|---|---|
| 1. | Ministry of Finance | 35 | 1 | 3 | 22 | 9 |
| 2. | Ministry of Economy | 4 | 0 | 1 | 2 | 1 |
| 3. | Ministry of Health | 13 | 0 | 3 | 9 | 1 |
| 4. | Ministry of Labor, Employment, Veteran and Social Issues | 5 | 0 | 1 | 4 | 0 |
| 5. | Ministry of Construction, Transport and Infrastructure | 8 | 3 | 1 | 2 | 2 |
| 6. | Ministry of Trade, Tourism and Telecommunications | 3 | 2 | 0 | 0 | 1 |
| 7. | Ministry of Public Administration and Local Government | 2 | 1 | 0 | 0 | 1 |
| 8. | Ministry of Mining and Energy | 1 | 0 | 0 | 1 | 0 |
| 9. | Ministry of Justice | 3 | 0 | 0 | 3 | 0 |
| 10. | Ministry of Culture and Information | 1 | 0 | 0 | 1 | 0 |
| 11. | Ministry of Agriculture and Environment Protection | 5 | 0 | 0 | 4 | 1 |
| 12. | Several ministries | 11 | 0 | 1 | 6 | 4 |
| 13. | National Parliament and legislation secretariat | 1 | 0 | 0 | 1 | 0 |
| 14. | National Bank of Serbia | 4 | 0 | 0 | 4 | 0 |
| 15. | Local government | 4 | 0 | 0 | 3 | 1 |
| | TOTAL | 100 | 7 | 10 | 62 | 21 |

Government's Decision adopting the Plan of priority activities for reducing the administrative burden in the Republic of Serbia. The obligation of submitting the M-4 form will no longer exist starting from 1 January 2019 for the year 2018. We are also eagerly looking forward to the repeatedly announced and delayed adoption of the Law on Financial Aid to Families with Children, which would finally enable the realization of NALED's recommendation for simplifying the process of exercising the right to maternity fee.

The line Ministry of Trade, Tourism and Telecommunications indicated that following the adoption of the Law on Advertising (Official Gazette of RS, No. 6/2016), whose implementation started on 6 May 2016, online advertising is no longer subject to the provisions from Article 19 and 20 of the Law on Obligation of Submitting an Advertising Declaration. Therefore, upon their suggestion, we changed the status of Grey Book's recommendation 6.2. from partially resolved to fully resolved.

## BY-LAW BAROMETER

Since 2010, NALED has been using the By-Law Barometer to monitor the extent to which by-laws are timely adopted, so as to ensure proper law implementation. The By-Law Barometer currently monitors 23 laws adopted over the previous seven years, which stipulate the adoption of by-laws. The selection primarily focuses on the laws with major effects on the business environment.

Based on a detailed analysis of the legal provisions, a list of 426 by-laws (decrees, rulebooks, decisions) has been established, which were (or still are) to be adopted, so as to ensure full law implementation and avoid arbitrariness in application. Out of the total number, there are 181 by-laws still to be adopted.

The average delay in the adoption of by-laws, whose deadline for adoption had previously expired, is 350 days.

# CONCLUSION

Even though the first half of 2017 has not provided impressive results in the regulatory field, primarily due to a break in the National Parliament activities, a large number of regulations have been prepared and awaiting adoption..

With the aim of e-government development, the Serbian Government announced that its regulatory priorities would be the adoption of the Law on E-Government and Law on Electronic Document, Electronic Identification and Trusted Services in Electronic Operations – paired with the Law on General Administrative Procedure, adopted in February 2016, these regulations make the legal framework that should enable the development of modern e-government and e-commerce. We stress that the key priority is to ensure that the solutions defined in these regulations are balanced and feasible in practice, and they cannot act as an obstacle to previously established e-procedures in public administration, primarily the unified procedure for construction permitting. An excellent example of such balanced solutions are the provisions of the Law on General Administrative Procedure which let the special laws define the obligation of electronic communication and the time of receipt of electronic applications, in line with the needs of concrete procedures (This refers to Article 57 Paragraph 2 of the Law, prescribing that: „A party electronically communicates with an institution, if previously approved by the party, or if governed by a special regulation." Such formulation makes it possible to stipulate electronic procedure as mandatory, which is in line with Article 8a of the Law on Planning and Construction, in terms of implementing the unified procedure, as well as Article 33 Paragraph 6 of the Law on Accounting, in terms of the form for submitting financial statements to Business Registers Agency. Additionally, Article 81 Paragraph 3 of the Law prescribes: „The time when an electronically submitted application is considered to be received is governed by a special law".)

NALED is satisfied for the constructive cooperation established with the Ministry of Justice and Ministry of Trade, Tourism and Telecommunications in harmonizing the provisions of the Law on Electronic Document, Electronic Identification and Trusted Services in Electronic Operations, primarily the provisions governing the transfer of paper documents to electronic form and vice-versa (Articles 11 and 12 of the Draft Law) and the scope of agreements that can be concluded in an electronic form (Article 50 of the Draft Law). We draw attention that this important reform should not be subject to any surprises, on the Government or Parliament level, as this could disable the implementation of electronic procedures. In this sense, NALED is willing to provide support at all levels of authority, with the aim of preventing such unpleasant surprises, which implies that regulatory process transparency and obligatory consultative process (participation of NGO sector in working groups for drafting regulations, focus groups and round tables...) should be the Government's absolute priority in this matter.

We support the establishment of the National Academy, but we draw attention that special focus needs to be placed on ensuring good quality of specific trainings and the fact that specific trainings are often implemented through donor projects (usually once, upon the adoption of a law or by-laws) .

Finally, without a serious approach to controlling the amount of fees and charges, charged by a very disperse and inconsistently organized public administration for the services within their public jurisdictions (particularly on the local level and among public enterprises), the uncontrolled and inconsistent introduction of para-fiscal charges will not be stopped, and we once again stress the necessity of establishing a Public Registry of Fees, so as to exert control of fees and taxes at the time of their registration, with a rule that holders of public authority cannot charge the fees which are not included in the registry.

In the meantime, we announce that the following quarterly report will focus on the analysis of laws currently being drafted or those announced to be prepared and adopted by the end of this year, which are highly significant but were not presented in this report, specifically:

- Draft Insolvency Act;
- Draft Law on the Fees for Use of Public Goods;
- Draft Law on Local Government;
- Draft Law on Simplified Work Engagement for Seasonal Jobs in Selected Industries.