ORIGIN: COMMISSION

WP ENLARGEMENT + COUNTRIES
NEGOTIATING ACCESSION TO EU
**MD 61/16**
01.04.16

# Screening report

# Serbia

## Chapter 9 – Financial services

**Date of screening meetings:**

Explanatory meeting: 21-22 January 2015
Bilateral meeting: 17 March 2015

## I CHAPTER CONTENT

The *acquis* on financial services includes rules for the authorisation, operation and supervision of financial institutions in the areas of banking, insurance, supplementary pensions, investment services and securities markets as well as with regard to financial market infrastructure. The new European System of Financial Supervisors (ESFS) entered into force in January 2011. It consists of a network of national financial supervisors working together with three new European Supervisory Authorities – a European Banking Authority (EBA), a European Securities and Markets Authority (ESMA), and a European Insurance and Occupational Pensions Authority (EIOPA). In addition, a European Systemic Risk Board (ESRB) was established to monitor and assess potential threats to financial stability that arise from macro-economic developments and from developments within the financial system as a whole.

In the field of **banks and financial conglomerates**, the *acquis* sets out requirements for the authorisation, operation and prudential supervision of credit institutions, as well as requirements concerning the calculation of capital of credit institutions and investment firms. The Capital Requirements Directive and Regulation ("CRD IV") translating the Basel III international standards into EU law entered into force in 2014. The *acquis* in this sector also lays down rules relating to supplementary supervision of financial conglomerates and to the taking-up, pursuit of and prudential supervision of the business of electronic money institutions. Credit institutions are required to join an officially recognised deposit guarantee scheme, which must provide for a protection of EUR 100,000 per depositor within 20 working days following the determination by administrative or judicial authorities that deposits are unavailable. The *acquis* lays down rules regarding the annual and consolidated accounts of banks and other financial institutions. It also organises the mutual recognition of reorganisation and winding up of credit institutions throughout the internal market.

In the field of **insurance and occupational pensions**, several Directives set out rules concerning the authorisation, operation and supervision of life and non-life insurance and re-insurance undertakings. The *acquis* establishes rules for the supplementary supervision of insurance groups. Specific provisions exist in the non-life sector for co-insurance, tourist assistance, credit insurance and legal expense insurance. The *acquis* also incorporates a prudential regulatory framework for reinsurance activities in the EU aiming at removing barriers to the pursuit of reinsurance business. A Directive on insurance mediation establishes a legal framework for the taking-up and pursuit of insurance and re-insurance mediation by natural and legal persons operating in the EU. In the field of motor insurance, requirements concerning insurance against civil liability in respect of motor vehicles are harmonised with a view to facilitating the free movement of goods and people, in particular by abolishing frontier controls on motor insurance. Likewise, the activities and supervision of institutions for occupational retirement provision are regulated. The insurance *acquis* also lays down rules regarding annual and consolidated accounts of insurance undertakings and certain provisions on reorganisation and winding up of insurance undertakings with branches in more than one Member State.

In regard to **financial market infrastructure**, the *acquis* aims to remove barriers in the post-trading area, enhancing market infrastructure resilience and promoting financial stability. The Directives in this area thus aim at reducing systemic risks linked to the insolvency in settlement systems, at creating and enforcing collateral arrangements across the EU and at strengthening the protection of financial collateral arrangements. The European Market Infrastructure regulation (EMIR) improves financial stability by setting out rules for the mandatory clearing of standardised over-the-counter (OTC) derivatives through Central Counterparties (CCPs).

In the field of **securities markets and investment services**, the Markets in Financial Instruments Directive (MiFID) on markets in financial instruments together with its amendments and implementing measures set out a comprehensive regulatory regime covering the authorisation, operation and supervision of investment firms and trading venues. The Prospectus Directive together with its amendments and implementing measures reinforces the transparency and thus protection for investors. The Directive on Market Abuse together with its amendments and implementing measures introduce a harmonised and comprehensive administrative regime for prohibiting and prosecuting insider dealing and market manipulation. The *acquis* also requires that Member States ensure that at least one officially recognised investor compensation scheme is established offering compensation up to EUR 20,000. The legislation on undertakings for collective investment in transferable securities (UCITS, accounting for most collective investments by small investors in the EU) sets out common basic rules for the authorisation, supervision, structure and activities of investment funds to facilitate the cross-border distribution of units of funds in the EU and to ensure adequate investor protection. Finally, the *acquis* has a comprehensive regulatory and supervisory framework for alternative investment, venture capital and social entrepreneurship funds, increasing transparency towards investors and public authorities.

In the wake of the financial crisis, the EU regulatory landscape in the financial services sector is changing fundamentally and very fast. One major point in the regulatory agenda is the "banking union" project. Once completed, it is to consist of revised or new legislation: a single rulebook, a single supervisory mechanism (SSM), a European deposit guarantee system and a European resolution framework for banks.

## II COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY

This part summarises both the information provided by Serbia and the discussion at the screening meetings. Serbia indicated that it can accept the *acquis* regarding chapter 9 - Financial Services, and it does not expect any difficulties to implement the *acquis* by the time of accession.

### a) Banks and financial conglomerates

Serbia stated that, while its legislation is largely aligned with Directives 2006/48/EC and 2006/49/EC (Basel II standards), the transposition of Directive 2013/36/EU of **CRD IV** is to be implemented in three phases: 1) the gap analysis has been completed; 2) the impact assessment phase is currently in progress; and 3) the legislative phase was to be concluded in the course of 2015.

Serbia explained that Serbian legislation as regards the taking up and pursuit of the business of credit institutions is based on the Law on Banks, the Law on the National Bank of Serbia, the Law on Payment Services, the Law on the Protection of Financial Services Consumers, the Law on Prevention of Money Laundering and the Financing of Terrorism, as well as on several implementing decisions. These regulate the definition of a bank, the conditions for the establishment, authorisation and operation of credit institutions, as well as their supervision. Serbian credit institutions need an authorisation from the National Bank of Serbia (NBS) for their establishment and operation in Serbia. The Development Fund and the Export Credit and Insurance Agency are exempted and governed by special laws. Provisions on capital measurement approaches remain to be transposed, as well as on home-host cooperation (consultation, exchange of information, conflict resolution).

In March 2015, Serbia explained, there were 30 banks operating in Serbia, 22 of which in foreign ownership. Total banking sector assets amounted to EUR 24.5 billion, capital to EUR 5 billion (Nov. 2014). Banking sector assets accounted for 91.7% of total financial sector assets. At the end of the third quarter 2014, the sector showed a Capital Adequacy Ratio of 19.4%, i.e. well above the Serbian regulatory minimum of 12%. Serbia explained that non-performing loans are the main problem for the Serbian banking sector. Foreign banks are barred from operating in Serbia through branches, but may found a subsidiary (i.e. a legal person established and registered under Serbian law) or establish a representative office, which is not allowed to perform banking activities. The cross-border provision of financial services, for example via the internet, is not allowed. Serbia acknowledges that its legislation is partially aligned with the *acquis*.

Serbia stated that **capital adequacy** requirements for investments firms and credit institutions are somewhat stricter than in the Capital Requirements Regulation 2013/575/EU: the regulatory minimum capital adequacy ratio is 12% for credit institutions, i.e. higher than the 8% required under the acquis. The minimum liquidity ratio is set at 100%. Serbia acknowledges that its regulatory framework is not fully aligned with CDR IV as it does not prescribe three capital adequacy ratios, certain restrictions under the recent acquis are not yet transposed, differences exist between domestic regulatory requirements and the Capital Requirement Regulation (CRR) regarding capital requirements for securitization, for short-term credit risk as well as for exposures to SMEs and to commercial immovable property. Also, Serbia's rules on capital conservation buffer deviate from the EU´s in confining profit allocation to core capital elements whenever the capital adequacy ratio is below 14.5%. The amounts of required reserves for estimated losses, as regulatory value adjustment, are deducted from core capital and thus not in line with the acquis. At the same time, Tier-3 capital is already excluded from regulatory capital, which Serbia considers to be in line with the acquis. Since 2008, both the average capital adequacy ratio and the liquidity ratio of Serbian banks have constantly been above the legally prescribed minima.

Banks are obliged to calculate risk-weighted exposure amounts for credit risk. Banks may use both approaches for calculating credit risk allowed under Capital Requirement Regulation ("CRR") including the Alternative Standardised Approach. All Serbian banks currently use the Standardised Approach. Serbia stated that some smaller differences with the CRR regarding the standardised approach remain, such as a different weighting of capital requirements for SMEs, absence of capital requirements for risks from securitisation, separate treatment of exposures to borrowers with short-term credit assessments and the absence of a more favourable treatment of exposures collateralised by commercial immovable property. In case of alternative use of the Internal Models Approach the capital requirements for exposure risk on debt securities is higher than under CRR while some other CRR requirements are not met. Banks are obliged to submit to the National Bank of Serbia a recovery plan to restore an adequate financial position in case of a significant deterioration of their financial condition; the plan is to be updated at least annually.

According to Serbia, other significant differences between domestic requirements and the CRR regarding capital requirements are the absence of capital requirements for securitisation instruments and for correlation trading portfolio and of provisions on the use of stressed value-at-risk in capital requirements calculation.

Serbia explained that an exposure to a single person or group of related persons is considered large if it amounts to 10% or more of the bank´s capital. No such exposure may exceed 25% of the bank´s capital. The CRR allows for an exception to this rule which is not foreseen under Serbian legislation.

Regarding additional supervisory measures to ensure adequate management of and provisions against increased risk, Serbian law assigns detailed responsibilities to managing and executive boards in identifying, measuring, assessing and managing a bank´s exposure risk, including the establishment of a special unit for risk management. Supervision is implemented by the National Bank of Serbia. It has adopted an assessment methodology which, according to Serbia, in line with the relevant European Banking Authorities' guideline. Serbia indicated that banks are required to continuously implement documented Internal Capital Adequacy Assessment Processes (ICAAP), consistent with the nature, volume and complexity of their activities.

As for transparency and disclosure requirements, Serbia stated that banks are required to disclose data on their risk management, capital, capital adequacy, etc in line with Pillar 3 requirements of Basel II.

Serbia stated that it has not transposed Directive 2002/87/EC on the comprehensive framework for the supplementary supervision of **financial conglomerates.** While currently there are no such conglomerates, Serbia stated its intention to adopt the necessary legislation before accession.

Regarding Directive 2014/49/EU on **deposit-guarantee schemes**, the relevant Serbian legislation comprises the Law on Deposit Insurance, the Law on the Deposit Insurance Agency, the Law on Bankruptcy and Liquidation of Banks and Insurance Companies, the Law on Amendments to the Law on Banks (all in the Official Gazette of Serbia 14/2015) as well as specific secondary legislation regulating the national deposit protection scheme covering deposits placed in all banks licensed by the National Bank of Serbia. According to Serbia, its legislation is largely compliant with the acquis. Exceptions are notably the coverage of deposits of up to EUR 50,000 per depositor per bank (half of the amount required by the *acquis*), the current exclusion from the insurance system of business entities with the status of "large legal entities", the absence of a risk-based premium calculation (right now, all banks are considered equal), the absence of a link between the insured amount and the deposit insurance premium as well as the absence of a 5-day maximum period for the payment of social deposits. The Deposit Insurance Fund is to be funded *ex ante*; the Fund´s target ratio is 5% of total insured deposits, to be achieved by 2025 at the latest. Serbia stated that full compliance in this area shall be achieved by the date of accession.

The area of **reorganisation and winding-up of credit institutions** is governed mainly by Serbia´s Law on Banks, last amended in February 2015. Serbia claims that it is largely in line with the Bank Recovery and Resolution Directive (BRRD) and Directive 2001/24 on the reorganisation and winding up of credit institutions. As in the BRRD, the objectives of the resolution management by the National Bank are to ensure the continuity of critical banking functions, to avoid significant adverse effects on the stability of the financial system, to protect public funds and depositors and investors and to balance the various interests of stakeholders fairly. Like the BRRD, Serbian legislation is based on the following key elements. Regarding first preparation and prevention, the National Bank of Serbia must draw and regularly update resolution plans for each bank. Any identified impediments to a bank's resolvability shall be removed. Secondly, the National Bank can adopt early intervention measures, when it has established that the bank in question has acted contrary to the law or is likely to do so due, inter alia, to a rapidly deteriorating financial situation. Resolution can be initiated when the bank is failing or likely to fail, when it is not probable that any alternative measure (incl. a write down and conversion of capital) can prevent this and when it is in the public interest. In the process, the National Bank may remove the bank´s managing and executive boards and assume their powers, amend and cancel agreements concluded by the bank, suspend payments and execution of other obligations for a limited period and appoint special managers for up to one year, sell the bank, transfer the shares, assets and/or liabilities to a bridge bank, separate good assets from bad ones and write down the debt of the failing banks (bail-in). If the valuation determines that during the resolution process the bank´s shareholders or creditors or the deposit insurance fund suffers higher losses than in the case of bankruptcy, damaged parties may claim compensation. Further secondary legislation and technical standards have been adopted since the screening meeting; in addition, provisions on establishing a separate financing agreement for the resolution fund and on investment firms are yet to be included in the legislation. Provisions on cooperation between Member States and third countries are still missing and will be addressed by means of Memoranda of Understanding with relevant authorities and international agreements.

Bankruptcy/litigation procedures are initiated by the National Bank and decided by a competent court, which has one working day for delivering its decision. The Deposit Insurance Agency acts as bankruptcy administrator, proposing the court the members of the board of creditors, in line with the size of their claims. While the resolution fund is not yet created, bail-in is already possible, the use of the deposit insurance fund is also available under the conditions of the Law on Banks. Moreover, the National Bank can submit a report on the cost of a resolution to the government requesting government financial support to fund resolution actions.

As Serbian law does not allow cross-border provision of banking services, Serbia considers that it has not fully implemented the acquis. Alignment with the provisions of Directive 2001/24 on the recognition of effects of parent bank's bankruptcy proceedings on its branches established in the EU is envisaged for the first half of 2018.

As regards **administrative capacity**, the National Bank of Serbia, as the institution mandated to exercise and share the regulatory and supervisory powers in this area oversees the maintenance of stability of the financial system as a whole and performs micro prudential supervision through off-site and on-site inspections.

Serbia explained that, in order to fulfil its functions, the National Bank's institutional organisation is guided by a risk-based supervision concept, with a distinction between on-site and off-site duties and responsibilities. The annual plan of on-site inspections is based on a bank's size, its risk profile, measures imposed against the bank and the number and result of on-site inspections performed in the previous year. Banks submit reports to the Central Bank on a daily and ten-day basis (liquidity indicators), a monthly and a quarterly basis, which are used for analytical and statistic purposes as well as for supervisory purposes (off-site inspections). All banks have been supervised at least once in 2011. In 2012, the Central Bank performed 26 on-site inspections, eight (8) of which in the area of money-laundering.

The Administration for Supervision of Financial Institutions within the National Bank has four departments, one of which responsible for the supervision of banks. This department currently has 102 staff, of which 23 responsible for off-site supervision and 36 for on-site supervision.

In performing its supervisory function, the National Bank cooperates with bank supervisory authorities of various foreign countries, including the South East Europe Network of Supervisors. It signed several Memoranda of Understanding with supervisory bodies in the neighbouring countries, as well as with some EU supervisors[1]. Cooperation with domestic institutions takes place mainly through agreed Memoranda of Understanding, such as with the Deposit Insurance Agency, the Securities commission, the Administration for the Prevention of Money Laundering, the Tax Administration, the Commission for the Protection of Competition, the Association of Serbian Banks and the Belgrade Stock Exchange.

**b) Insurance and occupational pensions**

According to Serbia, the basic legal act of its legislation on insurance is the Insurance Law. Additionally, there are other laws regulating specific areas such as the Law on Compulsory Traffic Insurance and the Law on Bankruptcy and Liquidation of Banks and Insurance Companies. Serbia stated that its Insurance Law was almost fully aligned with Solvency I, to be applicable by end-2015, while alignment with **Solvency II** (Directive 2009/138/EC, amended by Directive 2014/51/EU) was still in the early stages, in particular on Pillar I (quantitative requirements) and on Pillar III (reporting requirements), and to be completed by the end of 2018.

Serbia explained that most savings in the life insurance market were denominated in Euros, while most non-life insurance was denominated in dinars. Most investments are in government securities, denominated in both Euros and dinars. The total market was estimated at EUR 1.4 bn.

According to Serbia the Insurance Law is applied to all insurance companies, but not to the Serbian Export Credit and Insurance Agency and the National Mortgage Insurance Corporation. Insurance undertakings are required to establish a functional and efficient system of governance, applying the proportionality principle. Companies are prohibited from pursuing life and non-life insurance activities simultaneously. Simultaneous use of the same company for external audit and consultancy is equally prohibited. According to Serbia, capital adequacy requirements are in line with Solvency I. Insurance undertakings must regularly provide information to the supervisory authority. This relates in particular to capital requirements, the solvency margin and technical provisions. In case an insurer does not meet the solvency requirements any more, it must submit to the National Bank a plan on how to re-establish its solvency. In case an insurance company runs into difficulties, the National Bank has comprehensive supervisory powers, including prohibiting the conclusion of new contracts, cancelling old ones and suspending certain payments or withdrawing the operating license.

Foreign insurance companies with head offices in EU Member States or third countries may not establish a branch in Serbia or provide services in Serbia without having an establishment

[1] Slovenia, Hungary, Greece, Bulgaria, Cyprus, Romania and France. In October 2015 the NBS joined a memorandum of cooperation between the European Banking Authority and other regulatory bodies of South Eastern European countries.

in the country. Their freedom to provide services is envisaged with the date of accession at the latest.

The minimum solvency margin varies according to the type of service provided. Acquisitions beyond certain thresholds require the notification to the National Bank. The Insurance Law contains an exhaustive list of circumstances for license refusal by the National Bank.

**Insurance company groups** are subject to **supplementary supervision** (Directive 98/78/EC) and need to submit consolidated financial statements and other data to the supervisor. The National Bank also participates in supervisory colleges. Group supervision is not yet aligned with Solvency II.

Serbia stated that it applies, to a large extent, Directive 2005/68/EC on **re-insurance** by means of the Insurance Law and there are currently four domestic reinsurance companies in Serbia.

Serbia stated that insurance mediation through brokerage and agency activities is a very important distribution channel in Serbia and that this area is largely aligned with Directive 2002/92/EC on **insurance mediation** by means of the Insurance Law and associated bylaws. An exception to this is the intermediation in the area of motor traffic insurance, which currently allows also other intermediaries, i.e. entities authorised for motor vehicle inspection, to sell Motor Third Party Liability insurance policies. Moreover, the amount of professional indemnity insurance for intermediaries as well as additional requirements for insurance-based investment products remains to be aligned.

According to Serbia, Directive 2009/103/EC on **motor insurance** is almost fully implemented in Serbia through the Law on Compulsory Traffic Insurance and associated laws. Insurance is compulsory and covers damages (personal injury and to property) occurring on the territory of Serbia. Serbia signed the Multilateral Guarantee Agreement in 2011. Alignment with EU provisions on validity of insurance and single premium (i.e. rules regulating territorial validity of the third party insurance policy) is envisaged. Supervision is implemented by the National Bank, the Ministry of Interior and the Traffic Police. Public functions in accordance with this law are performed by the Association of Serbian Insurers, supervised by the Ministry of Finance. Minimum sums insured are in the dinar equivalent of EUR 1 million for personal injury per single loss event and EUR 200,000 for damage to property per single loss event. Deregulation of tariff calculation for insurance is envisaged from EU accession. A Guarantee Fund is to be funded for financial protection of passengers in public transport and third party claimants. This fund is to cover damages where no compulsory insurance was contracted, the insurance provider is insolvent or injury has been caused by an unknown motor vehicle, aircraft or boat. Serbian legislation in this area is not aligned with the *acquis* with regard to the sums insured – the amounts shall be raised gradually and be fully compliant by EU accession. Single premium rules are envisaged in the Law, to be applied from the date of accession.

As regards **occupational pensions**, Serbia stated that it is partially compliant with Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision. In Serbia, this field is regulated by the Law on Voluntary Pension Funds and Pension Schemes and its bylaws, while implementation is overseen by the National Bank. There are currently six (defined contribution base) voluntary pension funds operating in Serbia. They do not have legal entity status, are owned by fund members in proportion to their share in fund assets and managed by four management companies. Management companies must be closed joint stock companies and may be established by domestic and foreign natural and legal persons. Their operating licences are issued by the National Bank. Only natural persons, domestic or foreign, can be a member of a fund, either directly or through a pension scheme. There are rules restricting the investment policy of the funds to ensure security, diversification and liquidity: assets may be invested in public debt securities, corporate debt securities (up to 50%), shares (up to 40%), money deposits (up to 35%), real estate (up to 5%) etc. The total investment of fund asset abroad may not exceed 10% of fund assets. The National Bank supervises the implementation of the law, through supervision of reports and on-site inspections. The management company's licence may be revoked in cases of breach of the law. Serbia stated that technical provisions did not comply with the acquis and compliance in the area of cross-border activities had not been achieved. Serbia stated that full compliance with the EU *acquis* was to be attained by the date of its accession to the EU.

Serbia states that since 2014 its legislation is largely aligned with Directive 91/674/EEC on the **annual accounts and consolidated accounts of insurance undertakings.** The area is governed by the Accounting Law as well as specific secondary legislation, regulating the contents of balance sheets, profit and loss statements, technical provisions, definitions, income statements and publicity of financial statements. Implementing legislation with regard to notes to the financial statements is to be updated in a new framework in the course of 2016.

According to Serbia, Directive 2001/17/EC on **reorganisation and winding-up** of insurance undertakings was largely implemented through the Law on Bankruptcy and Liquidation of Banks and Insurance Companies. The National Bank may adopt reorganisation measures such as the transfer of portfolio, the prohibition of conclusion of new contracts and of certain payments, and temporary limitations in asset management. The National Bank initiates the winding-up by withdrawing the licence. The Deposit Insurance Agency acts as bankruptcy or liquidation administrator of the insurance company. Pay-out rank, rights and obligations of parties involved in the winding up proceedings are defined by law. The Commercial Court is the competent authority for the re-organisation and winding-up of insurance undertakings. Winding-up rules relating to EU relations, information to the competent authorities of other EU Member States and branches of third countries still need to be addressed in an amended law by 2018.

As regards **administrative capacity**, Serbia explained that the National Bank of Serbia was assigned the supervisory authority in this area. The National Bank´s Insurance Supervisory Department (part of the National Bank´s Department for Supervision of Financial Institutions) has 55 staff. It acts independently but has no legal personality. It performs checks both off-site and on-site, receives all information necessary from supervised institutions and can take preventive and corrective measures as well as impose fines. It can impose sanctions such as the withdrawal of licenses, refer cases for economic offenses to the judicial authorities and can put undertakings in the insurance sector under special administration. The National Bank has concluded bilateral cooperation agreements with regulatory authorities in Slovenia, Belgium, Hungary, the Former Yugoslav Republic of Macedonia, Austria and the South East Europe Network of Supervisors. The National Bank is a member of the International Association of Insurance Supervisors and the International Organisation of Pension Supervisors and since 2011 it has participated in the South East Europe Network of Supervisors (CESEE).

**c) Financial market infrastructure**

Regarding **settlement finality**, Serbia stated that after the adoption of its Law on Payment Services in December 2014, its legal framework is fully harmonised with Directive 98/26/EC on settlement finality in payment and securities settlement systems. Key definitions of institutions and participants in payment systems as well as rules on netting and transfer orders and insolvency proceedings are aligned but some elements will be applied only upon Serbia´s EU accession. Alignment is also envisaged in the area of securities settlement systems.

According to Serbia, the alignment with Directive 2002/47/EC on **financial collateral** arrangements as regards linked systems and credit claims is incomplete. The Law on Contracts and Torts, the Law on the Capital Market, the Law on Pledge of Movable Assets and the Law on Bankruptcy contain provisions that are relevant for provision and enforcement of financial collateral, but according to Serbia, all require updating with regard to financial collateral in order to comply with the acquis. Serbia states that full alignment is planned for 2016.

According to Serbia, its Law on Capital Market was adopted in 2011 and thus is not aligned with the European Market Infrastructure Regulation ("EMIR", 648/2012/EU) on over the counter (OTC) derivatives, central counterparties and trade repositories. However, it stated that the main international principles agreed under the Bank for International Settlements were adhered to and that full harmonisation would be attained at the latest six months prior to the accession to the EU.

**d) Securities markets and investment services**

Serbia's legislation in the area of **securities markets** is specified by the Law on Capital markets and in bylaws issued by the Securities Commission, which supervises the implementation of the law. This law defines and regulates, inter alia, financial instruments, transferable securities, investment firms, investment and ancillary services, regulated market, multilateral trading facilities and over the counter trade, the scope of work and responsibilities of the market supervision and competent authorities. Serbia stated that the law is aligned to a large extent with Directive 2004/39/EC on markets in financial instruments ("**MiFID I"**). Any brokerage – by a broker-dealer company or a bank – requires a license issued by the Securities Commission. Only a joint-stock company established in Serbia is allowed to operate a regulated market. Currently, the Belgrade Stock exchange is the only such operator authorised in Serbia. Notable exceptions to the alignment are the status of systematic internalisers, tied agents, home/host member states as well as the possibility for foreign investment firms to operate through branches and their effective access to the domestic regulated market. Serbia stated that alignment with MiFID II (2014/65/EU) is not achieved and will depend on the development of its capital markets.

According to Serbia, its legislation is aligned to a large extent with Directive 2003/71/EC ("**Prospectus Directive**"). The relevant Serbian legislation consists of the Capital Market Law, as well as the specific rulebooks. However, the law has not yet been aligned with respect to cross-border activities and foreign issues. Alignment is required with regard to making punishable also the attempt to act unlawfully. Serbian legislation has not yet been aligned with Directive 2010/73/EC (Prospectus II). Serbia did not state a precise date for alignment.

Directive 2003/6/EC on insider dealing and market manipulation ("**Market Abuse"**) is largely implemented in Serbian national law through the Law on Capital Market and its bylaws. The Securities Commission issues bylaws and supervises the implementation of the law. Serbia explained that it has not aligned with Directive 2014/57/EU on criminal sanctions for market abuse regarding buy-back programs and stabilisation of financial instruments. Alignment is envisaged no later than six months prior to Serbia´s EU accession. Serbia has not yet started alignment with the Regulation on Market Abuse (MAR) 596/2014.

According to Serbia, its legislation is partially aligned with Directive 97/9/EC on **investor compensation schemes.** National legislation in this area consists of the Law on Securities and implementing rules on the Central Depositary Agency. Full compliance is aimed to be achieved with the adoption of the forthcoming Law on Capital Market.

Serbia's legislation is partly aligned with Directive 2009/65/EC (as amended in 2014) on the coordination of laws, regulations and administrative provisions relating to **UCITS.** Serbian legislation on UCITS is governed by the Law on Investment Funds. This law regulates the definitions and conditions for establishment, operation and investment policies, information policy and other issues relevant to fund operations. Currently there are four management companies and 13 investment funds with a total value of less than EUR 100 million.

Serbia stated that while there is a high level of compliance of the law with the acquis in some areas such as terms and definitions, investor information and capital requirements, alignment is not achieved with regard to scope and definitions. Also the remuneration policy for management companies is not regulated and cross-border mergers are prohibited. There are no limits for investments in government securities or within the same group. The rules for investment in master-feeder structures are also non-compliant. Finally, Serbia stated that it is not aligned with Directive 2011/61/EC on Alternative Investment Fund Managers ("**AIFMD**").

As regards **administrative capacity**, supervision of securities markets and investment services in Serbia is carried out by the Securities Commission. The Commission has status of a legal person, governed by the Law on the Capital Market. Its supervisory independence is expressed by its independence in financial and personal respects. However, before making public the regulations from its remit, it has to obtain the agreement from the Ministry of Finance. The commission has five members which are appointed by the Serbian National Assembly for a renewable 5-year-period and can only be dismissed by the Serbian parliament on the basis of reasons defined by law. Membership is *ad personam.*

Supervision of market participants is performed through direct controls (daily, periodic and annual reports as well as ad hoc requests) and indirect controls (through statistical analysis). It is authorised to reject auditors´ reports and request new audits; it also determines and publishes the list of legal persons allowed to audit the sector under its remit. The Securities Commission is a full signatory of IOSCO's Multilateral Memorandum of Understanding and has concluded 12 other Memoranda of Understanding with supervisory authorities for securities markets.

## III ASSESSMENT OF THE DEGREE OF ALIGNMENT AND IMPLEMENTING CAPACITY

Overall, Serbia has already reached a satisfactory level of alignment and partly applies the *acquis* in the fields covered by this chapter. However, in order to be well prepared to take on the obligations of membership, Serbia will have to continue its efforts through further ambitious legislative reforms to incorporate the substantial EU *acquis* in the financial services area. In this sense, preparations will need to continue so as to ensure alignment and full implementation by the time of accession.

Further alignment with the *acquis* and its correct implementation are expected to take place on a regular basis, especially taking into account the evolving nature of the *acquis* in the financial services field.

Serbia's overall **administrative capacity** in all financial services areas is currently satisfactory. However, it will need to be strengthened in view of the increasing responsibilities and future obligations of each supervisor deriving from the application of the *acquis* in this chapter. In addition to a possible need for reinforcement in staff numbers, these institutions need to make further efforts to build upon the existing professional quality of their employees and continuously increase their technical expertise through targeted trainings. The same applies to supervisory practices and IT systems used to ensure effective and reliable prudential supervision, which will need to be updated to comply with the new *acquis*.

Finally, steps need to be taken in view of Serbia's attendance as observer in the work of the three European Supervisory Authorities –EBA, ESMA and EIOPA – closer to the time of accession.

**a) Banks and financial conglomerates**

Serbia has reached a satisfactory level of alignment with the *acquis* in this area. However, progress towards further alignment with recent legislative developments, particularly those transposing Basel III standards, will need to take place progressively in the coming years.

Serbia has largely transposed Directive 2006/48/EC on rules associated with the **taking up and pursuit of the business of credit institutions**. However, Serbia needs to adopt legislation allowing EU banks to provide services through branches.

Serbia`s rules on **capital adequacy** for investment firms and credit institutions are compliant with Basel II rules. Serbia needs to start alignment with the new package on capital requirements composed of Regulation (EU) 575/2013 and Directive 2013/36/EU transposing Basel III. This concerns also those of Serbia´s core capital requirements which are somewhat stricter than the EU´s and thus not fully in line with the *acquis*.

Serbia needs to align with Directive 2002/87/EC on the comprehensive framework for the supplementary supervision of **financial conglomerates**.

Serbia has largely aligned with *acquis* requirements on the coverage level of the **deposit guarantee scheme.** Steps need to be taken in order to transpose Directive 2009/l4/EC amending Directive 94/l9/EC, defining a public guarantee of EUR 100,000 for deposits applicable from accession at the latest, instead of the current EUR 50,000.

EU legislation on **reorganisation and winding-up** is partly transposed. Serbia needs to include investment firms into the scope of its legislation and agree upon cooperation procedures with Member States and third countries, including with regard to ensuring universality in the winding up and re-organisation of credit institutions with branches on other EU countries, mutual recognition of measures and proceedings as well as the cooperation of authorities.

As regards **administrative capacity**, the National Bank of Serbia is well equipped to perform its current regulatory and supervisory tasks. However, in view of its increasing responsibilities and future obligations deriving from the application of the evolving EU *acquis*, the National Bank needs to continue its efforts to maintain and increase the quality of their technical expertise, supervisory systems and practices, and IT systems so as to ensure effective and reliable prudential supervision in line with the Basel Core Principles for Effective Banking Supervision. Constant attention needs to be given to the existence of proper supervisory tools (e.g. data collection from supervised institutions, data verification and expert evaluation, frequency of on-site inspections, supervisory review process of institutions, etc.) and the close cooperation of the National Bank with regulatory bodies from EU member states and the region.

**b) Insurance and occupational pensions**

Serbia has in general reached a good level of alignment in the insurance sector and partly applies the *acquis* in this area. Serbia's legislation is largely compliant with the Solvency I regime including with regard to **life insurance**. Work needs to start towards full alignment with Solvency II.

Serbia has not yet aligned with Directive 98/78/EC on **supplementary supervision of insurance groups.**

Having largely transposed Directive 2005/68/EC, Serbia has reached a good level of alignment with the *acquis* requirements for **re-insurance**. However, Serbia still needs to align with Directive 64/225/EEC on the abolition of restrictions on freedom of establishment and freedom to provide services in respect of reinsurance and retrocession; and will need to align with Directive 2008/37/EC on reinsurance, as regards the implementing powers conferred on the Commission.

Serbia has reached a good level of alignment with the *acquis* requirements for **insurance mediation** by having largely transposed Directive 2002/92/EC. However, it now needs to align with the new Insurance Distribution Directive (IDD, 2016/97/EU), which has entered into force on 23 February 2016. Legislative aspects related to the intermediation in the area of motor insurance as well as the amount of professional indemnity cover for insurance brokerage and additional requirements for insurance-based investment products will have to be adopted.

Having largely transposed Directive 2009/103/EC Serbia has reached a good level of alignment with the *acquis* requirements for **motor insurance.** The two gaps – minimum amounts insured and single premium rules – will need to be gradually closed.

Serbia's legislation is aligned partially with *acquis* requirements for **occupational pensions** and the supervision of institutions for occupational retirement provision. Steps need to be taken towards full alignment, focussing on including cross-border activities. Technical provisions are to be implemented irrespective of Serbia´s operation of a defined contributions pension scheme.

Serbia's legislation is largely aligned with the *acquis* requirements for **annual accounts and consolidated accounts of insurance undertakings.** It will need to upgrade implementing legislation notably on notes on the accounts.

Serbia applies to a large extent Directive 2001/17/EC on **reorganisation and winding-up** of insurance undertakings. However, legislation needs to be adopted in order to align winding-up rules relating to Community relations, information to the competent authorities of other member states and branches of third countries.

In terms of **administrative capacity**, the Insurance Supervisory Department of the National Bank of Serbia needs to maintain a good level of human resources and take the necessary steps so that appropriate training is provided to its employees in view of market developments and implementing Solvency II requirements. On-site and off-site insurance inspections need to continue on a regular basis.

**c) Financial market infrastructure**

In the field of financial market infrastructure Serbia is reasonably aligned with the *acquis*.

Serbia is largely aligned with the *acquis* requirements for **settlement finality** in payment and securities settlement systems. Further legislation will need to concentrate on setting out the conditions and manner of the National Bank´s oversight role as well as on adopting the EU´s rules on securities settlement systems.

Serbia is only moderately aligned with the *acquis* on **financial collateral** arrangements. Amendments of the Laws on Capital Market, on Pledge of Movable Assets and on Bankruptcy remain to be adopted.

Serbia will need to start transposing the requirements of Regulation (EU) No 648/2012 ("**EMIR**"). Despite the fact that the requirements on central counterparties (CCPs) and trade repositories may not be directly relevant due to the lack of such infrastructure in Serbia, EU requirements have to apply to potential future users of derivatives.

**d) Securities markets and investment services**

Serbia has reached a satisfactory level of alignment in the field of securities markets and investment services and partly applies the *acquis* in this area.

Serbia's legislation is largely aligned with Directive 2004/39/EC on **markets in financial instruments** (MiFID I) but needs to take steps towards full alignment including by transposing the related Implementing Directives and Regulations. In addition, Serbia will need to catch up with legislative changes to the *acquis* after the adoption of Directive 2014/65/EU (MiFID II).

Serbia is largely aligned with Directive 2003/71/EC on **prospectuses**. Full alignment will namely have to include the cross-border activities and foreign issues, as well as the incrimination of the attempt to act unlawfully. Directive 2010/73/EC on Prospectuses (Prospectuses II) remains to be transposed.

While Serbia has reached a good level of alignment with Directive 2003/6/EC on **market abuse,** it needs to take steps towards full alignment by transposing Directive 2014/57/EU on buy-back programs and the stabilisation of financial Instruments and to start aligning with Regulation 596/2014 on Market Abuse (MAR).

Serbia is partially aligned with Directive 97/9/EC on **investor compensation schemes** and needs to continue preparation towards full alignment with more recent EU amendments to existing legislation.

Serbia is partially aligned with the *acquis* requirements for **UCITS**. Serbia will need to allow cross-border mergers. It will also need to align with Directive 2011/61/EC on **Alternative Investment Fund Managers** and meet the requirements of Regulations 345/2013 and 346/2013 on **European Venture Capital Funds** and **European Social Entrepreneurship Funds**. While there are currently no such funds in the country, Serbia needs to prepare meeting its obligations should it become a host Member State for any of these funds.

In terms of **administrative capacity,** the Securities Commission is well equipped in order to fulfil its current regulatory and supervisory functions. However, overall administrative and institutional capacity will need to be strengthened further to account for the expanding responsibilities that the new *acquis* entails.