



# ANALYSIS OF OBSTACLES TO SALES OF NON-PERFORMING RECEIVABLES OF SERBIAN MSMEs



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BALKANSKI CENTAR ZA  
REGULATORNU REFORMU  
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# TABLE OF CONTENTS

TABLE OF CONTENTS .....	5
ABBREVIATIONS AND ACRONYMS .....	7
RELEVANT REGULATIONS .....	8
EXECUTIVE SUMMARY .....	9
1. INTRODUCTION .....	19
IMPACT OF NON-PERFORMING RECEIVABLES ON THE MSME SECTOR .....	21
2. SIGNIFICANCE OF NON-PERFORMING RECEIVABLES .....	23
RECEIVABLES OF MSMES IN SERBIA .....	23
IMPACT OF THE COVID-19 OUTBREAK ON THE PAYMENT INDEX .....	27
3. REGULATORY FRAMEWORK .....	35
LATE PAYMENT LAW .....	35
SHORTCOMINGS OF THE LATE PAYMENT LAW .....	37
REGULATORY FRAMEWORK FOR ASSIGNMENT OF RECEIVABLES FOR CONSIDERATION .....	40
ASSIGNMENT OF RECEIVABLES FOR CONSIDERATION .....	40
FACTORING .....	45
ENFORCED COLLECTION OF ASSIGNED RECEIVABLES .....	47
OUT-OF-COURT ENFORCED COLLECTION OF BILLS OF EXCHANGE .....	47
CIVIL PROCEEDINGS .....	49
ENFORCEMENT PROCEEDINGS .....	50
BANKRUPTCY PROCEEDINGS .....	52
4. TAX TREATMENT OF NON-PERFORMING RECEIVABLES AND THEIR SALE .....	57
TAX TREATMENT OF NON-PERFORMING RECEIVABLES .....	57
RECEIVABLES AS TAX EXPENDITURES FROM THE PERSPECTIVE OF CIT RULES .....	57
WRITE-OFF OF RECEIVABLES .....	58
IMPAIRMENT OF RECEIVABLES .....	59
CIT RELIEF RULES IN OTHER JURISDICTIONS .....	59
NON-PERFORMING RECEIVABLES FROM THE PERSPECTIVE OF VAT .....	61
VAT RELIEF RULES IN SERBIA .....	61
VAT RELIEF RULES IN OTHER JURISDICTIONS .....	62
TAX TREATMENT OF THE SALE OF NON-PERFORMING RECEIVABLES .....	64
SALE OF RECEIVABLES FROM THE PERSPECTIVE OF CIT .....	64
SALE OF RECEIVABLES FROM THE PERSPECTIVE OF VAT .....	65
5. THE MARKET IN MSME RECEIVABLES .....	67
DEMAND FOR MSMES' NON-PERFORMING RECEIVABLES .....	67
PORTFOLIO PURCHASES .....	69
FACTORING MARKET .....	70
6. INVOICE TRADING MODEL .....	75
INVOICE TRADING MODEL AS A MARKET-BASED SOLUTION .....	75
RISKS ASSOCIATED WITH THE INVOICE TRADING MODEL .....	77
PRECONDITIONS FOR EFFECTIVE INVOICE TRADING .....	78

ELECTRONIC INVOICING IN B2B TRANSACTIONS.....	79
OUTSTANDING REGULATORY ISSUES FOR RECEIVABLES FINANCING IN SERBIA.....	82
REGULATORY ARRANGEMENTS IN OTHER JURISDICTIONS .....	85
7. RECOMMENDATIONS.....	91
STRATEGIC FRAMEWORK OF REGULATORY AND MARKET-BASED MEASURES TO RESOLVE MSMES' NON-PERFORMING RECEIVABLES .....	91
DEVELOP AND ENACT A NATIONAL PROGRAMME AND ACTION PLAN FOR RESOLUTION OF NON-PERFORMING RECEIVABLES HELD BY SERBIAN MSMES .....	91
IMPROVEMENT OF THE LATE PAYMENT LAW .....	92
FOSTERING A CULTURE OF PROMPT PAYMENT IN COMMERCIAL TRANSACTIONS .....	95
IMPROVING THE REGULATORY FRAMEWORK FOR SALE OF NON-PERFORMING RECEIVABLES .....	98
IMPROVING THE TAX TREATMENT OF RECEIVABLES .....	100
INTRODUCE POTENTIAL MARKET-BASED SOLUTIONS FOR MSME RECEIVABLES FINANCING .....	102
APPENDIX: MANAGING NON-PERFORMING RECEIVABLES .....	103
APPENDIX: SEMI-STRUCTURED INTERVIEWS .....	108
SEMI-STRUCTURED INTERVIEW: COLLECTION COMPANY 1 .....	108
SEMI-STRUCTURED INTERVIEW: COLLECTION COMPANY 2 .....	109
SEMI-STRUCTURED INTERVIEW: LAW FIRM .....	111
SEMI-STRUCTURED INTERVIEW: FACTORING COMPANY .....	113
SEMI-STRUCTURED INTERVIEW: RECEIVABLES INSURANCE COMPANY .....	115
APPENDIX: PAYMENT INDEX METHODOLOGY .....	119
APPENDIX: COMPARATIVE OVERVIEW OF RECEIVABLES TRADING PLATFORMS IN THE EU .....	120
UNITED KINGDOM .....	120
ITALY .....	123
FRANCE .....	129
SPAIN .....	132
GERMANY .....	137
SERBIA.....	138



## ABBREVIATIONS AND ACRONYMS

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<b>BSA</b>	Serbian Bankruptcy Supervision Agency
<b>B2B</b>	Business-to-business
<b>BRA</b>	Serbian Business Registers Agency
<b>EBRD</b>	European Bank for Reconstruction and Development
<b>ECJ</b>	European Court of Justice
<b>EOTF</b>	Enforcement Officer Tariff of Fees
<b>EPR</b>	European Payment Report
<b>EU</b>	European Union
<b>IAS</b>	International Accounting Standards
<b>IFRS</b>	International Financial Reporting Standards
<b>MSME</b>	Micro, small and medium-sized enterprise
<b>NBS</b>	National Bank of Serbia
<b>NPL</b>	Non-performing loan
<b>PA2B</b>	Public authorities-to-business
<b>PPR</b>	Pre-packaged plan of reorganisation
<b>SCC</b>	Serbian Chamber of Commerce and Industry

## RELEVANT REGULATIONS

Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions (OJ L 200, 8.8.2000, p. 35–38)
Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions (OJ L 48, 23.2.2011)
Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain (OJ L 111, 25.4.2019, p. 59–72)
Regulation on recognition, valuation, presentation and disclosure of positions in individual financial statements of micro and other legal entities ( <i>Pravilnik o načinu priznavanja, vrednovanja, prezentacije i obelodanjivanja pozicija u pojedinačnim finansijskim izveštajima mikro i drugih pravnih lica</i> ) ( <i>Official Gazette of the Republic of Serbia</i> , No. 89/2020)
Tax Administration Transformation Programme, 2015–2020 ( <i>Program za transformaciju Poreske uprave za period 2015–2020. godine</i> ), Ministry of Finance of the Republic of Serbia – Tax Administration, 2015
Law on Periods of Payment of Monetary Obligations in Commercial Transactions ( <i>Zakon o rokovima izmirenja novčanih obaveza u komercijalnim transakcijama</i> ) ( <i>Official Gazette of the Republic of Serbia</i> , Nos. 119/2012, 68/2015, 113/2017, and 91/2019)
Law on Foreign Exchange Operations ( <i>Zakon o deviznom poslovanju</i> ) ( <i>Official Gazette of the Republic of Serbia</i> , Nos. 62/2006, 31/2011, 119/2012, 139/2014, and 30/2018)
Law on Enforcement and Security ( <i>Zakon o izvršenju i obezbeđenju</i> ) ( <i>Official Gazette of the Republic of Serbia</i> , Nos. 106/2015, 106/2016 – Authentic Interpretation, 113/2017 – Authentic Interpretation, and 54/2019)
Factoring Law ( <i>Zakon o faktoringu</i> ) ( <i>Official Gazette of the Republic of Serbia</i> , Nos. 62/2013 and 30/2018)
Law on Bills of Exchange ( <i>Zakon o menici</i> ) ( <i>Official Gazette of the Federal People's Republic of Yugoslavia</i> , No. 104/46; <i>Official Gazette of the Socialist Federal Republic of Yugoslavia</i> , Nos. 16/65, 54/70, and 57/89; <i>Official Gazette of the Federal Republic of Yugoslavia</i> , No. 46/96; and <i>Official Gazette of Serbia and Montenegro</i> , No. 1/2003 – Constitutional Charter)
Law of Contracts and Torts ( <i>Zakon o obligacionim odnosima</i> ) ( <i>Official Gazette of the Socialist Federal Republic of Yugoslavia</i> , Nos. 29/78, 39/85, 45/89 – Constitutional Court of Yugoslavia Ruling, and 57/89; <i>Official Gazette of the Federal Republic of Yugoslavia</i> , No. 31/93; <i>Official Gazette of Serbia and Montenegro</i> , No. 1/2003 – Constitutional Charter; and <i>Official Gazette of the Republic of Serbia</i> , No. 18/2020)
Bankruptcy Law ( <i>Zakon o stečaju</i> ) ( <i>Official Gazette of the Republic of Serbia</i> , Nos. 104/2009, 99/2011 – Other Law, 71/2012 – Constitutional Court Ruling, 83/2014, 113/2017, 44/2018, and 95/2018)
Corporate Income Tax Law ( <i>Zakon o porezu na dobit pravnih lica</i> ) ( <i>Official Gazette of the Republic of Serbia</i> , Nos. 25/2001, 80/2002, 80/2002 – Other Law, 43/2003, 84/2004, 18/2010, 101/2011, 119/2012, 47/2013, 108/2013, 68/2014 – Other Law, 142/2014, 91/2015 – Authentic Interpretation, 112/2015, 113/2017, 95/2018, 86/2019, and 153/2020)
Value Added Tax Law ( <i>Zakon o porezu na dodatu vrednost</i> ) ( <i>Official Gazette of the Republic of Serbia</i> , Nos. 84/2004, 86/2004 – Corrigendum, 61/2005, 61/2007, 93/2012, 108/2013, 6/2014 – Adjusted Dinar Amounts, 68/2014 – Other Law, 142/2014, 5/2015 – Adjusted Dinar Amounts, 83/2015, 5/2016 – Adjusted Dinar Amounts, 108/2016, 7/2017 – Adjusted Dinar Amounts, 113/2017, 13/2018 – Adjusted Dinar Amounts, 30/2018, 4/2019 – Adjusted Dinar Amounts, 72/2019, 8/2020 – Adjusted Dinar Amounts, and 153/2020)
Civil Procedure Law ( <i>Zakon o parničnom postupku</i> ) ( <i>Official Gazette of the Republic of Serbia</i> , Nos. 72/2011, 49/2013 – Constitutional Court Ruling, 74/2013 – Constitutional Court Ruling, 55/2014, 87/2018, and 18/2020)
Law on Tax Procedure and Tax Administration ( <i>Zakon o poreskom postupku i poreskoj administraciji</i> ) ( <i>Official Gazette of the Republic of Serbia</i> , Nos. 80/2002, 84/2002 – Corrigendum, 23/2003 – Corrigendum., 70/2003, 55/2004, 61/2005, 85/2005 – Other Law, 62/2006 – Other Law, 63/2006 – Other Law, Corrigendum, 61/2007, 20/2009, 72/2009 – Other Law, 53/2010, 101/2011, 2/2012 – Corrigendum, 93/2012, 47/2013, 108/2013, 68/2014, 105/2014, 91/2015 – Authentic Interpretation, 112/2015, 15/2016, 108/2016, 30/2018, 95/2018, and 86/2019)
Capital Market Law ( <i>Zakon o tržištu kapitala</i> ), <i>Official Gazette of the Republic of Serbia</i> , Nos. 31/2011, 112/2015, 108/2016, and 9/2020)

## EXECUTIVE SUMMARY

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Non-performing accounts receivable can be described as receivables that have become due but have not been paid by the debtor, either in whole or in part. However, non-performing receivables go beyond just late payment, because they can become non-performing even before they mature. In this context, a deterioration in the debtor's liquidity position, accompanied by an account freeze and enforced collection actions by other creditors and other similar circumstances, indicate a particular account receivable has become non-performing.

Non-performing receivables are a major challenge that has been slowing growth of Serbia's economy, especially in the MSME sector. Late payments jeopardise the liquidity of businesses and can seriously threaten their operations, which is a particular concern for MSMEs, whose performance depends on their ability to regularly collect debts.

Serbian small businesses use trade credit more frequently compared other countries in the region. The use of trade credit as a source of financing working capital is about two times more likely in Serbia (49%) compared to other countries in the region (24%). Non-performing trade credit and unpaid receivables have been recognized as obstacles to the financial stability and growth of the MSME sector. Recent survey shows that 11-12% of businesses never try to enforce their accounts receivable.

The Serbian Late Payment Law establishes the regulatory framework for addressing the issue of non-performing receivables in Serbia by providing for remedies available to creditors in the event of delays in payment by their debtors from both the private and the public sector. The Law is largely aligned with Directive 2011/7/EU, which governs this issue in the EU. It does, however, depart from the Directive in a number of major issues, which may jeopardise its effective implementation. In addition, oversight of how the Law is enforced reveals it faces a number of challenges in practice. These considerations are the key reasons why the Law has failed to foster a culture of prompt payment in commercial transactions.

Time limits for payment are not appropriately regulated in the Law, in the largest single departure from the Directive. The Law does envisage strict requirements for contracting payment terms longer than the statutory maximum, whilst the Directive only stipulates that payment periods must be specifically contracted and must not be grossly unfair to the creditor. Unlike the Directive, the Law provides for three exemptions but no other situations in which the parties can deviate from the statutory periods.

**The Law does not recognise the legal standard of payment periods 'grossly unfair' to the creditor.** The Directive describes situations in which a particular contractual payment period clause could be deemed grossly unfair to the creditor. For instance, clauses that deviate from good commercial practice, those that envisage long payment periods unsuited to the goods that are the subject matter of the contract, and the lack of an objective reason for contracting a longer payment period may all constitute grossly unfair contractual terms. The Directive allows the courts to adjudicate such claims. By contract, the Law prescribes an exhaustive list of exceptions for which longer payment periods are allowed in B2PA and B2B transactions, which gives no latitude to the courts in assessing whether longer payment terms are allowed. Such a rigid approach limits the autonomy of wills of the contracting parties and deviates from the approach the Directive is founded upon, namely prohibiting abuse of the autonomy of wills in justified circumstances when this is to the detriment of the creditor.

**The Late Payment Law has proven fairly unsuccessful in practice, and, moreover, it is questionable whether the supervisory authorities have sufficient capacity to effectively scrutinise its implementation.** Research done into the application of the Law has revealed no more than 32 percent of those polled were aware of its existence, with only 11 percent having demanded compensation for late payment pursuant to it. In addition to weaknesses in use, it is questionable whether the Tax Administration, the government authority responsible for enforcing the law in B2B transactions, has sufficient capacity to oversee compliance by private businesses. The Tax Administration is currently consolidating its core activities, which is a strategic goal of its Transformation Programme. Oversight of timely payments in commercial transactions is a non-core (i.e. not tax related) activity of the Tax Administration, so these powers should be shifted from the Tax Administration to a different body.

**The Serbian regulatory framework does not significantly constrain the sale of accounts receivable.** From the perspective of substantive law, assignment of accounts receivable does not require any particular conditions to be met, nor do businesses face any restrictions in engaging in such assignment. Exceptions to this rule are factoring and assignment of claims owed to banks by natural persons, which are governed by two special pieces of legislation, the Factoring Law and the Financial Consumer Protection Law.

**The procedural regulations for trading accounts receivable are simple, but the framework does envisage some procedural fees that can adversely affect the cost-effectiveness of this practice.** There are no onerous requirements for an assignee to intervene in an ongoing civil dispute or enforcement or bankruptcy procedure. In addition, out-of-court collection of bills of exchange requires the new creditor to meet only a minimum of formal conditions,

but there is no procedure for an assignee to intervene in an ongoing enforced collection procedure involving a bill of exchange.

**Substitution of creditors in civil cases has been simplified.** Assignment requires written consent only from the assignor, rather than from both parties, which makes it significantly easier for the assignee to take action in ongoing cases. In enforcement procedures there are some administrative costs involved with formally certifying assignment agreements, which may be significant if the claim in question is low. Where an entire portfolio of low value accounts receivable is subject to assignment, the costs of enforcement may increase significantly, since this may involve a large number of individual assignment agreements that all have to be notarised.

**To intervene in an enforcement procedure, an assignee must additionally pay the cost of the enforcement officer's fee for issuing a procedural decision to permit the assignee to do so.** According to Item 2[8] of the Enforcement Officer Tariff of Fees, this fee amounts to 20 percent of the fee for preparing, managing, and archiving an enforcement case. This fee could be disproportionately large in low value cases and could disincentivise the assignment of accounts receivable subject to ongoing enforcement. Assignment agreements also must be formally notarised at some stages of bankruptcy proceedings, and this again could introduce disproportionately large costs for assignment of small claims. As MSMEs generally hold single, low value claims, the costs could well affect their readiness to engage in assignment at all.

**The tax treatment of non-performing receivables for corporate income tax (CIT) purposes provides limited opportunities for creditors to recognise these accounts receivable as expenses in their tax balance sheets.** For a creditor to impair and, subsequently, permanently write off an uncollected receivable, the creditor must bring a civil suit, initiate enforcement procedure, or take other legal actions with the aim of collecting that receivable. An absence of these legal actions means the creditor is not allowed to impair or write off the accounts receivable in its tax balance, meaning that the creditor will in this case have to self-assess and pay CIT for receivables it has been unable to collect. In some EU countries, write-off requirements do not mandate that the creditor only pay these costs: the creditor is also able to write off the uncollected portion of the account receivable if it has taken other actions with a view to collection, such as settlement and mediation. In Serbia, therefore, writing off accounts receivable does not make sense for creditors from a tax perspective, which goes some way towards explaining the very low write-off rate of 1.6 percent compared to the EU average of 2.6 percent, according to the 2019 European Payment Report (EPR). This also reduces the credibility of creditors' financial statements.

One alternative to writing off accounts receivable may be selling them, where the creditor need not pay the legal costs of collection but may still recognise the loss incurred in selling the receivable as an expense in its tax balance sheet. Here, the assignor can recognise a loss allowance for the sale of the receivable in its tax balance sheet and claim CIT relief for the discount at which it sold the debt. The creditor need not pay any additional legal costs to collect the receivable it would otherwise have to pay if it decided to write off the receivable.

**Value added tax (VAT) may be a major tax liability when it comes to uncollected accounts receivable.** The Value Added Tax Law prescribes highly stringent requirements for any ta in the event a receivable arising from the sale of goods or services cannot be collected either in whole or in part. Other countries examined in this report have less strict conditions for changing the VAT base. For this reason, a creditor facing difficulties with collecting accounts receivable also has to self-assess, report, and pay VAT for the appropriate tax period on those accounts receivable it has not been able to collect. These costs can make it much more difficult for a VAT payer to collect a non-performing receivable. By contrast, assignment of receivables for consideration is free of VAT, but the taxpayer is not exempt from prior tax.

The Serbian non-performing receivables market is not specifically regulated and is open to all businesses, except for receivables owed to banks by private individuals, businesses, and farmers, which may only be assigned to other banks. Types of accounts receivable can be divided into several categories: (1) corporate or consumer receivables; (2) performing or non-performing receivables; (3) receivables with or without third-party guarantees; and (4) receivables secured or unsecured by collateral. Debt buyers offer debt collection in exchange for a commission, and outright debt purchase. Receivables may be purchased singly or in a portfolio.

The Serbian market consists mainly of non-performing loans (NPLs), where five large servicers and buyers of NPLs account for most of the demand. The purchase of non-performing receivables is primarily handled by receivables collection agencies, 28 of which are currently registered.

The MSME receivables market is underdeveloped due to poor demand for these receivables, which are insufficiently profitable for both buyers and MSME creditors, and these generally sell smaller individual accounts receivable. The main shortcomings of this market are: 1) high discount rates, the direct consequence of poor receivables management by MSMEs; 2) large gap in valuation of accounts receivable by potential investors, on the one hand, and MSME creditors, on the other; and 3) lack of awareness and capacity at MSMEs to effectively manage accounts receivable and realistically assess their profitability.

The MSMEs also face major difficulties in identifying potential buyers of non-performing receivables. By contrast, collection agencies are primarily oriented towards large corporate clients in the financial sector.

**The factoring market in Serbia is underdeveloped, in particular for MSMEs. There are currently 45 firms licensed to provide factoring services, with banks accounting for the bulk of the demand.** Of these 45 businesses, 18 are factoring companies and 26 are banks, with the Serbian Export Credit and Insurance Agency also active in the market. Sixteen of the firms actively engage in factoring and 19 banks advertise factoring services online.

**The Serbian factoring market is the smallest in the region by volume of trading.** The market has been growing consistently since 2015, reaching a value of €883mn in 2019. This is lower than in any of the neighbouring countries, with Croatia, the closest regional market, seeing a value of €1.14bn.

**The market in accounts receivable arising from commercial transactions is highly suited to alternative financing models, especially non-bank services geared towards MSMEs.** In contrast to traditional financial services providers, which are focused on large corporate clients, a multitude of digital solutions have emerged in recent years that permit MSMEs to access finance that fits their needs. Key amongst these are financial services based on information technology (fintech), which include MSME receivables financing.

**The invoice trading model can be described as an alternative online receivables financing arrangement for MSMEs.** A review of invoice trading platforms in EU countries reveals three approaches to their operation: 1) marketplace; 2) direct purchase of receivables; and 3) supply chain financing. In this context, an invoice trading platform may act as a marketplace, matching creditors and potential investors; directly purchase receivables from creditors; as well as provide supply chain financing through reverse factoring.

**Invoice trading platforms are not specifically regulated, so it is up to national law to decide whether any financial services provided by a platform will fall under mandatory regulation.** In the Serbian framework there remain many outstanding issues with how these financial services are regulated, including their potential requirements with regard to anti-money laundering/combating the financing of terrorism (AML/CFT) controls, personal data protection, foreign exchange operations, and other key areas. First and foremost, it ought to be clarified whether these platforms' activities are subject to specific regulation. For instance, the platforms could not engage in lending, as the Banks Law restricts this activity to banks and other entities permitted to lend by special legislation. Invoice trading platforms could engage in factoring, but only provided they met the requirements of the Factoring Law and received approval from the Ministry of Finance. The platforms would be subject to AML/CFT controls if they engaged in an activity regulated by the Law on the Prevention of

Money Laundering and Combating the Financing of Terrorism, such as factoring. Moreover, the platforms would in any case be required to follow appropriate personal data protection measures whilst complying with the Personal Data Protection Law. These are just some of the issues raised by the Serbian legal framework. As such, the potential entry of invoice trading platforms into the Serbian receivables market will largely depend on their business model and financial services they intend to provide.

**The Central Invoice Register for commercial B2PA transactions and a centralised electronic invoice system for commercial B2PA and B2B transactions are key infrastructural arrangements that will promote innovations in receivables financing for MSMEs in Serbia.** The e-invoicing system ought to be introduced in 2021 for B2PA transactions, whilst the target date for B2B transactions involving all VAT payers is 1 January 2023. E-invoicing is key for continued development of the commercial accounts receivable market as it establishes a robust system to track and verify invoices issued by entities in both the public and the private sector.



## RECOMMENDATIONS FOR REMOVING OBSTACLES TO SALE OF NON-PERFORMING RECEIVABLES BY MSMEs

Measure	Steps	Benefits
<b>STRATEGIC FRAMEWORK OF REGULATORY AND MARKET-BASED MEASURES TO RESOLVE MSMEs' NON-PERFORMING RECEIVABLES</b>		
Develop and enact a National Programme and Action Plan for Resolution of Non-Performing Receivables held by Serbian MSMEs	<ul style="list-style-type: none"> <li>- Create a Working Party to develop the National Programme and Action Plan that would comprise representatives of the Government of Serbia, Ministry of Economy, Ministry of Trade, Tourism and Telecommunications, Ministry of Finance, Tax Administration, Serbian Chamber of Commerce and Industry, National Bank of Serbia, and other relevant institutions;</li> <li>- Develop and enact the National Programme and Action Plan.</li> </ul>	Establishment of an umbrella framework for the necessary regulatory and non-regulatory measures to resolve non-performing receivables; Institution of political, institutional, and infrastructural support for the necessary measures.
<b>IMPROVEMENT OF THE LATE PAYMENT LAW</b>		
Establish an effective mechanism to enforce the Late Payment Law by transferring this responsibility from the Tax Administration to another government authority (potentially the Competition Commission)	<ul style="list-style-type: none"> <li>- Conduct a functional assessment of the resources needed to effectively enforce the Late Payment Law to inform the potential transfer of these powers to a different government authority;</li> <li>- Develop and enact amendments to the Late Payment Law with regard to enforcement powers (Article 9);</li> <li>- Transfer enforcement powers to another government authority, potentially the Competition Commission.</li> </ul>	<p>Attainment of one transformation objective of the Tax Administration, namely the removal of its non-core (non-tax) responsibilities.</p> <p>Greater capacity and expertise to enforce the law.</p> <p>Prevention of excessive delays in payment (as the authority would act sua sponte).</p> <p>Since this measure requires direct intervention by a government authority, this would prevent situations where debtors could be disincentivised from exercising their rights to avoid hurting their business relationship with the creditor.</p>
Mandate reporting on payment practices by statute	<ul style="list-style-type: none"> <li>- Develop and enact amendments to the Late Payment Law to introduce new reporting requirements for businesses that could be grouped according to: 1) subject matter (payment periods in non-financial contracts); 2) extent, to include (a) information on payment terms such as periods, any changes to these, and dispute resolution; and (b) information on average payment periods, to include statistics for timely and late payments); and 3) addressees (medium-sized and large companies, or medium-sized and large companies in the trade sector).</li> </ul>	<p>Provision of relevant information on transactions terms to suppliers to inform pre-contract decision-making.</p> <p>Bringing competitive pressure to bear on buyers to ensure they adjust their payment periods.</p> <p>Public availability of data may have a positive impact on a culture of prompt payment.</p> <p>The data would indicate which sectors are the most affected by late payments and could inform enforcement decision-making.</p>
Introduce a legal standard for 'grossly unfair' contractual terms	<ul style="list-style-type: none"> <li>- Develop and enact amendments to the Late Payment Law to introduce exceptions from statutory payment periods (Articles 3 and 4) modelled after Directive 2011/7/EU, which permits contracting parties to explicitly stipulate longer payment periods provided that such terms are not grossly unfair to the creditor. Here, using the Directive as a model, the definition could include situations where a particular period is deemed to be grossly unfair to the creditor;</li> <li>- Prepare guidelines for application of the legal standards for 'grossly unfair' contractual terms to be used by courts, supervisory authorities, and businesses. These guidelines could specifically include examples of contractual terms grossly unfair to creditors.</li> </ul>	<p>Improvement of the current legislation that deviates from payment periods mandated by contract law and additionally prohibits contracting of payment periods longer than allowed maximums except in a handful of cases.</p> <p>Establishment and development of case law in the application of this legal standard and increase in legal security and predictability with regard to application of the Late Payment Law.</p>
Define the term 'non-performing account receivable' in the Late Payment Law	<ul style="list-style-type: none"> <li>- Develop and enact amendments to the Late Payment Law to introduce a new definition of non-performing receivables (Article 2). This definition could comprise formal elements of a non-performing receivable, such as default, as well as other indicators that a receivable has or may become non-performing, including deterioration of the debtor's liquidity situation accompanied by an account freeze, initiation of enforced collection procedures by other creditors, and similar circumstances.</li> </ul>	Introduction of legal certainty and predictability in treating non-performing receivables into Serbian law and better application of the Late Payment Law.

Mandate shorter payment periods in some cases, especially for perishable goods	<ul style="list-style-type: none"> <li>- Develop and enact amendments to the Late Payment Law and the Trade Law to introduce shorter payment periods for perishable goods. These amendments could be patterned after Directive (EU) 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, which introduces specific rules for this sector that derogate from Directive 2011/7/EU;</li> <li>- Align the statutory framework and define perishable goods, such as food and agricultural produce, after the pattern of Directive (EU) 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain. The Directive deems the following situations to be unfair trading practices: 1) payment made later than 30 days after the delivery date or due date; and 2) cancellation of an order of perishable products at such short notice that the supplier cannot reasonably be expected to find an alternative means of commercialising or using those product (30 days prior to envisaged delivery);</li> <li>- Development of a Regulatory Impact Assessment of this new requirement.</li> </ul>	<p>Adjustment of payment periods to transactions in this sector that is particularly affected by late payment and cancellation of orders at short notice immediately before the expiry dates of the products in question.</p> <p>Protection of creditors from unfair trading practices that are grossly unfair to creditors due to late payment or cancellation of orders prior to expiry of payment period.</p>
Introduce collective redress mechanisms for creditors with monetary claims	<ul style="list-style-type: none"> <li>- Develop and enact amendments to the Late Payment Law to introduce collective redress for creditors after the model of Directive 2011/7/EU by allowing complaints intended to address grossly unfair contractual provisions/terms.</li> </ul>	<p>Easier access to creditor safeguards.</p> <p>Elimination of contracting practices that are grossly unfair to creditors.</p>
<b>RECOMMENDATIONS FOR FOSTERING A CULTURE OF PROMPT PAYMENT IN COMMERCIAL TRANSACTIONS</b>		
Introduce sectoral initiatives to foster good business practices in payment of receivables	<ul style="list-style-type: none"> <li>- Develop guidelines for particular sectors of the economy to foster a culture of prompt payment, adherence to contractual terms, contracting of fair commercial payment terms, etc.</li> </ul>	Standardisation of contracting terms in each sector.
Introduce a Prompt Payment Code	<ul style="list-style-type: none"> <li>- Develop and adopt the Prompt Payment Code, in co-operation with the Serbian Chamber of Commerce and Industry, relevant business associations (especially those that represent the interests of MSMEs) and large companies, requiring the signatories to pay promptly, especially to MSMEs that are the worst affected by late payments;</li> <li>- Take action to familiarise businesses with the content and benefits of the Code.</li> </ul>	Improvement of payment culture, indication that signatories are ready to abide by contractual payment terms, signal to suppliers that buyers who sign the Code pay their debts regularly as contracted.
Introduce an MSME Commissioner	<ul style="list-style-type: none"> <li>- Develop and enact a regulatory framework instituting the Commissioner and regulating complaints and resolution of outstanding issues between parties to contracts.</li> </ul>	Provision of institutional support to MSMEs in commercial transactions.
Ensure greater use of alternative dispute resolution through mediation	<ul style="list-style-type: none"> <li>- Improve existing capacity of the Serbian Chamber of Commerce and Industry and raise MSME awareness of options for using alternative dispute mechanisms to resolve non-performing receivables.</li> </ul>	<p>Provide a more efficient procedure for creditors to access their rights.</p> <p>Lower costs relative to court cases.</p> <p>Less potential for disputes to harm business relationships.</p> <p>Opportunity to organise training courses, seminars, and other activities to raise awareness of businesses and resolve non-performing receivables.</p>
Inform and educate MSMEs	<ul style="list-style-type: none"> <li>- Organise outreach campaigns in connection with the rights, obligations, collection, and receivables financing for MSMEs.</li> <li>- Set up an online platform to inform and educate MSMEs about managing non-performing receivables and options for addressing issues caused by such receivables.</li> </ul>	<p>Better cash management and greater liquidity of MSMEs in connection the with collection of receivables.</p> <p>Less risk of MSMEs not being able to collect receivables and better receivables planning and management.</p>
<b>RECOMMENDATIONS FOR IMPROVING THE REGULATORY FRAMEWORK FOR SALE OF NON-PERFORMING RECEIVABLES</b>		
Reduce administrative costs of enforcement	<ul style="list-style-type: none"> <li>- Conduct a feasibility assessment of reducing the procedural costs of enforcement imposed by the Enforcement Officer Tariff of Fees;</li> </ul>	Lower burden of costs on receivables and greater profitability of receivables.

	<ul style="list-style-type: none"> <li>- Develop and adopt amendments to the Enforcement Officer Tariff of Fees (Item 2[8]) to remove the fee equal to 20 percent of the fee for preparing, managing, and archiving cases currently applicable to enforcement officers' procedural decisions permitting change of creditor following assignment.</li> </ul>	
Reduce transactional costs involved in selling receivables	<ul style="list-style-type: none"> <li>- Conduct an assessment to ascertain impact on legal predictability and alignment with other legal provisions;</li> <li>- Develop and adopt amendments to Article 48[2] of the Law on Enforcement and Security and Article 117 of the Bankruptcy Law. Currently, having the assignment contract notarised is the only option for the assignee to intervene in an enforcement or insolvency procedure, whereas the amendments would introduce a second option whereby consent from the assignor would be sufficient.</li> </ul>	Lower burden of costs on receivables and greater profitability of receivables.
Provide a more detailed definition of factoring	<ul style="list-style-type: none"> <li>- Develop and adopt amendments to the Factoring Law to provide a more detailed definition of factoring and explicitly stipulate that factoring companies can purchase non-factoring receivables (Article 5). The clarification is necessary as the current definition is excessively vague in this regard.</li> </ul>	Promotion of legal predictability for factoring providers.
<b>RECOMMENDATIONS IN CONNECTION WITH THE TAX TREATMENT OF NON-PERFORMING RECEIVABLES</b>		
Permit settlement and mediation to qualify a creditor for writing off a receivable for tax purposes	<ul style="list-style-type: none"> <li>- Conduct a fiscal impact assessment for this measure.</li> <li>- Develop and adopt amendments to the Corporate Income Tax Law to permit recognition of impaired and written-off receivables as expenses in the event of settlement or mediation (Article 16).</li> </ul>	Could promote alternative dispute resolution between businesses and reduce costs of collecting receivables.
Introduce additional grounds for claiming VAT relief for uncollected receivables	<ul style="list-style-type: none"> <li>- Develop and adopt amendments to the Value Added Tax Law to permit VAT relief in additional situations where the VAT payer is unable to collect a receivable (Article 21);</li> <li>- Conduct a fiscal impact assessment for this measure.</li> </ul>	Reduction of costs faced by VAT payers for uncollected receivables and increased profitability of receivables.
Inform and educate MSMEs of how they can obtain beneficial tax treatment through sale of receivables	<ul style="list-style-type: none"> <li>- Offer workshops for MSMEs to showcase potential tax savings they could achieve by selling receivables as opposed to writing them off;</li> <li>- Prepare educational materials for MSMEs</li> </ul>	Inducing MSMEs to manage their receivables more efficiently and reduce costs associated with receivables once they have become non-performing.
<b>RECOMMENDATIONS IN CONNECTION WITH POTENTIAL MARKET-BASED SOLUTIONS FOR MSME RECEIVABLES FINANCING</b>		
Regulatory review of the treatment of fintech platforms and feasibility assessment of a new MSME receivables market	<ul style="list-style-type: none"> <li>- Conduct a regulatory assessment of the Serbian legal system, with a comparative overview of other relevant jurisdictions, to identify receivables financing models potentially applicable to MSMEs. This assessment should include a review of the necessary legal amendments and the institutional landscape relevant for fintech operations.</li> <li>- Conduct a feasibility study of receivables financing models potentially applicable to MSMEs and potential MSME receivables markets that could rely on fintech solutions, such as invoice trading and other potential options.</li> <li>- The feasibility study could in particular assess whether this new market segment could be established given the current infrastructure and capacities of the Serbian capital market (such as a stock exchange or other types of markets).</li> </ul>	Development of a strategic document for use by Serbian authorities and institutions relevant for regulation and operation of fintech platforms in Serbia (National Bank of Serbia, Ministry of Finance, Tax Administration, Securities Commission, and other relevant bodies).



# 1. INTRODUCTION

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This assessment looks at monetary claims arising from commercial transactions (sale of goods or services) that small businesses enter as creditors. It primarily deals with non-performing receivables, defined as accounts receivable that have become due but have not been paid by the debtor, either in whole or in part. Under some circumstances, an account receivable may become non-performing even before it becomes due. These situations mainly involve a deterioration in the debtor's liquidity position, accompanied by an account freeze and enforced collection actions by other creditors and other similar circumstances. In addition, a receivable may be contested before it becomes due, with this being a strategy employed by illiquid debtors to delay payment. As such, non-performing payments are a broader concept than late payments.

**MSMEs (micro, small and medium-sized enterprises) are crucial for an inclusive economy: they drive job creation, economic growth, and contribute to a stable economic and social environment.** The Serbian MSME sector constitutes 99.8% (app. 400.000) of all enterprises, generates about two-thirds of total employment, contributes to app. 60% of value-added of the Serbian economy and creates app. 37% of total exports.

**Late payments are a major challenge to the sustainability and financing of the MSME sector and cause many issues in the operation of businesses, the key problem being that they reduce creditor liquidity.** Late payments usually generate major additional costs for creditors and make it difficult for these to manage their finances. They also have a devastating impact on cash flows, lead to substantial additional costs payable to banks, reduce opportunities for investment, and increase uncertainty for many creditors, especially MSMEs, which greatly affects their competitiveness, profitability, and sustainability, particularly at times when access to finance is constrained or poorly affordable. Late payments also often lead to knock-on defaults in paying suppliers and employees (which has significant adverse social effects), as well as paying taxes, customs duties, and social contributions (affecting public revenues). Lastly, they can make it more difficult to access finance<sup>1</sup> and lead to insolvency of otherwise sustainable firms, which can set off a cascade of bankruptcies along the supply chain, with significant adverse social and economic effects.<sup>2</sup>

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<sup>1</sup> For instance, late payment of taxes, customs dues, and social contributions due to the inability to collect invoices limits access to state aid and programmes financed from structural funds.

<sup>2</sup> Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on combating late payment in commercial transactions (recast) — Implementing the Small Business

Patterned after the European Union (EU) model, the Serbian legal system includes regulations designed to provide relief to creditors from late payment. The Law on Late Payments in Commercial Transactions<sup>3</sup> does not contain a definition of a non-performing account receivable, in contrast to banking regulations, which do provide a definition of a non-performing loan (NPL).

#### BOX 1. MATURITY OF RECEIVABLES AND DEFAULT

At a most basic level, monetary obligations, or receivables, can be divided into matured and not matured. A receivable is matured, or due, when the contractual or statutory time limit for its payment has elapsed. When a time limit is not determined, if the purpose of the transaction, the nature of obligation and the remaining circumstances do not require a specific time limit for fulfilment, the creditor may request immediate fulfilment of the obligation, while the debtor, on his part, may request from the creditor immediate acceptance of fulfilment (Article 314, Law of Contracts and Torts).<sup>4</sup> Moreover, the creditor is be entitled to request fulfilment before the time limit if the debtor fails to supply the creditor with a guarantee promised, or if the debtor, at the request of the creditor, fails to complete a guarantee reduced without fault of the creditor, or if the time limit is stipulated solely in the interest of the creditor (Article 315 LCT). The debtor is also allowed to fulfil an obligation ahead of time, in which case the debtor is entitled to deduct, from the amount of debt, interest covering the period from the date of payment to the date of maturity of the obligation, only where the debtor is permitted to do so by contract or business usage (Article 398 LCT).

The notion of maturity is similar to that of delinquency, but the two do not overlap completely. A debtor is delinquent if it does not fulfil an obligation by a time limit set for its fulfilment, and, in the absence of such time limit, when requested to do so by the creditor (Article 324 LCT).

The maturity of a receivable and lateness in payment create many legal consequences:

1. the statute of limitations period begins to run from the time the creditor was able to request fulfilment (Article 361[1] LCT), or from the occurrence of the time limit, or immediately after the obligation is instituted, where no time limit is contracted pursuant to the rules of Article 314 LCT cited above;
2. the debtor's actions can be avoided only if the account receivable has matured (Article 280 LCT);
3. maturity is the usual requirement for initiating enforced collection (cf. Article 53, Law on Enforcement and Security),<sup>5</sup> even though some enforced collection procedures can be launched before an account receivable becomes due: for instance, in a civil case, the court can

Act', COM(2009) 126 final — 2009/0054 (COD)(2010/C 255/07), Official Journal of the European Union, C 255, 22.9.2010, 43.

<sup>3</sup> Law on Periods of Payment of Monetary Obligations in Commercial Transactions (*Official Gazette of the Republic of Serbia*, Nos. 119/2012, 68/2015, 113/2017, and 91/2019), referred to as 'Late Payment Law' throughout.

<sup>4</sup> Law of Contracts and Torts (*Official Gazette of the Socialist Federal Republic of Yugoslavia*, Nos. 29/78, 39/85, 45/89 – Constitutional Court of Yugoslavia Ruling, and 57/89; *Official Gazette of the Federal Republic of Yugoslavia*, No. 31/93; *Official Gazette of Serbia and Montenegro* No. 1/2003 – Constitutional Charter; and *Official Gazette of the Republic of Serbia*, No. 18/2020), referred to as 'LCT' throughout.

<sup>5</sup> Law on Enforcement and Security (*Official Gazette of the Republic of Serbia*, Nos. 106/2015, 106/2016 – Authentic Interpretation, 113/2017 – Authentic Interpretation, and 54/2019), referred to as 'LES' throughout.

order a defendant to perform an obligation only if such obligation has become due for performance before the close of the main hearing (Article 343, Civil Procedure Law).<sup>6</sup> This means that a lawsuit can be brought before a receivable matures. Nevertheless, in this case the creditor risks having their complaint rejected as premature and/or ultimately having to pay the legal costs;

4. only a receivable that has not yet matured, meaning for which the time limit for performance is yet to occur, may be factored. The most important legal consequence of late payment for monetary obligations is that statutory default interest is owed only after the payment becomes past due (Article 277 LCT).

## IMPACT OF NON-PERFORMING RECEIVABLES ON THE MSME SECTOR

The economic crisis caused by the Covid-19 pandemic has deepened issues with access to finance and late payment by the MSME sector. One of the many adverse effects of Covid-19, any disturbance to a supply chain may further reduce consumption and constitutes a major threat to liquidity and risk exposure of the MSME sector. These circumstances have been making it difficult for Serbian businesses to fulfil their orders and meet their obligations, which may have a knock-on effect on local and regional supply chains. The possible recession can cause challenges in accessing bank loan finance. This could induce MSMEs to delay paying their debts in order to retain working capital. MSMEs can remain in business in the short run even when operating at a loss, but no company can survive for long without cash required to meet its current expenditures. As such, an effective system for MSMEs to collect their accounts receivable is a precondition for them to securely finance their business ventures.

**Efficient management of non-performing receivables can reduce reliance on internal funds or informal sources of finance.** Even though the Late Payment Law defines payment periods – and sanctions for not abiding by them – there is much evidence that the issue of late payments continues to adversely impact the operation of the Serbian MSME sector. Compared with their foreign peers, Serbian MSMEs have suffered huge losses in the past due to non-performing receivables. There are many likely reasons why MSMEs have failed to address outstanding non-performing receivables, including lack of awareness of how to manage accounts receivable, poor risk management, unequal power relationships between suppliers and buyers, inefficiency of the judiciary, absence of a culture of prompt payment, and the like.

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<sup>6</sup> Civil Procedure Law (*Official Gazette of the Republic of Serbia*, Nos. 72/2011, 49/2013 – Constitutional Court Ruling, 74/2013 – Constitutional Court Ruling, 55/2014, 87/2018, and 18/20200), referred to as ‘CPC’ throughout.

MSMEs generally lack an appropriate receivables management process as outlined in this chapter, and this has been identified in semi-structured interviews with relevant players in the receivables market (see the Semi-Structured Interviews chapter). One reason is that MSMEs fail to recognise the benefits of this system. The size and structure of MSMEs also act as constraints to the introduction of these rather complex arrangements. MSMEs often lack human and other resources that would allow them to put into effect an efficient collection system. Even though much data is available on the BRA and NBS web sites (such as financial statements), their appropriate interpretation requires specialised financial and legal skills. One option is for an MSMEs to retain a collection agency to manage its receivables, and another is to introduce specialised software tools, such as Bisnode solutions, into the company's internal receivables management process; combinations of these two approaches are also possible. The advantages of using this software include: (1) simple indicators showing debtor solvency and liquidity risk, with complete solvency reports available on demand; (2) aggregation of information from a variety of sources, such as company registration data, bank accounts, tax audits, real estate ownership, and the like; (3) ability to set predefined criteria (triggers) to allow automatic monitoring and reporting for a large number of businesses (including account freeze, removal of tax identification number, initiation of enforced collection, etc.), which also automates risk monitoring; and (4) ability to use these tools for other MSME operations, such as marketing, sales, portfolio diversification, market research, and the like.



## 2. SIGNIFICANCE OF NON-PERFORMING RECEIVABLES

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### RECEIVABLES OF MSMES IN SERBIA

One of the major sources of financing of the Serbian MSME sector comes from **suppliers and purchasers**. According to the last available data from the Serbian Business Registers Agency (hereinafter: *SBRA*), total (gross) short-term obligations from the business operation of the non-financial sector in 2019 are close to 17 percent of the total value of assets. In the sector of micro and small companies, the share amounts to 19 percent and 29 percent, respectively, which is significantly more than 12 percent of the share at large companies. By comparison, in Germany, the trade credit share is somewhat less in comparison to the total balance sheet liabilities, and it amounts to 15.8 percent. Still, it represents the most important external source of financing of the non-financial sector. The table below shows that Serbian small businesses report using trade credit regularly as a source of finance and more frequently compared to ECA and other countries. WB BEEPS data for 2019 show that only 12% of SMEs reported using banking core products (i.e., loans, overdrafts, and/or credit cards) to finance investments, but 48% reported banks as a source of working capital. While an important source of finance for Serbian MSMEs' working capital is bank finance (loans or overdrafts), **the use of trade credit as a source of financing working capital (Table 1) is about two times more likely in Serbia (49%) compared to other countries both in the region (24%) and overall (28%).** Furthermore, the significance of the use of trade credit increased as the 2013 BEEPS Survey showed that 43.3 percent of companies used trade credits to finance the working capital.

**Non-performing trade credit and unpaid receivables have been recognized as obstacles to the financial stability and growth of the MSME sector.** According to the 1000 businesses survey, 11-12% of businesses never try to enforce their accounts receivable. Furthermore, 30% of businesses need more than 60 days to settle their receivables and generally micro and small firms do not classify receivables. Only a small fraction perform classification and make distinction between non-performing and problematic receivables.

Table 1. The use of trade credit as a source of financing working capital

	Serbia	ECA	All countries
Percent of firms using banks to finance invest	39.4	26.6	26.5
Small (5-19)	28.1	24.6	23.6
Medium (20-99)	48	27.7	28.9
Proportion of investment financed internally (%)	60.8	75.2	71.8
Small (5-19)	66.3	76.2	73.5
Medium (20-99)	56.6	73.7	69.6
Proportion of investment financed by banks (%)	19	14.1	14.9
Small (5-19)	12.1	13.2	13
Medium (20-99)	24.3	14.9	16.5
Percent of firms using banks to finance working capital	51	30.6	30.1
Small (5-19)	48.3	27	25.8
Medium (20-99)	52.2	36.7	37
Percent of firms using trade credit to finance working capital	50.1	24.7	29.7
Small (5-19)	48.8	23.8	28.3
Medium (20-99)	51.8	26.6	32.2
Proportion of investment financed by supplier credit (%)	14.4	4.2	4.9
Small (5-19)	13.8		
Medium (20-99)	15.7		
Proportion of working capital financed by banks (%)	17.8	10.1	11.7
Small (5-19)	17.1	8.9	10.1
Medium (20-99)	18.8	12.1	14.4

Source: World Bank BEEPS data 2019

Serbian MSMEs have high losses due to bad debts compared to their peers. As per the European Payment Report (EPR) 2018, Serbia is among the countries reporting the highest average levels of bad debt loss as a percentage of total annual revenue in 2017. Serbian companies report that, on average, they experienced bad debt losses in 2017 that amount to 2.9% of total annual revenue. In the Report, it is also stressed that of all European companies that were polled, Serbian companies are the slowest in handing over outstanding invoices to a collection agency. The European average for handing over outstanding invoices to a collection agency amounts to 82 days, while the average for Serbian companies amounts to 264 days. These effects are passed on through supply chains as MSME paid their suppliers late because they had received less than they owe. According to research undertaken by EOS MATRIX/IPSOS in 2016 on a sample of 200 medium-sized and large retail, manufacturing, and services firms, time to payment in business-to-business (B2B) transactions in Serbia was among the longest in Europe. Only 12% of all B2B payments were made in under 30 days, with the retail sector seeing the worst excesses. There is some anecdotal evidence that larger firms pay more slowly and more often lately than MSMEs. However, there is an obvious need for more reliable recent data on late payments, and the proper policy response should be evidence-based.

According to the 2019 European Payment Report (EPR),<sup>7</sup> the average payment terms in B2B transactions had increased in October 2019 relative to 2017 (from 35 to 38 days), with, consequently, the average time actually taken by customers to pay also rising (from 39 to

<sup>7</sup> Intrum Iustitia, European Payment Report 2019. Available at [intrum.com/media/5755/intrum-epr-2019.pdf](https://intrum.com/media/5755/intrum-epr-2019.pdf).

**40 days**). The European average for payment terms accepted by customers was 43 days, with customers actually taking 40 days to pay. In addition, in B2C transactions the longest average time to collection was 47 days (whilst the European average stood at 23 days), and the average time to payment by the public sector, of 38 days, was below the 42-day European average (with payment terms allowed to the public sector also lower than the average). In Serbia, late payments were mostly caused by debtors in financial difficulty, as reported by 72 percent of those polled in 2019 (up from 82 percent in 2018), as opposed to the European average of 54 percent. According to the EPR, 1.6 percent of all accounts receivable in Serbia are written off, lower than the European average of 2.6 percent in 2019. All other reasons given for poor performance with collection are below the European averages, indicating that illiquidity in the Serbian economy is recognised as the primary cause of inadequate collection.<sup>8</sup>

These data reveal that Serbian businesses face the greatest issues in collecting from customers; that issues with collection from other businesses are not as pronounced relative to the European average; and that Serbian firms have the least issues when dealing with the public sector. The preferred precaution among Serbian companies to protect against bad payment is pre-payment, with 65 percent of Serbian companies favouring this alternative, in comparison to the European average of 39 percent.<sup>9</sup>

**According to the Payment Study,<sup>10</sup> in 2019 no more than 27.3 percent of all businesses made payments on time, as opposed to the European average of 44.3 percent.** Figures for 2017, 2018 and 2019 show that payments by due date had declined by 2.4 percent in 2018, sliding further by 3.1 percent in 2019 relative to 2018 and by 5.5 percent in 2017. Payments past due by up to 90 days increased by 3.2 percent in 2019, with payments past due by more than 90 days ('very late payments') up by 0.1 percent relative to the preceding year. Large companies had the poorest payment practices: no more than 20.3 percent of these firms paid on time. In the MSME segment, small businesses were the best examples, since 28.5 percent of them paid by due date, with another 62.6 percent doing so within 30 days of payment becoming due. Micro- and medium-sized firms generally paid within 30 days. These figures show that MSMEs face cash flow issues when dealing with large companies, since they pay more regularly than large firms.

**A survey conducted by EOS MATRIX/IPSOS revealed that the prevalence of late payments placed Serbia at the very head of the list of countries surveyed, with one in three invoices (29 percent) not paid by due date and 4 percent remaining unpaid altogether. At the**

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<sup>8</sup> *Ibid*, 9, 66.

<sup>9</sup> *Ibid*, 66-67.

<sup>10</sup> Cribis Dun & Bradstreet, Payment Study 2020, 184-185. Available at [hello.bisnode.com/rs/145-JUC-481/images/Payment-Study-2020-cs.pdf](https://hello.bisnode.com/rs/145-JUC-481/images/Payment-Study-2020-cs.pdf).

sectoral level, late payments accounted for 23 percent of all transactions in the services sector, rising slightly in industry and trade (at 30 and 31 percent, respectively). In B2B transactions, creditors had to wait for payment for on average 50 days after maturity (in an SCC survey, this figure was found to be 47 days). The shortest delay was identified in industry (44 days), followed by trade (55 percent) and services (63 percent).

**There are several reasons for the failure of MSMEs to resolve the problem of non-performing trade credit and unpaid receivables.** These include asymmetric bargaining power distribution between suppliers and customers, legal impediments, poor risk management, widespread culture of late payment, and inadequate management of the trade credit function. Again, the nature and extent of these reasons for failure to optimize trade credit varies from sector to sector and is often contingent on market conditions and the sector's structure. Efficient resolution of unpaid receivables reduces the reliance on internal funds or informal sources such as family and friends by connecting firms that are creditworthy to a broad range of lenders and investors. If payment receipt periods are longer than payment demand periods, then this can quickly create funding gaps. There is evidence that this issue is affecting Serbian MSMEs. Although common payment is regulated by the Law on settlement deadlines that has been effective since 2012 and it is a transposition of the 2011/7/EU Directive into the Republic of Serbia legislation.

**Given the difficulties associated with securing bank loans, MSMEs are increasingly turning to the alternative finance industry with online invoice trading being a promising approach.** This particular industry fills the funding gap with innovative funding solutions. Innovative online platforms are delivering newer financing models, such as crowdfunding, peer-to-peer lending, invoice discounting and invoice trading (traditionally, debtor finance products). These certainly provide more efficient and flexible custom working capital solutions to businesses of all sizes. But it is MSMEs that stand to gain the most from these alternative finance solutions. Some of the services online invoice trading companies are offering includes Debtor financing, Invoice factoring, invoice discounting and receivables financing. These are the alternatives to traditional finance products provided by banks. They allow businesses to selectively sell one or more unpaid invoices to private investors as and when they need earlier access to accounts receivable. This provides fast access to much needed working capital, unlocking funds that might not otherwise be available to businesses for up to 120 days and more.

## IMPACT OF THE COVID-19 OUTBREAK ON THE PAYMENT INDEX

Unpaid receivables are among the most problematic consequences of the Covid-19 outbreak. Almost two thirds of businesses state that they expect to face major difficulties with respect to settlement of debt (67%), as well as with respect to collection of receivables (64%). This leaves Serbian companies unable to fulfil orders and contractual obligations, which is also having a substantial impact on local and regional supply chains. To ensure sufficient liquidity of MSMEs, an effective counterpart remedy may be achieved through mechanisms for reducing the risk exposure of MSMEs. For example, the preferred precaution among Serbian companies to protect against bad payment is pre-payment, with 65 percent of Serbian companies favouring this alternative. In comparison, the European average is only 39 percent.<sup>11</sup> Due to the crisis, this precautionary policy will be less viable. In the short term it is more likely that Serbian companies will be forced to sell goods and services without asking for pre-payment to stay in business.

The IMF recently assessed the financial resilience of the corporate sector using corporate balance sheet information combined with earnings expectations at the sector level.<sup>12</sup> The results for 2019 show a substantial heterogeneity across sectors and a potential increase of Debt at Risk to about 33 percent in 2020, with companies in hospitality, machinery and equipment, and transportation sector receiving the hardest hit.<sup>13</sup> These highly affected companies employ about 110,000 employees.

The initial data on the late payments in the Serbian economy has indicated that companies' payments to their suppliers and vendors have been prolonged because of the Covid-19 outbreak. The Payment index<sup>14</sup> was used to estimate the initial effect of the Covid-19 containment measures on late payments. The lower value of index indicates longer period required to pay the debts. The data<sup>15</sup> suggest the presence of the negative trend, and that this trend has deepened in 2020 because of the Covid-19 outbreak. In other words, the

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<sup>11</sup> Intrum Iustitia. 2019. European Payment Report, 66-67. Available at [intrum.com/media/5755/intrum-epr-2019.pdf](https://intrum.com/media/5755/intrum-epr-2019.pdf).

<sup>12</sup> See IMF. 2020. Republic of Serbia: Fourth Review under the Policy Coordination Instrument-Press Release and Staff Report, available at <https://www.imf.org/-/media/Files/Publications/CR/2020/English/ISRBEA2020001.ashx>.

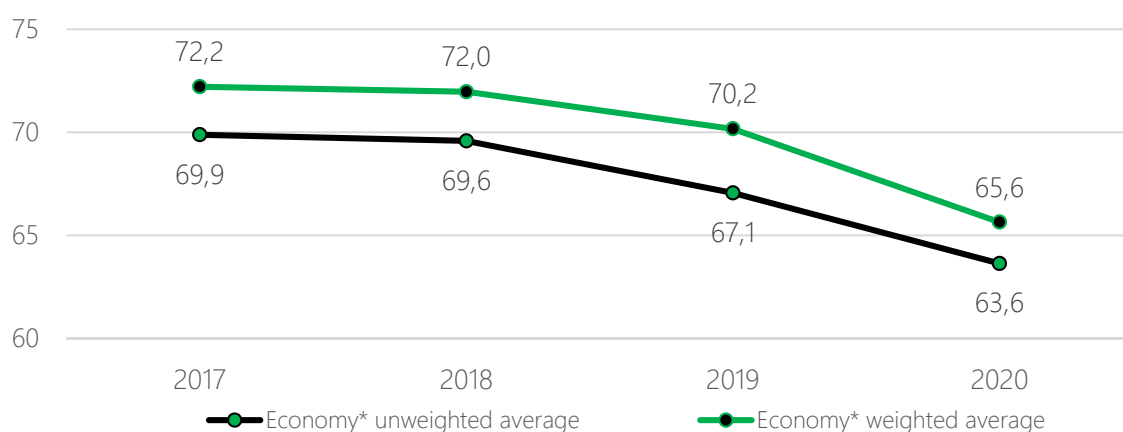
<sup>13</sup> Debt is considered at risk if a company's net earnings (EBIT) do not cover its interest costs fully and its current liabilities exceed current assets.

<sup>14</sup> The payment index developed by Bisnode LLC is calculated as a weighted average of the day between the settlement date and the invoice value date. The payment index is recalculated on a monthly basis. The payment index shows the estimated payment habits of companies on a scale from 0 to 100. The payment index of 80 means that, according to the available information, the company settles its obligations on time. A higher index means that invoices are settled before the payment deadline, while an index below 80 shows that invoices are paid late. The payment index in the range between 75-79 indicates up to 7 days late in payments; in the range between 70-74 indicates up to 15 days late in payments; in the range between 50-69 indicates up to 30 days late in payments etc.

<sup>15</sup> The main limitation of this data set is a high volume of missing data.

companies' average payment period was relatively stable until 2020. The weighted<sup>16</sup> average payment period for companies from selected sectors has increased from the average of app. 15 days (70 - 74 Index points) to app. 30 days (or from 50 to 69 Index points) in 2020. Unless a breakthrough in containing Covid-19 pandemic, it is reasonable to expect that this trend could continue in 2021 (see Figure 1). Similar trends regarding payment periods were observed in all four analysed sectors (see Figures 2 and 3).

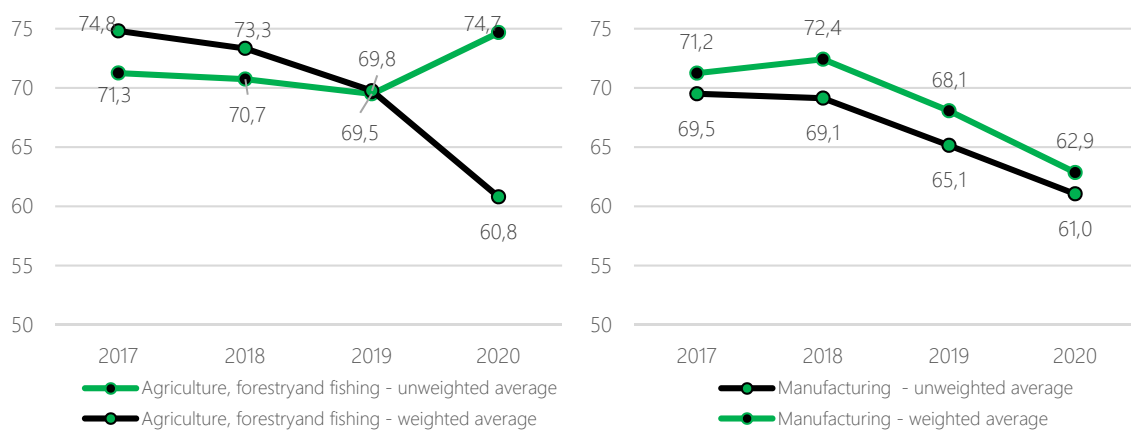
**Figure 1 Payment index of the Serbian economy\***



\*Agriculture, Manufacturing, Construction and the Wholesale and retail trade sector combined.

Source: Author's calculation based on the data from Bisnode LLC.

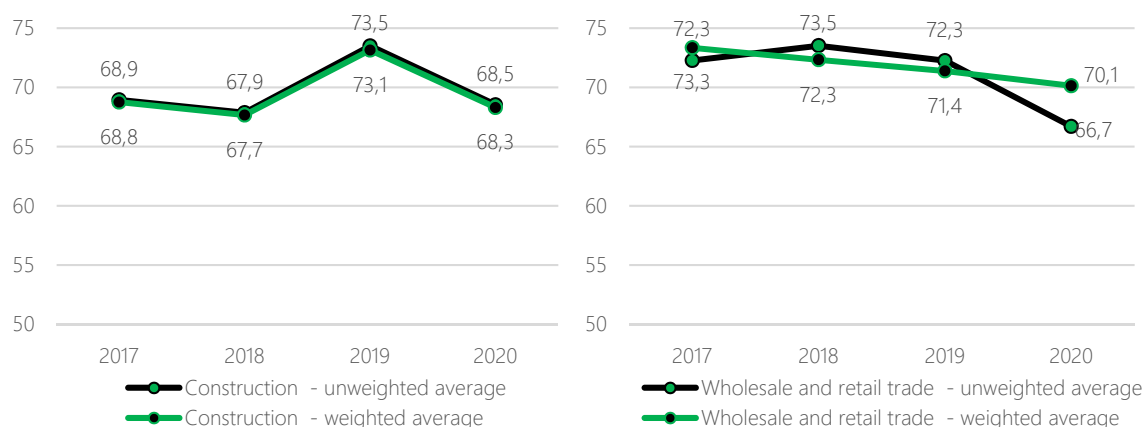
**Figure 2 Payment index of the Agriculture, forestry and fishing and Manufacturing sector**



Source: Author's calculation based on the data from Bisnode LLC.

<sup>16</sup> Gross value added of the Agriculture, Manufacturing, Construction and the Wholesale and retail trade sector were used as a weight in the calculation of the weighted averages.

Figure 3 Payment index of the Construction and the Wholesale and retail trade sector



Source: Author's calculation based on the data from Bisnode LLC.

Prior to 2020, the share of the trade credit (operating liabilities) in the total liabilities in all four selected sectors was stable. Between 2014 and 2019 the share of operating to total liabilities was relatively stable (34.4%). However, a considerable difference in trade credit practice is present between the four analysed sectors, ranging from the average of 23.9% in the construction sector to the average of 45.7% in the wholesale and retail sector in the observed period (Table 1). In the pre-Covid period, about a third of the company's total financing was related to the trade credit. This may suggest that there is no significant additional room for increase in the share of trade credit in total company financing.

Table 2. The share of the trade credit (operating liabilities) in the total liabilities in four selected sectors

Sectors	2014	2015	2016	2017	2018	2019
Agriculture, forestry, and fishing	38.3%	37.3%	34.7%	35.1%	34.3%	32.0%
Construction	22.6%	23.7%	25.2%	25.1%	24.2%	22.5%
Manufacturing industry	31.2%	31.0%	32.3%	33.4%	34.0%	35.2%
Wholesale and retail trade	45.6%	46.2%	46.1%	45.8%	45.9%	44.4%
Average	34.4%	34.6%	34.6%	34.8%	34.6%	33.5%

Source: Author's calculation based on data from Bisnode LLC.

Based on financial statements, companies took on average 129.3 days per year to settle down their trade payables in the period from 2014 to 2019. Companies from the wholesale and retail trade sectors had the shortest average settlement period (88 days). The longest period to resolve trade payables (165.6) was recorded in the construction sector. It is also reasonable to expect that due to changed circumstances the days payable outstanding will increase in the forthcoming period.

**Table 3. The days payable outstanding in the four selected sectors**

Sectors	2014	2015	2016	2017	2018	2019
Agriculture, forestry, and fishing	150.5	145.0	146.5	153.0	144.3	144.4
Construction	197.4	151.6	179.5	171.7	155.1	138.0
Manufacturing industry	115.4	110.2	124.4	119.6	115.4	113.9
Wholesale and retail trade	78.4	73.9	98.9	96.8	92.1	88.3
Average	135.4	120.2	137.3	135.3	126.7	121.1

Source: Author's calculation based on data from Bisnode LLC.

The companies in analysed sectors required additional financing compared to the pre-Covid-19 period. The duration of the business cycle in the observed period was longer than the duration of the cash cycle, which indicates the need for additional sources of financing (Table 3) as well as additional illiquidity exposure during and after the Covid-19 outbreak.

**Table 4. The days payable outstanding in the four selected sectors**

Sectors	2014	2015	2016	2017	2018	2019
Agriculture, forestry, and fishing	52.4	56.5	52.7	64.1	65.8	72.0
Construction	80.1	91.4	69.6	61.5	60.0	70.5
Manufacturing industry	47.8	45.5	41.9	44.6	49.7	52.4
Wholesale and retail trade	37.3	37.6	28.2	32.0	34.4	35.3
Average	54.4	57.7	48.1	50.6	52.5	57.5

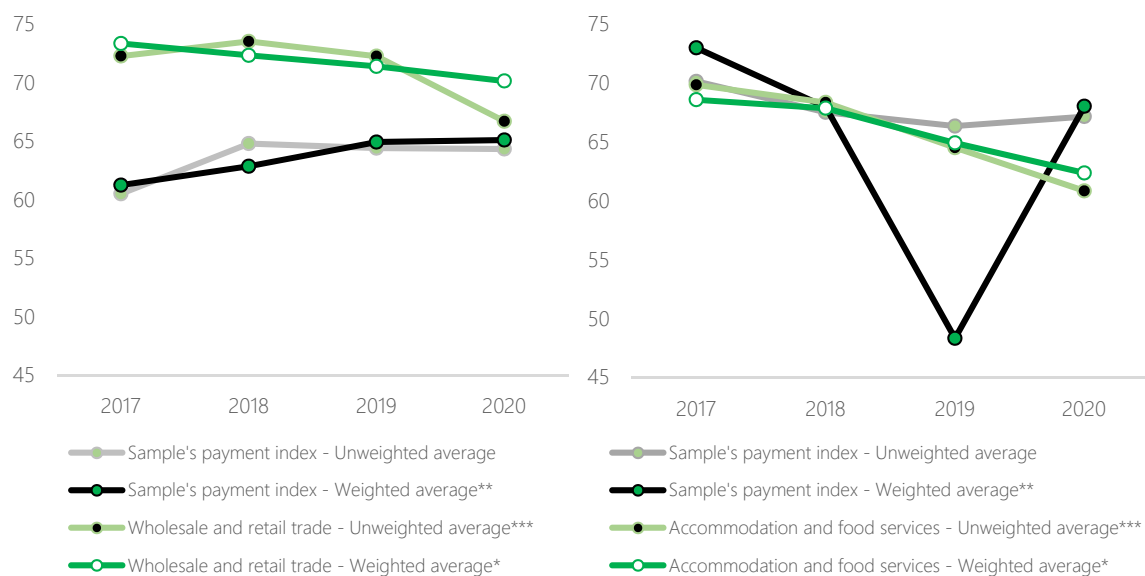
Source: Author's calculation based on data from Bisnode LLC.

Large companies that are affected due to prolonged crises may become the source of illiquidity in their respective sectors.<sup>17</sup> In the pre-Covid period payment practice of large companies tended to be longer than the average payment period in their respective sectors. The slower payment period of the large companies compare to the Wholesale and retail trade sector averages indicates that the large companies had exercised their market position to impose business conditions that are disadvantageous to their suppliers in the terms of cash flows and liquidity. In other words, large companies that make up the sample were imposing trade credits on their suppliers to improve their liquidity to the detriment of their suppliers. This effect is less pronounced in the Accommodation and food services sector, as it is much more liquid by default and there is less need for the trade credits compare to the wholesale and retail trade sector (Figure 4).

<sup>17</sup> The assessment was based on data from the 100 largest Serbian companies, concerning operating revenues, from the Wholesale and retail trade and the Accommodation and food services sector. The selected companies had a market share of at least 1% in their respective markets. The Wholesale and retail trade and the Accommodation and food services sectors were chosen because these sectors were most affected by the Covid-19 containment measures.



Figure 4 Large companies' sample - Payment index



\* Gross value added of the selected industries was used as a weight in the calculation of the weighted averages.

\*\* Companies' shares in the sample's total income were used as a weight in the calculation of the weighted averages.

\*\*\* Weights from 2019 were used as weights for 2020.

Source: Author's calculation based on data from Bisnode LLC.

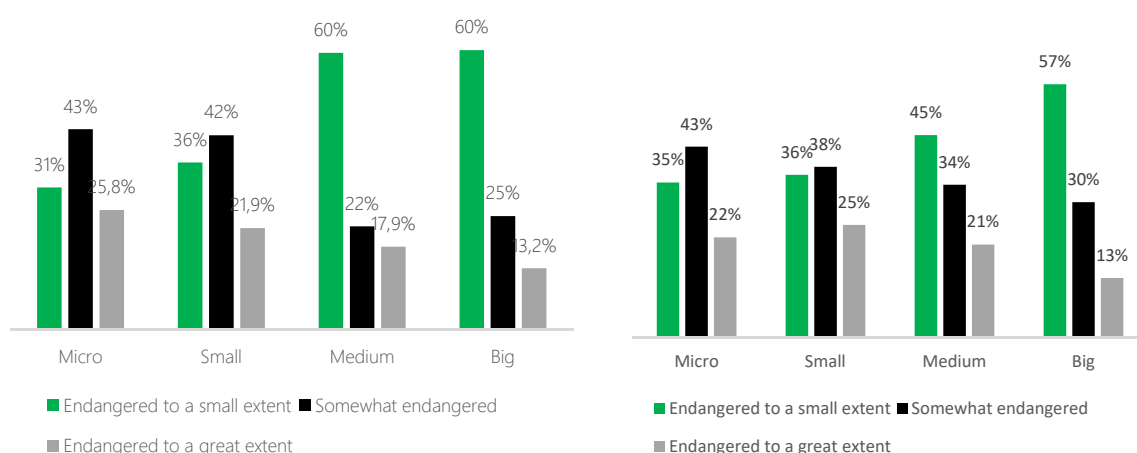
Based on the preliminary and incomplete data from 2020, there was no significant difference in payment practice of large companies compared to the previous period. A viable explanation for the somewhat constant payment practices of large companies, despite the economic crisis caused by Covid-19, maybe Government measures to support the economy. However, another explanation may be the lack of data and the incompleteness of the database used. The same data show convergence between the market average payment period and the payment period of large companies in 2020. Assuming that the payment practice of large companies remained fairly constant, this would indicate that MSMEs were more significantly affected by the Covid-19 containment measures. The practice of shifting the costs of adjustment to the crisis from large companies to small ones will make the business condition for MSMEs more difficult and it will make them more vulnerable to the consequences of the economic crisis. The additional burden in the form providing trade credits to large companies is something that MSMEs will not be able to bear on their own during the economic crisis.

The USAID ninth Annual Survey of 1,000 Serbian companies have shown the significant impact of Covid-19 on various aspects of conducting business in Serbia<sup>18</sup>. Over 60% of micro and small companies respectively have reported higher possible difficulties in settling their financial obligations and in collecting their trade receivables in 2020 (see figure 5). Around 40% per cent of medium and large size companies respectively have stated that

<sup>18</sup> On November 12, 2019, the United States Agency for International Development's (USAID) Cooperation for Growth Project released the findings of the ninth Annual Survey of 1,000 Serbian businesses. The survey's sample of businesses mirrors the Serbian economy by region, size, and sector. It consists of 95% micro and small companies, 3% mid-size companies, and 2% large companies.

they would face a possible hurdle in meeting their financial obligations in the upcoming year. More than a half of interviewed medium-size companies are expecting additional problems in collecting their trade receivables in 2020 and about 40% of large size companies have the same expectations in the coming year (see figure 5).

**Figure 5. Possibility of settling financial obligations (a) and to collect receivables (b)**



Source: USAID ninth Annual Survey of 1000 Serbian Businesses

Half of all companies surveyed reported decreases in revenue and net profits in 2020. More than two-thirds of surveyed micro and small companies respectively are expecting that their business income would be lower in the range between 20% and more than 50% in 2020 compared to the previous year. About 50% of surveyed micro and small companies respectively are expecting that their business income would be reduced in a range between 20% and 50% compared to 2019. Over half of the medium-size companies are expecting a reduction in business income in the range between 20% and 30% in the same period (see table 4).

**Table 5. What will be the economic impact of the coronavirus on reducing your business income in 2020?**

	Micro	Small	Medium	Big
Up to 10%	4.4%	11.5%	16.2%	16.7%
10 to 20%	18.0%	15.2%	27.2%	16.7%
20 to 30%	30.7%	31.4%	56.5%	16.7%
30 to 50%	22.0%	21.1%	0.0%	16.7%
More than 50%	17.9%	13.7%	0.0%	16.7%
Refusal	6.9%	7.3%	0.0%	16.7%

Source: USAID ninth Annual Survey of 1000 Serbian Businesses

The usual period in which surveyed companies are collecting their trade receivables is between 30 and 60 days. Also, about one third of surveyed micro, small and medium size companies have reported that usual duration for collecting trade receivables exceeds 60 days. (see table 5).

**Table 6. What is the usual duration of collecting outstanding receivables (from maturity date to payment date)?**

	Micro	Small	Medium	Big
Less than 30 days	20.2%	20.1%	19.3%	22.6%
31 to 60 days	28.5%	32.3%	33.7%	45.3%
61 to 90 days	16.0%	17.8%	22.0%	13.2%
91 to 180 days	7.4%	9.7%	7.7%	9.4%
More than 180 days	3.1%	7.9%	5.8%	3.8%
We have no outstanding receivables	22.1%	10.4%	10.1%	3.8%
Refusal	2.7%	1.9%	1.5%	1.9%

*Source: USAID ninth Annual Survey of 1000 Serbian Businesses*



### 3. REGULATORY FRAMEWORK

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Receivables become non-performing only after particular conditions have been met. As such, there needs to be consideration of when a receivable becomes non-performing, and, once it does, what legal avenues the creditor has recourse to. This introductory chapter will first review the statutory framework governing payment periods and timely payment in commercial transactions. Serbia has largely aligned its regulatory environment with the EU Late Payment Directive, but numerous problems persist, both with the actual legal instrument and with its implementation in practice. Thereafter, key aspects of the legal framework regulating the assignment of accounts receivable for consideration, or sale of accounts receivable.<sup>19</sup> The Serbian legal system regulates in detail the practice of assignment of accounts receivable, envisaging how these legal transactions are entered into, what consequences they have, and how this option is used for collection of assigned accounts receivable. Apart from reviewing the key sources of law regulating this area, this report will indicate the current limitations of and costs generated by the Serbian legal system that can adversely affect entry into and closure of assignment transactions from the side of both the **assignor** (the initial creditor, or seller of the account receivable) and the **assignee** (the new creditor, or purchaser of the account receivable). Finally, the incentives provided by the legal framework in this regard should also be discussed. As such, the next chapter will consider the issue of how assignment of receivables is treated for tax purposes.

#### LATE PAYMENT LAW

Late payment of accounts receivable threatens the liquidity and solvency of businesses, creates the need for additional finance, and may jeopardise operations and, consequently, have an adverse impact on the economy as a whole. The negative effects of late payment are particularly pronounced where debtors use their market position to impose unfavourable payment terms. This section will discuss application of the Late Payment Law, its alignment with the EU Late Payment Directive, and possible changes that could make

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<sup>19</sup> The expressions 'sale' and 'assignment' will be used interchangeably throughout, except where otherwise noted. In addition, for convenience, the expression 'assignment' will be construed to mean 'assignment for consideration', except where otherwise noted.

the Law more effective in terms of ensuring compliance with statutory payment periods, primarily in transactions between businesses (B2B transactions).<sup>20</sup>

**The Serbian Late Payment Law is largely based on the EU Late Payment Directive.** The major shortcomings of the initial legislative framework concerned its enforcement. According to the current rules, transactions where the debtor is a public-sector entity are supervised by the Budget Inspection of the Ministry of Finance, whilst B2B transactions are controlled by the Tax Administration.<sup>21</sup> Fines depend on the type of debtor and range from RSD 100,000 to 2 million for legal entities, from RSD 10,000 to 500,000 for sole traders, and from RSD 10,000 to 150,000 for natural persons who own registered farms. Inspection oversight of the Late Payment Law is subject to the relevant provisions of the Law on Tax Procedure and Tax Administration.<sup>22</sup>

**Amendments to the Late Payment Law have failed to comprehensively address issues with its enforcement.** One pressing problem is the lack of capacity of the Tax Administration to effectively enforce the statutory rules in commercial transactions given its limited resources. Ever since 2015, the Tax Administration has been undergoing a comprehensive business process reengineering exercise regulated by the Tax Administration Transformation Programme, 2015-2020<sup>23</sup> and the Action Plan for the Tax Administration Transformation Programme, 2018-2023.<sup>24</sup> The Transformation Programme and the Transformation Action Plan envisage consolidation of the Tax Administration's operations by redistributing responsibility for its non-core activities to other institutions, and enforcement of the Late Payment Law has been identified as one of these non-core (non-tax) activities.<sup>25</sup> As such, re-allocating this activity to a different government body would also help achieve one of the strategic objectives of the Transformation Programme.

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<sup>20</sup> This paper will look to a much lesser extent at payment periods in transactions between entities in the public and the private sector ('public authorities to business', or 'PA2B').

<sup>21</sup> Regulation on enforcement of the Law on Periods of Payment of Monetary Obligations in Commercial Transactions between the public sector and business entities where public sector entities are debtors and between public sector entities, and on the submission of and access to information on commitments undertaken by the public sector for purposes of such enforcement (*Official Gazette of the Republic of Serbia*, Nos. 88/2015 and 16/2018). Enforcement of this law is also governed by the Regulation on enforcement of the Law on Periods of Payment of Monetary Obligations in Commercial Transactions between business entities (*Official Gazette of the Republic of Serbia*, No. 54/2016).

<sup>22</sup> Law on Tax Procedure and Tax Administration (*Official Gazette of the Republic of Serbia*, Nos. 80/2002, 84/2002 – Corrigendum, 23/2003 – Corrigendum., 70/2003, 55/2004, 61/2005, 85/2005 – Other Law, 62/2006 – Other Law, 63/2006 – Other Law, Corrigendum, 61/2007, 20/2009, 72/2009 – Other Law, 53/2010, 101/2011, 2/2012 – Corrigendum, 93/2012, 47/2013, 108/2013, 68/2014, 105/2014, 91/2015 – Authentic Interpretation, 112/2015, 15/2016, 108/2016, 30/2018, 95/2018, and 86/2019), referred to as 'LTPTA' throughout.

<sup>23</sup> Ministry of Finance of the Republic of Serbia – Tax Administration, 2015. Tax Administration Transformation Programme, 2015-2020, referred to as 'Transformation Programme' throughout.

<sup>24</sup> Ministry of Finance of the Republic of Serbia – Tax Administration, 2017. Action Plan for the Tax Administration Transformation Programme, 2018-2023, referred to as 'Transformation Action Plan' throughout.

<sup>25</sup> *Ibid*, 11.

## BOX 2. DIRECTIVE 2011/7/EU

The European Union took the first step towards addressing the consequences of late payment by adopting Directive 2000/35/EC on combating late payment in commercial transactions. Preventing late payment was motivated by the need to provide legal safeguards to MSMEs against unduly long payment periods that could seriously threaten their liquidity and potentially cause insolvency. The Directive applied to both B2B and PA2B transactions and regulated issues of payment and minimum interest rate. The regulatory framework established by Directive 2000/35/EC failed to eliminate delays in payment or promote shorter payment terms. These challenges led to the adoption of the new Directive 2011/7/EU on combating late payment in commercial transactions, which also aims at providing relief to MSMEs by preventing late payments. Its key features are (1) limitations as to payment periods that can be contracted in commercial transactions subject to the Directive, and (2) guarantees of creditors' rights in the event of late payment.

**The first group of provisions govern how payment periods are contracted.** The restrictions here depend on whether the commercial transaction is contracted between two businesses or a business and a public authority. In the former case, the maximum payment period that can be contracted is 60 calendar days, except where otherwise stipulated in the contract and provided this is not grossly unfair to the creditor. Where a public authority is the debtor, the maximum payment period allowed to be contracted is 30 days, which may be extended to 60 days for special categories of public authorities.

The Directive gives creditors three primary options for compensation in the event of a debtor being delinquent: a one-off fixed sum of 40 euros, reasonable compensation for any recovery costs exceeding this fixed sum, and interest (either contractual or statutory). The freedom of a public-sector debtor to contract penalty interest is also limited, as the interest rate may not be lower than the statutory rate (which is the key policy rate of the European Central Bank, or the national central bank for non-euro countries, plus at least 8 percentage points). Directive 2011/7/EU applies to all commercial transactions, regardless of whether the debtor is a business or a public authority, but EU Member States may exempt businesses that are subject to insolvency proceedings.

A public authority may not pay an invoice that is not registered in the electronic invoice register. Once an invoice is registered, the debtor has an eight-day window to either accept or decline the invoice. It is worth mentioning that the **exercise of rights extended by the Late Payment Law depends on the willingness of creditors to use them**, even though public authorities act *sua sponte* to enforce the Law.<sup>26</sup>

## Shortcomings of the Late Payment Law

<sup>26</sup> Opinion of the Ministry of Finance and Economy No. 011-00-00509/2013-16(1) of 24 May 2013.

Any comparison between Directive 2011/7/EU and the Serbian Late Payment Law patterned after it must take into account the departures in the Serbian law from the legal framework established by the Directive. **Unlike EU Member States, when it transposed the Directive into national law, Serbia did not conform to the principle of freedom of contract.** The primary shortcomings of the Late Payment Law identified in literature are: significant extension of the mandatory payment period relative to general contract law and limited freedom of parties to contract a payment period longer than the allowed maximum, with a number of statutory exceptions.<sup>27</sup> When transposing the Directive the Member States generally deviated on the side of creditors, allowing them greater safeguards. Even though the primary objective of the Directive was to establish a framework for payments in commercial transactions, its intent was not to create a rigid system that would constrain freedom of contract. As such, the Late Payment Law is peculiar in that it diverges from the spirit of the Directive. Apart from this substantive deviation, the Serbian framework can be examined from the perspective of each of its features:<sup>28</sup>

1. **Payment periods for B2B transactions are more restrictive than laid down in the Directive.** The Directive envisages a maximum payment period of 60 days, which may be extended in the contract if not grossly unfair to the creditor. The Late Payment Law provides three exceptions and does not allow the parties to contract other periods. The difference here is one of approach. The Directive lists situations in which a contractual term may be considered grossly unfair (gross deviation from good commercial practice, nature of the product or service, whether there is an objective reason that justifies longer payment terms), whilst the decision in the matter is itself left to the courts. By contrast, the Late Payment Law identifies qualifying exemptions for both types of transactions in advance and does not allow the courts to assess whether a longer contractual payment period is allowed. The exceptions envisaged for B2B transactions are: 1) where payment is made in instalments, in which case a 90-day period may be contracted, on condition that at least 50 percent of the monetary obligation must be paid at the latest on the expiry of one-half of this period, with the remainder to be paid at the end of this period; 2) where collateral is provided in the form of a bank guarantee that contains clauses to the effect that it is 'irrevocable', 'unconditional', or 'payable at first demand without objection', or a guaranteed bill of exchange issued by a bank in an amount not lower than the monetary obligation or invoiced value of the service or good provided; and 3) where the debtor is the owner of a registered farm or a farming co-operative

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<sup>27</sup> Radović, M. 2013. Novi pravni režim rokova izmirenja novčanih obaveza iz trgovinskih ugovora. *Pravo i privreda*, 7–9, 252–254.

<sup>28</sup> See *ibid.* For a detailed discussion and comparison of the Serbian late payment framework with Directive 2011/7/EU and a comparison of the environment instituted by the Late Payment Law with previous rules of the LCT and the General Customary Practices for Trade in Goods.



purchasing raw materials. In PA2B transactions there is only one exception to the maximum payment period (of 45 days), which applies where the debtor is the National Health Insurance Fund or a beneficiary of the National Health Insurance Fund: here the maximum period is 90 days. According to Radović (2013), the legal consequences of the Late Payment Directive have not been transposed appropriately into Serbian law, as the Late Payment Law does not recognise the legal standard of 'grossly unfair' payment terms.<sup>29</sup>

2. **The Law provides for longer statutory payment periods in PA2B transactions than the Directive.** This holds true for both maximum payment periods and exceptions to that rule. The Directive requires payment to be made within 30 days, except where the debtor is a public authority which carries out economic activities of an industrial or commercial nature by offering goods or services on the market (i.e. a statutory corporation), or a public entity providing healthcare, in both of which cases the period may be extended to up to 60 days. The Law stipulates a maximum period of 45 days in where the debtor is a public authority, whilst exemptions can extend this period to 90 days.
3. **Inadequate enforcement of the Law for B2B transactions.** Even though Member States have not applied a universal approach in designating an authority to enforce the transposed rules, the current Serbian solution is not appropriate. In Serbia, responsibility for enforcement of the Law in B2B transactions resides with the Tax Administration, whilst the Budget Inspection is charged with enforcement for transactions involving public authorities. Member States have also introduced other types of enforcement. For instance, Spain and Poland require reporting on payment practices and publication of indicators of late payment and payment periods in commercial transactions.
4. **The Late Payment Law mandates fixed compensation for late payment of RSD 20,000.** This amount does not differ significantly from that envisaged in the Directive (40 EUR minimum), but it does not distinguish between the amount owed or the sector in which the transaction takes place.

**It seems that the Late Payment Law has failed to have preventive effects, and that it has not significantly affected the behaviour of businesses.** Even though the Law does foresee fines for violations of its provisions fixing maximum payment periods, businesses generally believe it is highly unlikely that any such fines will actually be imposed in practice.

**Businesses' limited awareness of the options at their disposal in the event of late payments is another issue,** and one that is also present in EU countries. The 2017 Intrum Justitia report

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<sup>29</sup> *Ibid.*

revealed relatively little familiarity amongst businesses with the Late Payment Law.<sup>30</sup> Moreover, an SCC survey found that under one-third (32 percent) of all firms were familiar with the Law at all, and that as few as 11 percent had ever demanded compensation for late payment.

**Choosing to exercise rights under the Law also depends on the commercial relationship between creditor and debtor**, or, more precisely, on their relative negotiating powers and the impact that any enforced collection could have on their relations. This was also revealed after the Directive had been transposed into national law by EU Member States, showing that a piece of legislation cannot alter asymmetrical business relationships in isolation, without appropriate enforcement mechanisms. Practical experience with the Directive has shown that small and medium-sized companies are half as likely as large companies to assert their right to compensation or interest for late payment.<sup>31</sup>

## REGULATORY FRAMEWORK FOR ASSIGNMENT OF RECEIVABLES FOR CONSIDERATION

### Assignment of receivables for consideration

**Assignment**, the most common option for transferring an account receivable from one entity to another, can be based on various types of nominate and innominate contracts. These contracts can be both gratuitous and onerous. For instance, receivables can be assigned by means of: (1) contracts of sale; (2) factoring contracts; (3) contract of gift; and (4) contract of exchange.

**The sale of an account receivable is formally the legal transaction of contractual assignment of an account receivable (cession)** governed by the LCT. The LCT regulates such assignment in detail, including its effects between the parties and towards the debtor, guarantees in connection with the assignment, types of assignment, and other issues of relevance for the assignment transaction. Sale is the most common reason for assignment of an account receivable.<sup>32</sup>

**Sale of accounts receivable is also at the heart of factoring contracts.**<sup>33</sup> Factoring is a subset of the sale of accounts receivable. Whilst any matured accounts receivable can be sold, as can accounts receivable that have not yet matured and future accounts receivable, factoring

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<sup>30</sup> Intrum Iustitia, 2017. European Payment Report, p. 40. Available at <http://www.intrum.com/media/2634/epr2017.pdf>.

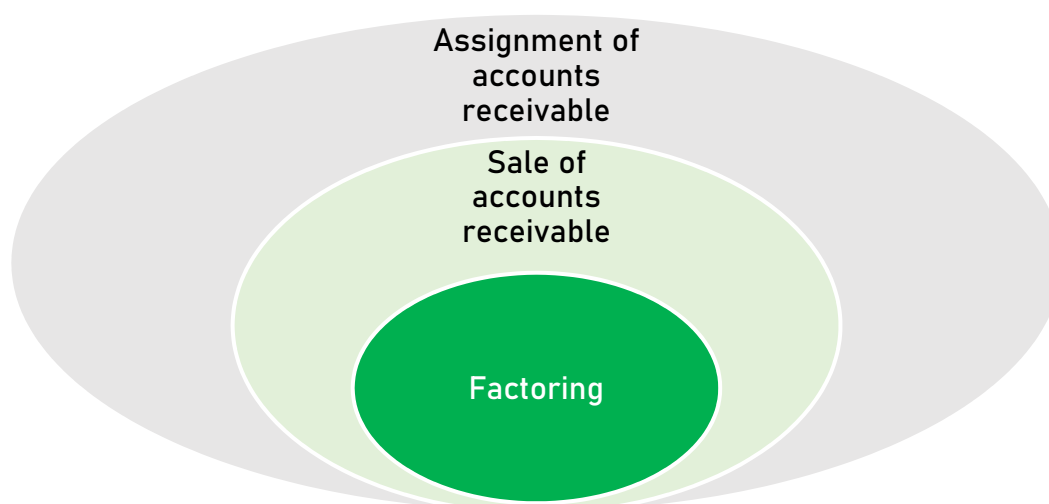
<sup>31</sup> Branko Radulović, „Direktiva o restrukturiranju i nesolventnosti: sve će to zakoni pozlatiti“, in: Vuk Radović (ur.), Usklađivanje poslovnog prava Srbije sa pravom Evropske unije (2019), Univerzitet u Beogradu – Pravni fakultet, 2019, pp. 58-80.

<sup>32</sup> Tešić, N. 2012. *Prodaja i prenos potraživanja*, Pravni fakultet, Univerzitet u Beogradu, 81.

<sup>33</sup> *Ibid*, 25.

deals only with current accounts receivable that have not become due and future short-term monetary claims arising from agreements on the supply of goods and/or services domestically or internationally. The relationship between assignment, sale, and factoring is shown in Figure 6.

**Figure 6. Relationship between assignment of accounts receivable, sale of accounts receivable, and factoring**



Accounts receivable are assigned pursuant to assignment contracts (contracts on the sale or purchase of accounts receivable), as governed by Articles 454 to 551 of the LCT. Of particular significance is Article 461 LCT, which stipulates that a contested right may be subject to a contract of sale, since accounts receivable commonly constitute creditors' rights to payment of a particular sum of money that can be contested. For the same reason, another set of important provisions concerns liability for legal deficiencies and protection against forfeiture (Articles 508 to 515 LCT). Where a receivable is subject to a contract of sale, the seller guarantees the existence of such receivable and the absence of any legal impediments for its performance (Article 508[2] LCT). The procedure for assigning an account receivable is governed by Chapter VI, Section 1 of the LCT, 'Yielding of claims by contract (Assignment or cession)'. Articles 436 to 445 LCT contain: (1) general rules for assignment (which receivables can be assigned, extent of assignment, notification of debtor, and multiple assignment); (2) relationship between assignee and debtor; (3) relationship between assignor and assignee (transfer of instruments substantiating the account receivable, responsibility for existence of the account receivable, responsibility for collectability), as well as specific cases of assignment in lieu of performance or to ensure performance.

An assignor may enter into a contract with a third party to assign to such third party an account receivable claimed by such assignor, excepting only accounts receivable that may not be transferred by virtue of statute, or that are restricted to the person of the assignor, or whose very nature is incompatible with being transferred (Article 436[1] LCT). A contract of assignment is not binding on the debtor if the contract between the debtor and the creditor prohibits the transfer of the receivable altogether or without the consent of the debtor.

**Accessory rights are transferred to the assignee together with the receivable;** this includes the right of preferential payment, mortgage, security, rights arising from contracts with guarantors, rights to interest, to liquidate damages, and the like (Article 437[1] LCT). Paragraph [3] of this Article introduces the **presumption that due and outstanding interest is assigned (ceded) together with the principal account receivable.** For accounting purposes and to ascertain the balance of the debt at the time of its transfer to the assignee, it is common business practice to define assignment date in the assignment contract, and this is usually a date prior to entry into the contract. This date is also significant in that any and all payments made to the assignor before assignment date accrue to the assignee.

Assignment does not require consent of the debtor, but the assignor is required to notify the debtor of having assigned an account receivable. Where an assignor has assigned the same account receivable to (multiple) different parties, the account receivable shall attach to the assignee first notified as such by the assignor or to the assignee that first contacted the debtor (Article 439 LCT). Additionally, the assignee has the same rights with regard to the debtor as the assignor did prior to assignment. Lastly, in addition to any objections the debtor may raise with the assignee, the debtor may also raise with the assignee any objections the debtor had been entitled to raise with the assignor until such time as the debtor was notified of the assignment (Article 440 LCT).

The assignor is required to present to the assignee a debenture bond or other debt instrument, if any, together with any other proof of the account receivable assigned and of the accessory rights (Article 441 LCT). Table 7 shows the key instruments for assignment of accounts receivable between legal persons.

Table 7. Key instruments for assignment of accounts receivable

Instrument	Description	Form of presentation	Significance	Comment
Contract (basis of account receivable)	Generally, a supply of goods and/or services agreement	Presentation	Proves the existence of the account receivable and its subject matter, maturity, amount, etc.	/
Accounting record	Accounting record of debt as of date of assignment	Presentation	Proves amount of account receivable	Accounting record displays all changes to debt occurring due to repayment, interest accrual, and the like
Invoice	Creditor's invoice with delivery note (for goods contracts) or other written proof that the debtor has been notified of the obligation	Presentation	Proves existence of account receivable and its subject matter, maturity, amount, etc.  Constitutes an 'authentic title' for purposes of enforcement procedure (Art. 52[2]3) LES)	Since commercial contracts may be entered into orally, invoices are significant for proving the existence of accounts receivable
Bill of exchange	Blank bill of exchange registered with the NBS Register of Bills of Exchange (in most cases) Guarantor's bill of exchange	Presentation and endorsement	Collateral (especially when issued by a guarantor or giver of collateral promise)  Means of out-of-court enforced collection on bank accounts (Art. 47, Payment Operations Law)  Constitutes an 'authentic title' for purposes of enforcement procedure (Art. 52[2]1) LES)	Bills of exchange do not play a major role in proving accounts receivable, since they are generally issued blank  Conversely, since bills of exchange are assumed to be correct in proceedings to contest bills of exchange in any civil dispute, their role is not negligible in this regard
Guarantee or collateral promise contract	/	Presentation	Collateral	These two types of contracts have similar effects in commercial transactions

The assignor is responsible for the existence of an account receivable at the time it is assigned (Article 442 LCT). However, the assignor guarantees the collectability of an account receivable only where this is explicitly stipulated in the assignment contract, and only up to the amount received from the assignee. The imperative provision of the LCT (Art. 443[2] LCT) prevents contracting of greater liability of an assignor acting in good faith.

As demonstrated above, the LCT provides liberal rules for assignment of accounts receivable. For instance, there is no prescribed format of assignment contract; in other words, from a strictly formal perspective, an assignment contract may also be entered into orally. The usual practice in business transactions, however, is for these contracts to be entered into in writing as this facilitates proving assignment and complies with the requirements of current Serbian accounting regulations.

**Some formalities are regulated by other laws.** These provisions generally do not concern the legal validity of the assignment as such, but rather govern how the assignee can achieve particular effects by means of the assignment, such as, for instance, initiating or intervening in an enforcement procedure. In addition, in insolvency proceedings, signatures on an

assignment contract must be notarised for some options to be available, including substituting the assignor in the case (Article 117a, Bankruptcy Law<sup>34</sup>). **However, a specific form of assignment contract may be required.** For instance, Article 19 of the Factoring Law<sup>35</sup> requires a written or electronic assignment contract.

The sole formal requirement for assignment envisaged by the LCT is for the assignor to **notify the debtor of the assignment** (Art. 438 LCT). This notice need not be made in writing either, but, for evidentiary purposes, it is desirable for the notice to be sent by registered mail with acknowledgment of receipt, since major legal consequences apply according to the LCT from the time the debtor is notified.

**If the assignor fails to comply with this requirement, any performance made to the assignor will be valid only if the debtor was not aware of the assignment.** In this case, the debtor is released from any further obligation, whilst, from a formal legal perspective, the assignor would not be entitled to such performance and would have to transfer it to the assignee. By contrast, this provision could have major consequences for the assignee in the event the assignor was insolvent, subject to an account freeze, or generally in financial distress. Here, if the assignee does not hold a secured claim against the assignor on these grounds, the assignee will have to seek collection as any other creditor of the assignor, whilst the debtor would no longer be liable for performance of the obligation. The assignee could evade this provision if it provided separate notice to the debtor of the assignment and invited the debtor to continue performance to the benefit of the assignee, which would eliminate the threat of the debtor becoming released from its obligation by providing performance to the assignor.

**Where an account receivable is secured by a bill of exchange, which is frequently the case, the rule is that the bill of exchange also be transferred to the assignee.** Bills of exchange are transferred by endorsement, which may be in favour of the bearer, in full, or blank (Arts. 11 and 12, Law on Bills of Exchange).<sup>36</sup> Once a bill of exchange is transferred as described above, the assignee may use the bill of exchange as collateral for collection of the assigned account receivable. These benefits of bills of exchange remain effective so long as the debtor is solvent, since a bill of exchange confers no priority in collection on the creditor, except for any priority acquired in enforced collection of the bill of exchange. Where the debtor's account is frozen, priority is determined with reference to the time the bill of

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<sup>34</sup> Bankruptcy Law (*Official Gazette of the Republic of Serbia*, Nos. 104/2009, 99/2011 – Other Law, 71/2012 – Constitutional Court Ruling, 83/2014, 113/2017, 44/2018, and 95/2018), referred to as 'BL' throughout.

<sup>35</sup> Factoring Law (*Official Gazette of the Republic of Serbia*, Nos. 62/2013 and 30/2018), referred to as 'FL' throughout.

<sup>36</sup> Law on Bills of Exchange (*Official Gazette of the Federal People's Republic of Yugoslavia*, No. 104/46; *Official Gazette of the Socialist Federal Republic of Yugoslavia*, Nos. 16/65, 54/70, and 57/89; *Official Gazette of the Federal Republic of Yugoslavia*, No. 46/96; and *Official Gazette of Serbia and Montenegro* No. 1/2003 – Constitutional Charter), referred to as 'LBE' throughout.

exchange was received for collection, or the time of adoption of an enforcement ruling based on the bill of exchange. These qualities make bills of exchange important instruments in assignment situations. For a detailed discussion of collection using bills of exchange, see the section on out-of-court enforced collection of bills of exchange.

## Factoring

Factoring operations are a subset of assignment. Factoring is a financial service involving the purchase of an existing account receivable that has not become due or a short-term future account receivable arising from an agreement on the supply of goods and/or services domestically or internationally (Art. 2[1]1) FL). Until the FL was adopted in 2013, factoring operations in Serbia were contracted pursuant to the LCT.

According to the FL, a business registered for the performance of factoring activities ('factoring business') can engage in factoring operations if it meets the requirements of the FL in terms of capital and if it holds approval for factoring operations. The factoring business must hold and maintain capital stock amounting to no less than RSD 40 million (Art. 6 FL). In addition to factoring companies, banks can also engage in factoring; a separate piece of legislation also governs the Serbian Export Credit and Insurance Agency, which engages in export factoring to promote exports.<sup>37</sup> Lastly, if they are natural persons, the owners, and the responsible officers of a factoring business, are debarred from holding this office if they have been sentenced to a term of imprisonment of more than six months for a criminal offence, if they are under criminal investigation, or if they are debarred from practising any profession or holding any other office. Legal persons may not own a factoring business if they have been finally convicted of a criminal offence or are under criminal investigation (Art. 7[2]1) and 4) FL).

The FL permits the following types of factoring operations: (1) domestic factoring; (2) international factoring; (3) non-recourse factoring; (4) recourse factoring; and (5) reverse factoring.

Article 5 FL stipulates that a factoring company may only engage in factoring operations and related or ancillary operations. The usual interpretation is that these operations include the purchase of other types of accounts receivable, not just those subject to factoring, and that factoring companies are permitted to purchase non-performing receivables. To remove any regulatory risk and make it easier for factoring companies to access the non-

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<sup>37</sup> Law on the Serbian Export Credit and Insurance Agency (*Official Gazette of the Republic of Serbia*, Nos 61/2005 and 88/2010).

performing receivables market, there ought to be legislative intervention to clarify whether factoring firms can engage in these transactions.

Even though factoring may not involve recourse, a key right of the factor relative to the assignee of the receivable is the right to recourse from the assignor in the event the receivable cannot be collected. These rights matter because, under the LCT, an assignor acting in good faith is liable for the collectability of an account receivable only up to the value of the consideration made for the assignment. Recourse factoring means that the assignor is liable to the factor for the collectability of the account receivable as of the day it becomes due (Art. 16[1] FL).

Recourse factoring will be deemed to be contracted in the event of any confusion as to the type of factoring (Article 16 FL). Where recourse factoring is contracted, the factor is entitled to demand performance from the debtor, assignor, or both at the same time, within the limits of liability of the debtor and assignor, if not otherwise contracted. Having exercised recourse against the assignor, the factor is required to return the receivable to the assignor (Article 16[4] FL).

The factor is not entirely free to manage an assigned receivable if recourse factoring has been contracted, in contrast to the assignee. Since the factor has the right to recourse, the factor also has an obligation that the assignee, as a rule, does not, namely, to exercise due diligence and act in good faith in managing the purchased receivable.

Unlike in assignment, the contractual prohibition of transferring the receivable is not binding on the factor, meaning that a receivable can be sold to the factor even if the assignor and the debtor have agreed this prohibition, except where otherwise provided for by an international treaty (Art. 30 FL).

Reverse factoring is particularly important for preventing a receivable from becoming uncollectable. This is a special type of factoring where the receivables are not assigned. In reverse factoring, the factor undertakes the obligation to pay the debtor's invoices (debts) and is able to collect these amounts from the debtor within periods of time stipulated in goods and/or services supply contracts (Art. 18 FL). Since this is an assignment of debt, in reverse factoring it is not sufficient to only notify the creditor, but the creditor must also agree to this. It is in the creditor's interest to agree to the cession because this guarantees its invoices will be paid once they become due.



## ENFORCED COLLECTION OF ASSIGNED RECEIVABLES

One important issue to consider in assignment of receivables for consideration is that of the rights and obligations of the assignee in enforced collection procedures previously initiated by the assignor. These efforts will often have been launched by the assignor before the account receivable is assigned in an attempt to collect it.

Two procedural aspects of assignment are of relevance to the assignee (purchaser) of the **receivable**: (1) the assignee ought to have at its disposal some sort of procedure to enforce the receivable; and (2) if a proceeding has been launched before assignment, the assignee should also be able to intervene in this ongoing proceeding.

Both the assignee and the assignor have recourse to the following methods of **enforced collection**: (1) out-of-court enforced collection of bills of exchange; (2) enforcement; (3) civil proceedings (primarily in continuation of enforcement proceedings); and (4) bankruptcy proceedings (proceedings in which all creditors to collectively recover their debts from an insolvent debtor).

### Out-of-court enforced collection of bills of exchange

Out-of-court enforced collection of bills of exchange is important for receivables accompanied by formally correct bills issued by the debtor. This is a significant means of out-of-court enforced collection given the widespread issuance of bills of exchange by Serbian businesses. By endorsing a bill of exchange, the assignee becomes a bill of exchange creditor, and as such may seek out-of-court enforced collection of that bill to recover the assigned debt. One specific benefit offered by bills of exchange in the Serbian economy is the ability to have it collected by debiting the bank account of the debtor, in accordance with the central bank's Decision on enforced collection by debiting of clients' bank accounts.<sup>38</sup> This option is available provided the bill is registered with the Central Register of Bills of Exchange maintained by the NBS. Before issuing the bill of exchange, the debtor has its commercial bank register the instrument.

Assuming a bill of exchange is properly assigned, the assignor can use it without any further formalities, such as notifying the commercial bank or the NBS of the substitution of creditor, since, according to the Law on Bills of Exchange,<sup>39</sup> these instruments are subject to the

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<sup>38</sup> Decision of the National Bank of Serbia ('NBS') on enforced collection by debiting of clients' bank accounts (*Official Gazette of the Republic of Serbia*, Nos. 14/2014, 76/2016, and 8/2020).

<sup>39</sup> Law on Bills of Exchange *Official Gazette of the Federal People's Republic of Yugoslavia*, No. 104/46; *Official Gazette of the Socialist Federal Republic of Yugoslavia*, Nos. 16/65, 54/70, and 57/89; *Official Gazette of the Federal Republic of*

'principle of incorporation', meaning that all rights arising from the bill of exchange are determined solely on the basis of that bill. The bill must be appropriately completed and assigned pursuant to the LBE for the debtor's bank to be able to freeze the account (Art. 7, Decision on enforced collection by debiting of clients' bank accounts).

**The efficiency of out-of-court collection of bills of exchange depends on the solvency of the debtor.** In the event that the debtor's accounts are not frozen and contain sufficient funds, the actual collection procedure is highly efficient and can be completed within hours after the bill is presented for payment. With an insolvent debtor, collection can take more time and effort, but out-of-court collection can still be used as an effective option for collecting relatively easily and putting pressure on the debtor to pay voluntarily. If the debtor has already had its account frozen, a bill presented for payment will take its order in the queue with other instruments based on the time of its receipt.

**Bills of exchange have a lower priority than other instruments**, as shown in Table 8.

Table 8. Various grounds for collection and priority in payment

Grounds for collection	Order of priority	Typical instrument
Enforceable orders issued by tax, customs, and other authorities – by time of receipt	1	Order for enforced collection of tax
Enforceable court rulings, other enforceable titles, statutory authorisations – by time of receipt	2	Enforcement ruling
Creditors' orders based on matured securities, bills of exchange, or authorisations issued by debtors to their banks and creditors – by time of receipt	3	Bill of exchange

Collection of a bill of exchange will be suspended if a higher-priority instrument is received until that higher-priority claim is paid. In such cases, out-of-court collection against bank accounts is often launched simultaneously with enforcement proceedings. Here, bills of exchange are first presented for payment, to ensure the account is quickly frozen and collect whatever funds may be available before other creditors proceed with their enforced collection efforts. Since it generally takes longer to collect from a bank account, enforcement under the LES is initiated in parallel to secure higher priority in collection and permit the creditor to go after any other assets held by the enforcement debtor. As such, the process of out-of-court enforced collection of bills of exchange as described above works best for solvent debtors. **It is less effective for debtors that are already in financial**

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*Yugoslavia*, No. 46/96; and *Official Gazette of Serbia and Montenegro* No. 1/2003 – Constitutional Charter), referred to as 'LBE' throughout.

distress. Since bills confer no priority for collection in bankruptcy, they are not particularly important in insolvency cases.

A receivable on sale may already have attached to it bills of exchange presented for **enforced collection**. This conclusion is supported by the data cited above which show that, in 2018, Serbian firms were the least likely in Europe to engage collection agencies, on average doing so only after an account receivable was 264 days past due, whilst the European average was 82 days.<sup>40</sup> This finding was confirmed in semi-structured interviews with industry representatives.

One possible issue with the current regulatory arrangement is that it offers no option for the assignee to intervene in the proceedings if there are bills of exchange pending collection. If collection of those bills is effected after assignment, the funds will be transferred to the assignor, which ought to remit them to the assignee. Since one of the assignor's aims is to reduce the administrative burden of managing its non-performing receivables, this is not an acceptable solution. A second option would be to recall the payment orders, which is, conversely, not acceptable to the assignee. This is not a major problem in practice since receivables are generally sold at more advanced stages where higher-priority instruments are commonly used, such as enforceable court or tax orders for enforced collection.

## Civil proceedings

Civil proceedings are typically used to collect assigned receivables. This type of proceeding is initiated by bringing a civil action, but, in practice, collection of receivables usually leads to lawsuits after an enforcement debtor has objected to an enforcement ruling based on an invoice or bill of exchange.

If conditions have not been met for enforcement on the basis of an 'authentic title', the assignee can easily launch a civil proceeding by filing a lawsuit with the relevant court. The assignee will demonstrate its standing in the lawsuit itself, which will allow it to litigate. Even though there are no formal impediments, in this case the assignee is at a disadvantage to other creditors, since civil proceedings generally require more time and cost than enforcement proceedings.

Receivables that are already subject to litigation may be sold because, prior to the sale, a creditor may have launched enforcement proceedings to which the debtor objected, resulting in a court case. Assignment does not automatically mean the assignee substitutes for the plaintiff; rather, the assignee must make a formal motion to intervene, for which it needs the written consent of the assignor (Art. 204[2] CPL). This rule was introduced to

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<sup>40</sup> Intrum Iustitia. 2018. European Payment Report, 7. Available at [intrum.com/media/3762/european-payment-report-2018.pdf](https://intrum.com/media/3762/european-payment-report-2018.pdf).

make it easier for assignees to intervene in ongoing litigation.<sup>41</sup> Prior to this change, intervention required consent from both parties, and defendants rarely felt this was in their interest. The assignee's intervention is formally allowed by a ruling of the court. Since the debtor is no longer able to obstruct the proceedings by withholding consent, this amendment has certainly made it easier to assign receivables in situations where litigation is ongoing.

## Enforcement proceedings

Of relevance for this study is enforcement based on invoices and bills of exchange, which are both deemed to be 'authentic titles'. The principle of strict formal legality applies in enforcement proceedings, unlike in civil cases. Enforcement is initiated only and exclusively to the benefit of the person indicated as the creditor in an enforceable title or authentic title (Art. 53 LES). For instance, an assignor (the erstwhile creditor) will have issued the debtor the invoice, so that the assignee may not enforce solely on the basis of the invoice, since – regardless of the assignment – the invoice is not in its name. Bills of exchange face significantly fewer issues, because once the bill is endorsed to the assignee, the assignee becomes the bill of exchange creditor, at which point all formal requirements of the LES will be met and the assignee will be able to enforce the bill of exchange.

**Another situation that may appear with assignment during enforcement proceedings is intervention in an ongoing enforcement case.** Before the 2016 Law on Enforcement and Security, an assignee could initiate enforcement only based on an enforceable title (judgment, court settlement, payment order, final enforcement ruling pursuant to an authentic title, and the like), even where it was not named as the enforcement creditor in the enforceable title, on condition that it submitted a public instrument or instrument notarised in accordance with law proving that the receivable from the enforceable title was assigned or otherwise transferred to it. If such proof was not available, evidence of assignment or transfer was required in the form of a final or enforceable decision rendered in civil, misdemeanour, or administrative proceedings.<sup>42</sup> The new LES extended this option to enforcement of authentic titles, such as bills of exchange and invoices.

**For an assignee to initiate an enforcement proceeding, the assignment must have been made pursuant to a duly notarised contract between the creditor and the debtor.** Failing that, the assignee would have to pursue a special proceeding to determine the fact that the receivable had been transferred to it. This rule is not much of an issue when it comes to

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<sup>41</sup> Article 1, Law Amending the Civil Procedure Law (*Official Gazette of the Republic of Serbia*, No. 87/2018).

<sup>42</sup> See Article 23 of the previous iteration of the Law on Enforcement and Security (*Official Gazette of the Republic of Serbia*, Nos 31/2011, 99/2011 – Other Law, 109/2013 – Constitutional Court Ruling, 55/2014, and 139/2014).

assignment of one claim or a handful of receivables, or a portfolio consisting of separate high-value claims. However, **if an entire portfolio of small account receivable is assigned, costs of enforcement proceedings may increase significantly**, since the sale contracts can run to the hundreds of pages. Each time it commences an enforcement proceeding, the assignee must provide notarised copies of the agreements, and the costs of notarisation depend on the number of physical pages. Moreover, for the assignor to be freed of any and all burdens in connection with the assigned receivables, sale agreements often explicitly require the assignee to intervene in all proceedings in connection with the receivables that are ongoing at the time of the assignment. If the number of assigned receivables is high, this requirement may pose a substantial procedural cost to the assignee. Lastly, the high procedural costs could drive down the price of the assigned receivables, which could depress the supply of MSMEs' receivables.

**The assignee also faces additional costs when intervening in enforcement proceedings.** Item 2 of the EOTF requires a fee to be paid to the enforcement officer for issuing a procedural decision permitting the assignee to intervene in a proceeding, as referred to in Article 48 LES. The fee amounts to 20 percent of the fee for preparing, managing, and archiving a case, and, given the likely intended disincentivising effect on low-value proceedings, represents a large percentage of the nominal value for smaller claims. For instance, the fee for an account receivable worth RSD 100,000 is about 1 percent of its nominal value, dropping significantly for receivables valued at RSD 1,000,000, where it stands at some 0.3 percent of the nominal value. **Since MSMEs generally hold lower-value receivables in their portfolios, the current fee has the effect of significantly increasing the cost of selling accounts receivable for these businesses.**

Intervention by the assignee in an enforcement proceeding initiated by the assignor may have a wealth of positive effects, since the assignor has already paid the initial costs of enforcement and the assignee enters the proceeding at a later stage. The assignee has thus avoided the risk associated with opening an enforcement case by skipping the most critical stage of the proceedings where the motion to enforce may be rejected and where the debtor may object. Moreover, the debtor also stands to benefit from an intervention as opposed to initiation: (1) since the proceeding has already begun, it will be shorter and, as such, more efficient from the standpoint of the assignee; (2) if information on the assets of the enforcement debtor has been obtained; (3) if enforcement is already in progress; and (4) if key enforcement actions have already been taken that usually require more time, such as a scheduled sale of real estate or movable items.

## Bankruptcy proceedings

Bankruptcy proceedings, in which all creditors collectively seek to recover their claims from a debtor, are overly complex and differ greatly from other options available to the assignee. The stages of bankruptcy relevant for assignment of receivables are: (1) opening a bankruptcy proceeding; (2) filing claims; (3) intervening in a bankruptcy proceeding; (4) management and decision-making in bankruptcy; and (5) position of the assignee in pre-packaged plans of reorganisation ('PPRs').

**To open a bankruptcy proceeding, the assignee is not required to meet any formal requirements different from those applicable to other creditors.** Similarly to civil cases, in its motion to open the bankruptcy proceeding the assignee must submit evidence to prove its standing in the case. Opening bankruptcies is somewhat of an issue given the lack of interest on the part of MSMEs to do so, as their claims are generally small and they lack priority in collection from the debtor's assets, which ultimately means they may not even be able to cover the procedural costs from any funds recovered.

**The applicant faces fairly straightforward requirements for filing a claim; it is enough for it to provide evidence, in the filing, to prove its standing as creditor.** Moreover, the bankruptcy debtor will often have been made aware of the assignment before the bankruptcy is opened and may have even made the necessary changes to its accounting records that are available to the insolvency office holder ('bankruptcy administrator'). **There are strict time limits, however, for filing claims.** Before and during assignment negotiations, therefore, the assignee would do well to determine whether the receivables are owed by debtors in bankruptcy. If this is indeed the case, the assignee should file a claim in bankruptcy in due time after the receivable has been assigned. Notices of open bankruptcy proceedings published in the *Official Gazette* include time limits for filing claims, so assignees have access to information about the status of claims in bankruptcies.

**Admitted and contested claims in bankruptcy proceedings may be assigned after the final list of claims has been determined, but in this case the signatures of the assignor and assignee must be notarised pursuant to law governing notarisation of signatures, manuscripts, and transcripts, and the bankruptcy debtor must be notified in writing of the assignment** (Art. 117a BL). An assignee is also entitled to seek correction of the final list of claims. Similarly to enforcement, the assignor and assignee must notarise the assignment contract. Nevertheless, multiple variations are possible depending on the stage of the bankruptcy proceeding at which the assignment takes place, as shown in Table 9 below.

**Table 9. Formal requirements at various stages of bankruptcy proceedings**

Time of assignment	Intervention	Control	Form	List of admitted and contested claims / PPR
<b>Before bankruptcy is opened</b>	Assignee files on its own behalf and is entitled to file motion to open bankruptcy proceeding if other requirements are met.	Assignee has complete control over content of claim.	Filing of claim	Assignee is initially named in list.
<b>After claim is filed by assignor, and before expiry of time limit for filing claims</b>	Assignee files on its own behalf but seeks to be awarded rights arising from claim filed by assignor.	Assignee has complete control over content of claim.	Filing of claim	Assignee is initially named in list.
<b>After expiry of time limit for filing claims</b>	Pursuant to application for intervention in bankruptcy and amendment of list of admitted and contested claims (possible only if assignor has filed in due time).	Assignee is awarded assignor's rights arising from claim as filed by assignor.	Contract on assignment of claim with certified signatures	List of admitted and contested claims is amended.
<b>Before filing of motion to open bankruptcy pursuant to PPR</b>	Applicant submits PPR and indicates assignee as creditor.	Assignee has full control in terms of voting for PPR and other rights regarding adoption of PPR.	No specific form envisaged	Assignee is initially named in list.
<b>After filing of motion to open bankruptcy pursuant to PPR</b>	Pursuant to motion by assignee, applicant amends PPR, substituting assignee for assignor as creditor.	Assignee has full control in terms of voting for PPR and other rights regarding adoption of PPR.	Motion by assignee to amend list and be included in voting class	PPR is amended.
<b>After finality of procedural decision confirming PPR approved by creditors</b>	Notice of assignment to debtor.	Assignee is substituted for assignor and enjoys rights with regard to claim as indicated in PPR. No intervention in bankruptcy proceeding takes place as proceeding has ended.	No specific form envisaged	Payments envisaged by PPR are made to assignee according to PPR rules with no formal substitution of creditor.

Issues can arise with the practical interpretation of Article 117a BL when it comes to assignment of claims in bankruptcy. This provision stipulates that only 'admitted and contested claims' may be assigned, which can be construed to mean that no transaction can take place until the insolvency office holder has examined the claim (and either admitted or contested it). This interpretation would mean that the creditor is prevented from freely disposing of its claim, a highly controversial position. This section of the law should, therefore, either be deleted or clarified.

As with enforcement, the assignment contract must be notarised for the assignee to intervene in bankruptcy. The problem here is even more pronounced as claims in bankruptcy are non-performing receivables, and, if the assigned receivable is not secured by collateral, likelihood of recovery is relatively low. This issue is mitigated to some extent by the sheer number of situations in which notarisation is not a prerequisite for intervention.

According to the Bankruptcy Supervision Agency (BSA), the average recovery rate in bankruptcies ending in compulsory liquidation is some 4 percent. Even though this rate may seem very low, it is close to levels seen in comparable insolvency systems.

Where the assignor has failed to file a claim in due time (where the preclusive filing period has ended), recovery of the assigned claim may not be sought in bankruptcy proceedings (Art. 111 BL), so the assignee has no option for intervening in a bankruptcy proceeding, which may raise the issue of assignment guarantees. As such, before entering into an assignment contract, the (potential) assignee should ascertain whether the assignor has filed a claim in bankruptcy in due time. This information can be found in the Conclusion on Admitted and Contested Claims for the relevant case, published on the BSA web site, as well as on the Court Case Tracker web site. The assignee may also seek proof that the claim has been filed from the assignor (such as a filing of claim with the court's incoming registration stamp or proof of the claim having been mailed to the court).

Where a bankruptcy is opened pursuant to a PPR, intervention in the case (or award of rights arising from a final PPR) is much easier. Each PPR must include a clause whereby the claim of a creditor not covered by the PPR are to be paid under the same conditions as claims of other creditors of the same class. As such, even where the assignee has failed to intervene in a case opened under a PPR, the assignee remains authorised to receive payment pursuant to the PPR in lieu of the assignor, based on general rules. The assignee is also entitled to move to open a bankruptcy proceeding where (1) an approved PPR is not complied with; or (2) the PPR has been approved illegally or fraudulently (Art. 173 BL). Since the PPR is also an enforceable title, the only situation in which the assignee could not initiate enforcement proceedings on those grounds is if the assignee is not named in the PPR (Art. 147 BL), or if the claim has not been transferred pursuant to a contract bearing duly notarised signatures in accordance with the rules of enforcement proceedings outlined above.



### BOX 3. JUDICIAL EFFICIENCY

Judicial efficiency is highly significant for the assignee, as the assignee shares the assignor's pre-assignment position with regard to initiating and pursuing enforced collection proceedings. A strategic priority of the Judicial Development Strategy, 2020-2025, is to continue enhancing the efficiency of the legal system. Major results have been achieved in recent years in terms of reducing case backlog, especially in enforcement proceedings, as well as reducing court workload by broadening the remits of notaries and enforcement officers.

As of mid-2020, 1,593,185 cases remained outstanding, meaning that 63,460 cases have been resolved since late 2019, including in enforcement proceedings, notwithstanding the period of inactivity during the Covid-19 lockdown. The first half of 2020 saw a decline in outstanding cases in commercial and basic courts, mainly due to the application of the 2019 amendments to the LES and the reduction in enforcement cases. At the beginning of 2020, commercial courts had 10,332 enforcement cases in progress, of which 1,089 remained outstanding in mid-2020. The percentage of 'old' bankruptcy cases (outstanding for between 3 and 10 years) stood at 57.15 percent in the first half of 2020.

One objective set in the draft Judicial Development Strategy is to address enforcement and bankruptcy cases by: (1) improving performance of enforcement officers; (2) improving in-court enforcement; and (3) improving court performance with the aim of enhancing the business environment and reducing the number of bankruptcy cases. Continued improvement to the efficiency of Serbia's judiciary, in particular enforcement and bankruptcy proceedings, is highly significant for promoting the market for trade in receivables, since assignees should have at their disposal efficient options for enforcement of any receivables assigned.



## 4. TAX TREATMENT OF NON-PERFORMING RECEIVABLES AND THEIR SALE

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This analysis focuses on the tax consequences of accounts receivable becoming non-performing and the sale of such accounts receivable. Since these receivables arise from commercial transactions, the Serbian tax system looks at them only from the perspective of corporate income tax (CIT) and value added tax (VAT). Serbian tax laws contain detailed provisions on the recognition of accounts receivable as expenditures for tax purposes and the tax treatment of the sale of these receivables. **The review here aims at revealing the tax benefits the assignor and assignee can make use of in these situations, the taxes and other costs payable pursuant to tax rules, and a number of statutory constraints that can adversely affect the sale of receivables in Serbia.**

### TAX TREATMENT OF NON-PERFORMING RECEIVABLES

A non-performing receivable is one: 1) whose collectability, either in whole or in part, is doubtful; or 2) which is certain to be uncollectable either in whole or in part. In the former case, where collectability is questionable, the creditor may impair the receivable to reduce the carrying value to its appraised face value. In the latter situation, where the receivable is certain to remain outstanding, the creditor may write it off.

Valuation of accounts receivable is governed by the Regulation on recognition, valuation, presentation, and disclosure of positions in individual financial statements of micro and other legal entities.<sup>43</sup> Short-term receivables are valued at their face value reduced indirectly by the estimated amount of the receivable likely to remain uncollected, or directly in the event that inability to collect is certain and documented (Art. 29[6] of the Regulation).

#### Receivables as tax expenditures from the perspective of CIT rules

Impairment loss and outright write-off of receivables are expenditures recognised in tax balance sheets for the purposes of CIT assessment, according to rules set out in the CIT

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<sup>43</sup> Regulation on recognition, valuation, presentation, and disclosure of positions in individual financial statements of micro and other legal entities (*Official Gazette of the Republic of Serbia*, No. 89/2020), referred to as 'Regulation on micro and other legal entities' throughout.

Law. Recognition of impairment losses and write-offs as tax expenditures is regulated by Article 16 CIT Law (except for commercial banks, which are subject to Art. 22a CIT Law). For a taxpayer to account for a particular receivable as an expenditure in its tax balance sheet, it must meet the requirements of the CIT Law, otherwise it has to include the non-performing receivable in its taxable income. These considerations require identifying when a taxpayer may impair a receivable and when it is able to write it off for the purpose of assessing its CIT taxable base.

## Write-off of receivables

A taxpayer may write off non-performing receivables and present them as expenditures for the purpose of assessing its CIT taxable base under the following requirements set out in Article 16[1] of the CIT Law:<sup>44</sup>

1. there must be unambiguous evidence that the receivables were previously included in the taxpayer's income;
2. the receivables must have been written off as uncollectable in the taxpayer's books of account; and
3. the taxpayer must provide evidence of having sought to collect the receivable in court, meaning that enforcement proceedings were initiated to collect the receivables or that the receivables have been filed as claims in a liquidation or bankruptcy proceeding against the debtor.

**The creditor must meet these requirements cumulatively or the written-off receivable will not be recognised as a tax expenditure.** It follows that the creditor must pay the costs of legal actions undertaken to collect the receivable (costs of litigation against the debtor, initiation of enforcement proceedings, and the like) for the write-off to be recognised as a tax expenditure.<sup>45</sup> The CIT Law also envisages three exemptions where the creditor need not take legal action to collect: 1) if the receivable is included in a financial reorganisation effort within the meaning of the law governing consensual corporate financial restructuring; 2) if the receivable is included in a pre-packaged reorganisation plan confirmed by a final procedural decision adopted pursuant to the BL; and 3) if the costs of actions required to collect receivables from one debtor exceed the total value of the receivables owed by that debtor.

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<sup>44</sup> Article 16[2] of the CIT Law sets out requirements for recognition of write-off of receivables that are not accounted for as income pursuant to accounting regulations and IAS, or IFRS and IFRS for SMEs, whilst Article 16[3] and [4] provide for exemptions to some of the three requirements in the event of financial restructuring and write-off of receivables covered by pre-packaged reorganisation plans.

<sup>45</sup> Including fees and other public revenues payable under the Court Fees Law.

## Impairment of receivables

A creditor may impair a receivable and present it as an expenditure in its tax balance sheet if the receivable is at least 60 days past due at the end of the tax period. However, the creditor must meet the requirements of Article 16[1] and [2] of the CIT Law in the tax period in which the (impaired) receivable is written off for the impairment loss to be permanently recognised as tax expenditure.<sup>46</sup>

As envisaged by Article 16[10] CIT Law, all receivables that have been written off and impaired and other receivables referred to in Article 16 recognised as expenditures that are subsequently collected, or that are subject to lawsuits, enforcement motions, or claims in bankruptcy that are subsequently abandoned by the creditor, will be deemed to have become income of the taxpayer at the time they are collected or the action is abandoned.

The above considerations suggest that the creditor is always required to pay the costs of actions to collect any receivables impaired or written off that have been recognised as tax expenditures. Otherwise, the creditor will be required to include the impaired and/or written-off receivables in its CIT taxable base. **These costs may induce the creditor to assign some non-performing receivables at a discount instead of writing them off. These could be debts owed by insolvent debtors where the creditor does not expect to be able to enforce its debts quickly and efficiently.** Additional incentives for assignment of non-performing receivables are described in the section of this study dealing with the treatment of assignment for CIT purposes.

## CIT RELIEF RULES IN OTHER JURISDICTIONS

The discussion above suggests that Serbian taxpayers (that are creditors) are required to pay the costs of proceedings to collect non-performing receivables, and many countries in the region have similar arrangements in place. However, in some jurisdictions, creditors have access to alternatives that do not require other actions. For instance, in **Croatia**, impairment of accounts receivable for goods and services is recognised as a tax expenditure if it is more than 60 days past due at the end of the tax period and has not been collected for 15 days before the tax return is filed. Impaired receivables accounted for as recognised tax expenditures in previous tax periods are included in income if the creditor has not met the necessary requirements before the entitlement to collect has lapsed due to statute of limitations. The requirements for recognising impairment loss are: 1) the receivable must be

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<sup>46</sup> Opinion of the Ministry of Finance No. 430-00-512/2019-04 of 10/2/2020.

presented in the creditor's books of account as income; and 2) due diligence must have been exercised in taking action to recover the debt. Due diligence is deemed to have been exercised where the creditor has: a) taken legal action or initiated an enforcement proceeding to collect the account receivable; b) filed a claim for the receivables in a bankruptcy proceeding; or c) reached settlement with the debtor, which must not be an affiliate of the creditor, within the meaning of regulations governing bankruptcy, arbitration, and conciliation.<sup>47</sup> As such, Croatian taxpayers may impair receivables even where they have taken no legal action to collect them or moved to enforce but have instead agreed payment terms in a separate legal proceeding that allow the taxpayer to recover less than the total value of the receivable. **In Montenegro, Federation of Bosnia and Herzegovina, and Republika Srpska**, requirements for recognising impairment losses and write-offs are stricter than in Serbia, as there a receivable must be more than one year past due to be impaired or written off (under the Serbian CIT Law, a receivable has to be at least 60 days past due at the end of the tax period for impairment loss to be recognised). The Montenegrin Corporate Income Tax Law stipulates that impairment loss or write-off of a doubtful receivable can be recognised as a tax expenditure if: 1) it is proven beyond doubt that the receivable was previously included in the taxpayer's income; 2) the receivable is written off as uncollectable in the taxpayer's books of account; 3) the taxpayer produces evidence of having taken legal action to collect or enforce the receivable or having filed the relevant claim in a liquidation or bankruptcy proceeding against the debtor; and 4) the account receivable is more than 365 days past due.<sup>48</sup> The Federation of Bosnia and Herzegovina imposes similar requirements: 1) the receivable must have been included in the taxpayer's income in the previous tax period and must be more than 12 months past due; or 2) legal action must have been taken to collect the receivable or the relevant claim must have been filed in a liquidation or bankruptcy proceeding against the debtor.<sup>49</sup> The Republika Srpska recognises impairment losses as tax expenditures if the impaired doubtful receivable for goods and services was previously included as income in the taxpayer's taxable base as follows: 1) up to 25 percent of the value of a receivable more than 12 months past due; 2) up to 50 percent of the value of a receivable more than 18 months past due; and 3) up to 75 percent of the value of a receivable more than 24 months past due. One exception to this rule are doubtful receivables more than 12 months past due where the creditor has

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<sup>47</sup> Article 9[1]-[3] of the Croatian Corporate Income Tax Law (*Zakon o porezu na dobit*) (*Narodne novine*, br. 177/04, 90/05, 57/06, 146/08, 80/10, 22/12, 148/13, 143/14, 50/16, 115/16, 106/18, 121/19, and 32/20), in force and effect as of 20 March 2020, excepting Art. 30h, due to take effect on 1 January 2022.

<sup>48</sup> Article 17[1] of the Montenegrin Corporate Income Tax Law (*Zakon o porezu na dobit pravnih lica*) (*Službeni list Republike Crne Gore*, Nos. 065/01 of 31/12/2001, 012/02 of 15/03/2002, and 080/04 of 29/12/2004; *Službeni list Crne Gore*, Nos. 040/08 of 27/06/2008, 086/09 of 25/12/2009, 040/11 of 08/08/2011, 014/12 of 07/03/2012, 061/13 of 30/12/2013, and 055/16 of 17/08/2016).

<sup>49</sup> Article 17[1] of the Federation of Bosnia-Herzegovina Corporate Income Tax Law (*Zakon o porezu na dobit*) (*Službene novine FBiH*, Nos. 15/2016 and 15/2020).

taken at least one of the following actions to collect: 1) taken legal action to collect; 2) filed an enforcement motion with the relevant court; 3) initiated enforced collection; 4) filed the relevant claim in a bankruptcy proceeding against the debtor; or 5) reached agreement with the debtor in a liquidation or bankruptcy proceeding.<sup>50</sup>

## NON-PERFORMING RECEIVABLES FROM THE PERSPECTIVE OF VAT

Pursuant to the Value Added Tax Law, for every VAT taxable transaction involving goods or services, a VAT payer must assess and account for VAT. The VAT indicated by a creditor in its invoices constitutes its tax liability it is required to assess, report, and pay. Under Article 16 of the VAT Law, a tax liability arises on the earliest date of any of the following actions: 1) transaction involving goods or services; 2) collection or payment, where all or part of the consideration is collected or paid in cash prior to a transaction involving goods or services; 3) issuance of invoice for services of transfer, assignment, and use of copyright and related rights, patents, licences, and trademarks, and time-limited technical support services related to software, hardware, and other equipment; and 4) creation of a customs liability for import of goods, and, in the absence of such liability, date on which such liability would otherwise have arisen. **Therefore, for a VAT payer, in most cases the tax liability will arise at the time the invoice for goods or services is issued.**

### VAT relief rules in Serbia

For transactions involving goods and services, the taxable base is the consideration (in money, items, or services) that is or should be received by the taxpayer for the services or goods from the recipient of the services or goods or a third party, including subsidies and other income, not including VAT, unless otherwise provided for by the VAT Law (Art. 17 VAT Law). For goods transactions without consideration, the purchase price or cost price of those or similar goods at the time of the transaction is deemed to be the taxable base, whilst, for services, the cost price of the relevant or similar services at the time of the transaction is taken as the taxable base (Art. 18[1] and [2] VAT Law).

A VAT payer may claim VAT relief for debt not collected or collected only partially. Article 21[5] of the VAT Law allows VAT payers to claim relief for bad debt on the basis of:

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<sup>50</sup> Article 21[1] of the Republika Srpska Corporate Income Tax Law (*Zakon o porezu na dobit*) (*Sl. glasnik Republike Srpske*, Nos. 94/2015, 1/2017, and 58/2019).

1. final court ruling closing a bankruptcy proceeding, or
2. certified transcript of the court settlement order.

In all other cases, where the consideration for a transaction involving goods or services could not be collected in whole or in part for other reasons (lapsing of the receivable due to statute of limitations, suspension of enforced collection proceeding, and the like), the VAT payer may not claim VAT relief for non-performing receivables.<sup>51</sup> **As such the creditor, as the VAT payer, is required to pay VAT on transactions where the price remains uncollected even though legal action has been taken with the aim of ensuring collection.**

The VAT Law stipulates exceedingly strict requirements for VAT relief if the VAT payer has failed to collect, or has only partially collected, a goods or services receivable. These rules have two consequences. Firstly, the creditor faces greater tax costs if unable to collect, since the VAT Law envisages only two circumstances in which VAT relief may be sought for bad debt. Secondly, the price at which the receivable can be sold will increase, because the creditor will include the VAT payable on the transaction underlying the receivable. For these reasons, the VAT payer creditor has a tax liability, and these costs may significantly affect the price of the receivable they may sell, and, as such, the profitability of that receivable for the assignee.

## VAT relief rules in other jurisdictions

**Countries in the region impose similar requirements, but these are nevertheless not as restrictive as in Serbia.** Neighbouring countries that are EU Member States do not have such restrictions in place. For instance, in addition to the same requirements as set out in the Serbian VAT Law, **Montenegro** allows taxpayers to claim VAT relief they obtain a final court ruling suspending an enforcement proceeding or another document proving the taxpayer did not receive payment following a legal proceeding or did not receive payment in full due to the debtor being struck from the court register or a similar rolls.<sup>52</sup> In **Croatia**, a taxpayer may claim VAT relief for non-performing where the taxpayer that received the goods or services claims input VAT relief and notifies the supplier thereof in writing, or, if the taxpayer is not a VAT payer in Croatia, such taxpayer notifies the supplier in writing that

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<sup>51</sup> Mišljenje Ministarstva finansija, br. 401-00-02666/2013-04 od 10.4.2014. godine, odnosno br. 413-00-00927/2011-04 od 20.10.2011. godine).

<sup>52</sup> Article 20a[2] of the Montenegrin Value Added Tax Law (*Zakon o porezu na dodatu vrijednost*) (*Sl. list RCG*, Nos. 65/2001, 12/2002 - ispr., 38/2002, 72/2002, 21/2003, 76/2005, 4/2006 - ispr. and *Sl. list CG*, Nos. 16/2007, 40/2011- dr. zakon, 29/2013, 9/2015, 53/2016, 1/2017, 50/2017, 46/2019 - dr. zakon, and 80/2020).



it has not applied for VAT refund.<sup>53</sup> The **United Kingdom** also has fairly straightforward requirements for claiming VAT relief. For a VAT payer to be able to benefit from VAT relief, 1) the receivable must be over six months old; 2) the receivable must have been written off; 3) the claimant must maintain a record of receivables written off; 4) the claimant must have already accounted for and paid the VAT; and 5) the value of the goods or services concerned must not exceed their open market value.<sup>54</sup> Each **EU Member State** sets its own requirements for claiming VAT relief for non-performing or partially performing debt. However, these countries are restricted in doing so; the European Court of Justice (ECJ) has ruled that the requirement to obtain a final court decision closing a bankruptcy proceeding was contrary to the VAT Directive.<sup>55</sup>

In **Denmark**, the taxable amount (VAT exclusive) may be adjusted in bankruptcy proceedings, compulsory or voluntary composition, and execution levied by bailiff or sale by order of court. Danish authorities have of late allowed taxpayers to adjust output VAT on small bad debt losses if the creditor has made efforts to recover the debt proportional to the size of the debt. The creditor can consider the loss incurred if it is decided that further recovery is unprofitable after an individual assessment (Art. 27[6], Danish VAT Act).<sup>56</sup>

**Spanish** VAT rules permit VAT relief subject to the following requirements: 1) one year must elapse from the time VAT became chargeable (smaller entities may opt to wait only 6 months); 2) the unpaid invoice must be registered in the provider's VAT records; and 3) the customer must be a taxable person or the taxable base of the transaction must be greater than EUR 300. The creditor needs to have sought recovery by means of a judicial claim or through a notary public (if the debtor is a public body, a specific certificate must be obtained in which the pending debt is outlined) (Art. 80[4], Spanish VAT Law). Article 80[3] of the Spanish VAT Law also permits VAT recovery for bad debts when the debtor enters

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<sup>53</sup> Article 33[7] of the Croatian Value Added Tax Law (*Zakon o porezu na dodanu vrijednost*) (*Narodne novine* 73/13, 99/13, 148/13, 153/13, 143/14, 115/16, 106/18, and 121/19).

<sup>54</sup> HMRC Internal Manual, VAT Bad Debt Relief. Available at [gov.uk/hmrc-internal-manuals/vat-bad-debt-relief/vbdr1500](http://gov.uk/hmrc-internal-manuals/vat-bad-debt-relief/vbdr1500).

<sup>55</sup> The European Court of Justice (ECJ) has adopted several rulings on conditions for VAT relief. In a case concerning Italian regulations that make tax relief conditional on the existence of a final court ruling closing an insolvency proceeding, certainty that a debt was definitely non-collectable could in practice be gained only after some ten years. The ECJ took the view that such a period would disrupt the cashflow of any retailer subject to this legislation relative to their competitors in other Member States, which plainly went against the objective of fiscal alignment. In conclusion, the ECJ felt that the VAT Directive did not permit disproportionate restrictions on VAT adjustment in such cases. A similar ruling was adopted with regard to Greek legislation. See Ernst & Young, VAT on bad debts, [ey.com/Publication/vwLUAssets/ey-transfer-pricing-alert-november-2017-eng/\\$FILE/ey-transfer-pricing-alert-november-2017-eng.pdf](http://ey.com/Publication/vwLUAssets/ey-transfer-pricing-alert-november-2017-eng/$FILE/ey-transfer-pricing-alert-november-2017-eng.pdf). International tax review, Greece: ECJ decision on bad debt VAT relief could serve as a guide in many Greek cases, [internationaltaxreview.com/article/b1f7n2rz2mz42w/greece-ecj-decision-on-bad-debt-vat-relief-could-serve-as-a-guide-in-many-greek-cases](http://internationaltaxreview.com/article/b1f7n2rz2mz42w/greece-ecj-decision-on-bad-debt-vat-relief-could-serve-as-a-guide-in-many-greek-cases). PWC, Tax Flash, VAT relief on bad debts – ECJ Decision in favour of taxpayers, [pwc.com/gr/en/newsletters/tax-flash-vat-bad-debt-relief.pdf](http://pwc.com/gr/en/newsletters/tax-flash-vat-bad-debt-relief.pdf).

<sup>56</sup> European Commission, Rules applicable in EU Member States with relevance to supplies of telecommunications, broadcasting and electronic services to non-VAT taxable persons located in the EU and the application of the Mini One Stop Shop, 2018, available at [ec.europa.eu/taxation\\_customs/sites/taxation/files/2018-01\\_01\\_moss\\_report.xlsm](http://ec.europa.eu/taxation_customs/sites/taxation/files/2018-01_01_moss_report.xlsm).

bankruptcy. In this case, some specific formal and timing requirements must be complied with (other than those set forth in Art. 80[4] VAT Law).<sup>57</sup>

## TAX TREATMENT OF THE SALE OF NON-PERFORMING RECEIVABLES

This part of the assessment looks at assignment of receivables by a contract by which the assignor assigns a receivable arising from a commercial transaction (provision of goods and/or services) to the assignee for consideration. The consideration represents the discounted amount of the nominal value of the receivable determined by mutual agreement of the parties.

### Sale of receivables from the perspective of CIT

A creditor holding a non-performing receivable may assign (sell) that receivable to another person at a discount relative to its nominal value. By doing so, the creditor secures recovery of a portion of the receivable assigned, but the CIT Law also provides tax relief by recognising the difference between the nominal outstanding debt and the price at which the receivable was assigned as a tax expenditure.

The loss incurred by the assignor when selling the receivable is recognised as an expenditure in the tax balance sheet in the amount presented in the assignor's profit and loss account for the tax period in which the receivable is assigned (Art. 16a[1] CIT Law). This allows the creditor to use the discounted amount at which the receivable was sold as an expenditure in its tax balance to reduce its taxable base for the tax period in which the sale took place. Where the assignor has impaired the receivable, the impairment loss recognised as expenditure will remain recognised without the assignor having to meet the requirements of either Article 16[1]3) (which requires the assignor to have taken sufficient legal action in an attempt to recover the claim) or Article 16[2] of the CIT Law.

**Assignment of a non-performing receivable has multiple benefits for the assignor over write-off.** The first advantage is that the assignor may claim the loss incurred when selling the receivable as a tax expenditure, thereby using the discounted value of the receivable to reduce its CIT taxable base. Secondly, the assignor need not pay the costs of legal actions in recovery of the receivable it would otherwise have to take to ensure the receivable is permanently recognised as an expenditure.

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<sup>57</sup> *Ibid.*

The assignee, as the new creditor, is also entitled to impair the receivable acquired under an assignment contract. The impairment loss recorded by the assignee in its books of account is recognised in the tax balance sheet submitted for the tax period in which the impairment is made, provided that the receivable is at least 60 days past due at the end of the tax period.<sup>58</sup>

The assignee accounts for a purchased receivable at its depreciated value, which is the purchase price inclusive of transaction costs (the amount at which the receivable is initially recognised) less any payment of principal (if payment is made in instalments) and less any impairment.<sup>59</sup>

### Sale of receivables from the perspective of VAT

Assignment of receivables for consideration is exempt from VAT without allowing the taxpayer to deduct input VAT. Pursuant to Article 25[1]6) of the VAT Law, VAT is not paid on cash and capital transactions in connection with operations and intermediation involving monetary claims, cheques, bills of exchange, and other similar securities, excepting collection of receivables on behalf of another party. As such, when a VAT payer assigns a monetary claim to an assignee, the VAT is not assessed or paid, whilst the assignor is not entitled to deduct input VAT.<sup>60</sup>

The same treatment applies to factoring transactions. The VAT Law allows tax exemption without deduction of input VAT for cash and capital transactions, including operations and intermediation involving monetary claims, except collection on behalf of another party. As such, VAT is not assessed or paid on factoring fees, whilst the VAT payer providing the factoring service (the factor) is not entitled to deduct input VAT. As the factor collects matured receivables in its own name and on its own behalf (rather than collects receivables on behalf of another party), this is a service exempt from VAT without deduction of input VAT under the VAT Law.<sup>61</sup>

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<sup>58</sup> Opinion of the Ministry of Finance No. 430-00-512/2019-04 of 10/2/2020.

<sup>59</sup> Opinion of the Ministry of Finance No. 011-00-332/2017-16 of 26/5/2017.

<sup>60</sup> Opinion of the Ministry of Finance No. 430-00-529/2012-04 of 17/4/2012.

<sup>61</sup> Opinion of the Ministry of Finance No. 011-00-00648/2017-04 of 31/8/2017.

#### BOX 4. TAX TREATMENT OF NON-PERFORMING RECEIVABLES AND THEIR SALE – KEY FINDINGS

**Corporate income tax.** The Serbian CIT framework is satisfactory in its treatment of non-performing receivables and their sale. From the perspective of CIT, uncollected receivables can be recognised as tax expenditures through impairment and subsequent write-off. To impair and permanently write off an uncollected claim as a tax expenditure, the creditor must litigate, enforce, or take other legal action to collect that claim. Otherwise, the impairment loss will not be recognised in the creditor's tax balance, so the creditor will be forced to include it in its CIT taxable base. As such, creditors have to pay the procedural costs associated with seeking to collect the receivables if their write-off is to be permanently recognised as an expenditure. Similar rules exist in other countries, with some exceptions (see the section on CIT relief rules in other jurisdictions). These costs may induce creditors to assign some non-performing receivables with consideration, instead of taking legal action to collect claims, writing them off, and accounting for them as expenditures for tax purposes.

Selling a non-performing receivable offers several benefits to the assignor. Firstly, the assignor may claim tax relief on the loss incurred in selling the receivable (Art. 16a[1] CIT Law). The assignor may use the discounted value of the receivable to reduce its taxable base. Secondly, the assignor stands to save the costs of legal action it would otherwise have to take before the impairment loss could be recognised for tax purposes. Even where the assignor has impaired a receivable, the expenditure recognised in a previous tax period will remain recognised after the receivable is sold.

**Value added tax.** The VAT Law prescribes strict requirements for claiming VAT relief for uncollected or partially collected goods and services receivables. Serbia's neighbouring countries also have similar requirements in place, but these are less restrictive (see section on VAT relief rules in other jurisdictions). The inability to claim VAT relief for uncollected receivables affects the costs incurred by the creditor/assignor in its relationship with its debtor, as it will be required to assess, report, and pay the VAT it has failed to collect. These costs may thus affect the price at which the creditor will be willing to assign the receivable since they reduce its collectability.

Assignment of receivables with consideration is free of VAT without deduction of input VAT.

## 5. THE MARKET IN MSME RECEIVABLES

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### DEMAND FOR MSMES' NON-PERFORMING RECEIVABLES

The Serbian non-performing receivables market is not specifically regulated, so all businesses are able to access it. That being said, some aspects of the market are subject to regulation: for instance, debts owed by private individuals to banks may be assigned only to other banks, in accordance with Article 39 of the 2011 Financial Consumer Protection Law.<sup>62</sup> Amendments to this piece of legislation enacted in 2014 (Art. 2[2]) extended this restriction to debts owed to banks by sole traders and farmers.<sup>63</sup>

Debt buyers (assignees) purchase accounts receivable from the original creditors (assignors) in the market, with wide variation present in the types of receivables traded. These can be (1) corporate or consumer receivables; (2) performing or non-performing receivables; (3) receivables with or without third-party guarantees; and (4) receivables secured or unsecured by collateral.<sup>64</sup> Market participants debt collection in exchange for a commission, and outright debt purchase. In Serbia, non-performing accounts receivable are primarily purchased by entities registered as collection agencies and credit bureaus. There are exceptions to this rule since there are no specific conditions as to how a debt buyer has to be registered.<sup>65</sup>

Debt buyers offer two basic types of services: (1) debt collection, and (2) debt purchase. With debt collection, the outstanding amount is collected on behalf of the creditor in exchange for a commission, whilst debt purchase means the debt collection agency becomes the new creditor. Debts can be purchased as either (1) entire portfolios or (2) single receivables. Most information in Serbia is available for the non-performing loan (NPL) market. Currently, five large NPL servicers and buyers are active in the country: (1) APS holding; (2) B2 Holding; (3) Credit Express; (4) Coface; and (5) EOS Group.<sup>66</sup> These agencies' established practice in the Serbian market is to buy up large portfolios of non-performing

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<sup>62</sup> *Zakon o zaštiti korisnika finansijskih usluga* (Official Gazette of the Republic of Serbia, Nos. 36/2011 and 139/2014).

<sup>63</sup> *Zakon o izmenama i dopunama zakona o zaštiti korisnika finansijskih usluga* (Official Gazette of the Republic of Serbia, No. 139/2014).

<sup>64</sup> Receivables Management Association International. 2015. Receivables Management Association International - White Paper, 3.

<sup>65</sup> Some businesses are large players in the NPL management and purchase market, even though not registered specifically for this activity.

<sup>66</sup> NPL Monitor for the CESEE region H2 2019, 17.

receivables, mainly from the financial sector.<sup>67</sup> For example, according to available information, in July 2019 EOS Matrix purchased a Serbian Deposit Insurance Agency portfolio worth €242 million.<sup>68</sup> Currently, 28 businesses are registered as debt collection agencies in Serbia, as shown in Table 10.

Table 10. Registered debt collection agencies operating in Serbia

Company	Source	Web site lists debt buying as service?
AGRO FACTORING DOO NOVI SAD	<a href="http://agro-factoring.rs/rs/">agro-factoring.rs/rs/</a>	No
AK COLLECTION DOO BEOGRAD		
ASTOP INKASSO DOO BEOGRAD		
B2 HOLDING KAPITAL DOO BEOGRAD	<a href="http://b2kapital.rs/klijenti">b2kapital.rs/klijenti</a>	Yes
B4B COLLECTIONS DOO BEOGRAD	<a href="http://b4b.rs">b4b.rs</a>	No
BNP FINANCE DOO BEOGRAD		
CREDITREFORM DOO BEOGRAD	<a href="http://creditreform.rs/en/products-and-services/debt-collection-service.html">creditreform.rs/en/products-and-services/debt-collection-service.html</a>	No
CYCLE CREDIT DOO BEOGRAD	<a href="http://cyclecollections.com/cycle-sa-rs">cyclecollections.com/cycle-sa-rs</a>	No
DDM DEBT MANAGEMENT DOO BEOGRAD		
DMC-DEBT MANAGEMENT CENTER DOO BEOGRAD		
DOO CREDITEXPRESS BEOGRAD	<a href="http://creditexpress.com/srb/usluge-2">creditexpress.com/srb/usluge-2</a>	No
EOS MATRIX DOO BEOGRAD	<a href="http://rs.eos-solutions.com/services.html">rs.eos-solutions.com/services.html</a>	Yes
FACTOR COLLECTION CONSULTING DOO BEOGRAD		
INCASSO MANAGEMENT DOO BEOGRAD	<a href="http://incasso.me/otkup-potrazivanja">incasso.me/otkup-potrazivanja</a>	Yes
INVEST PRO CAPITAL DOO BEOGRAD		
KKND DEBT COLLECTION AGENCY DOO BEOGRAD		
MCGRATH & ARTHUR DOO BEOGRAD		
MELLON SERBIA DOO BEOGRAD	<a href="http://mellon.rs/upravljanje-potrazivanjima-i-naplata-potrazivanja">mellon.rs/upravljanje-potrazivanjima-i-naplata-potrazivanja</a>	No
MIG-INVEST GROUP DOO VOJKA		
NDEXPRESS DOO NEGOTIN		
ODM ASSET DOO BEOGRAD		
ODM COLLECTIONS DOO BEOGRAD	<a href="http://odmc.rs/en/debt-purchase">odmc.rs/en/debt-purchase</a>	Yes
OFS DOO BEOGRAD	<a href="http://ofs.rs/#ponuda">ofs.rs/#ponuda</a>	No
PRIVREDNO DRUŠTVO ZA TRGOVINU TWO DOTS DOO BEOGRAD		
PRO KOLEKT DOO BEOGRAD	<a href="http://prokolekt-serbia.com/izterajava-dolgov">prokolekt-serbia.com/izterajava-dolgov</a>	No
PRO KOLEKT-PROHIT DOO BEOGRAD	<a href="http://prokolekt-prohit.com/otkup-potrazivanja">prokolekt-prohit.com/otkup-potrazivanja</a>	Yes
STM COLLECTION SERVICES DOO BEOGRAD		
TVS MONETA DOO BEOGRAD		

Accessing information is an issue, since MSMEs (sellers of single receivables) find it difficult to identify businesses that provide debt buying services. Few of these agencies list debt buying as a service they offer. No more than five collection agencies that had web sites explicitly stated they provided this service. Only one agency offered to purchase single receivables, but even in this case the service was described rather vaguely. Factoring companies also offer to purchase non-performing receivables as a service related to factoring, and information listed on their web sites suggests they will purchase single receivables. Even though factoring firms are generally registered for other activities, one collection agency from the sample above also had a factoring licence. Since factoring is based on the purchase of single receivables, factoring firms enjoy an advantage over collection agencies, which usually deal with portfolios, as factoring companies have well-

<sup>67</sup> See, for instance, Eos Matrix, *Services*, available at [rs.eos-solutions.com/en/services.html](http://rs.eos-solutions.com/en/services.html).

<sup>68</sup> NPL Monitor for the CESEE region H2 2019, 14.

established risk assessment procedures they can rely on when purchasing individual accounts receivable.

A survey of the market and information obtained in semi-structured interviews with the relevant players (see Appendix, Semi-Structured Interviews) suggest that **there is no significant market demand for MSME debt from collection agencies or other institutional debt buyers**; in other words, market players do not see the purchase of these receivables as a lucrative endeavour. These accounts receivable are at best bought only sporadically. According to semi-structured interviews with debt collection agencies, the market in non-performing MSMEs' receivables is constrained by a number of factors: 1) MSMEs often react late in seeking to dispose of their debt; 2) MSMEs frequently have unrealistic perceptions of the market value of their receivables (i.e. the discount at which they can sell them); and 3) MSMEs lack awareness.

## PORTFOLIO PURCHASES

It takes some three months to complete an NPL portfolio purchase transaction.<sup>69</sup> The usual steps taken in such a purchase are: (1) tender for sale of the portfolio is advertised; (2) non-binding bids are submitted; (3) portfolio information is accessed; (4) potential purchasers perform due diligence; (5) negotiations take place about the transaction; (6) a purchaser is selected; and (7) agreement on assignment of receivables is signed. Although the process need not comprise all the steps outlined above and may be structured differently, access to information about the portfolio and due diligence are always required, due to the pronounced information asymmetry between the assignor and the assignee.<sup>70</sup> Due diligence allows buyers to assess the financial and legal risks inherent to a portfolio and set the price based on an overall review of it.

**Receivables that are part of a portfolio may be assessed according to different criteria.** Here, it is important to consider: (1) length of delinquency; (2) date and amount of the debtor's latest payment; (3) number of contested receivables; (4) receivables subject to enforcement; (5) receivables filed as claims in bankruptcy and their status in the bankruptcy proceeding; (6) type and value of collateral posted to secure the receivable; and (7) financial position of the debtor. Each of these criteria contains a number of categories that are taken into account during the assessment. Portfolio size also allows buyers to better estimate collection risk. Since the seller usually defines the portfolio based on a number of pre-

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<sup>69</sup> Draft of Analysis of the existing impediments to the sale of NPLs in Serbia, 29.

<sup>70</sup> Tešić, 2012, 124.

defined criteria, receivables with a low probability of recovery are grouped together with those relatively likely to be collected (such as, for instance, receivables included in reorganisation plans in progress, or those secured by valuable collateral).

Apart from institutional buyers, the market constantly sees ad hoc assignment of accounts receivable between various businesses in support of these firms' core activities ('casual assignments'). These transactions are motivated by various reasons: (1) collecting an account receivable from the assignor; (2) settlement; and (3) closing of multiple open positions between companies doing business with one another.

*Example: Company A assigns a non-performing debt owed by Company C to Company B. Company B is at the same time a large customer of Company C, unlike Company A, which does business with Company C only occasionally. As such, Company B is better able to recover or offset the account receivable it has bought. This transaction can have the purpose of allowing Company A to repay its debts to Company B, where the assignment is made instead of payment, or of allowing Company B to earn a profit from the assigned receivable whilst Company A recovers at least some of the debt in a short period of time. In this case, the assignment arrangement is conditioned by the situation in which these three companies find themselves, or by the state of the market.*

## FACTORING MARKET

The Serbian factoring market is underdeveloped. In practice, companies generally allow discounts instead of factoring to ensure timely payment. The factoring market was valued at 1.9 percent of GDP in 2019, which was a relatively low percentage in comparison with EU Member States (where the figure is some 7 percent). In 2017, the market was in recovery, but future trends are difficult to estimate given the ongoing pandemic. There is significant potential for the factoring market to grow, especially given how widespread payment delinquency is and the liquidity issues it causes, particularly for MSMEs.

Serbia has the least well-developed factoring market in the region. Figure 7 shows trends in regional factoring markets from 2013 to 2019. According to these data, 2019 saw an increase in factoring revenues in Bulgaria (10 percent), Slovenia (42 percent), and Serbia (35 percent). Factoring revenues dropped sharply in Serbia in 2014, but thereafter increased consistently to peak at €883 million in 2019.<sup>71</sup> Even at this value, the Serbian factoring market is the smallest relative to neighbouring countries, and this finding is corroborated by other

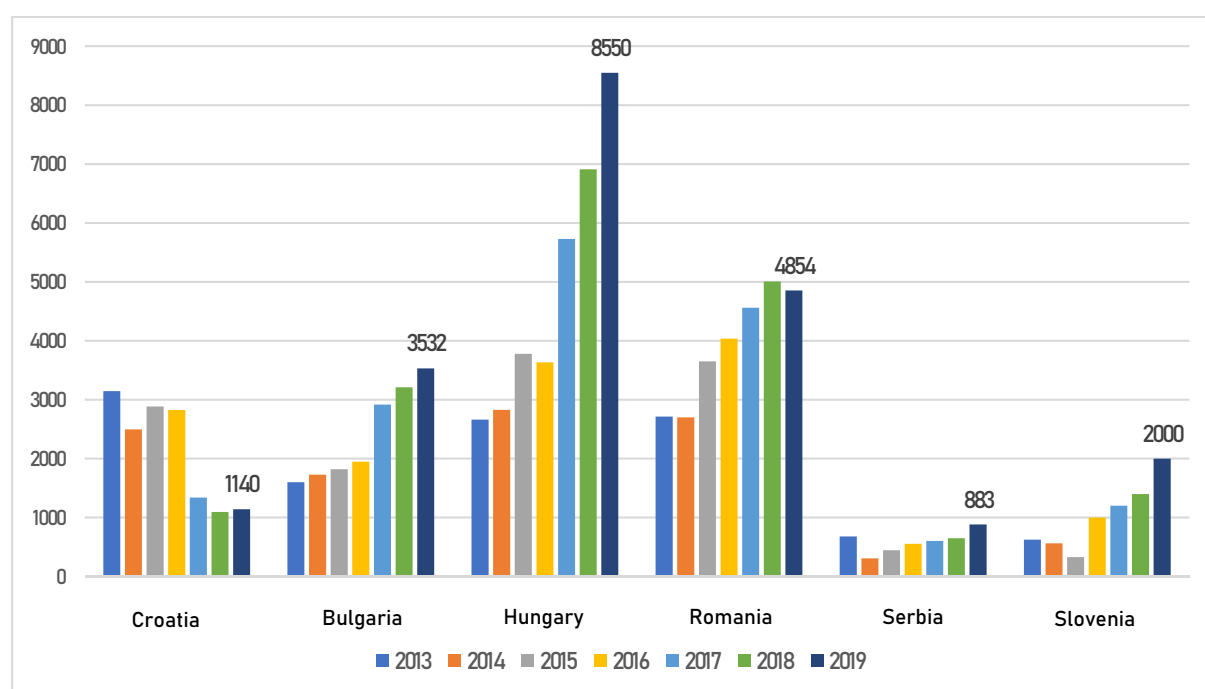
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<sup>71</sup> Factoring and Financing of Open Account Domestic and International Trade Receivables, Industry Statistics. Available at [fci.nl/en/industry-statistics?language\\_content\\_entity=enl](https://fci.nl/en/industry-statistics?language_content_entity=enl).



sources. No respondents in the Annual Survey of 1000 Serbian Businesses conducted by the USAID Cooperation for Growth Project reported using factoring as a source of finance.<sup>72</sup>

Figure 7. Regional factoring market, 2013 – 2019, EUR mn



Source: Factoring and Financing of Open Account Domestic and International Trade Receivables, Industry Statistics, available at [fci.nl/en/industry-statistics?language\\_content\\_entity=enl](https://fci.nl/en/industry-statistics?language_content_entity=enl).

Banks account for a major part of the factoring market, in terms of both the number of players and the total revenue. According to statistics and findings of semi-structured interviews with the relevant players (see the Semi-Structured Interviews section), commercial banks dominate the market and shape its key aspects. No leading global companies are currently active in Serbia. There are 45 entities licensed to engage in factoring (as shown in Table 11). Of these:

- 18 are factoring companies (of which 16 are actively trading);
- 26 are banks (of which 19 were found to be advertising factoring services on their web sites); and
- one is a specialised public agency, the Serbian Export Credit and Insurance Agency.

Of the 45 licensed businesses, 36 actively offer factoring. These are 16 factoring firms, 19 banks, and one public entity. Although factoring companies generally offer only factoring services (for accounts receivable that have not matured), some firms also purchase delinquent or non-performing receivables.

<sup>72</sup> USAID-ov Projekat saradnje za ekonomski razvoj, Anketa „1.000 preduzeća“, novembar 2020. godine. Available at [saradnja.rs/wp-content/uploads/2020/11/Anketa-1000-preduze%C4%87a-2020.pdf](https://saradnja.rs/wp-content/uploads/2020/11/Anketa-1000-preduze%C4%87a-2020.pdf).

Table 11. Companies licensed to provide factoring services

Company	Web site
DRUŠTVO ZA FACTORING TELEGROUP FINANCE DOO BEOGRAD	
PRVI FAKTOR - FACTORING DOO, BEOGRAD u likvidaciji.	
FINERA FACTORING DOO BEOGRAD u stečaju	
DOO GAMICO FACTORING BEOGRAD	<a href="http://gamicofactoring.com/article/factoring.html">gamicofactoring.com/article/factoring.html</a>
AGRO FACTORING DOO NOVI SAD	<a href="http://agro-factoring.rs/rs/o-nama.html">agro-factoring.rs/rs/o-nama.html</a>
DRUŠTVO ZA FACTORING PROFINANCE DOO BEOGRAD	<a href="http://profinance.rs">profinance.rs</a>
ABL FAKTOR DOO BEOGRAD	<a href="http://ablfaktor.rs">ablfaktor.rs</a>
FOCUS FACTOR PLUS DOO BEOGRAD	<a href="http://focusfactor.rs/otkup-potrazivanja">focusfactor.rs/otkup-potrazivanja</a>
CENTAR FAKTOR DOO BEOGRAD	
PRIVREDNO DRUŠTVO QUICK FACTORING DOO BEOGRAD	
ALCHEMIST FAKTOR DOO BEOGRAD	<a href="http://alchemist.rs/otkup-potrazivanja">alchemist.rs/otkup-potrazivanja</a>
IDEAL FINANCE DOO BEOGRAD	<a href="http://idealfinance.rs">idealfinance.rs</a>
EMELION FACTORING DOO BEOGRAD	<a href="http://emelion-factoring.com/o-nama.html">emelion-factoring.com/o-nama.html</a>
PETERHOF FACTORING DOO BEOGRAD	<a href="http://peterhof-factoring.com">peterhof-factoring.com</a>
ARTHUR BERGMANN AD BEOGRAD	
POMAX DOO BEOGRAD	
VANTAGE FINANCIAL CONSULTING DOO BEOGRAD-STARI GRAD	
FINSLOT DOO BEOGRAD-Stari Grad	<a href="http://finspot.rs">finspot.rs</a>
ADDIKO BANK AD BEOGRAD	<a href="http://addiko.rs/privreda/krediti/kratkoročno-finansiranje">addiko.rs/privreda/krediti/kratkoročno-finansiranje</a>
AIK BANKA AD, BEOGRAD	<a href="http://aikbanka.rs/privreda-i-finansijske-institucije/privreda/krediti">aikbanka.rs/privreda-i-finansijske-institucije/privreda/krediti</a>
ALTA BANKA AD BEOGRAD	<a href="http://altabanka.rs/code/navigate.asp?id=457">altabanka.rs/code/navigate.asp?id=457</a>
API BANK AD BEOGRAD	<a href="http://apibank.rs/privreda/factoring">apibank.rs/privreda/factoring</a>
BANCA INTESA AD BEOGRAD	<a href="http://bancaintesa.rs/privreda/factoring.812.html">bancaintesa.rs/privreda/factoring.812.html</a>
BANKA POŠTANSKA ŠTEDIONICA AD, BEOGRAD (PALILULA)	<a href="http://posteo.co.rs/kamatne_stope.html">posteo.co.rs/kamatne_stope.html</a>
BANK OF CHINA SRBIJA AD BEOGRAD - NOVI BEOGRAD	<a href="http://bankofchina.com/rs">bankofchina.com/rs</a>
CREDIT AGRICOLE BANKA SRBIJA AD NOVI SAD	<a href="http://creditagricole.rs/factoring/factoring.2966.html">creditagricole.rs/factoring/factoring.2966.html</a>
DIREKTA BANKA AD KRAGUJEVAC	<a href="http://direktbanka.rs/uploads/main">direktbanka.rs/uploads/main</a>
EXPOBANK AD BEOGRAD	<a href="http://expobank.rs/index.php/sr">expobank.rs/index.php/sr</a>
ERSTE BANK AD, NOVI SAD	<a href="http://ersteinbank.rs/sr/Pravna-lica/proizvodi/factoring">ersteinbank.rs/sr/Pravna-lica/proizvodi/factoring</a>
EUROBANK AD BEOGRAD	<a href="http://eurobank.rs/pocetna.1.html">eurobank.rs/pocetna.1.html</a>
HALKBANK AD BEOGRAD	<a href="http://ersteinbank.rs/sr/Pravna-lica/proizvodi/factoring">ersteinbank.rs/sr/Pravna-lica/proizvodi/factoring</a>
KOMERCIJALNA BANKA AD BEOGRAD	<a href="http://kombank.com/sr/privreda/ostalo-privreda/otkup-potrazivanja">kombank.com/sr/privreda/ostalo-privreda/otkup-potrazivanja</a>
MIRABANK AD BEOGRAD-NOVI BEOGRAD	<a href="http://mirabankserbia.com">mirabankserbia.com</a>
MOBI BANKA AD BEOGRAD (NOVI BEOGRAD)	<a href="http://mobibanka.rs">mobibanka.rs</a>
MTS BANKA AD BEOGRAD	<a href="http://mtsbanka.rs/sr-Latn-RS/privreda/otkup-potrazivanja#gsc.tab=0">mtsbanka.rs/sr-Latn-RS/privreda/otkup-potrazivanja#gsc.tab=0</a>
NLB BANKA AD BEOGRAD	<a href="http://nlb.rs/vest/17071/uspesno-završen-proces-privatizacije-nlb-grupe">nlb.rs/vest/17071/uspesno-završen-proces-privatizacije-nlb-grupe</a>
OPPORTUNITY BANKA AD NOVI SAD	<a href="http://obs.rs">obs.rs</a>
OTP BANKA SRBIJA AD BEOGRAD	<a href="http://otpsrbija.rs/privreda/domaci-factoring-privreda">otpsrbija.rs/privreda/domaci-factoring-privreda</a>
PROCREDIT BANK AD BEOGRAD (NOVI BEOGRAD)	<a href="http://procreditbank.rs">procreditbank.rs</a>
RAIFFEISEN BANKA AD BEOGRAD	<a href="http://raiffeisenbank.rs/en/pravna-lica/privreda/factoring-poslovi">raiffeisenbank.rs/en/pravna-lica/privreda/factoring-poslovi</a>
SBERBANK SRBIJA AD BEOGRAD	<a href="http://sberbank.rs/privreda/privreda/finansiranja/factoring">sberbank.rs/privreda/privreda/finansiranja/factoring</a>
SRPSKA BANKA AD BEOGRAD	<a href="http://srpskabanka.rs/privreda/kreditiranje-factoring.html">srpskabanka.rs/privreda/kreditiranje-factoring.html</a>
UNICREDIT BANK SRBIJA AD BEOGRAD	<a href="http://unicreditbank.rs/rs/biznis/finance/factoring.html">unicreditbank.rs/rs/biznis/finance/factoring.html</a>
VOJVODANSKA BANKA AD NOVI SAD	<a href="http://voban.co.rs/factoring">voban.co.rs/factoring</a>
AGENCIJA ZA OSIGURANJE I FINASIRANJE IZVOZA REPUBLIKE SRBIJE AD	<a href="http://aofi.rs/sr/usluge/factoring">aofi.rs/sr/usluge/factoring</a>

**Banks mostly offer reverse factoring.** The findings of semi-structured interviews show banks provide reverse factoring for large clients, which allows them to finance the supply chains which include MSMEs. Even though this model ultimately serves to finance MSMEs, it is neither initiated nor dependent on this sector, which is a primary reason for the under-development of the Serbian factoring market.

**Factoring firms prefer to work with larger companies, whilst MSMEs remain poorly acquainted with the benefits of factoring.** As a consequence, MSMEs are very late in approaching factoring companies, often just days before maturity. The development of online reverse factoring could greatly facilitate access and increase the volume of factoring services. One commercial bank has introduced its proprietary platform for this, but a comprehensive (nationwide) online marketplace could significantly promote access and ensure the most favourable conditions for MSME financing.

**MSMEs can access information about the supply of factoring services fairly easily.** In addition, factoring companies could play a greater role in purchasing single non-performing receivables from MSMEs, and some already offer this service. Online invoice trading platforms, which will be discussed in detail below, offer much potential for development of the Serbian factoring market and the market in non-performing MSME accounts receivable. Lastly, some issues have been identified in practice, for instance with invoice registration, since factoring companies have no way of ascertaining whether an invoice has previously been factored.



## 6. INVOICE TRADING MODEL

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This section looks at the possible options for MSMEs to secure liquidity by using financing based on both delinquent and non-matured receivables. As such, this chapter partly focuses on receivables that are not non-performing. Asset-based finance using accounts receivable can reduce the likelihood of the underlying receivable becoming non-performing. This section shows the characteristics and nature of the invoice trading model as a market-based solution, in particular in view of the experiences of European countries with well-developed markets of this type. Some outstanding issues with the regulatory framework have also been identified that can inform the development and implementation of similar solutions in Serbia.

### INVOICE TRADING MODEL AS A MARKET-BASED SOLUTION

Many financing options have long been available that reduce the impact of non-performing trade receivables on the side of both creditors and debtors. These financial instruments, however, are mainly tailored to the needs of large companies, and MSMEs have rarely been able to access these sources of finance.<sup>73</sup> Nevertheless, recent years have seen substantial innovation when it comes to financial services adjusted to the needs of MSMEs. These are digital solutions that, on the one hand, simplify the steps required to access or approve receivables-based financing, and, on the other, secure better financing conditions for MSMEs. Foremost amongst these are financial services based on information technology offered by 'fintech' companies.<sup>74</sup>

Fintech services can be grouped under alternative or non-bank finance in that they are not provided by banks and other mainstream financial intermediaries. Alternative finance involves a broad range of financial services, which can be broadly divided into: 1) debt financing; 2) equity financing; and 3) non-investment financing models.<sup>75</sup> Debt financing is

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<sup>73</sup> Botta, A., Höll, R., Jain, R., Shah, N., Hau, L. 2020. Supply-chain finance: A case of convergent evolution? *The 2020 McKinsey Global Payments Report*, McKinsey & Company, 19. Available at [mckinsey.com/industries/financial-services/our-insights/accelerating-winds-of-change-in-global-payments](https://mckinsey.com/industries/financial-services/our-insights/accelerating-winds-of-change-in-global-payments).

<sup>74</sup> Fintech companies can be described as firms that provide financial services based on information and communication technology. See Schena, C., Tanda, A., Arlotta, C., Potenza, G. 2018. The development of FinTech: Opportunities and risks for the financial industry in the digital age. *Commissione Nazionale Per Le Società E La Borsa*, 8. Available at [consob.it/web/consob-and-its-activities/fintech-series](https://consob.it/web/consob-and-its-activities/fintech-series).

<sup>75</sup> Cambridge Centre for Alternative Finance. 2020. *The Global Alternative Finance Market Benchmarking Report: Trends, Opportunities and Challenges for Lending, Equity, and Non-Investment Alternative Finance Models*, 30. Available at

most commonly used to finance accounts receivable arising from commercial transactions between creditors and debtors. Here, investors (both institutional/corporate ones and private individuals) extend finance to MSMEs as loans or by purchasing debt, and the intermediary facilitating the financing is an online platform (or financial service provider) that matches creditors with investors and assumes responsibility for all financing actions.<sup>76</sup>

**The invoice trading is the financial service linked the most closely to financing creditors' accounts receivable.** The invoice trading model is a form of alternative online receivables-based MSME financing. Invoice trading usually entails financing of receivables where investors (private individuals and institutional investors) purchase invoices from a business at a discount.<sup>77</sup>

**Invoice trading platforms offer three main models of this service: 1) marketplace; 2) direct purchase; and 3) supply chain financing.** In the first case, the platforms match companies with investors and at times organise auctions where potential investors in invoices can bid for them. Here, the platforms act as market operators and are not directly involved in the invoice financing transaction. In the second case, platforms directly buy invoices from creditors; most of these platforms have agreements with institutional investors that finance the purchases. The platforms here buy the accounts receivable. Lastly, in the third case, supply chain financing platforms offer their services mainly to large firms that have debts arising from commercial transactions. These companies allow their suppliers to transfer invoices to investors accredited on the platforms.

The invoice trading process is structured as follows:

1. A business (creditor) applies online to become an approved member of the invoice trading platform.
2. Once approved, a client bank account is set up and the business can sell an invoice (as small as €1,000 and as large as €1 million or more) on the invoice trading platform.
3. The invoice trading company electronically verifies the invoice to determine whether it is authentic, and the receivable actually exists. Once verified, the invoice is sold on the platform, where multiple investors buy slices of the invoice.
4. The business receives funds in its account as an advance up to 90 percent of the invoice face value within 24 to 48 hours.

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jbs.cam.ac.uk/faculty-research/centres/alternative-finance/publications/the-global-alternative-finance-market-benchmarking-report.

<sup>76</sup> *Ibid.*

<sup>77</sup> *Ibid.*, 31.

5. When the end debtor pays its invoice into the client bank account, the invoice trading platform makes the remaining balance available to the business, minus the platform's fees.<sup>78</sup>

**Invoice trading is very similar to standard factoring.** The financing consists of the purchase of trade receivables by investors at a discount. Invoice trading is different from factoring in that **it takes place via an online platform and the creditor sells its receivables in an auction, generally to a large number of investors that buy 'slices' of the invoice and so finance the receivable.** If the platform takes on the role of marketplace in these transactions, rather than taking part directly in receivables purchasing, the service involved is not factoring. Rather, in this case the platform matches the supply of receivables with demand for them and brings together creditors and investors to finance the receivables. However, when the platform directly purchases receivables from creditors, this can be construed as factoring and the platform must meet the requirements for providing this service. Invoice trading can here be seen as recourse factoring, and the creditor (assignor) is liable to the platform for collecting the receivables. Further, supply chain financing for debtors can be considered reverse factoring if, by taking on an invoice from a debtor, the platform also takes on its liability towards creditors, whereby it can collect the amount from the debtor within the contracted period, as regulated by Serbian law (Article 18 FL).

Since the receivable is sold to the investor(s) that make the highest bid, a creditor seeking finance using invoice trading may get favourable terms, depending on how collectable the debt is and other key aspects (e.g. its debtor's creditworthiness, operating performance, and the like). This means that invoice trading platforms may address issues with the Serbian receivables market by offering creditors opportunities to sell their invoices at higher prices.

## **RISKS ASSOCIATED WITH THE INVOICE TRADING MODEL**

**Invoice trading entails risks that are generally associated with receivables.** As such, any receivables financing platform ought to address the principal hazards involving this type of transaction:

- 1) **fraud risk:** the risk that the purchase order or invoice presented for trading may be counterfeit;
- 2) **receivable title risk:** the risk that the creditor may have already assigned or pledged the receivable to another investor or financial institution;

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<sup>78</sup> MarketFinance, Invoice Trading Explained. Available at [marketfinance.com/business-finance/what-is-invoice-trading](https://marketfinance.com/business-finance/what-is-invoice-trading).

- 3) **receivable transfer risk:** the risk that applicable law may not allow the investor to take a good and marketable title to the receivable, free and clear of third-party claims, or that it may require the investor to take actions they were not aware they were required to take;
- 4) **dispute risk:** the risk that the debtor (the buyer in the commercial transaction) may claim that the goods or services did not satisfy the requirements of the commercial transaction, or that the creditor did not perform its obligations arising from the commercial transaction;
- 5) **discount risk:** the risk that the debtor will not pay the full amount of the invoice for reasons other than the creditor's performance in connection with the commercial transaction;
- 6) **payment delay risk:** the risk that the debtor will not pay in a timely manner;
- 7) **payment direction risk:** the risk that the debtor will make the payment to the creditor or some other party instead of the investor; this is a risk only if the investor has bought the receivable but the debtor is not aware that the investor is now the creditor; and
- 8) **debtor credit risk:** the risk that the debtor will not pay due to financial inability or insolvency.<sup>79</sup>

According to the **Global Alternative Finance Market Benchmarking Report**, **campaign fraud risk was the single greatest risk factor in invoice trading**, with 80 percent of all platforms assessing this risk as 'very high' or 'high'. **Notable increase in default** was seen as the second highest-ranked risk, with 70 percent of platforms identifying it as 'very high' or 'high'. **In the Balkans, cyber-security breach** was perceived as the greatest risk, seen by one-third of those polled as 'very high' or 'high', with change in regulation coming second, rated by no more than 11 percent as 'low' or 'very low'. Interestingly, respondents in the Balkans were not concerned about default or fraud: none of those polled rated these as high risks.<sup>80</sup>

## PRECONDITIONS FOR EFFECTIVE INVOICE TRADING

Functionality is a key concern for market-based solutions that can enhance MSME liquidity by offering receivables financing. In both the region and across the EU, fintech solutions,

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<sup>79</sup> Incomlend, What are the Risks of Invoice Finance and Invoice Trading? Available at [incomlend.com/what-are-the-risks-of-invoice-finance-and-invoice-trading](https://incomlend.com/what-are-the-risks-of-invoice-finance-and-invoice-trading).

<sup>80</sup> Cambridge Centre for Alternative Finance. 2020. 98.



such as invoice trading, came into being only after electronic invoicing was introduced in these countries.<sup>81 82</sup>

As such, a key precondition for introducing similar options in the Serbian receivables market is the creation of infrastructure that would ensure sufficient reliability in assessing the authenticity of receivables that underlie invoices in both B2B and B2PA transactions. In 2018, Serbia began this process by setting up the Invoice Register for B2PA transactions, with a centralised e-invoicing system now planned to be introduced for B2PA and B2B transactions.

## ELECTRONIC INVOICING IN B2B TRANSACTIONS

Electronic invoices were first recognised as valid accounting documents in the previous iteration of the Accounting Law (*Official Gazette of the Republic of Serbia*, No. 62/2013). This piece of legislation had required accounting documents (including invoices) to be furnished with an electronic signature or other identifying device, which facilitated the issuance and posting of invoices in Serbia, with specific rules introduced for their electronic storage.<sup>83</sup>

The new Accounting Law, which took effect on 1 January 2020, mandates e-invoicing as of 1 January 2022. The Law requires legal persons and sole traders to issue invoices as accounting documents exclusively in electronic format.<sup>84</sup> The Statement of Explanation accompanying the Accounting Bill noted that this would facilitate invoicing, shorten transaction times, and allow quicker VAT refunds.<sup>85</sup>

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<sup>81</sup> Koch, B. 2019. The E-Invoicing Journey 2019-2025, *Billentis*, 25. Available at [billentis.com/The\\_einvoicing\\_journey\\_2019-2025.pdf](https://billentis.com/The_einvoicing_journey_2019-2025.pdf).

<sup>82</sup> One recent example is that of Croatia, which instituted an e-invoicing system in 2016 to allow companies to issue standardised electronic invoices to public-sector entities through an online platform (*E-Račun*, or 'E-Invoice'). The platform allowed the existing financial market infrastructure to be harnessed to create new, alternative sources of finance for MSMEs. In this context, in late 2018 the European Bank for Reconstruction and Development (EBRD) financed an assessment of the suitability of *e-Račun* to register accounts receivable, or electronic invoices, in the private sector with a view to allowing these to be traded. The project aimed at exploring the establishment of a new market category for e-invoices, receivables, and other potential alternative cash flow financing instruments for SMEs. Similarly to Serbia, the factoring market was found to be contracting, which was creating an immediate demand for a new framework and products for cash flow financing for SMEs based on best practices and international experiences, e.g. by creating a trading platform for e-invoices building on an established framework, thereby enabling multilateral trading of receivables. European Bank for Reconstruction and Development. 2018. *Croatia: Establishing a receivable/e-invoice trading platform to strengthen access to finance for SMEs*. Available at [ebrd.com](https://ebrd.com).

<sup>83</sup> Interpretive release of the Ministry of Finance and the Ministry of Trade, Tourism and Telecommunications with regard to the issuance and posting of physical and electronic invoices not furnished with official stamp and signature, Ministry of Finance and Ministry of Trade, Tourism and Telecommunications, 12 December 2017. Available at [media.srbija.gov.rs/medsrp/dokumenti/fakture-u-papirnom-el.obliku-bez-pecata-potpisa2017.pdf](https://media.srbija.gov.rs/medsrp/dokumenti/fakture-u-papirnom-el.obliku-bez-pecata-potpisa2017.pdf).

<sup>84</sup> Article 9[3] and Article 64[3] of the Accounting Law (*Official Gazette of the Republic of Serbia*, No. 73/2019).

<sup>85</sup> Accounting Bill (*Official Gazette of the Republic of Serbia*, No. 73/2019). Available at [parlament.gov.rs/upload/archive/files/cir/pdf/predlozi\\_zakona/2019/2368-19.pdf](https://parlament.gov.rs/upload/archive/files/cir/pdf/predlozi_zakona/2019/2368-19.pdf).

A special piece of legislation will be enacted to regulate e-invoices. The Electronic Invoicing Law has been approved by the Government and has entered Parliamentary procedure for adoption.<sup>86</sup> The Law envisages staggered entry into effect for different types of transactions. E-invoicing will become mandatory for B2PA transactions on 1 January 2022 and for PA2B transactions on 1 July 2022; in B2B transactions, this requirement will apply from 1 January 2023.<sup>87</sup>

Starting from 1 July 2021, in addition to public-sector entities, VAT payers and other legal persons and sole traders will be able to use e-invoices once the technical requirements for this have been addressed. E-invoicing in B2B transactions will apply only to VAT payers, since the Electronic Invoicing Bill applies only VAT payers, whilst other legal persons and sole traders required to issue or accept invoices, within the meaning of specific legislation, can use the e-invoicing system but are not required to do so.<sup>88</sup>

**The new system will entail a centralised electronic invoice clearing arrangement.** It will be managed by the Ministry of Finance, which will play the role of 'central information intermediary', and facilitate sending, receiving, recording, processing, and retention of e-invoices. Whilst the Ministry of Finance will be the central information intermediary, the Electronic Invoicing Bill envisages other 'information intermediaries', businesses that will be licensed by the Ministry of Finance to provide services of issuing, recording, processing, receiving, and retaining e-invoices and any accompanying documentation.<sup>89</sup>

**The aim of this initiative is to completely replace paper-based invoices with digital ones, which will be conveyed in a dematerialised fashion through a centralised platform from the issuer to the recipient.** B2PA invoices will be the first to move to this new arrangement, as businesses are already able to invoice public authorities electronically. According to the Economic Reform Programme, 2021-2023, the shift to e-invoicing will be accompanied by a major outreach and awareness-raising effort spanning all of 2021 to help businesses change over to the new system.<sup>90</sup> Since the Electronic Invoicing Bill envisages later entry into effect of the various requirements, time limits in the implementation plan are expected to shift similarly.

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<sup>86</sup> Electronic Invoicing Bill, 2 April 2021. Available at [parlament.gov.rs/upload/archive/files/cir/pdf/predlozi\\_zakona/2021/582-21.pdf](http://parlament.gov.rs/upload/archive/files/cir/pdf/predlozi_zakona/2021/582-21.pdf).

<sup>87</sup> The requirement for public-sector entities to accept and retain e-invoices and issue e-invoices to other public-sector entities will enter into effect on 1 January 2022. Public-sector entities will be required to issue e-invoices to businesses from 1 July 2022. Public-sector entities will be required to assess VAT electronically from 1 January 2022. Businesses will be required to invoice public-sector entities electronically from 1 January 2022. Businesses will be required to accept and retain e-invoices issued by public-sector entities and other businesses from 1 July 2022. E-invoicing in B2B transactions will become mandatory on 1 January 2023. See Article 24, Electronic Invoicing Bill.

<sup>88</sup> Article 5[4] of the Electronic Invoicing Bill.

<sup>89</sup> Article 2[1]6) of the Electronic Invoicing Bill.

<sup>90</sup> Ministry of Finance, 2020. Draft Economic Reform Programme, 2021-2023, 72, 109-110. Available at [mfin.gov.rs/wp-content/uploads/2020/12/ERP-2021-2023\\_Nacrt-za-javnu-raspravu.pdf](http://mfin.gov.rs/wp-content/uploads/2020/12/ERP-2021-2023_Nacrt-za-javnu-raspravu.pdf).

Table 12. Steps to be taken by the Ministry of Finance in introducing e-invoicing, according to the Draft Economic Reform Programme, 2021-2023<sup>91</sup>

Planned activities to introduce e-invoicing	2021				2022			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
Adoption of legislative framework for e-invoicing	x	x	x	x				
Roll-out of a centralised e-invoicing platform			x	x				
Extension of e-invoicing to cover all businesses					x	x	x	x
Outreach and awareness-raising of e-invoicing platform users to facilitate shift to new system	x	x	x	x				

#### BOX 4. INVOICE REGISTER FOR B2PA TRANSACTIONS

In 2017, the Serbian Parliament adopted amendments to the Late Payment Law that introduced mandatory registration of invoices and payment orders in B2PA transactions. This requirement entered into effect on 1 March 2018, since when invoices and payment orders have had to be registered with the Central Invoice Register maintained by the Treasury Administration at the Ministry of Finance.

The Central Invoice Register is a centralised information system used to keep records of all invoices and other payment orders issued by businesses to public authorities. The Register is accessible to all creditors and debtors and permits entry and review of data on B2PA transactions where public authorities are debtors. The system allows users to track each B2PA invoice in terms of whether and when it was registered, as well as whether it has been paid. The Register was introduced in 2018.

The 2017 amendments to the Late Payment Law set out the rationale for introducing the Register. Its stated purpose is to facilitate review of B2PA receivables, with private creditors having an interest to register the invoices and other payment orders due to the increased efficiency and greater certainty of payment. For their part, debtors may inspect each invoice for accuracy and pay only if the invoice has been duly registered, meaning if the registered invoice corresponds to the invoice or payment order actually presented for payment. This ensures greater transparency of B2PA receivables and the liabilities of public authorities in these transactions.

Currently, the registration requirement applies to invoices and other payment orders where payment is made from accounts managed by the Treasury Administration. Once the requisite technical conditions are in place, the requirement will be extended to also cover invoices and other payment orders issued to other public-sector entities which use commercial banks for their payment operations. According to the latest set of amendments to the Late Payment Law, all invoices and payment orders issued to public authorities that use accounts managed by the Treasury Administration will have to be in electronic format as of 1 July 2021. Other public-sector entities that use commercial banks will be subject to this requirement once the necessary technical conditions are in place.

<sup>91</sup> *Ibid*, 110.

## OUTSTANDING REGULATORY ISSUES FOR RECEIVABLES FINANCING IN SERBIA

The Serbian legal system recognises traditional financing offered by banks and other financial services providers. Receivables financing, either through their sale or extension of finance with receivables used as collateral, outside of mainstream options (such as loans, factoring, bill of exchange discounting, and the like) poses a number of regulatory questions, and the answers to them will, in effect, determine whether these new MSME financing options can actually become viable and develop further.

### Is a receivables marketplace a capital market within the meaning of the Capital Market Law?

One option for an organised and efficient venue for receivables trading that brings together MSMEs and debt buyers would be a receivables marketplace. For accounting purposes, short-term accounts receivable are financial instruments with a maturity date of up to one year from initial recognition.<sup>92</sup> The CML envisages secondary trading in financial instruments,<sup>93</sup> and so there ought to be clarity as to whether the CML would apply to such an organised market. The definition of financial instruments from Article 2 CML does not explicitly include receivables arising from commercial transactions, and so it seems that the commercial receivables marketplace should remain outside the scope of this law.

### Should a platform that facilitates receivables financing through sale or receivables-based lending be subject to specific regulation?

Intermediation between creditors and investors could potentially be considered financial intermediation or provision of financial services other than those offered by monetary institutions or primarily related to financing, other than lending.<sup>94</sup> These activities include factoring. In that case, platforms that exclusively match creditors that sell their receivables and investors that finance them should not be considered financial intermediaries in the same way as banks or factoring companies.<sup>95</sup> However, platforms that would directly purchase receivables arising from commercial transactions would be engaging in factoring if the receivables were not matured, and would as such have to abide by the requirements of the FL.<sup>96</sup> Platforms that would purchase matured receivables would not be engaging in

<sup>92</sup> Article 29, Regulation on micro and other legal entities.

<sup>93</sup> Article 1 of the Capital Market Law (*Official Gazette of the Republic of Serbia*, Nos. 31/2011, 112/2015, 108/2016, and 9/2020), referred to as 'CML' throughout.

<sup>94</sup> This activity is defined under Class 64.99, Other financial service activities, except insurance and pension funding n.e.c., pursuant to the Government Order on Classification of Activities (*Official Gazette of the Republic of Serbia*, No. 54/2010).

<sup>95</sup> Schena, C. Tanda, A., Arlotta, C., Potenza, G. 2018. 31.

<sup>96</sup> This activity is currently performed in Serbia by Finspot, which is registered as a provider of factoring services within the meaning of the FL. See [finspot.rs](http://finspot.rs).

a specifically regulated activity and could potentially be grouped in the class of collection agencies and credit bureaus.<sup>97</sup>

#### Do platforms that facilitate receivables financing need a licence from an appropriate authority for that activity?

Whilst facilitating receivables financing, a platform could conceivably engage in a regulated activity (as a bank, factoring company, investment firm, etc.) that require a licence from an appropriate authority and would therefore have to obtain such a licence before beginning operations. As such, these platforms could not lend, since this activity is reserved solely for banks and other legally authorised entities (such as payment institutions),<sup>98</sup> as stipulated by the Banking Law.<sup>99</sup> A platform could lend sporadically to entities it regularly does business with, but could not have lending as its core activity, since it would then be classified as a lender.<sup>100</sup> As for factoring, if a platform acted as a factor in receivables purchasing transactions, a platform would have to meet the requirements of the FL and receive approval from the Ministry of Finance.<sup>101</sup>

#### Are platforms that facilitate receivables trading subject to AML/CFT regulations?

According to Article 4 of the Law on the Prevention of Money Laundering and Combating the Financing of Terrorism,<sup>102</sup> AML/CFT requirements apply to factoring companies. Therefore, given the current legislative environment, only platforms intending to provide factoring services or perform other activities envisaged by AML/CFT regulations would be subject to these rules. Other platforms would not face any such requirements on condition they did not perform any of the activities that would place them under the scope of the AML/CFT law.

#### Are data processed by the platform subject to the Personal Data Protection Law?

‘Personal data’ means any and all information relating to an identified or identifiable natural person, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that

<sup>97</sup> This activity is defined under Class 82.91, Activities of collection agencies and credit bureaus, pursuant to the Government Order on Classification of Activities, and is currently the predominant activity of receivables purchasing agencies.

<sup>98</sup> Article 95[2] of the Payment Services Law (*Official Gazette of the Republic of Serbia*, Nos. 139/2014 and 44/2018).

<sup>99</sup> Article 5[2] of the Banking Law (*Official Gazette of the Republic of Serbia*, Nos. 107/2005, 91/2010, and 14/2015).

<sup>100</sup> Magdelinić, S. 2007. U čemu je razlika između kredita i zajma, *Bankarstvo*, 1/2, 51. Available at [ubs-asb.com/Portals/0/Casopis/2007/1\\_2/UBS-Bankarstvo-1-2-2007-PO.pdf](https://ubs-asb.com/Portals/0/Casopis/2007/1_2/UBS-Bankarstvo-1-2-2007-PO.pdf).

<sup>101</sup> Articles 5 to 10 FL.

<sup>102</sup> Law on the Prevention of Money Laundering and Combating the Financing of Terrorism (*Official Gazette of the Republic of Serbia*, Nos. 113/2017, 91/2019, and 153/2020).

natural person. A platform would be deemed to be ‘processing’ personal data if it performed collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, reproduction, alignment or combination, restriction, erasure or destruction of such data.<sup>103</sup> As such, the Personal Data Protection Law would apply to platforms, for instance with regard to personal information relating to individuals who are debtors in commercial transactions.

#### Will platforms be allowed to use information from the e-invoicing system in receivables financing?

The Electronic Invoicing Bill raises two questions about the use of information from the e-invoicing system. Firstly, whether information maintained in the e-invoicing system will be available to third parties at all, and, secondly, what protection arrangements will apply to personal data in the e-invoicing system. According to Article 15 of the Electronic Invoicing Bill, the Ministry of Finance, information intermediaries, and entities authorised to access the e-invoicing system are required to process personal data only for purposes of the invoicing and protect them as envisaged by the Personal Data Protection Law. Hence, it is unclear whether the restriction on processing data from the e-invoicing system also extends to businesses (creditors in B2B transactions), since they are amongst the persons to which data from the e-invoices pertain. Moreover, even if this restriction is not imposed for businesses, any transfer or processing of information maintained in the e-invoicing system would have to comply with the Personal Data Protection Law.

#### What are the potential restrictions for facilitating sale of receivables in Serbia?

Serbian foreign currency operations rules pose one restriction on the volume of financing that could be secured through invoice trading platforms. The Foreign Exchange Operations Law (‘FX Law’)<sup>104</sup> permits use of foreign financial loans only for payment of imported goods and services and financing of investment abroad, as performed by Serbian residents as part of their business activities, as well as for repayment (refinancing) of outstanding foreign loans. Residents may take foreign financial loans for other purposes as regulated by the NBS.<sup>105</sup> An NBS decision provides a detailed definition of conditions under which Serbian residents are able to take out foreign credit and loans.<sup>106</sup>

<sup>103</sup> Art 4[1]1) of the Personal Data Protection Law (*Official Gazette of the Republic of Serbia*, No. 87/2018).

<sup>104</sup> Foreign Exchange Operations Law (*Official Gazette of the Republic of Serbia*, Nos. 62/2006, 31/2011, 119/2012, 139/2014, and 30/2018), referred to as ‘FX Law’ throughout.

<sup>105</sup> Article 21 FX Law.

<sup>106</sup> Decision on the terms and conditions of using foreign financial credits for purposes set out in Article 21, Paragraph 2 of the Foreign Exchange Operations Law (*Official Gazette of the Republic of Serbia*, Nos. 6/2013, 74/2013, and 32/2018).

These requirements are highly restrictive and generally prevent Serbian residents from taking on debt from non-residents. In addition, any loan a resident receives from a non-resident must be notified to the NBS, and the foreign currency proceeds of a loan disbursed from abroad cannot be used until the loan has been registered.<sup>107</sup> This makes it clear that creditors would be limited only to financing available from Serbian residents. Another limitation stemming from the FX Law is that foreign platforms would not be able to effectively facilitate receivables financing for Serbian residents.

## REGULATORY ARRANGEMENTS IN OTHER JURISDICTIONS

Receivables Exchange, the first online invoice trading platform, became operational in 2007.<sup>108</sup> In Europe, the UK has the largest market size, and the country's platforms initially recorded the greatest market share in terms of the volume of trading.<sup>109</sup> Recently, however, Debitos, established in Germany in 2010, has been seeing greater trading volume than UK-based platforms.<sup>110</sup> Moreover, the Cambridge study has found the Dutch market was second-largest (valued at \$1.8 billion in 2018), with Germany and France coming third and fourth, respectively.<sup>111</sup>

In other countries, receivables trading platforms first began to emerge in 2011, with this activity in time being recognised as an opportunity to provide financing models suited to MSMEs. Most platforms whose business models are analysed in this study base their operations on short-term liquidity financing for MSMEs through purchasing receivables or discounting invoices issued by MSMEs in commercial B2B transactions.

The table below provides an overview of financing platforms based on the availability of peer-to-peer (P2P) finance in European markets and the presence of the platforms in the individual countries. The primary selection criterion was whether the platforms offered invoice trading.<sup>112</sup> Business models were assessed through seven dimensions: 1) registration formalities; 2) financing costs; 3) requirements for registration applicable to users (creditors); 4) requirements applicable to invoices/receivables; 5) how debtors were notified of the

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<sup>107</sup> Decision on reporting on foreign credit transactions (*Official Gazette of the Republic of Serbia*, Nos. 56/2013, 4/2015, and 42/2020).

<sup>108</sup> Currently trading as LiquidX. Available at [liquidx.com](http://liquidx.com).

<sup>109</sup> These are MarketInvoice (trading as MarketFinance) and PlatformBlack (trading as Sancus.com).

<sup>110</sup> Dziuba, D. 2018. Crowdfunding Platforms in Invoice Trading as Alternative Financial Markets, *Roczniki Kolegium Analiz Ekonomicznych*, Szkoła Główna Handlowa W Warszawie, br. 49 (Społeczno-ekonomiczne aspekty rozwoju gospodarki cyfrowej: koncepcje zarządzania i bezpieczeństwa), 462. Available at [rocznikikae.sgh.waw.pl/p/roczniki\\_kae\\_z49\\_31.pdf](http://rocznikikae.sgh.waw.pl/p/roczniki_kae_z49_31.pdf).

<sup>111</sup> Cambridge Centre for Alternative Finance. 2020, 26.

<sup>112</sup> This review looked only at platforms for which data were publicly available, so most findings are based on information found on the web sites of financing facilitators operating in selected European countries.

purchase of the receivable/invoice discount financing; 6) amount of financing available; and 7) other relevant characteristics.

The data about how the platforms operate and what services they provide revealed differences between both markets and individual financing facilitators. The review identified: 1) financial services offered by the platforms; 2) types of receivables that can be financed; 3) specific services provided by the platforms; and 4) investors active in the invoice trading market. The review focused on platforms that purchase receivables on their own behalf and those matching MSME creditors and potential investors intending to purchase receivables. All platforms offered trading in invoices or non-matured collectable receivables, generally with maturity periods exceeding 30 days.

**The review of business models suggests that discount rates depend on multiple creditor and debtor characteristics. As a rule, they include: debtor's creditworthiness, amount of the invoice, and maturity date.** Another important consideration is the type of service provided by the platform. Here, auction-based platforms generally offer lower invoice discounts (i.e. finance the entire amount of the receivable less fees and investor commission) than factoring providers (where the financing limit is generally under 80 to 90 percent of the invoiced amount). A summary of the invoice trading platforms reviewed is shown in Table 13 below.



Table 13. Comparative overview of invoice trading platforms in the EU<sup>113</sup>

Country	Name	Registration formalities	Financing costs	Eligibility requirements	Receivable/invoice requirements	Receivable/invoice verification	Debtor notification	Amount financed	Other relevant features
United Kingdom	MatchPlace	N/A	1) Invoice processing fee of between 0.75% and 2.5% of total invoice amount; 2) payment processing fee of £15; and 3) finance cost of 0.05% to 0.3% per day of the cash advance amount for the duration of the cash advance.	1) LLCs and public companies registered in the UK; 2) demonstrated business activity of at least 2 years.	1) Minimum amount £20,000; 2) minimum residual maturity 15 days.	Yes	Receivables are assigned without debtor notification.	Up to 90% of invoice amount.	Private investors, institutional investors, banks, and businesses can register as investors. After registration, user may act as both assignor and investor.
	Investly	Company should provide statements from all banks where it has accounts.	User pays fee of between 1.65% and 2.6% of invoice amount for each invoice sold at auction.	1) Company must be trading for at least 6 months; 2) based in UK; 3) good credit standing; 4) no ongoing court cases that could affect its operations significantly.	1) Goods and services have been delivered; 2) invoice has not reached due date; 3) payment term between 15 and 180 days.	Direct communication between platform and debtor. Special procedure possible for 'confidential' financing	Platform contacts debtor directly with creditor approval.	Up to 100% of invoice amount, less costs of financing.	Sale by auction.
	MarketFinance	N/A	Two fee options: 1) contract option (fixed monthly fee, listing, and interest finance); 2) pay-as-you go (service fee is percentage of invoice face value plus listing fee and finance fee).	1) LLCs based in the UK; minimum turnover £100,000.	N/A	1) Direct contact for first purchase of invoice for each debtor; 2) each subsequent invoice for same debtor verified automatically by e-mail.	Debtor notified in the course of invoice validation.	Up to 90% of invoice amount.	Platform offers re-purchase of receivables 10 days past due or debt repayment plan. Creditor is required to repay debt after 17 days after maturity on payment of fixed fee.
Italy	WorkInvoice	Company supplies information from its corporate byelaws and debtor data.	Fixed service charge €30 with additional commission charged for each successful invoice auction	All MSMEs can register.	Individual receivables must have a minimum value of €10,000.	N/A	N/A	Up to 100% of invoice amount.	Receivables are sold as non-recourse factoring.
	Credimi	N/A	User pays two types of fees: 1) processing fee for invoice purchases; and 2) service fees.	1) Annual turnover and length of trading; 2) form of incorporation; 3) registered office; and 4) activity	Minimum invoice value is €2 million	N/A	Platform notifies debtor of assignment but also has a confidential mode where debtor is not informed.	Up to 100% of invoice amount.	Creditor guarantees all receivables assigned are liquid and collectable on maturity, except if debtor becomes insolvent. If creditors' claims prove unfounded, Credimi can require reimbursement, along with interest and commission.

<sup>113</sup> Note: this review is based on data collected from the platforms' web sites, and does not include legal sources such as national legislation, general and specific terms and conditions, model contracts, agreements, prospectuses, and the like.

	CashInvoice	N/A	Assignor pays annual contract fee, financing fee of between 0.5% and 3% of financing +VAT, and monthly interest of 0.5% to 0.7%, plus additional costs depending on type of financing.	1) public companies and LLCs registered in Italy 2) that issue invoices worth over €500,000 annually; and 3) have at least 3 past financial statements.	1) Term must be over 30 days; 2) amount must be over €1 million.	N/A	Platform notifies debtor of assignment only for assignment with recourse.	Payment of up to 90% of nominal value of invoice in event of non-recourse factoring.	Financing is not available to companies in tobacco, gaming, and construction sectors.
	CashMe	Company supplies: 1) business identifying information; 2) identity and personal identification document of legal representative; 3) invoice number; 4) invoice amount; 5) due date; 6) debtor information; 7) average number of days taken by debtor to pay in commercial transactions; 8) invoice file; and 9) sale agreement.	1) one-off access fee; 2) commission of 0.6% of value of the receivable; 3) financing fee of 1% to 2% of value of the receivable.	1) Company must have submitted at least one financial statement and 2) has annual turnover of at least €500,000.	Debtors in commercial transactions registered in the EU and having good credit standing.	N/A	Platform notifies debtor of sale of receivable.	Financing always equals 90% of price at auction, with remainder paid once receivable is collected.	Non-recourse financing by investor in event of debtor insolvency. Where debtor does not pay within 4 months of due date, investor is not required to pay remainder of amount to original creditor, which retains deposit of 90% of value of the receivable.
	Crowdcity	N/A	N/A	Credit brokerage assesses compliance with eligibility requirements.	1) Receivables with nominal value of at least €1,000 with 2) debtors having turnover of at least €5 million.	N/A	Platform notifies debtor of assignment only by e-mail.	90% of purchase price paid when contract is entered into, remainder when receivable is collected.	N/A
France	FinexKap	Company pre-registers by providing information on its form of incorporation and length of trading.	Financing fee equal to 10%-20% of nominal value of receivable. Fee in event of debtor default amounts to 12% of value at annual level.	Two types of conditions: pre-registration (form of incorporation, activity, and financial position) and type of debtor (financial considerations and invoicing process). Creditor must be a company based in the European Economic Area.	Nominal amount of first invoice financed must not be lower than €1,000 inclusive of VAT.	Platform collects invoice information in direct contact with debtor.	Platform contacts debtor by e-mail or post to provide new payment information.	Face value of receivable less fees charged to creditor.	FinexKap can refuse to finance a creditor's receivables if it has already taken on a quantity of receivables with the same debtor, regardless of other purchase conditions. FinexKap allows creditors to buy back debt within 35 days of due date. If receivable cannot be collected due to debtor insolvency, the collection will be managed by FinexKap and the assignor will face a cost of 4% of the nominal value of the invoice.
	Créancio	N/A	Platform services fee of at least 0.49% of nominal value of invoice (including VAT).	Clients must have an annual turnover of at least €300,000.	N/A	N/A	Platform can notify debtor of assignment of receivable.	Between 80% and 95% of invoice amount.	N/A

Spain	NoviCap	Company has to submit: 1) proof of regular payment of taxes not older than one month; 2) proof of regular payment of social contributions not older than one month; 3) personal identity document of representative; 4) statement from debtor's bank indicating account for payment; 5) information on collection of receivables from key clients; 6) information about other types of financing used by the company; 7) copy of invoice and bill of lading for receivables with underlying goods supply contracts. Sale agreements are optional.	1) Annual financing interest of between 1% and 9%; 2) access, user assessment, financing management, and risk assessment fee; 3) service charge of 0.95% of the invoice amount. In event of late payment, creditor pays costs of delay.	Companies that invoice private-sector firms with revenue of at least €3 million or public sector.	N/A	N/A	Creditor notifies debtor of assignment.	Up to 90% of invoice amount. Remaining sum paid after debt is collected from debtor.	Receivables paid exclusively into NoviCap account. Investors based in the UK and Spain can finance invoices by purchasing 'slices'. If a debtor does not pay an invoice, the creditor is responsible for payment; in the event of delinquency, creditor pays costs of delay.
	Finanzarel	Registration requires: 1) national identification document of applicant; 2) proof of ownership of bank account; 3) applicant's power of attorney; and 4) company articles of association.	Platform charges a monthly commission of 0.25% of total value of invoices put up for auction. Commission is reduced if company puts up 10 or more invoices for auction annually.	1) Annual creditor turnover €100,000; 2) annual debtor turnover €10 million; 3) debtor and creditor must be doing business for more than 6 months; 4) invoice issued as part of creditor's regular business operations.	Receivables must be worth between €3,000 and €1 million.	Invoice can be purchased without proof of authenticity from debtor. This may result in higher financing costs.	Financing can be provided without notification of debtor.	N/A	Platform offers special service to finance prompt payment by debtor; this is termed 'confirming'.
	Circulantis	Companies can register as assignors, which allows access to auction information, and 'active assignors', which allows organising actions to raise working capital using invoices or bills of exchange.	Commission charged to assignors depends on payment terms, but may not be lower than €50. For maturities of up to 30 days, commission rate is 0.60%, rising to 0.95% for maturities of up to 90 days. Rate increases by 0.10% for every additional 30 days thereafter.	Services are available to: 1) tax residents; 2) persons registered with appropriate register; and 3) persons with Spanish bank accounts.	1) Debtor must have been trading for at least 3 years; 2) credit rating score must be at least 7; 3) must have positive solvency review from platform's partner, Informa D&B.	N/A	N/A	Auction is closed where: 1) financing set by creditor when registering auction is reached, regardless of whether interest rate sought is achieved; or 2) both interest rate and financing sought are achieved.	Minimum investment is €50.

	Inversa	N/A	Assignor pays: 1) initial commission of 2% of nominal receivable amount per annum, which may not be less than €200 inclusive of VAT; 2) fee for management and disclosure of commercial documents of 0.25% of nominal receivable amount per month, which may not be less than €10 inclusive of VAT and is chargeable only on successful auctions; 3) default management fee of 2% of nominal transaction amount, which may not be less than €100 inclusive of VAT.	Company must pass 'reliability test', which is a precondition for registration and consists of: 1) assessment of external credit report; 2) financial assessment; and 3) assessment of collectability of receivables previously assigned through the platform.	Nominal amount of invoice or bill of exchange must be between €10,000 and €100,000.	For assignment of receivables based on invoices and bills of exchange containing the wording 'not on order', assignor must notify debtor of assignment, or platform does so but assignor pays costs of notification.	Platform seeks certification of authenticity for all financial instruments traded on the platform (invoices, bills of exchange).	If auction is successful, platform pays 90% of amount raised at auction into assignor's account, and keeps 10% in its user account until debtor has paid.	Assignor is required to buy back receivable on expiry of 30 days from start of default; platform may use assignor's available balance to recoup debt.
Germany	Debitos	There is no available information about invoice trading as a business model in the German market. However, the German alternative finance market is one of Europe's largest, passing the \$1 billion benchmark in 2018. Germany was the second largest market in Europe by size, and fourth globally by number of online alternative finance platforms, after China, the US and the UK. The country's largest platform is Debitos, which offers a combination of factoring and peer-to-peer lending, and adjusts these instruments for the non-performing and non-collectable receivables market.							
Serbia	FinSpot	When registering account, company supplies: 1) trading name; 2) taxpayer ID number; and 3) registration number	Cost of financing is some 24% of nominal value of invoice.	Companies, sole traders, or banks registered in Serbia or abroad may use the platform.	Debtor must have good credit standing.	N/A	After financing is approved, platform (or assignor) notifies debtor of change of creditor.	Depends on credit assessment used to set financing limit.	Finspot offers domestic and international factoring with or without recourse.

## 7. RECOMMENDATIONS

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This section looks at the regulatory and non-regulatory measures and steps required for a comprehensive and systemic resolution of the non-performing receivables problem. Apart from solutions that should make it easier to assign these receivables, the recommendations also include measures that ought to eliminate their causes, together with steps for mitigating the adverse impact of existing non-performing receivables.

The measures are grouped by areas in which non-performing receivables are regulated and by how these steps can be taken. Apart from the proposed regulatory interventions, awareness-raising and educational campaigns must also be delivered to familiarise MSMEs with the importance and impact of non-performing loans in their operations.

### **STRATEGIC FRAMEWORK OF REGULATORY AND MARKET-BASED MEASURES TO RESOLVE MSMEs' NON-PERFORMING RECEIVABLES**

#### **Develop and enact a National Programme and Action Plan for Resolution of Non-Performing Receivables held by Serbian MSMEs**

An approach similar to that taken in policies addressing non-performing loans (NPLs) should ideally be taken to resolve MSMEs' non-performing receivables. As the MSME sector is the most severely affected by this issue, it is the sector that these policies should target the most closely. As such, policy instruments such as a National Programme and Action Plan to resolve Serbian MSMEs' non-performing receivables would provide an overall framework of measures and options for monitoring their implementation. Given the extent of the measures proposed, their success depends on significant political will and readiness on the part of public authorities. The strategic documents could result in a systematic and planned approach to addressing non-performing receivables in Serbia.

This activity would entail two steps:

- Creation of a Working Party to develop the National Programme and Action Plan that would comprise representatives of the Government of Serbia, Ministry of Economy, Ministry of Trade, Tourism and Telecommunications, Ministry of Finance, Tax Administration, Serbian Chamber of Commerce and Industry, National Bank of Serbia, and other relevant institutions; and
- Development and enactment of the National Programme and Action Plan.

## IMPROVEMENT OF THE LATE PAYMENT LAW

### Establish an effective mechanism to enforce the Late Payment Law

Currently, the Tax Administration is responsible for enforcing the Late Payment Law, even though this is not a core activity of this entity, and the limited resources it has at its disposal for this purpose (such as the number of inspectors, all of which also have other duties) directly affects the quality of its enforcement operations. The Tax Administration is pursuing a re-engineering of its business processes and a consolidation exercise. Its strategic transformation documents have identified a set of activities that are not related to taxation and as such are not part of its core business, and this includes enforcing prompt payment in commercial transactions. This current power could be transferred to the Competition Commission, but that body's current statutory powers and capacity constraints should also be taken into account. Any transfer of powers would have to be preceded by a functional assessment to determine the required human and infrastructural resources for effective enforcement of the law.

This activity would entail the following steps:

- Functional assessment of the resources needed to effectively enforce the Late Payment Law to inform the potential transfer of these powers to a different government authority.
- Development and enactment of amendments to the Late Payment Law with regard to enforcement powers (Article 9);
- Transfer of enforcement powers to another government authority, potentially the Competition Commission.

### Mandate reporting on payment practices by statute

A reporting requirement is a precondition for amending the current enforcement arrangements for the Late Payment Law, as reporting data would reveal sectors where late payments were the most pressing issue and could inform decisions on allocating resources to such enforcement. Additionally, a reporting requirement, coupled with the change in the enforcement authority, would permit the Competition Commission to act automatically in the event of 'excessive' payment delays. **Power asymmetry between parties to commercial transactions has a bearing on long payment periods.** Since the law cannot alter the bargaining power of individual companies and given the importance of debtors for some suppliers (MSMEs), creditor safeguards could be ensured by mandating reporting of payment practices that would permit these firms to be aware in advance of what they could expect and could contribute to expedited payment.<sup>114</sup>

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<sup>114</sup> Impact Assessment, Requirement for large companies and listed companies to report on their payment practices and policies. Available at

Reporting frequency could be set so as to take into account the costs of such reporting for businesses (IT infrastructure, data collection costs, etc.), as well as the correlation between reporting and informed decision-making. On the one hand, since this requirement would primarily apply to large companies, annual reports could be mandated that would be submitted together with annual operating reports. That being said, an annual frequency could defeat the purpose of the reporting requirement as the data could become outdated over such a long period of time. Quarterly reporting would ensure the reports were relevant for decision-making in terms of both entering into contracts and what terms to agree to.

This activity would entail the following steps:

- Development and enactment of amendments to the Late Payment Law to introduce new reporting requirements for businesses that could be grouped according to: 1) subject matter (payment periods in non-financial contracts); 2) extent, to include (a) information on payment terms such as periods, any changes to these, and dispute resolution; and (b) information on average payment periods, to include statistics for timely and late payments; and 3) addressees (medium-sized and large companies, or medium-sized and large companies in the trade sector).

### Introduce a legal standard for 'grossly unfair' contractual terms

The Late Payment Law does not define 'grossly unfair' contractual terms. According to Directive 2011/7/EU, such a definition could extend to situations where a payment period is deemed to be grossly unfair for the creditor. Recital 12 of the Directive, for instance, sets out terms that should be presumed to be grossly unfair to the creditor: 1) exclusion of the right to charge interest, which should always be considered to be a grossly unfair contractual term or practice, and 2) exclusion of the right to compensation for recovery costs.

This activity would entail the following steps:

- Development and enactment of amendments to the Late Payment Law to introduce exceptions from statutory payment periods (Articles 3 and 4) modelled after Directive 2011/7/EU, which permits contracting parties to explicitly stipulate longer payment periods provided that such terms are not grossly unfair to the creditor. Here, using the Directive as a model, the definition could include situations where a particular period is deemed to be grossly unfair to the creditor; and
- Preparation of guidelines for application of the legal standards for 'grossly unfair' contractual terms to be used by courts, supervisory authorities, and businesses. These guidelines could specifically include examples of contractual terms grossly unfair to creditors.

### Define the term 'non-performing account receivable'

**A new definition of non-performing receivables must be introduced.** This definition should be broad in its scope: apart from delinquent receivables, it ought to include other accounts

receivable where the specific circumstances suggest that the receivable has become or could become non-performing. The definition could take into account aspects such as the debtor's account being frozen by creditors, enforced collection by other creditors, and similar circumstances that seriously threaten the debtor's liquidity and ability to repay the debt in full and on maturity. The rationale is that a receivable could become non-performing even before it becomes due, which is why clear criteria must be introduced to determine which receivables could be categorised as non-performing.

This activity would entail the following steps:

- Develop and enact amendments to the Late Payment Law to introduce a new definition of non-performing receivables (Article 2).

### Mandate shorter payment periods in some cases, especially for perishable goods

In 2019, the EU enacted Directive 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain,<sup>115</sup> which envisages specific rules for delinquent payments in this sector relative to Directive 2011/7/EU. Here, payment made later than 30 days after the delivery date or due date; and 2) cancellation of an order of perishable products at such short notice that the supplier cannot reasonably be expected to find an alternative means of commercialising or using those product (30 days prior to envisaged delivery) are deemed to be unfair trading practices. Amendments to Serbian law could be modelled after Directive 2019/633, to remove the current restrictive maximum payment period, which applies regardless of the type of commercial transaction and envisages exceptions, and replace it with definitions of circumstances that require shorter payment periods. As such, the restrictive provision (the maximum payment term of 60 days, under the current rules) would be replaced by shorter terms for sectors where late payments pose more of a pressing problem (e.g. 30 days for perishable goods and food).

This activity would entail the following steps:

- Development and enactment of amendments to the Late Payment Law and the Trade Law to introduce shorter payment periods for perishable goods;
- Alignment of the statutory framework and definition of perishable goods, such as food and agricultural produce, after the pattern of Directive (EU) 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain.

### Introduce collective redress mechanisms for creditors with monetary claims

The legal regulation of 'grossly unfair' contractual terms is a precondition for collective redress for creditors with monetary claims. The collective mechanisms envisaged in Directive 2011/7/EU entail collective representation of creditors to address grossly unfair

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<sup>115</sup> OJ L 111, 25/4/2019.



contractual provisions/terms.<sup>116</sup> Collective redress has failed to gain wide acceptance. Factors that affect options for collective redress include organisational resources and capacity, restrictions imposed by articles of association (where these instruments prevent organisations from pleading cases for their members in court), and potential conflicts of interest where contested provisions are found in contracts with members of the entity bringing the collective action.<sup>117</sup>

This activity would entail the following steps:

- Development and enactment of amendments to the Late Payment Law to introduce collective redress for creditors after the model of Directive 2011/7/EU by allowing complaints intended to address grossly unfair contractual provisions/terms.

## FOSTERING A CULTURE OF PROMPT PAYMENT IN COMMERCIAL TRANSACTIONS

### Introduce sectoral initiatives to foster good business practices in payment of receivables

Experience from EU Member States shows that good business practices can be successfully fostered through initiatives aimed at addressing late payments in individual sectors.

Sectoral codes permit comprehensive regulation of commercial relationships between creditors and debtors tailored to issues characteristic for each sector.<sup>118</sup> This initiative is valuable in that sectoral codes may target the causes of delinquent payment, and rules can be tailored to particular sectors. In time, sectoral initiatives can grow into regulatory measures.<sup>119</sup>

This activity would entail the following steps:

- Develop guidelines for particular sectors of the economy to foster a culture of prompt payment, adherence to contractual terms, contracting of fair commercial payment terms, etc.

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<sup>116</sup> According to the European Commission's Recommendation on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union law, which adopts a horizontal approach (in that it applies to all areas where collective redress is offered for violations of rights granted under Union law), a minimum set of criteria must be met for an entity to be recognised as having legal standing to bring representative action. These are the non-profit character of the entity, a direct relation between its objectives and the violated rights and a sufficient capacity (funding, human resources, and expertise) to represent multiple claimants acting in their best interest.

<sup>117</sup> European Commission. 2018. Business-to-business transactions: a comparative analysis of legal measures vs. soft-law instruments for improving payment behaviour, 47. Available at [publications.europa.eu/resource/cellar/c8b7391b-9b80-11e8-a408-01aa75ed71a1.0001.01/DOC\\_1](https://publications.europa.eu/resource/cellar/c8b7391b-9b80-11e8-a408-01aa75ed71a1.0001.01/DOC_1).

<sup>118</sup> For instance, in 2009 the UK adopted the Groceries Supply Code of Practice, which introduced the principle of fair dealing. This requires retailers to make no distinction between formal and informal arrangements and recognise suppliers' needs for certainty in relation to payment issues.

<sup>119</sup> As was the case with the Groceries Supply Code of Practice after the Groceries Code Adjudicator Act was adopted in 2013. The Adjudicator ('Supermarket ombudsman') is responsible for investigations if some retailers are suspected of having breached the Code, as well as mediating in disputes between retailers and suppliers. For a detailed discussion, see Department for Business, Energy & Industrial Strategy. Guidance Groceries Supply Code of Practice. 2009, available at [gov.uk/government/publications/groceries-supply-code-of-practice/groceries-supply-code-of-practice](https://gov.uk/government/publications/groceries-supply-code-of-practice/groceries-supply-code-of-practice). See also Department for Business, Energy & Industrial Strategy. 2020. Groceries Code Adjudicator: statutory review, 2016 to 2019, available at [gov.uk/government/organisations/groceries-code-adjudicator](https://gov.uk/government/organisations/groceries-code-adjudicator).

## Introduce a Prompt Payment Code

Apart from codes that focus on late payments in particular sectors, Prompt Payment Codes may regulate payment terms in asymmetrical transactions and focus on particular types of debtors.<sup>120</sup> Companies acceding to Prompt Payment Codes undertake to adhere to payment terms and to abide by good business practices established by these codes. This Code could be developed and introduced in co-operation with the SCC and other business associations and companies.<sup>121</sup> **The Code ought to be accompanied by outreach to familiarise businesses with its content and significance.** In a long-term perspective, businesses should incorporate provisions of the code in their day-to-day operations.

This activity would entail the following steps:

- Development and adoption of the Prompt Payment Code, in co-operation with the Serbian Chamber of Commerce and Industry, relevant business associations (especially those that represent the interests of MSMEs) and large companies, requiring the signatories to pay promptly, especially to MSMEs that are the worst affected by late payments; and
- Action to familiarise businesses with the content and benefits of the Code.

## Introduce an MSME Commissioner

**A regulatory framework for an MSME Commissioner would allow direct institutional support to MSME creditors facing difficulties in collecting receivables.** As an independent watchdog, the Commissioner would be able to address issues faced by MSMEs in dealing with their debtors, especially large businesses. Other jurisdictions have already introduced similar arrangements.<sup>122</sup> Apart from making recommendations to address grievances, the Commissioner would advise MSMEs as to how to work with clients and handle payment-related disputes, and would inform these businesses about alternative dispute resolution mechanisms.

This activity would entail the following steps:

- Development and enactment of a regulatory framework instituting the Commissioner and regulating complaints and resolution of outstanding issues between parties to contracts.

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<sup>120</sup> In EU Member States, initiatives for companies to sign up to these codes are launched by chambers of commerce, business associations, bodies specialised in addressing late payment issues, and line ministries. See European Commission. 2018. Business-to-business transactions: a comparative analysis of legal measures vs. soft-law instruments for improving payment behaviour, 41. Available at [publications.europa.eu/resource/cellar/c8b7391b-9b80-11e8-a408-01aa75ed71a1.0001.01/DOC\\_1](https://publications.europa.eu/resource/cellar/c8b7391b-9b80-11e8-a408-01aa75ed71a1.0001.01/DOC_1).

<sup>121</sup> A similar initiative focused on MSMEs has been endorsed by the SCC as part of a broader international project and envisages the issuance of 'Excellent SME' certificates to businesses meeting the conditions of 1) turnover in excess of 4 million dinars annually and 2) good credit standing. The certificates are valid for one year and may be revoked if the company no longer meets the requirements.

<sup>122</sup> For instance, in the UK, the Enterprise Act 2016 established the Small Business Commissioner, a body whose responsibilities include reviewing complaints made by small businesses in connection with payment from large firms and making recommendations for dealing with uncollected debt.

## Ensure greater use of alternative dispute resolution through mediation

Alternative approaches to providing relief to creditors aim at reducing legal costs, ensuring more efficient collection, and incentivising creditors to access their rights whilst maintaining working relationships with their debtors. Mediation is a mechanism best suited to commercial disputes, given their nature and the needs of the parties. The requirement for mediators to ensure equality of both parties is particularly significant for asymmetrical transactions. In addition, confidentiality in mediation safeguards the reputation of businesses, which provides an incentive for debtors to take part in these proceedings.<sup>123</sup>

Development of a specialised mediator training programme is the key step in the creation of an alternative dispute resolution mechanism in commercial B2B transactions. An alternative dispute resolution mechanism can be developed within the current legal framework established by the Law on Mediation in Dispute Resolution (Official Gazette of the Republic of Serbia, No. 55/2014)<sup>124</sup> and the Law on Chambers of Commerce (*Official Gazette of the Republic of Serbia*, No. 112/2015),<sup>125</sup> which authorises the Serbian Chamber of Commerce to mediate in commercial disputes. At the time of writing, four organisations held licenses to offer specialised training for mediation in commercial disputes in Serbia.<sup>126</sup>

## Inform and educate MSMEs

Research has shown that businesses have little awareness of the Late Payment Law. An outreach campaign conducted after the law was enacted aimed at familiarising stakeholders with the rights and obligations envisaged by this piece of legislation, but met with limited success.

Lack of understanding of the receivables market is a major constraint preventing businesses from selling their accounts receivable. According to semi-structured interviews, companies expect to be able to sell unsecured debt at between 50 and 70 percent of its face value, whilst the actual market value is between 1 and 3 percent. Creditors are not aware of how they can protect themselves, and as such their receivables are not appropriately secured by collateral. With regard to discount rates for unsecured receivables owed by delinquent debtors, MSMEs generally do not expect to be able to sell them. By contrast, MSMEs that do have experience with selling receivables have a more realistic opinion of their value. This

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<sup>123</sup> There are two types of mediation, one involving a body specialised for alternative dispute resolution in commercial transactions, and another where the mediator is a business association or chamber of commerce. The rules of mediation are set out in the Law on Mediation in Dispute Resolution (*Official Gazette of the Republic of Serbia*, No. 55/2014), Articles 9 to 16.

<sup>124</sup> Law on Mediation in Dispute Resolution (*Official Gazette of the Republic of Serbia*, No. 55/2014).

<sup>125</sup> Law on Chambers of Commerce (*Official Gazette of the Republic of Serbia*, No. 112/2015), Article 12[1]16).

<sup>126</sup> Serbian Ministry of Justice, Register of government bodies, organisations, and businesses licensed to deliver mediator training, available at [mpravde.gov.rs/registar/9572/drzavni-organi-organizacije-i-pravna-lica-koje-sprovode-obuke-zaposrednike.php](http://mpravde.gov.rs/registar/9572/drzavni-organi-organizacije-i-pravna-lica-koje-sprovode-obuke-zaposrednike.php).

is why some stakeholders in the receivables market ought to receive education in both financial and technical aspects.

Chief financial officers (CFOs), chief executive officers (CEOs), and company owners ought to be involved in awareness raising about the importance of appropriately managing corporate finances. This activity requires the creation of an educational platform to present options for addressing non-performing receivables and effective receivables management as the first step in raising awareness and disseminating effective receivables management practices amongst MSMEs. Doing so may address one of the key issues with selling non-performing receivables, namely their poor quality. Creditors thus need to be educated as to how to protect themselves and ensure collection, the actions that can be taken in this regard, and how a receivable can be assessed for performance.

**Outreach can take several forms, as it can be designed to both prevent issues and educate.** In addition to providing information about companies' rights and obligations in the event of payment delinquency, the campaign could focus on receivables management and the options that creditors have at their disposal to reduce the cost of collection or raise finance for operations, as well as reduce the risk attributable to non-performing receivables. This measure is particularly significant for MSMEs, since they could receive training on how to assign individual receivables and which businesses purchase debt.

**These activities would parallel awareness-raising for businesses focusing on their rights and obligations in the event of delinquency that would acquaint them with the steps they ought to take to avoid the consequences of late payment.** The outreach ought to be aimed at sectors most affected by issues with collection.

Since this measure is indirectly aimed at improving business practices, its effects should be assessed from the perspective of creditors. The results would here depend on appropriately targeting stakeholders, relevance of the issues under consideration, and costs of participating in training events. This type of initiative could be offered periodically by the Chamber of Commerce, which is responsible for delivering formal and informal training for businesses, as well as by other relevant organisations.<sup>127</sup>

## IMPROVING THE REGULATORY FRAMEWORK FOR SALE OF NON-PERFORMING RECEIVABLES

### Reduce administrative costs of enforcement

Administrative costs of enforcement could be reduced by amending the Enforcement Officer Tariff of Fees. According to Item 2[8] of the Tariff of Fees, a procedural decision allowing a creditor to intervene in a case attracts a fee equal to 20 percent of the fee for preparing, managing, and archiving an enforcement case. Any amendments to the Tariff

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<sup>127</sup> Article 12 of the Law on Chambers of Commerce.

must be preceded by an impact assessment to ascertain the potential effects of any reduction in enforcement officer revenues vs the likely savings in transaction costs when receivables are sold. If the savings turned out to be proportionately more significant than the income lost by enforcement officers, this measure would be desirable and cost-effective.

This activity would entail the following steps:

- Conduct a feasibility assessment of reducing the procedural costs of enforcement imposed by the Enforcement Officer Tariff of Fees; and
- Develop and adopt amendments to the Enforcement Officer Tariff of Fees (Item 2[8]) to remove the fee equal to 20 percent of the fee for preparing, managing, and archiving cases currently applicable to enforcement officers' procedural decisions permitting change of creditor following assignment.

### Reduce transactional costs involved in selling receivables

Transaction costs can be reduced by amending provisions of the LES and BL that require assignment contracts to be notarised before creditors can intervene in enforcement or bankruptcy proceedings. In addition to addressing the notarisation issue, these amendments could also permit new creditors to intervene with the consent of the (former) enforcement or bankruptcy creditor. Notarisation is required by Article 48[2] of the ESL where receivables are assigned in the course of an enforcement proceeding, and by Article 117a of the BL for admitted and contested claims in bankruptcy. This requirement also entails having to submit notarised copies of contracts proving assignment in enforcement or bankruptcy proceedings. Amending these procedural laws would alter conditions for intervening in an ongoing proceeding, so any changes would have to be preceded by an assessment of their impact on legal certainty and their systemic alignment with other current legislation. This assessment would have to ascertain whether new options for intervening would jeopardise the legal certainty of selling receivables or create room for abuse such as multiple sales of one and the same receivable.

This activity would entail the following steps:

- Conducting an assessment to ascertain impact on legal predictability and alignment with other legal provisions; and
- Development and adoption of amendments to Article 48[2] of the Law on Enforcement and Security and Article 117 of the Bankruptcy Law to replace notarisation as the precondition for intervening by consent from the assignor.

### Permit registration of assigned receivables with the Pledge Register maintained by the SBRA

Greater legal certainty in selling receivables can be achieved by allowing assigned receivables to be registered with the Pledge Register maintained by the SBRA. This option is already available for pledging receivables, an arrangement quite similar to assignment. As registration

involves paying a fee to the SBRA, an impact assessment of this measure ought to be undertaken to ascertain what its potential impact may be on transactional costs as opposed to any increase in legal certainty in selling receivables. This activity would entail the following steps:

- Conducting an assessment to ascertain impact on transactional costs as opposed to greater legal certainty; and
- Development and adoption of amendments to the Law on Registered Charges on Moveable Assets and Rights.

### Provide a more detailed definition of factoring

According to the current definition from Article 2[1] of the Factoring Law, factoring is a financial service consisting of the sale and purchase of an existing non-matured or future short-term monetary account receivable arising from a goods or services supply contract in Serbia or abroad. **Article 5[2] of the FL stipulates that a factoring company may only engage in factoring activities and activities related to or connected with factoring.** Non-compliance with this rule is a misdemeanour punishable by a fine ranging from RSD 100,000 to 2 million for the factoring company and from RSD 5,000 to 150,000 for the responsible officer of that company. For this reason, Article 5 must be clarified to unambiguously permit factoring companies to perform activities other than factoring that are not permitted by other regulations and so remove this source of uncertainty as to what a company may do without exposing itself to the fines envisaged by the FL.

This activity would entail the following steps:

- Development and adoption of amendments to the Factoring Law to provide a more detailed definition of factoring and explicitly stipulate that factoring companies can purchase non-factoring receivables (Article 5).

## IMPROVING THE TAX TREATMENT OF RECEIVABLES

### Permit settlement and mediation to qualify a creditor for writing off a receivable for tax purposes

Article 16 of the CIT Law must be amended to permit recognition of impairment and write-off loss in the event of settlement and mediation. Currently, for a taxpayer to be able to write off a receivable and claim it as an expenditure for tax purposes, the taxpayer must meet the requirements of Article 16[1] CIT Law:

1. there must be unambiguous evidence that the receivables were previously included in the taxpayer's income;
2. the receivables must have been written off as uncollectable in the taxpayer's books of account; and

3. the taxpayer must provide evidence of having sought to collect the receivable in court, meaning that enforcement proceedings were initiated to collect the receivables or that the receivables have been filed as claims in a liquidation or bankruptcy proceeding against the debtor.

**With regard to Item 3 above, settlement and mediation must be included in the list of legal actions that qualify a receivable for being written off for tax purposes,** as is the case in Croatia. This measure would motivate creditors to seek avenues for collection other than bringing court cases or other proceedings against their debtors.

This activity would entail the following steps:

- Conducting a fiscal impact assessment for this measure.
- Development and adoption of amendments to the Corporate Income Tax Law to permit recognition of impaired and written-off receivables as expenses in the event of settlement or mediation (Article 16).

### **Introduce additional grounds for claiming VAT relief for uncollected receivables**

Article 21[5] of the VAT Law allows VAT payers to claim relief for bad debt on the basis of 1) a final court ruling closing a bankruptcy proceeding, or 2) a certified transcript of the court settlement order. In all other cases, where the consideration for a transaction involving goods or services could not be collected in whole or in part for other reasons (lapsing of the receivable due to statute of limitations, suspension of enforced collection proceeding, and the like), the VAT payer may not claim VAT relief for the amount not collected. It would be desirable to envisage other cases in which accounts receivable remain outstanding, on the EU pattern, where less restrictive grounds for VAT relief would be available. The experiences of other jurisdictions suggest that several criteria could be key for permitting such more flexible VAT relief options:

- 1) a set period must have elapsed since the VAT liability was incurred;
- 2) the claimant must have recorded the receivable as uncollectable;
- 3) the claimant must be a VAT payer;
- 4) the VAT taxable base must not exceed a particular amount; and
- 5) the claimant must have taken some legal action to collect the receivable.

### **Inform and educate MSMEs of the beneficial tax treatment available through sale of receivables**

MSMEs must be educated as to how non-performing receivables affect their tax liability, assess their costs in this regard, and understand the tax rules that apply to the recognition of non-performing receivables for the purpose of assessing the tax base at the end of each tax period.

This activity would entail the following steps:

- Offering workshops for MSMEs to showcase potential tax savings they could achieve by selling receivables as opposed to writing them off; and
- Preparing educational materials for MSMEs.



## INTRODUCE POTENTIAL MARKET-BASED SOLUTIONS FOR MSME RECEIVABLES FINANCING

### Regulatory review of the treatment of fintech platforms and feasibility assessment of a new MSME receivables market

Since invoice trading platforms are not specifically regulated, there is some degree of legal uncertainty as to how they could operate in Serbia. This is one of the principal barriers to the entry of these platforms into the Serbian market.

A detailed regulatory review of the Serbian legal landscape ought to be conducted from the points of view of all relevant areas of regulation, such as the provision of financial services, application of AML/CFT rules, personal data protection, foreign exchange operations, lending, capital market operation, and other areas.

This analysis should identify Serbian regulations that should appropriately govern the rights and obligations of invoice trading platforms. It could also determine whether specific rules were needed to regulate alternative finance for MSMEs. Apart from changes to the regulatory environment, the review would also have to identify government bodies and authorities responsible for regulating and overseeing fintech platforms.

A feasibility study is also necessary to look into options for introducing an MSME receivables financing model and creating a new MSME receivables market. These documents would serve as strategic guidance for Serbian authorities called upon to regulate and oversee invoice trading platforms and other innovative options for alternative MSME finance.

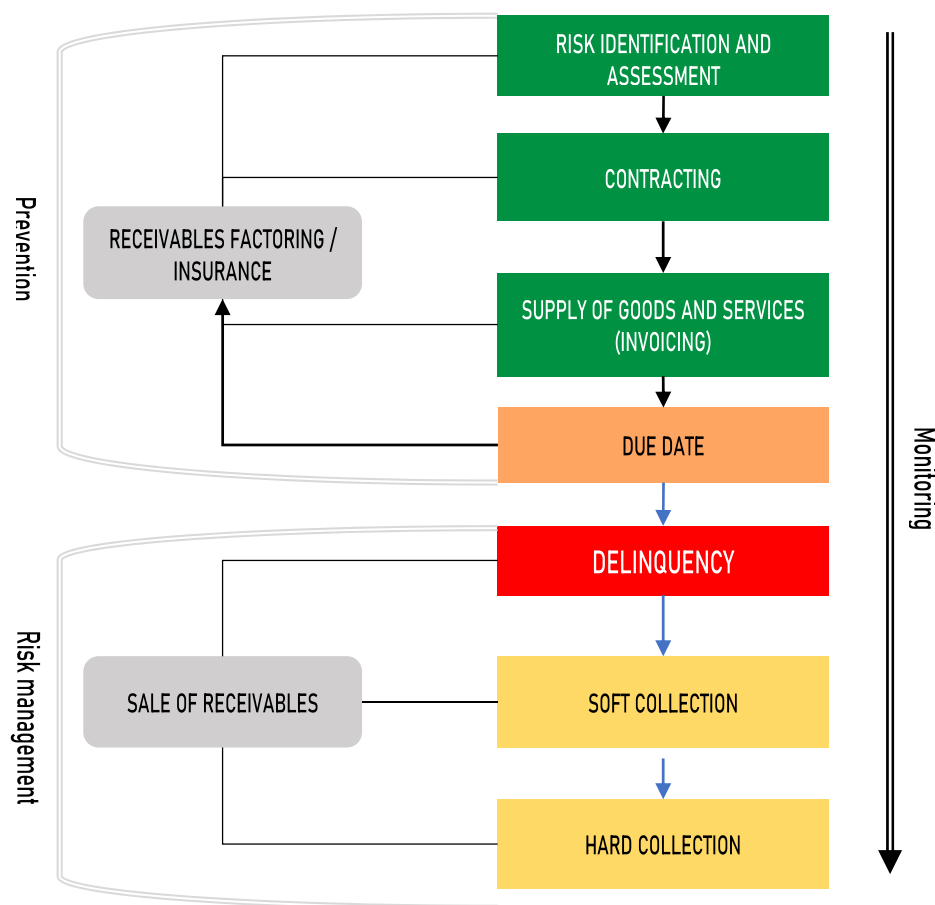
This feasibility study could specifically assess whether this new market segment could be created using existing infrastructure and capacities of the Serbian capital market. Here, it ought to be assessed whether the current stock market infrastructure and existing transaction settlement system could be applied to transactions involving accounts receivable. If the present capacity could indeed support making receivables a new type of financial instruments, regulatory authorities could potentially be more efficient in implementation. It the NBS and the Securities Commission would be expected to be recognised as regulators that would govern and scrutinise this new segment of the capital market. Lastly, if receivables were included as a new financial instrument into an already regulated market (such as the capital market, which is regulated by the CML), regulatory authorities would also be expected to recognise this new market segment and have the requisite capacity to efficiently regulate it.



## APPENDIX: MANAGING NON-PERFORMING RECEIVABLES

Before an account receivable is created, the creditor ought to be reasonably certain that the debtor will pay the debt, or, otherwise, take action to reduce the likelihood of the account receivable becoming non-performing. Creditors generally perform various checks on existing and potential buyers to spot possible issues in collection ahead of time. Figure A1 shows the stages that precede the sale of a receivable and the options creditors have at their disposal to mitigate the risk of delinquency in payment and ensure receivables are collected as efficiently as possible.

Figure A1. Managing accounts receivable



Collection risk management begins at the negotiations stage, before two companies first **do business together**. At this point, the supplying business ought to identify and assess the risks of this business venture, the key ones being (1) liquidity risk and (2) risk the receivable will be contested. For smaller orders, risk identification can be restricted to a handful of

criteria, such as bank account status and checking whether the prospective debtor is in bankruptcy. In more complex transactions, where a company faces greater exposure, this process can involve external consultants such as lawyers and/or financial advisors. The assessment can lead to a business abandoning a venture if there is a high likelihood the resulting debt will not be paid. The risk assessment should always be reflected in the contractual terms of payment and requirements for appropriate collateral.

Collateral usually takes the form of:

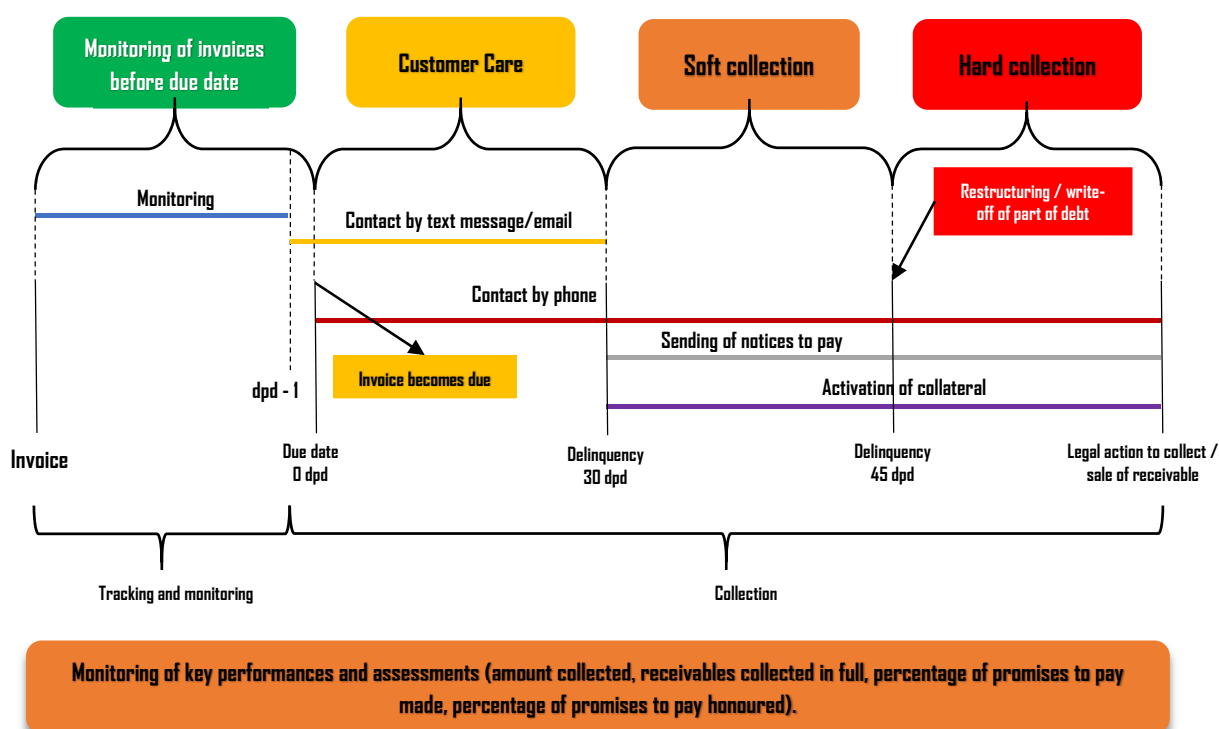
1. debtor's bill of exchange;
2. debt assumption or guarantee with or without a bill of exchange from the assuming party or guarantor;
3. pledge on rights and movable property;
4. mortgage; and
5. bank guarantee.

Bills of exchange are the most common form of collateral in the Serbian economy and should be used whenever there are delays in payment or long-standing business relationships are contemplated. Bills of exchange, guarantees, and debt assumption do not entitle the creditor to priority in collection, but do allow it to seek collection from the totality of the debtor's assets. By contrast, pledges and mortgages do confer priority in collection from assets subject to the pledge or mortgage, but the creditor cannot go after any other assets of the debtor. This is why the best approach involves combining these forms of collateral. Bank guarantees, especially demand guarantees, are among the safest types of collateral. Nevertheless, since bank guarantees can expose debtors to large banking fees, they are usually taken out only for high-value transactions.

For the duration of the entire process, until an invoice becomes due for payment or delinquent, the creditor may take risk mitigation measures, chief amongst which are **factoring and receivables insurance**. The time frame for taking this action is in practice slightly shorter than the maturity period, since factors and insurers need time to perform their own assessments. **Factoring** is an option for securing accelerated finance if a business needs to consolidate its cash flow by selling receivables. **Receivables insurance** is a special option for securing receivables that is not counterparty dependent. Here, failure to pay is an insured event, and if it occurs the insurer pays the sum insured to the beneficiary.

Figure shows a model for receivables collection proposed by EOS MATRIX, from invoicing until legal action to collect.

Figure A2. Collection of accounts receivable<sup>128</sup>



\*dpd: days per delinquency

Source: EOS MATRIX d.o.o. Beograd. 2016. *Naplata potraživanja u B2B sektoru*. PowerPoint presentation.

This collection model offers the advantage of being divided into distinct stages and based on a gradual increase of pressure on the debtor to pay. The collection process begins immediately after an invoice becomes due, or even prior to that point. 'Soft collection' is a procedure where the entity seeking collection attempts to communicate and negotiate with the debtor and third party guarantors to secure voluntary payment. This usually precedes 'hard' or enforced collection, since hard collection requires additional costs and may strain the relationship between the parties. However, circumstances may dictate that hard collection begin as quickly as possible, and it may be prudent for the two options to alternate or run in parallel. For instance, hard collection may be pursued against the principal debtor, whilst negotiations take place with accessory debtors, or vice versa, or the same entity or person can be subject to hard collection actions and party to negotiations at the same time.

<sup>128</sup> As used in this figure, the expressions 'soft collection' and 'hard collection' differ from the meaning given to them in the remainder of this study. Here, they refer to the type of collateral used at these stages of collection.

**Hard collection should take place if attempts to secure voluntary payment fail, and if doing so is feasible.** Typical situations in which hard collection is desirable immediately, as soon as conditions permit, include:

1. if it is apparent that the debtor will not pay a non-contested debt voluntarily;
2. where a different creditor has frozen the debtor's accounts; and
3. if the debtor enters bankruptcy.<sup>129</sup>

**A key precondition for launching hard collection is knowledge that the debtor possesses assets that can be used to recover the debt.** Such assets need not necessarily be present at the time the process begins; it is sufficient for there to be reasonable assurance that the debtor will in the future receive cash flows that will permit collection. The feasibility assessment of hard collection is often a complex effort and requires the engagement of outside experts, such as lawyers. Besides, initiating out-of-court collection of a bill of exchange by freezing a debtor's accounts is always recommended, since this procedure is efficient and does not entail significant cost. Obviously, a creditor stands a better chance of collecting if the account receivable has been appropriately secured by collateral at the time of the transaction.

**Selling a receivable is another option available to the creditor for mitigating the impact of delinquency.** Selling may offer substantial benefits over hard collection:

1. the creditor will certainly recover a part of the receivable;
2. the creditor will receive cash in fairly short order;
3. the creditor does not have to pay the fees involved in hard collection;
4. the creditor may use the uncollected amount as an expenditure for tax purposes to claim CIT relief without having to pay the costs of enforcement;
5. the creditor need not take any additional legal action to collect the claim so as to avoid any previously recognised impairment losses from again being used for tax assessment, which will also reduce their future tax costs; and
6. the creditor can free up resources for other operations and need no longer use them to pursue collection of a non-performing receivable.

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<sup>129</sup> Even though bankruptcy is a special procedure for collective recovery by all creditors of an insolvent business, we consider it to be a form of enforced collection since it is undertaken regardless of and against the will of the business and its members (with the exception of a debtor-initiated PPR).

Example: The cost of launching enforcement based on an authentic instrument for a receivable valued at 100,000 dinars is RSD 18,124 (about 18 percent of the face value). Enforcement fees are structured so as to discourage low-value proceedings and prevent them from posing a strain on the justice system. For a receivable worth 1 million dinars, the cost is RSD 44,660 (some 4 percent of the face value).

**It also ought to be borne in mind that these are just the initial costs of enforcement, which generates additional expense for as long as it is ongoing.** A creditor may also find it unfeasible to abandon a procedure as it will lose the tax benefits associated with it (see section on Tax treatment of non-performing receivables and their sale).<sup>130</sup>

The main shortcoming of choosing to sell a receivable over launching hard collection is the fact that the creditor will definitively abandon some part of the receivable. Receivables are generally bought at a large discount (reaching up to 99 percent of their face value). The days of delinquency indicator is a major criterion in determining the price. In addition, enforced collection is often already in progress, which may cost the creditor some benefits. One solution could be to sell a receivable soon after it becomes delinquent, before enforced collection is initiated, which will maximise purchase price and tax benefits and avoid the cost of enforced collection. Lastly, for the benefits of sale to be fully apparent, the face value should not be compared only with the purchase price; rather, the total value of all benefits of selling the receivable (purchase price, avoiding enforcement costs, tax benefits, and the like) should be set against the likelihood of collecting the entire receivable or its part at some point in the future, including the expected time needed for collection.

**The debtor and the receivable are monitored throughout the collection process.** Monitoring serves as an early warning system that allows timely response to any anticipated issues with collection. In addition, the creditor should ensure the monitoring effort includes a customer care model to reduce the risk of the receivable being contested: this will allow the creditor to identify any justified objections from the debtor and so avoid unnecessary litigation.

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<sup>130</sup> See also Item 2, Enforcement Officer Tariff of Fees (*Official Gazette of the Republic of Serbia*, No. 93/2019), referred to as 'EOTF' throughout, and Items 18 to 21 of the Attorney Tariff of Fees and Awards (*Official Gazette of the Republic of Serbia*, Nos. 121/2012 and 99/2020).

## APPENDIX: SEMI-STRUCTURED INTERVIEWS

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From September 2020 to February 2021 several semi-structured interviews were conducted with key players in the Serbian factoring, insurance, and collection market to ensure better understanding of the various aspects of managing, collecting, and selling non-performing receivables for the purposes of this study. The interviews involved collection companies, a law firm providing collection services, a factoring company, and a firm primarily engaged in receivables collection and insurance. The key findings of the interviews are given below.

### SEMI-STRUCTURED INTERVIEW: COLLECTION COMPANY 1

The first semi-structured interview involved a collection company. This firm generally purchases receivables from Serbian banks, insurance companies, and telecommunications operators, and has to date never bought other types of receivables. The firm noted it was often difficult to reach agreement with clients due to differing expectations, usually caused by lack of awareness on the part of companies, and insufficient knowledge about options for and approaches to collecting debt.

**Lack of awareness of the market was the primary obstacle preventing businesses from selling their receivables.** According to the respondents, businesses believe they are able to sell unsecured debt at between 50 and 70 percent of its face value, whilst the actual price is closer to between 1 and 3 percent. Potential clients are generally poorly aware of how they can protect themselves from bad debt and so their receivables are not properly collateralised. **The company claimed that available data suggested March 2021 was expected to see a marked increase in collection difficulties at banks.** According to this company, from January 2021 debtors were expected to begin 'backsliding', with their receivables progressively becoming less collectable until they reached non-performing status in March 2021. **The company reported running an 'early collection' programme for some clients.** Here, the firm mediated between creditors and debtors to ensure the debts were paid as a matter of priority. The early collection arrangement involved the debt collection company's operators first contacting debtors five days before the invoice became due, then on due date, and then again five days after due date. The clients has a range of options at their disposal (account freeze, presenting a bill of exchange for payment, withdrawing goods from retail stores, and the like). The company has to date always issued

a notice to the debtor before every such action, and this has had good results. The respondents expected this system to come back on track starting in the spring of 2021.

**The company claimed that creditors generally did not sell their receivables earlier than 90 days past due.** Asked whether they felt the creditors did so out of a desire not to jeopardise their trading relationships, and whether selling invoices anonymously through online platforms and an invoice trading market could promote efficiency, the respondents claimed the Serbian market was unlikely to see such arrangements soon. This suggests that micro-companies should be targeted by training in finance and technology so they can manage their finances properly. Before any invoice trading platforms are introduced, CFOs, CEOs, and company owners should undergo awareness-raising efforts that would enhance their understanding of the importance of appropriately managing their companies' financial affairs. The collection agency claimed any invoice trading platforms ought to be preceded by educational web sites that would inform businesses about how to manage their receivables and address non-performing debt.

By contrast, receivables auctions could greatly benefit small Serbian investors unable to purchase receivables portfolios from banks, since they could buy individual accounts receivable at auction.

Lastly, the company reported collection was adversely affected by lengthy court cases and the likelihood of claims lapsing due to statute of limitations.

## **SEMI-STRUCTURED INTERVIEW: COLLECTION COMPANY 2**

The second semi-structured interview was organised with another company that purchases, collects, and services receivables. This firm generally purchases receivables from MSMEs (mainly SMEs) in the real sector. Here, the respondents agreed that creditors had unrealistic expectations of the price their accounts receivable could command but noted this could be overcome by negotiating with likely clients. Clients offering receivables for sale usually exhibited large differences between expected and realistic discount rates, and so in these cases it was usually more cost-effective to service receivables rather than purchase them. Moreover, the delay in putting a receivable up for sale depended on when the company realised it was facing a cash flow problem. MSMEs generally presented with receivables that had either lapsed due to statute of limitations or were about to do so.

Asked whether MSMEs failed to secure their receivables due to the differences in bargaining power between themselves and their clients, the company responded that some of this issue was attributable to a lack of awareness of the various options to collateralise

**receivables.** The company advised its clients to try to take out additional collateral once the receivable becomes non-performing. Some of the issues were due to the state of the market, with some MSMEs concerned that clients would simply take their business elsewhere if faced with a request for a bill of exchange, which could restrict the MSMEs' sales strategies.

The company agreed that many SMEs did not seek legal action to collect receivables since the cost of enforced collection was prohibitively high. These firms were also seen as lacking logistical support.

The greatest challenge in the Serbian market, it was said, was identifying and purchasing receivables, as creditors were insufficiently motivated to opt for this approach, and properly arranging their documents and databases. The company was particularly interested in regulation and standardisation of this process, since a great deal of their own business depended on educating creditors about the value of the receivables and their ability to collateralise and collect their claims. The firm also felt creditors had to receive training about the options at their disposal with regard to selling and collecting receivables. MSMEs faced lengthy processes of collecting usable data to evaluate portfolios (debt age, underlying instrument, debtor size), which could involve significant transactional costs (up to six months in some cases). There was also a problem with proper record-keeping, which can affect even large companies.

Many receivables were 'untreated', the company claimed, which posed difficulties with selling non-performing receivables in Serbia. Before a receivable was declared uncollectable, creditors should be educated about their options for collateralisation and collection, so that they can take any and all required actions before abandoning collection efforts.

When asked about obstacles to the development of the Serbian market and the possible options for improving sales of non-performing receivables, the company responded that standardisation would benefit both collection agencies and creditors. In their view, clear guidance and direction ought to be put into place for how creditors could package their receivables portfolios and present them to interested buyers. This was in effect a straightforward process of extracting information from books of account about receivables that might interest potential buyers, with these buyers then assessing whether the purchase was profitable and the sellers whether it made sense for them to sell. Better arrangements here would mean significant savings of time.

An additional obstacle for small firms was the lack of a sufficient volume of receivables to build a marketable portfolio. Clients' receivables portfolios were often too small for the collection agency to justify taking on collection costs. The issue was not so much that the



value of each individual receivable was low, but that very few of those receivables were actually collectable. The lower the value of such a portfolio, the higher the cost burden.

Invoice trading platforms could be one option to establish a market in non-performing receivables, but the greatest challenge here, the company said, would be motivating MSMEs to opt for selling their accounts receivable.

As for the legal limitations on selling and buying non-performing receivables, the collection company highlighted the requirement for notarising each contract for use at later stages of collection procedures. The cost of notarisation could make these actions unprofitable for smaller receivables. The firm noted this could be a problem even if an invoice trading were introduced, since the documents would still have to be notarised for purposes of identification in legal proceedings. The company explained it prepared several original copies of these documents, then deposited photocopies with the court and presented originals where required, but court practice was inconsistent. Another major obstacle was how to prove a creditor with a notarised document had standing in the case, especially for large companies that needed to produce, sign, and notarise documents.

There was virtually no middle ground between factoring and receivables collection, the company said. When asked about their views of the Serbian factoring market, the firm claimed that factoring companies generally took on highly collateralised risk-free receivables, and that the selection threshold was high.

The collection agency claimed there was room for new players to enter the Serbian non-performing receivables market.

## **SEMI-STRUCTURED INTERVIEW: LAW FIRM**

The third entity interviewed for this study was a law firm that negotiates with businesses on a daily basis, either from the perspective of purchasers of distressed debt or to offer receivables servicing. This firm agreed that economies of scale were the key obstacle for greater numbers of companies to enter this market segment in any organised fashion. Foreign investors did not find it worthwhile to engage if a portfolio was not sufficiently large. One option was to consolidate MSMEs' individual claims into one portfolio for sale to investors or funds.

The respondents were asked whether they believed one reason for hesitating to sell receivables was motivated by the desire not to hurt relationships with clients or a lack of anonymity. The response was that, once a company was reduced to the expedient of selling its receivables, there was no longer any relationship to be risked. Frictions between the

**sales, legal, and financial departments in a company** could occur over the extent to which a receivable was suitable for sale. Here, experience had shown that companies had no trouble selling their accounts receivable if they had a clear mechanism in place for debts 90 days past due and access to buyers interested in purchasing the receivables. One problem was that the receivables were often viewed only in the context of their book value and were not properly depreciated, with the creditor's legal department assuring the management that the receivables could be collected quickly and easily. The respondents claimed that, in negotiations, these companies were difficult to convince that the actual value of the receivables ranged from 5 to 15 percent of their nominal amount.

**MSMEs generally lacked experience with discounts for unsecured receivables in default, which meant they had no expectations either.** Companies that had previously worked with the law firm were aware of how these receivables could be valued. MSMEs that had already had experience with selling receivables were able to identify better performing debt. Once a business gained some idea about the value of the receivables they were selling, their expectations no longer differed much from the actual state of the market, the interviewees observed.

Since the market could be split into a segment where debtors were not yet in default, which was primarily given over to factoring, and the non-performing receivables segment, the law firm agreed that a large part of the market was a 'no-man's land' not served by anyone.

Receivables put up for sale in the Serbian market were past due by at least one year, and often by more than two years. The respondents noted they were able to step in to provide services on day one after an invoice matured, but there the MSMEs had no interest in selling. Firms were quite certain, the firm claimed, that they could collect their debt fairly easily.

**Servicing receivables was a service somewhere in between factoring and debt buying.** This entailed familiarising businesses with the method of putting pressure on the debtor some days before maturity and on due date, as well as with options available thereafter. Firms were not ready to pay for this service as they were quite certain they could collect their debts fairly easily. The interviewees agreed that there may be some cognitive bias or baseless optimism on the part of the MSMEs, and that a key issue was their failure to recognise their receivables could not be collected and impair them in due time in their books of account.

The law firm felt creditors were deterred from taking legal action by the debtors' common defence of lodging objections with the exclusive aim of unduly extending the enforcement proceeding, as well as the many fees that needed to be paid during the course of the procedure.

Invoice trading platforms could be a sensible solution, the respondents agreed, but economies of scale had to be taken into account. A thorough investigation of this issue would have to be undertaken, they claimed, to determine whether there was a sufficient quantity of receivables in the Serbian market. The law firm felt that use should be made of the mandated switch to e-invoicing, as this will accelerate and expedite the process and permit the creation of a market where investors could purchase invoices online.

It made sense to disseminate information and educate younger individuals just starting out in business, and especially letting them know that an asset is at its most valuable when it is youngest and depreciates every day.

The law firm agreed with the views of previous interviewees that one obstacle to efficient sale of receivables was the fact that creditors did not maintain structured records of their claims, so that assignees needed months to intervene in all proceedings and collect information about all invoices.

The respondents believed there were several options for sidestepping challenges with notarisation of assignment contracts, including by depositing one copy of the documentation with the court or submitting copies for examination.

There was a clear trend towards consolidation in the receivables servicing market. Even though there were other players in the market, mainly foreign-owned companies and a host of other smaller entities, the respondents believed that most large firms had ceased to provide these services. The market was too small, the interviewees believed, for any more players to enter, especially as other countries in the region offered more lucrative opportunities.

## **SEMI-STRUCTURED INTERVIEW: FACTORING COMPANY**

The fourth respondent, a factoring company, agreed that factoring was an under-utilised option in the Serbian market. They felt that liquidity was constrained by the vicious circle of increasingly lengthy delays in payment and correspondingly less collectable receivables. Although a traditional financial product, factoring is still relatively unknown in the Serbian market, the company felt, and many firms had issues with incorporating it into their operations. The respondents believed familiarising companies with factoring and its benefits was highly resource-intensive for the factoring firm. Banks were also insufficiently interested in providing factoring services, as they required the operational structures and resources that banks probably believed were better employed elsewhere, but factoring could also deliver many benefits and synergies with existing banking products.

**According to the firm, treatment of factoring was a little-known benefit.** Factoring transactions were a way for companies to access liquidity (cash) without burdening their balance sheets, since the liabilities side of the balance sheet remained unaffected. More liquidity allowed firms to address their liabilities without having to take on bank loans and provided room for strategic financing and co-operation with banks without the need for financial institutions to concern themselves with providing short-term liquidity financing to the company. Factoring can greatly help improve the liquidity of the economy as a whole, the firm claimed. Accelerated cash flows would gradually address the issue of non-performing receivables and those difficult to collect. When invoices are still performing and due dates still likely to be observed, factoring can help accelerate liquidity and cash flows and reduce the adverse impacts of delinquency.

**Banks usually provided reverse factoring, the responses said.** Banks primarily offered reverse factoring to their large clients so as to finance their supply chains, which also included MSMEs. Even though this model ultimately served to finance MSMEs, it was neither initiated nor dependent on this sector. Banks had an interest in diversifying their balance sheet assets and dispersing their investments across a large number of clients.

**There had to be greater take-up of direct factoring.** Banks could help in this regard given their high visibility in the market. When a supplier contacted a factoring company, it had to be able to collect its receivable from a large creditor regardless of that creditor's influence on the factoring company.

**The interviewed company had well-established procedures in place to assess risk, solvency, and credit standing, and offered recourse factoring.** Solvency assessments were done in-house, but the firm also reported using data from aggregators such as Bisnode for this purpose. A credit limit was set for each assignor. With recourse factoring, the ultimate risk and liability for payment reverts to the assignor if the debtor fails to pay.

**Potential clients contacted the company with receivables any stage of maturity.** There were extreme cases where clients came in with receivables just days short of the due date. Conversely, some companies would contact the factoring firm on the day they delivered the goods, or even before, whilst still strategising, negotiating with clients, and agreeing payment terms.

**The factoring firm reported setting its fees with reference to maturity periods and assessed credit standing.** The clients collected the largest part of the receivable once the factoring transaction was complete, with the rest coming in after the debtor paid the factoring company and it subtracted its fee from the difference. **The cost of factoring is higher than that of a bank loan, but the two were different products.** Factoring permitted companies to

access liquidity by turning receivables into cash, the most liquid asset, which can be gainfully invested in real time, so the potential return outweighed the cost of the factoring service.

The respondents agreed that an invoice trading platform including an auction mechanism allowing interested parties to finance non-performing receivables would probably bring benefits. It would also be desirable to share information about payment practices in commercial transactions, they reported, as this would result in greater awareness of the solvency of the companies involved and so benefit the entire business ecosystem.

The company felt receivables were sufficiently identifiable and this was not an issue. The Factoring Law permitted factoring of future receivables. Identifiability was not in and of itself a problem if the subject matter of a transaction was clearly defined in the relevant contract. The risk here, rather, was that some activities needed to be performed to make a 'future' receivable into an actual one. Identifiability is defined by the performance of the assignor, and, for a variety of reasons, a receivable might not materialise, or they may be a delay or other issues.

The company believed that the Factoring Law clearly stipulated requirements for factoring licences and the licensing process was efficient. There was no need for deregulation or liberalisation, the firm felt, as the conditions were sensible and the capital requirement was appropriate.

## **SEMI-STRUCTURED INTERVIEW: RECEIVABLES INSURANCE COMPANY**

The fifth respondent in the semi-structured interview series was a company primarily providing receivables insurance, mainly for large businesses. The company's operations was comprised of three segments. The first was assessing company risk, the second involved collecting receivables, and the third related to providing collection insurance. The respondents noted that the market initially did not fully understand what this service involved, which meant that a lengthy awareness-raising period ensued and was still ongoing. The company primarily aimed its services at medium-sized and large companies, although it also targeted small firms.

An internal portfolio assessment revealed a downward trend over the past five years in terms of how long it took to collect debt. The improvement has not been dramatic, but is nevertheless visible. In 2010, payment in B2B transactions in Serbia took approximately 140 days, and the figures for 2018 and 2019 ranged from 95 and 98 days.

As for the receivables collection portfolio, it was worrying to see that a large proportion (50 to 60 percent) of foreign creditors' receivables owed by Serbian businesses were non-

**performing.** The interviewed company also highlighted the large extent to which Serbian firms were insolvent. There has been uncertainty with collection since Q2 2020, the firm said, and the challenges were only set to worsen in 2021, with the year ahead certainly likely to be difficult for collection of receivables. In early 2021 all companies seemed to reduce operations to the barest minimum. Companies still did not recognise it was better to engage in pre-collection than wait for an invoice to become due and waste the underlying effort. Not all industries faced the same difficulties, but it was better to have some chance of collection than incur losses. Businesses were still attempting to resolve collection issues alone, the company claimed.

The Serbian market was still deficient in terms of a culture of prompt payment, regardless of the Late Payment Law, as this piece of legislation was vague in some respects, was not fully complied with, and was difficult to put into practice in some situations. The Late Payment Law imposed some constraints on freedom of contracting and commercial arrangements between businesses. It was necessary, first of all, for the government to underscore the importance of prompt payment, in particular in PA2B transactions. The respondents felt poor payment practices were a cultural issue in the Western Balkans, and could only be addressed if the government led by example and if awareness-raising was offered on the benefits of prompt payment, in particular for MSMEs.

The company reported they engaged in collection on clients' behalf and took on the risk of opportunity costs in time and resources, since they charged their fee only after the receivables were collected. MSMEs did not have clearly structured collection processes, the company claimed. These businesses were not aware, first and foremost, that collection could be outsourced to a third party before a problem occurred, and that doing so allowed them to focus on more pressing issues for their company. Moreover, some firms may feel collection service is overly expensive, only to change their minds too late and seek help. The interviewed company's overarching interest was, in their words, to motivate firms to focus on their own businesses, manufacturing and offering their products and services, whilst outsourcing collection to a specialised entity that will not seek to appease the buyer and that will find an appropriate collection model. The company's retention rate was around 85 percent. A major task was educating debtors that failing to pay would put strain on their balance sheets.

The interviewees were familiarised with research showing that trade, manufacturing, and tourism were the hardest hit by non-performing receivables. **The company claimed the crisis was primarily one of mobility and that it believed the transport sector would also be affected.** They also highlighted a sharp drop in tourism that was connected with issues in the transport industry. The car industry was also in crisis, but the pandemic has been a time for growth in other sectors, such as the media, IT, and pharmaceuticals.

**Collateral has lost value.** Bills of exchange were deprecated in collection services, the company claimed, mainly due to abuses with bills of exchange posted as guarantees.

Lastly, the respondents felt there was a niche market in offering collection insurance to small businesses.

### Key findings of semi-structured interviews

- The MSME receivables market, in particular for non-performing accounts receivable, is characterised by failures that hinder its development. The salient feature of this market is poor demand, whilst on the supply side MSME receivables are not profitable enough to serve as a major source of MSME liquidity.
- The main shortcomings of the market are: 1) high discount rates, in direct consequence of poor receivables management by MSMEs; 2) a large gap between the value of receivables as perceived by creditors and potential investors; and 3) poor awareness and capacity of MSMEs to efficiently manage their receivables and realistically assess their value. MSMEs see receivables as passive equity, meaning that they do not commonly sell, pledge, or factor them, relying rather on other sources of finance for cash needed to maintain current liquidity.<sup>131</sup> Due to these issues, MSMEs have no options for mitigating liquidity risk, one of their principal threats.
- Debt buyers feel MSME receivables they have to date dealt with are worth between 1 and 15 percent of their face value. This high discount rate for MSMEs commercial receivables reduces the profits they may bring to the creditor in the event of sale.
- Conversely, MSMEs believe they can get between 50 and 70 percent of the face value of their non-performing receivables. This indicates an obvious discrepancy between how the supply and the demand side assess their market value. One of the reasons behind this divergence is the poor awareness amongst MSMEs of how much their receivables are actually worth.
- MSMEs lack the knowledge and capacity to appropriately collateralise their receivables and have no structured internal procedures to manage them. Moreover, their weak negotiating position vis-à-vis their debtors often leads them to delay collection in a bid to preserve the working relationship. These factors all drive the market value of accounts receivable down, so MSMEs' expectations are at odds with the real state of demand in Serbia.
- For these reasons, the Serbian receivables market requires solutions that will bridge the gap between supply-side and demand-side expectations and incentivise MSMEs to better understand the market value of their receivables and so manage them more effectively.

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<sup>131</sup> For instance, in Serbia as many as 68.97 percent of all firms took out no collateral other than bills of exchange. See USAID-ov Projekat saradnje za ekonomski razvoj. 2019. Prezentacija svih nalaza, mera i preporuka koji utiču na likvidnost MMSP, 22. Available at [saradnja.rs/wp-content/uploads/2019/10/Liquidity-Study-Srbija.pdf](http://saradnja.rs/wp-content/uploads/2019/10/Liquidity-Study-Srbija.pdf).



## APPENDIX: PAYMENT INDEX METHODOLOGY

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According to Bisnode LLC's methodology, the Payment Index assesses companies' payment practices. The payment index is calculated as a weighted average of the number of days between payment date and invoice value date.

The Payment Index is recalculated monthly based on information obtained from invoices that are not older than one year. The Payment Index shows the estimated payment practices of companies on a scale from 0 to 100.

A payment index of 80 means that the company settles its obligations on time according to the available information. A higher value means that invoices are paid before the payment deadline, while an index of under 80 shows that invoices are paid late. The Bisnode Payment Index should be interpreted as follows:

- Over 80: the company pays before the invoice matures;
- 80: the company pays on time;
- 75 to 79: the company pays up to 7 days late;
- 70 to 74: the company pays up to 15 days late;
- 50 to 69: the company pays up to 30 days late;
- 40 to 49: the company pays up to 60 days late;
- 31 to 39: the company pays up to 90 days late;
- 20 to 30: the company pays up to 120 days late;
- 0 to 19: the company pays with more than 120 days of delay.

Bisnode has introduced the following indicators based on the methodology described above:

- Company payment index: maximum number of days;
- Company payment index: average number of days;
- Company payment index: minimum number of days;
- NACE rev. 2 group payment index: maximum number of days;
- NACE rev. 2 group payment index: average number of days;
- NACE rev. 2 group payment index: minimum number of days.

## APPENDIX: COMPARATIVE OVERVIEW OF RECEIVABLES TRADING PLATFORMS IN THE EU<sup>132</sup>

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### UNITED KINGDOM

The UK is one of the largest and best developed markets for alternative finance. In 2018, the UK accounted for 57 percent of the European alternative finance market.<sup>133</sup>

#### MatchPlace Ltd<sup>134</sup>

Registration formalities: No information available.

Financing costs: Registration is free of charge, but other actions taken by the platform attract fees, namely: 1) Invoice processing fee of between 0.75 percent and 2.5 percent of the total invoice amount; 2) payment processing fee of £15; and 3) finance cost of 0.05 percent to 0.3 percent per day of the cash advance amount for the duration of the cash advance.

Eligibility requirements: The platform is open to LLCs and public companies registered in the UK that can demonstrate business activity for at least two years before registration.

Receivable/invoice requirements: Users can register all debts owed by LLCs and public companies registered in the UK on condition that: 1) each receivable is worth at least £20,000; and 2) that minimum residual maturity is 15 days or longer.

Receivable/invoice verification: In direct contact between the platform and the debtor. The platform contacts the debtor to verify the invoice.

Debtor notification: Receivables are assigned without debtor notification.

Amount financed: Up to 90 percent of the amount of invoices registered on the platform.

Other relevant features: Private investors, institutional investors, banks, and businesses can register as investors. After registration, user may act as both assignor and investor.

#### Investly<sup>135</sup>

Registration formalities: When registering the monetary receivable that underlies an invoice, the creditor supplies statements from all banks where it has accounts to advise the platform

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<sup>132</sup> Note: Note: this review is based on data collected from the platforms' web sites, and does not include legal sources such as national legislation, general and specific terms and conditions, model contracts, agreements, prospectuses, and the like.

<sup>133</sup> Cambridge Centre for Alternative Finance. 2020, 26.

<sup>134</sup> A description of the operating model and services offered by MatchPlace is available at [matchplace.com](https://matchplace.com).

<sup>135</sup> A description of the operating model and services offered by Investly is available at [investly.co](https://investly.co).

of transactions over the previous six months. After assessing the company and its statements, Investly makes the creditor an offer indicating the financing limit and costs. Registration and listing on the platform are free of charge.

Financing costs: Users pay a fee of between 1.65 and 2.6 percent of the invoice amount for each invoice sold at auction.

Eligibility requirements: Company must be trading for at least 6 months; be based in the UK; have good credit standing; and have no ongoing court cases that could affect its operations.

Receivable/invoice requirements: Investly trades in B2B and B2PA invoices. Invoices can be issued to foreign firms, but as a rule the company requires invoices to be denominated in British pounds. Financing is disbursed once the debtor confirms receipt of the new invoice.

Invoices may be issued to UK or foreign suppliers for goods and services delivered, but the invoice must not have reached its due date and must have a payment term of between 15 and 180 days. The invoice should include amount, date of issue and due date (or payment terms), full trading name and address of the creditor and supplier, and contract/order reference. Receivables in the construction sector also require delivery instrument and receipt (interim payment certificate). In other cases, proof of delivery is also desirable. The invoice receiver cannot have delays any longer than 30 days with previous payments and has to be a company trading for at least 3 or more years with a turnover of at least £1 million per year.

Invoices must also comply with some formatting guidelines, so the issuer must make changes and re-issue the invoice. In addition to standard details, the invoice must include: 1) reference to the order for goods or services received by the debtor from the creditor; 2) assignment notification: 'Assignment notification: The claim underlying this invoice is a subject of invoice discounting and has been assigned to a third party, represented by Investly Ltd (...). The invoice has to be paid in full to Investly Ltd bank account (...) Please add your company name and the invoice number to payment reference (...)'; and 3) Investly Ltd bank details for payment by the debtor.

Receivable/invoice verification: This is done in direct communication between the platform and the debtor. 'Confidential' financing, entails a special procedure to verify the receipt of goods/services and confirmation of invoice details. No further information is available about this confidential approach.

Debtor notification: The platform contacts the debtor once the creditor signs an agreement with Investly Ltd. The creditor's approval is required for every communication.

Amount financed: Up to 100 percent of the invoice amount, less costs of financing.

Other relevant features: The invoice goes to auction which lasts between one and two days. Investors place bids of varying sums and interest rates. The system uses a reverse auction model where bids are sorted from lowest to highest, based on the interest rate. Bidding requirements change once the invoice amount is fulfilled. Here, investors are still able to make bids but they have to be lower than the highest competing bid in order to be considered. After the winning bid is declared, the amount is disbursed to the creditor, less the platform's fees.

## **MarketFinance<sup>136</sup>**

The MarketFinance business model entails assignment of receivables to MarketFinance – in other words, MarketFinance buys receivables from its clients. Once the debt is collected, MarketFinance sets aside the financing and its fee and pays the remainder into the original creditor's account. This is in effect recourse factoring.

Registration formalities: No information available.

Financing costs: There are two fee options. One is a contract option, which involves a fixed monthly fee, listing, and interest finance. The contract may be cancelled early if the subscription is paid in full, and clients wishing to cancel contracts must give three months' notice. The other is a pay-as-you go option, where the service fee is a percentage of the invoice face value plus listing fee and finance fee. The finance fee is based on the invoice and the financial information about the creditor and the debtor. The fee is assessed on gross finance before the service fee is levied.

Eligibility requirements: The platform is open to LLCs based in the UK with a minimum turnover of £100,000.

Receivable/invoice requirements: No information available.

Receivable/invoice verification: This is done in direct contact between the platform and the debtor for first purchase of an invoice for a new debtor. Each subsequent invoice for same debtor is verified automatically by e-mail.

Debtor notification: The debtor is notified whilst the invoice is verified. In addition, since the invoice is assigned to MarketFinance, the company may contact the debtor again to ensure collection, especially in case of delinquency. The creditor is required to notify MarketFinance at least 7 days after an expected payment date has passed. The debtor is also contacted if

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<sup>136</sup> A description of the operating model and services offered by MarketFinance is available at [marketfinance.com](http://marketfinance.com).

an invoice is significantly overdue, if there is a dispute, or if the debtor may already have made payment elsewhere.

Amount financed: Financing is limited to 90 percent of the invoice amount, and this advance rate is reduced for sectors where underpayment is common. (The original creditor also receives any amount over the advance after the platform's fee has been collected.)

Other relevant features: If an invoice is overdue by 10 days, MarketFinance offers to re-purchase the invoice from the original creditor or proposes a debt repayment plan. Once an invoice is 17 days past due, MarketFinance requires the creditor to repay the outstanding amount plus a fixed 10 percent fee.

## ITALY

Italy is amongst the leading EU countries by introduction of e-invoicing. Electronic invoices were introduced for B2B transactions in 2017, became partly required (for some goods and services) in 2018, and finally became mandatory for all B2B transactions on 1 January 2019.<sup>137</sup> Online reporting of invoice data has been mandated since 2017. VAT payers were able to waive this requirement if they used the Exchange System (*Sistema di Interscambio*) for e-invoicing.

Invoice discounting is particularly important for Italian MSMEs as commercial payment periods there are usually longer than elsewhere in the EU.<sup>138</sup> According to a 2018 report produced by the Politecnico di Milano, invoice discounting permitted some 900 firms to raise funds amounting to €612 million. Discounting takes the form of recourse or non-recourse factoring where the creditor MSME sells a commercial receivable on an invoice trading platform where that receivable is purchased by a professional investor.

The report identifies two options for invoice assignment used by Italian platforms. In the first approach, platforms are intermediaries in the assignment of an invoiced receivable and organise auctions in which professional investors bid. In the second option, having assessed the risk of the financing operation, platforms make invoice issuers offers to purchase their receivables. Italy's first invoice trading platform was established in 2015.

### Workinvoice<sup>139</sup>

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<sup>137</sup> Bilancio di previsione dello Stato per l'anno finanziario 2018 e bilancio pluriennale per il triennio 2018-2020. (17G00222). Available at GU Serie Generale n.302 del 29-12-2017 - Suppl. Ordinario n. 62.

<sup>138</sup> Politecnico di Milano, School of Management. 2018. Alternative Finance for SMEs in Italy, 6. Available at [epic.it/sites/default/files/documents/Report%20Alternative%20Finance%20for%20SMEs%20in%20Italy.pdf](http://epic.it/sites/default/files/documents/Report%20Alternative%20Finance%20for%20SMEs%20in%20Italy.pdf).

<sup>139</sup> A description of the operating model and services offered by Workinvoice is available at [workinvoice.it/anticipo-fatture](http://workinvoice.it/anticipo-fatture).

Workinvoice was the first Italian online trade finance marketplace based on invoice trading.<sup>140</sup> The platform is explicit in stating it does not offer engage in regulated activities. Apart from financing MSMEs, the company offers 'Smart Reverse', a service billed as a modified form of reverse factoring.<sup>141</sup>

Registration formalities: To join the marketplace, a business must register and supply information about the debtor and accompanying documentation, including information from its corporate byelaws.

Financing costs: Fixed service charges amount to €30 per month, as calculated from the day the platform's services are first offered. Together with the monthly fee, Workinvoice also charges a commission for each successful auction as a percentage of the winning bid. The maturity period determines the amount of this commission: receivables maturing in 30 days attract a charge of 0.25 percent of the amount the invoice is sold for, whilst charges increase proportionately for longer maturities and amount to 0.40 percent if the receivable is due within 31 to 60 days, 0.60 percent for periods of between 61 and 90 days, and 1.20 percent if the receivable matures in between 121 and 150 days.

Eligibility requirements: SMEs (public companies and LLCs) may apply.

Receivable/invoice requirements: Individual receivables must have a minimum value of €10,000 (inclusive of VAT). Collectable non-matured receivables in transactions where debtors are medium-sized or large companies may be traded at auction. Workinvoice does not allow trading of receivables owed by the public sector, those where the buyer expressly prohibits assignment, receivables where the service in question has not been fully performed, receivables that are contested or subject to offsetting, receivables that are already assigned or are subject to factoring, and receivables owed by entities that are not public companies or LLCs.

Receivable/invoice verification: No information available.

Debtor notification: No information available.

Amount financed: If an auction is successful, the invoice is purchased at 90 percent of its face value. After the debtor has paid the investor once the receivable has matured, the

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<sup>140</sup> Politecnico di Milano, School of Management. 2018. Alternative Finance for SMEs in Italy, 19. Available at [epic.it/sites/default/files/documents/Report%20Alternative%20Finance%20for%20SMEs%20in%20Italy.pdf](http://epic.it/sites/default/files/documents/Report%20Alternative%20Finance%20for%20SMEs%20in%20Italy.pdf).

<sup>141</sup> Article 18 of the FL defines reverse factoring as a special type of factoring transaction between the factor and the debtor under a goods or services supply contract, whereby the factor assumes an invoice from the debtor and in doing so also takes on the obligation to pay creditors, and may collect the debt from the debtor within the term stipulated in the goods or services supply contract. Here, the beneficiaries of Smart Reverse owe a monetary obligation from a commercial transaction – they are debtors, and they invite the suppliers to sell their invoices. If the supplier accepts, and the debtor authorises the invoice, the supplier sells the invoice. The requirements are somewhat different from those for invoice financing (*anticipo fatture*). The client (debtor) must have turnover of at least €50 million and must occupy a leading position in the supply chain, whilst its suppliers must play strategic roles.

creditor is paid the remainder of the receivable less the fee paid to the investor that purchased the receivable. When an invoice is listed on the marketplace, its seller sets the minimum purchase price and the price at which any investor can buy the receivable outright without an auction.

Other relevant features: Auctions are open exclusively to institutional investors. Receivables are sold in a non-recourse factoring transaction. As such, when the invoice is sold, the collection risk passes to the investor, which has no recourse against the seller. Exceptionally, in the event of delinquency in payment due to an ongoing dispute about whether the seller has performed the underlying contract (i.e. delivered the goods or services in question), the investor is able to seek annulment of the contract for sale of the receivable and reimbursement of the purchase price.

## Credimi<sup>142</sup>

This platform offers several models of alternative financing for MSMEs.<sup>143</sup> In addition to recourse and non-recourse factoring, it extends loans to MSMEs backed by between 70 and 90 percent in government guarantees<sup>144</sup> and supply chain finance.<sup>145</sup> A new service, dubbed 'Digital Future', is planned for introduction; it is intended to finance business digitalisation projects.

Registration formalities: No information available.

Financing costs: Credimi's factoring clients pay two types of fees: 'receivable purchase fees' and 'service fees'. The purchase fees are proportional to the length of the financing period, amount of financing, and the risk associated with the creditor and the debtor. The financing period is calculated on the basis of the due date and average days of delinquency. Purchase costs may be assessed as a percentage of the total invoice value (say, 0.74 percent) or as a fixed amount (e.g. €73.77). The purchase fee is made up of interest, which depends on creditor risk and length of financing (the net interest rate stands at between 1 and 12 percent annually) and commission, which is based on the same elements and stands at between 0.2 and 6 percent of the invoice amount. Service fees are comprised of the monthly fee (€10) and assessment costs (€19 for each invoice, regardless of whether or not it is assigned).

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<sup>142</sup> A description of the operating model and services offered by Credimi is available at [credimi.com](https://credimi.com).

<sup>143</sup> This relates to non-recourse factoring. Available at [static.credimi.com/foglio-informativo-pro-soluto.pdf](https://static.credimi.com/foglio-informativo-pro-soluto.pdf).

<sup>144</sup> Pursuant to Order No. 23 of 8 April 2020 (Misure urgenti in materia di accesso al credito e di adempimenti fiscali per le imprese, di poteri speciali nei settori strategici, nonché interventi in materia di salute e lavoro, di proroga di termini amministrativi e processuali). Available at GU Serie Generale n. 94 del 08-04-2020.

<sup>145</sup> This service is aimed at medium-sized and large industrial groupings that contract longer payment terms in commercial transactions (from 60 to 120 days). If they meet eligibility requirements, Credimi purchases their suppliers' receivables at 100 percent with no recourse requirement in case of failure to pay.

Eligibility requirements: Financing approval decisions take into account annual turnover, length of trading, form of incorporation, seat, and industry. If a company is deemed to be eligible, Credimi will notify it of the financing services available, and a detailed financial offer will be provided if the company chooses to use one of the services. Information is also collected about responsible officers and owners of the company and their experience in the industry, as well as the firm's reputation and its intangible assets. On average, the EBITDA<sup>146</sup> of businesses eligible for financing stands at 10 percent of their turnover. If a company opts for factoring finance, their debtors' credit standing is also examined, including information from the Central Loan Register (NPL indicator) and Credit Information System, as is other information that may reflect obvious performance issues that preclude purchase of its receivables.<sup>147</sup>

Receivable/invoice requirements: Each invoice must amount to a minimum of €2 million (geared towards institutional investors).

Receivable/invoice verification: No information available.

Debtor notification: As a rule, Credimi notifies debtors of assignment, but permits a confidentiality exception where the seller has commercial considerations.

Amount financed: Receivables may be purchased at up to 100 percent of their face value.

Other relevant features: The creditor guarantees all receivables assigned are liquid and collectable on maturity, except if debtor becomes insolvent. If creditors' claims prove unfounded, Credimi can require reimbursement, along with interest and commission.

## CashInvoice<sup>148</sup>

This platform offers non-recourse purchase of trade credit at 100 percent; recourse factoring; reverse factoring; export factoring; supply chain finance; lending; lending at a fixed subsidised rate to cover the costs of opening offices, showrooms, stores, or service centres, and business promotion in non-EU countries;<sup>149</sup> purchase of matured outstanding receivables; and financing of e-commerce abroad at subsidised interest rates.

In non-recourse purchase of trade credit, CashInvoice assumes credit and insolvency risk. This service is aimed at medium-sized and large companies required to publish periodical

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<sup>146</sup> Earnings Before Interest, Tax, Depreciation, and Amortisation.

<sup>147</sup> Valutazione delle richieste di finanziamento. Available at [credimi.com/modello-rating](https://credimi.com/modello-rating).

<sup>148</sup> A description of the operating model and services offered by CashInvoice is available at [cashinvoice.it](https://cashinvoice.it).

<sup>149</sup> Here the amount ranges from €50,000 to €2.5 million and may not exceed 25 percent of average turnover for the previous two years.



financial statements, since the purchased account receivable is cleared from the company's balance sheet.

Reverse factoring entails CashInvoice acting as factor and undertaking to pay debts owed to suppliers, at the conditions set out in the contract between the debtor and the factor, provided this is acceptable to the creditor. With reverse factoring, transfer of insolvency risk also depends on whether the receivable is purchased with or without recourse.

Registration formalities: No information available.

Financing costs: The assignor pays an annual contract fee, financing fee amounting to between 0.5 and 3 percent of the financing plus VAT, and monthly interest of between 0.5 and 0.7 percent, plus additional costs depending on the type of financing.

Eligibility requirements: Assignors must be public companies and LLCs registered in Italy that issue invoices in commercial transactions worth at least €500,000 annually and have at least three financial statements.

Receivable/invoice requirements: The remaining term of the account receivable must be over 30 days. The invoice amount must exceed €1 million. The debtor must: 1) be a public company or LLC registered in the EU; 2) have at least three prior financial statements available; 3) not operate primarily in tobacco, gaming, or construction industries; 4) have a sound reputation; and 5) make payments regularly.

Receivable/invoice verification: No information available.

Debtor notification: Non-recourse assignment takes place without the debtor being notified of the change in creditor.

Amount financed: Up to 90 percent of the face value of the invoice for non-recourse factoring.

Other relevant features: Financing is not available to companies in the tobacco, gaming, and construction sectors.

## CashMe<sup>150</sup>

Registration formalities: Registration requires identifying information about the issuer of the invoice submitted for trading; identity and personal identification document of the legal representative; invoice number; invoice amount; due date; debtor information; average

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<sup>150</sup> A description of the operating model and services offered by CashMe is available at [cashme.it](http://cashme.it).

number of days taken by debtor to pay in commercial transactions; invoice file; and sale agreement.

Financing costs: Creditors pay a one-off access fee, assignment commission amounting to 0.6 percent of the value of the account receivable, and financing fee of between 1 and 2 percent of the value of the receivable.

Eligibility requirements: Invoices can be sold at auction by public companies and LLCs that are parties to B2B commercial transactions, have at least one registered financial statement, and have annual turnover of at least €500,000.

Receivable/invoice requirements: Identifiable collectable receivables arising from the supply of goods or services to public companies and LLCs registered in the EU that have good credit standing.

Receivable/invoice verification: No information available.

Debtor notification: The platform notifies the debtor of the sale of accounts receivable.

Amount financed: The original creditor sets the starting price for the receivable at auction. The financing paid to the original creditor after an auction is always equal to 90 percent of the price achieved at auction, whilst the remainder is paid once the receivable is collected.

Other relevant features: Where the debtor is delinquent in payment, the original creditor pays a fee that is subtracted from the price achieved at auction and the deposit that is paid to the original creditor once the auction ends.

Investors provide non-recourse financing in the event of debtor insolvency. Where the debtor does not pay within four months of due date, the investor is not required to pay the remaining amount to the original creditor, which retains a deposit amounting to 90 percent of the value of the receivable.

## CrowdCity<sup>151</sup>

Investors purchase receivables on the platform without recourse from assignors. As such, assignors do not assume the risk of debtor insolvency in the event of late payment, but this may lead to a ban from the platform or a reduction in credit rating, which will affect discount rates in future transactions.

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<sup>151</sup> A description of the operating model and services offered by CrowdCity is available at [crowdcity.it/en](https://crowdcity.it/en).

CrowdCity SpA produces reports for each assignor and invoice recipient that contain: credit rating as assessed by a specialised agency; sectoral analysis; profit and loss account and balance sheet; cash flow analysis; and financial indicators.

Registration formalities: No information available.

Financing costs: Creditor pays one-off registration fee.

Eligibility requirements: CrowdCity SpA manages the platform and its client database, whilst eligibility is assessed by a credit brokerage registered with the Credit Broker Register (*Albo dei Mediatori Creditizi*). The credit broker also proposes the discount rate in its assessment of whether to permit a business to list invoices on the platform.

Receivable/invoice requirements: Matured collectable receivables arising from commercial transactions that amount to at least €1,000 where the debtors have turnover of at least €5 million. At the time of writing, the platform had a total of 24 assignors and 5 investors active. Most assignors (87 percent) were manufacturers.

Receivable/invoice verification: No information available.

Debtor notification: Debtor is notified of the assignment exclusively by the platform by e-mail.

Amount financed: Within two days of entry into the assignment agreement, the assignor receives 90 percent of the purchase price achieved by the invoice, with the remainder disbursed once the debtor has paid.

Other relevant features: No information available.

## FRANCE

France will roll out mandatory e-invoices in B2B transactions from 1 January 2023 to 1 January 2025. On 17 January 2020, the National Financial Information Technology Agency (AIFE) and the Directorate General of Public Finances (DGFIP) officially launched a pilot e-invoicing simulation project that is set to end in June 2021. This initiative aims to test how well private companies are able to receive e-invoices using the Chorus Pro platform. The pilot already numbers more than 50 companies across all sectors and sizes.

A study produced by Opinion Way, *Loi de finances 2020: impact de la généralisation de la facturation électronique btob sur les TPE & PME*, which looked at 408 businesses with fewer than 250 staff that invoiced other firms,<sup>152</sup> showed the share of invoices issued to other

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<sup>152</sup> The report used a quota method to build the sample, with reference made to sectoral criteria and salaries. The sample comprised: 155 companies with fewer than 10 staff; 109 companies employing 10 to 49 staff; and 144 firms with between 50 and 249 staff. The industries represented were agriculture/extractives (44), industry/construction (140), and services

businesses was 64 percent of the total (with the remainder split into 31 percent for consumers and 5 percent for the public sector). As many as 95 percent of those polled issued fewer than 500 invoices each month.

The findings revealed one in two French companies were aware of the e-invoicing requirement for B2B transactions,<sup>153</sup> and that each invoice would have to be uploaded to the government platform in a pre-defined format. Even though 51 percent of those polled were positive about e-invoicing, 43 percent questioned their readiness, citing additional costs and security issues connected with doing business online. The study showed that, in 2020, nearly 4 out of 10 companies (over a million businesses) were certain they would not be able to comply with the e-invoicing requirement before it was introduced. Moreover, 80 percent of those polled believed it would be more feasible to send e-invoices directly to customers rather than using an intermediary platform to forward these documents to recipients.<sup>154</sup>

Alternative finance is widespread in France, with the country ranking amongst the top 20 countries by revenue from alternative finance per capita.<sup>155</sup> Apart from online marketplaces, invoices in France are financed by factoring firms. For instance, since 2008 Credit Agricole Leasing & Factoring has offered its 'Cash in Time' product, which is intended to finance B2B receivables. According to available information, 14,000 businesses have to date applied to use this service, with over 73,000 invoices financed.<sup>156</sup> Below is a brief overview of the business models employed by debt purchasing and invoice discounting platforms.

## FinexKap<sup>157</sup>

Registration formalities: Companies register by providing information about its form of incorporation and length of trading. This is used by the marketplace's algorithm to determine the type of financing that will be offered ('Instant Cash', 'Cash Creation', or 'Cash Solo').

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(224). Opinion Way. 2020. Loi de finances 2020: impact de la généralisation de la facturation électronique btob sur les TPE & PME. Available at [opinion-way.com/en/opinion-political-surveys/published-surveys/opinionway-pour-quadiant-impact-de-la-loi-finances-et-de-la-generalisation-de-la-facturation-electronique-btob-sur-les-tpe-pme-mai-2020/viewdocument/2380.html](https://opinion-way.com/en/opinion-political-surveys/published-surveys/opinionway-pour-quadiant-impact-de-la-loi-finances-et-de-la-generalisation-de-la-facturation-electronique-btob-sur-les-tpe-pme-mai-2020/viewdocument/2380.html).

<sup>153</sup> Loi n° 2019-1479 du 28 décembre 2019 de finances pour 2020 (Journal officiel électronique authentifié n° 0302 du 29/12/2019), Art. 153.

<sup>154</sup> Opinion Way. 2020. Loi de finances 2020: impact de la généralisation de la facturation électronique btob sur les TPE & PME. Available at [opinion-way.com/en/opinion-political-surveys/published-surveys/opinionway-pour-quadiant-impact-de-la-loi-finances-et-de-la-generalisation-de-la-facturation-electronique-btob-sur-les-tpe-pme-mai-2020/viewdocument/2380.html](https://opinion-way.com/en/opinion-political-surveys/published-surveys/opinionway-pour-quadiant-impact-de-la-loi-finances-et-de-la-generalisation-de-la-facturation-electronique-btob-sur-les-tpe-pme-mai-2020/viewdocument/2380.html).

<sup>155</sup> Cambridge Centre for Alternative Finance. 2020, 38.

<sup>156</sup> Credit Agricole S.A. 2019. *Universal registration document*, 52. Available at [credit-agricole.com/en/pdfPreview/184700](https://credit-agricole.com/en/pdfPreview/184700).

<sup>157</sup> A description of the operating model and services offered by FinexKap is available at [finexkap.com](https://finexkap.com).

Financing costs: Access and use costs comprise sale fee, holdback, and 'late payment fee'. The sale fee and holdback are assessed with reference to invoice amount. The sale fee can range from 10 to 20 percent of the face value of the invoice. The 'late payment fee' follows the logic of penalty interest and accrues from day 15 of the delinquency to date of payment by the debtor. The late payment fee is 12 percent annually. If the debtor does not pay on maturity, or 15 days past due at the latest, the invoicing creditor is required to pay the late payment fee.

Eligibility requirements: There are two types of conditions: pre-registration (form of incorporation, activity, and financial position) and type of debtor (financial considerations and invoicing process). To access finance, a company must supply its bank statements, the personal identity document of its legal representative, and additional documentation including deposited financial statements, depending on the type of finance sought and the financial year. FinexKap assesses compliance with both registration and financing requirements. The platform is open to companies based in the European Economic Area that issues invoices to other firms in B2B commercial transactions. The proposed financing package is based on information collected in the registration process.

Receivable/invoice requirements: The minimum amount of any receivable purchased by the platform is €1,000. FinexKap finances only non-matured receivables with payment terms/periods that comply with applicable law and have not already been assigned to a third party. Additionally, the content of the invoice presented for purchase must correspond to the content at the time of issue. FinexKap can refuse to finance an invoice if it has already taken on a quantity of receivables owed by the same debtor, irrespective of whether other conditions for purchase are met.

Receivable/invoice verification: FinexKap collects invoice information directly from the debtor.

Debtor notification: By e-mail or regular mail to provide new payment information.

Amount financed: Face value of the receivable less fees charged to the creditor.

Other relevant features: The platform employs an algorithm that uses registration data to propose an appropriate financing option. There are three models: purchase of accounts receivable from companies that have a longer presence in the market ('Instant Cash'), purchase from recently founded firms ('Cash Creation'), and purchase from sole traders and natural persons ('Cash Solo'). Instant Cash is intended for companies registered for longer than 8 months, whilst Cash Creation is aimed at firms between 4 and 8 months old that are still in their first financial year and are registered. The platform also offers Cash Solo, which is used to finance natural persons who are self-employed, independent workers, licensed professionals, sole traders, and freelancers. For Cash Creation and Cash Solo, the first

invoice with a particular debtor attracts a €25 fee. Each subsequent invoice between the same parties is charged only the assignment fee and the holdback guarantee. The client can end its contract with FinexKap by giving two months' notice if all receivables financed have been collected.

FinexKap allows creditors to buy back the debt within 35 days of maturity. If a receivable cannot be collected due to the debtor's insolvency, the collection will be managed by FinexKap and the assignor will face a cost of 4% of the nominal value of the invoice.

## Créancio<sup>158</sup>

Registration formalities: No information available.

Financing costs: Creditor pays a service fee that in effect constitutes a commission calculated as a percentage of each invoice assigned. The fee is determined by information on the parties to the transaction and payment terms; the lowest fee is on average 0.49 percent of the invoice amount inclusive of VAT.

Eligibility requirements: Clients must have an annual turnover of at least €300,000.

Receivable/invoice requirements: Partial invoices can be financed.

Receivable/invoice verification: No information available.

Debtor notification: The standard contract between the platform and the client does not envisage debtor notification. Another option is a factoring contract under which the debtor is notified of the new creditor.

Amount financed: Invoices are purchased at between 80 and 95 of their face value. The balance between the face value and financing is paid after the debt is collected from the debtor, less fees and interest.

Other relevant features: No information available.

## SPAIN

According to the Cambridge Alternative Finance survey, in 2018 Spain ranked seventh in Europe for alternative finance, and, notably, the increase in use of alternative finance since 2017 amounted to 130 percent. The alternative finance market was valued at \$419 million, with invoice trading accounting for 25.7 percent.<sup>159</sup> Given the average payment periods in

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<sup>158</sup> A description of the operating model and services offered by Créancio is available at Créancio.com.

<sup>159</sup> Cambridge Centre for Alternative Finance. 2020, 206.

Spain as identified in the 2020 European Payment Report, and the differences between contractual and actual payment periods in B2B transactions (contracts require payment in 44 days on average, whilst actual payment is generally made in 65 days),<sup>160</sup> alternative finance is becoming a significant option for MSMEs to maintain liquidity.

### NoviCap<sup>161</sup>

Registration formalities: Registration requires supplying proof of regular payment of taxes (not older than one month); proof of regular payment of social contributions (not older than one month); personal identity document of authorised representative; statement from the debtor's bank indicating account for payment; and updated tax liabilities data. In addition, a prospective client also has to provide information about collection of receivables from key clients and other types of financing used by the company. A copy of the invoice must also be provided, together with bill of lading for receivables with underlying goods supply contracts. Sale agreements are optional. Any additional documents help the client reduce its assessed credit risk.

Financing costs: The annual interest rate on the finance extended amounts to between 1 and 9 percent, and is based on the debtor's risk profile and payment period. Also payable are access, user assessment, financing management, and risk assessment fees, as well as a service charge amounting to 0.95 percent of the invoice amount.

Eligibility requirements: NoviCap is open to all companies that invoice private-sector debtors with revenue of at least €3 million or the public sector.

Receivable/invoice requirements: No information available.

Receivable/invoice verification: No information available.

Debtor notification: The creditor notifies the debtor of the assignment.

Amount financed: Investors finance up to 90 percent of the invoice, with the balance, less platform fees and investor commission, disbursed to the creditor after collection once the receivable has become due.

Other relevant features: Receivables paid exclusively into NoviCap account. Investors based in the UK and Spain can finance invoices by purchasing 'slices'.

If a debtor does not pay an invoice, the creditor is responsible for payment; in the event of delinquency, the creditor pays costs of delay.

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<sup>160</sup> Intrum, European Payment Report. 2020, 84. Available at [intrum.com/media/8918/european-payment-report-2020\\_final.pdf](https://intrum.com/media/8918/european-payment-report-2020_final.pdf).

<sup>161</sup> Information about NoviCap can be found at [novicap.com/preguntas-frecuentes/puedo-acceder-a-los-servicios-de-novicap](https://novicap.com/preguntas-frecuentes/puedo-acceder-a-los-servicios-de-novicap).

## Finanzarel<sup>162</sup>

Finanzarel offers invoice advance, bill of exchange discounting, 'confirming' (a service that entails prompt payment to Finanzarel's clients), and contract finance. The platform is based on matching businesses that need short-term finance and professional investors outside the mainstream banking market. Invoice advance is offered in the form of a factoring transaction, with receivables purchased at auction.

Registration formalities: Registration requires the national identification document of the applicant; proof of ownership of a bank account; applicant's power of attorney; and the company's articles of association.

Depending on the financing option chosen, registration also requires CIT returns for the preceding two years, VAT returns for the past year and four quarters immediately preceding the application, annual statements deposited with the Business Register for the preceding year, latest set of annual financial statements, statement of business done with third parties for the preceding year, tax and social deposit clearance certificate, and risk summary issued by the central bank's Risk Information Centre (CIRBE).

Financing costs: The platform charges a monthly commission of 0.25 percent of the total value of invoices put up for auction. This commission is reduced if the company puts up 10 or more invoices for auction.

Eligibility requirements: The total annual value of invoices issued by the creditor must exceed €100,000, whilst the recipient of the invoices must have an annual turnover of at least €10 million. Additionally, the debtor and the creditor must have been doing business for more than six months, and the invoice must have been issued as part of creditor's regular business operations.

Receivable/invoice requirements: The invoices put up for auction must be worth between €3,000 and €1 million.

Receivable/invoice verification: Invoices can be purchased without proof of authenticity from the debtor. This may, however, result in higher financing costs.

Debtor notification: Financing can be provided without the debtor being notified.

Amount financed: No information available.

Other relevant features: 'Confirming' also entails trade credit finance in commercial transactions through prompt payment of invoices, but here the client is the debtor rather than the supplier. This service is available to businesses invoicing at least €30 million annually, regularly paying their debts, and paying taxes and social contributions. Confirming

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<sup>162</sup> A description of the operating model and services offered by Finanzarel is available at [finanzarel.com](http://finanzarel.com).



is not available to brokerages. This service is based on the same principle as invoice advance, so investors submit offers based on the debtor's financial position, although the debtor is actually the client. Access to confirming requires the client to provide the same information as for invoice advance.

### Circulantis<sup>163</sup>

Circulantis offers 'crowdfactoring' to finance MSMEs' working capital based on receivables owed by solvent debtors underlain by invoices or bills of exchange. The platform offers bill of exchange discounting and invoice advance. Circulantis primarily offers administrative and intermediation services but does not provide investment advice. It facilitates drafting of assignment contracts, bill endorsement, and collection. This platform does not invest in financial instruments traded in the market and is not subject to regulatory oversight. The market is segmented.

Registration formalities: Companies can register as assignors, which gives them access to auction information, and 'active assignors', which allows organising actions to raise working capital using invoices or bills of exchange. Only active assignors can take part in auctions.

Financing costs: The commission charged to assignors depends on payment terms, but may not be lower than €50. For maturities of up to 30 days, the commission rate is 0.60 percent, rising to 0.95 percent for maturities of up to 90 days. The rate increases by 0.10 percent for every additional 30 days thereafter.

Eligibility requirements: Financing services are available to companies registered in Spain and sole proprietors with receivables from commercial transactions with deferred payment for goods and services supplied to businesses registered in Spain. To register, natural persons must be aged over 18, have contractual capacity, and be residents of Spain. The platform is open to legal persons that are tax residents and are registered with the appropriate register. The legal representative must be empowered to take actions in the name and on behalf of the company. Both natural and legal persons must have Spanish bank accounts.<sup>164</sup>

Receivable/invoice requirements: The debtor must have been trading for at least three years, its credit rating score must be at least 7, and it must have received a positive solvency review from the platform's partner, Informa D&B. Financial position is assessed not just to approve access to the platform, but also determines the maximum financing amount at

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<sup>163</sup> A description of the operating model and services offered by Circulantis is available at [circulantis.com/financiacion](https://circulantis.com/financiacion).

<sup>164</sup> Términos y condiciones generales (T&C) de los inversores, Para. 3.1. Available at [circulantis.com/TerminosYCondicionesInversores.pdf](https://circulantis.com/TerminosYCondicionesInversores.pdf). The same terms and conditions apply to assignors.

auction. An invoice or bill of exchange can be listed on the platform only if the debtor complies with payment terms in commercial transactions.

Receivable/invoice verification: No information available.

Debtor notification: No information available.

Amount financed: An auction is closed where: 1) the amount of financing set by the creditor when registering the auction has been reached, regardless of whether the interest rate sought has been achieved; or 2) both interest rate and financing sought have been achieved.

Other relevant features: Minimum invoice finance investment is €50.

## **Inversa<sup>165</sup>**

Registration formalities: No information available.

Financing costs: The assignor pays: 1) an initial commission equal to 2 percent of the nominal receivable amount per annum, which may not be less than €200 inclusive of VAT; 2) fee for management and disclosure of commercial documents amounting to 0.25 percent of the nominal receivable amount per month, which may not be less than €10 inclusive of VAT and is chargeable only on successful auctions; 3) default management fee of 2 percent of the nominal transaction amount, which may not be less than €100 inclusive of VAT. The default management fee is not charged for the first five days of default, within which the assignor can negotiate with the debtor to pay off the debt or make the payment. After one month from due date, the platform charges the assignor an additional fee amounting to 10 percent of the nominal financing amount, which may not be less than €300. The assignor has to cover the costs of extending the financing and collecting the receivable.

Eligibility requirements: The company must pass a 'reliability test', which is a precondition for registration and consists of the assessment of an external credit report; financial assessment; and assessment of collectability of receivables previously assigned through the platform.

Receivable/invoice requirements: The nominal amount of an invoice or bill of exchange eligible for auction on the platform must be between €10,000 and €100,000 (but Inversa can waive the ceiling in writing).

Receivable/invoice verification: Inversa seeks verification for all financial instruments (bills of exchange and invoices) traded on the platform.

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<sup>165</sup> A description of the operating model and services offered by Inversa is available at [inversa.es](https://inversa.es).

Debtor notification: In the event of assignment of receivables based on invoices and bills of exchange containing the wording 'not on order', the assignor must notify the debtor of the assignment, or the platform will do so but the assignor has to pay the costs of notification.

Amount financed: An auction can be cancelled if investors' bids do not meet the requirements for auction set by the prospective assignor, or if the bids do not fulfil the amount of financing sought by the assignor.

If an auction is successful, the platform pays 90 percent of amount raised in the auction into the assignor's account and keeps 10 percent in its user account until the debtor has paid. The balance, less interest, commission, and costs is paid by the platform into the assignor's account once payment is received from the debtor. In addition, after the auction ends and the assignment is formalised, the investor receives financing interest upfront, and the invested amount is disbursed on maturity, or after payment is made by the debtor or the assignor.

Other relevant features: In the event the debtor does not pay on due date, the assignor is required to seek written confirmation by e-mail from the debtor that the debt has matured and the payment has not been made. In this case, Inversa will contact the assignor and seek to mediate payment within 15 days. After 15 days of delinquency, the platform offers the assignor to buy back the debt and starts applying penalty interest. Buyback is required after 30 days of delinquency, and the platform may use the assignor's available balance to recoup the debt.<sup>166</sup>

Where the debtor or assignor do not pay within three months from maturity, the investor may authorise Inversa to take action to collect the debt in or out of court. Inversa can also buy the receivable from the investor for a price equal to the debt. After purchase, this receivable is assigned to a third party and the amount, less costs, is paid to the investor. In the event of late payment, the platform's service fees are charged to assignors.<sup>167</sup>

## GERMANY

The German alternative finance market is one of Europe's largest, passing the \$1 billion benchmark in 2018.<sup>168</sup> Germany was the second largest market in Europe by size, and fourth globally by number of online alternative finance platforms, after China, the US and the UK.<sup>169</sup> Although invoice trading is not the commonest type of alternative financing practised in

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<sup>166</sup> Condiciones generales de contratación aplicables a los inversores y a los cedentes, Gestión de importes impagados, Para. 8. Available at [inversa.es/es/contratos-y-tarifas](https://inversa.es/es/contratos-y-tarifas).

<sup>167</sup> *Ibid.*

<sup>168</sup> Cambridge Centre for Alternative Finance. 2020, 24.

<sup>169</sup> *Ibid.*, 26, 35.

Germany, the Debitos platform accounts for a large share of Europe's invoice trading.<sup>170</sup> Its business model is based on a combination of factoring and peer-to-peer lending and adjusting these instruments for the non-performing and non-collectable receivables market.

Debitos began technical development in 2010 after consultation with the German Federal Financial Supervisory Authority and data privacy bodies. Its trading was initially aimed at non-performing receivables and claims filed by banks and financial institutions in insolvencies. Since 2014, Debitos has offered trading in non-performing secured receivables in the real estate sector. The secondary receivables market for insolvency claims was opened in 2016.

Debitos organises two types of auctions: open auctions for all investors, and closed, invitation-only auctions, where confidentiality agreements can be a requirement for joining.

When creating auctions, sellers identify the product category that will be bid on. Once the listing is active, all investors interested in that category are notified. Where a multi-product portfolio is put up for auction, the category is based on the product with the largest share in the group. Documents can be added to the data room and price can be reduced during the auction. The listing fee is €5,000.

Investors can filter auctions by category and value. If a listing is marked as unsold, an interested investor may ask the seller to re-list it. Creditors have access to listing status and identification, name, category, time listed, number of bids, and amount of winning bid.

## SERBIA

Banks are the largest source of business finance in Serbia. Given the difficulties MSMEs face in accessing finance, alternative sources are particularly important for their operations. That being said, the Serbian alternative finance market is underdeveloped, and there is currently only one platform, Finspot, that offers short-term finance to MSMEs through recourse factoring. Until Finspot was set up, three platforms operated in Serbia that had been established by foreign businesses.<sup>171</sup>

Finspot<sup>172</sup> is Serbia's first online platform that finances MSMEs by purchasing their commercial receivables. In addition to financing, Finspot offers clients risk assessment of their own and their debtor's operations, collection, and financing advice.

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<sup>170</sup> A description of the operating model and services offered by Debitos is available at [debitos.com](https://debitos.com).

<sup>171</sup> Cambridge Centre for Alternative Finance. 2020, 235.

<sup>172</sup> A description of the operating model and services offered by FinSpot is available at [finspot.rs](https://finspot.rs).

Registration formalities: When registering an account, the company supplies its trading name, taxpayer identification number, and registration number. Financing limit is based on credit assessment, which relies on financial statements, bank statements, and invoice information.

Financing costs: No information available.

Eligibility requirements: Assignors can be businesses, sole traders, or banks registered in Serbia or abroad.

Receivable/invoice requirements: Existing non-matured or future monetary receivables, either in whole or in part, arising from the supply of goods or services in commercial B2B and B2PA transactions, can be assigned. The invoices submitted must pertain to supplied goods or services with deferred payment. The debtor must have good credit standing.

Receivable/invoice verification: No information available.

Debtor notification: After financing is approved, the platform (or assignor) notifies the debtor of the change of creditor.

Amount financed: Financing limit is based on credit assessment.

Other relevant features: Finspot offers domestic and international recourse factoring.

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