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Report on the Draft Law on the Science Fund of the Republic of Serbia

The Draft Law on the Science Fund of the Republic of Serbia is an important law which is at the same time the basis for general financing of science in the Republic of Serbia. The law is not extensive and constitutes normative texts which as basic should not be comprehensive, since on the basis of this law, laws and by-laws will have to be adopted which will regulate in more detail the field of science funding in the Republic of Serbia. The law has 27 and 28 articles, respectively, and falls into short pieces of legislation. Methodologically, given the modest number of members, it is well-posed and regulates the most important issues that the law should have standardized. The draft law has set some solutions well and is a significant factor in regulating this area and filling gaps in science funding.

In addition to the undoubted effort and intention to regulate this issue and find solutions in the field of well-funded science, the Draft “suffers” from some weaknesses, especially when it comes to preventing corruption and discrimination. It is clear that one can never write a law that will not “suffer” from the weakness that legal norms always step behind the real life, that is, it is impossible to predict and regulate all aspects that may occur in practice.

The objections raised, with all due respect to efforts to come up with regulations with good solutions, relate to some of the solutions established by the Draft Law.

Principal suggestions could be put to some solutions and it is suggested that the Government consider, correct or supplement them. There are legal gaps noted in the Draft that are related to the relationship between the Draft Law and other laws related to this Law. At the same time, the legal nature of the Fund is not sufficiently clear.

There are gaps and ambiguities between the Draft Law on the Fund and the Law on Scientific Research Activities that relate to the following:

1) The Draft Law does not have any provisions regulating the relationship between the Draft Law on the Science Fund of the Republic of Serbia and the Law on Science and Research (“Official Gazette of the RS” No. 110/2005, 50/2006 - correction., 18/2010 and 112/2015). The Draft Law has neither in the text, nor in the Transitional and Final Provisions, the articles that link or make (not even mention) the Law on Scientific Research Activities (hereinafter: LSRA). Therefore, it is easily possible that due to this inaccuracy, either a conflict of norms or legal gaps will occur. First, as a preliminary question, what is the role of the National Council for Scientific and Technological Development in determining the programs envisaged by this law and what is the relationship between the bodies envisaged by the LSRA and this law? What is the relation between the programs envisaged in this Draft and the programs envisaged by the LSRA?

2) A particular issue is the lack of clarity between institutional and project financing by the Fund, as well as the sense of financing by the Fund, since no amendments to the LSRA are envisaged to regulate the institutional funding of research organizations.

The Draft Law does not regulate the relationship between this law and the Law on General Administrative Procedure (“Official Gazette of RS” No. 18/2016). The Draft Law on the Fund stipulates that the funding of scientific research projects is carried out through public calls under the Program. The procedure itself is, by its legal nature, an administrative procedure. Since the Draft Law does not refer to the implementation of the provisions of the Law on Administrative Procedure (hereinafter referred to as the LAP) and does not explicitly provide for deviations from certain procedural solutions contained in the Law on Administrative

Procedure, it enables to regulate a whole range of important issues, such as are: unclear deadlines in the procedure for deciding on submitted Projects, form and constituent parts of the acts deciding on submitted Projects, unforeseen legal protection of the rights and interests of the project applicants, unforeseen possibility of filing an appeal and managing an administrative dispute, etc. All these weaknesses open up opportunities for discrimination and corruption.

The Council proposes the following:

That the Draft Law on the Science Fund of the RS should be comprehensively regulated with all issues relevant to the financing of science, so as to simultaneously amend the LSRA, which would regulate institutional financing and harmonize with the LAP.

The Draft Law is not systematically harmonized with legal and other general acts governing state aid. The Draft Law provides that the Law governing the State aid of small value (Official Gazette of the RS “No. 51/2009) and other general acts governing the state aid, as well as by-laws shall apply to financing by the funds of the Republic of Serbia available to the Fund. and other general acts adopted for its implementation and the Decree on Rules for Granting State Aid (Official Gazette of the RS No. 13/2010, 100/2011, 91/2012, 37/2013 and 97/2013). Regarding systemic non-compliance, it is emphasized that, given the solutions in the mentioned regulations to determine the concept of beneficiaries of state aid, the institutions mentioned in the Draft Law could not be considered as beneficiaries of state aid.

The Council proposes that the Draft Law on the Science Fund be systematically harmonized with the Law governing the State aid of small value (Official Gazette of the RS “No. 51/2009) and other general acts regulating state aid, as well as by-laws and other general acts adopted for its implementation and the Decree on State Aid Rules.

In addition to legal gaps, the Draft Law contains inconsistencies and ambiguities with the norms governing the issues of legal institutes that should be governed by its provisions, as well as a number of terminological imprecisions.

Thus, it becomes unclear which body of the Fund decides on the allocation of the Fund's resources and the Projects received by public invitation, who decides what the Fund's Programs are, whether the members of the Scientific Council of the Fund can apply for and participate in the Fund's Projects and Programs, the indeterminacy of the person or entity that defines the thematic projects referred to in Article 18 of the Draft Law and the inaccuracy around the term who is considered to be “young scientists ... who have been recognized in the international research space” during their long scientific career, etc.

Article 6, item 11 of the Draft Law regulates a subject matter already regulated by the activity of the Center for the Promotion of Science. Article 6 states that it “conducts activities of promoting science and research results for the purpose of raising general social awareness about the importance of science.” Law on Science and Research in Article 27b. envisaged the establishment of a Center for the Promotion of Science and stimulated the following competencies:

“The Center is competent to: 1) prepare a proposal for a program to promote science, scientific and technological results and achievements; 2) prepare a proposal for an act on financing the activities of scientific, scientific-professional societies, associations and other organizations that are in the function of improving scientific research, promotion and popularization of science and technology; 3) cooperate and materially encourage the activities

of scientific, scientific-professional societies, associations and other organizations that are in the function of improving scientific research work, promotion and popularization of science and technology; 4) cooperate with institutes, higher education institutions and other scientific research organizations and companies and their associations in achieving the promotion and popularization of science and technology; 5) organize or participate in the organization of gatherings, conferences, round tables and other events for the promotion of science, scientific and technological results and achievements; 6) (deleted); 7) organize a joint exhibition of scientific publications of scientific research organizations at the International Book Fair in Belgrade; 8) achieve cooperation and provide services in the field of promotion and popularization of science to the Ministry and the ministry responsible for higher education; 9) perform activities in the field of marketing and other activities related to the promotion of science, scientific and technological results and achievements in the country and the world; 10) issue brochures and other publications related to the promotion and popularization of science; 11) perform other tasks, in accordance with this Law and the Statute of the Center. The program referred to in item 1) of this Article shall be adopted by the Government, upon the proposal of the Management Board of the Center“ (underlined by the Anti-Corruption Council).

This doubles the competencies in the field of science promotion performed by the Center and the Fund.

The Council suggests that it is necessary to clarify these ambiguities in order to avoid conflicts of interest and prevent corruption and discrimination.

Regarding the relationship between the Fund and the Center for the Promotion of Science, in the opinion of the Council, three solutions are possible: 1) to exclude this area from the Fund's competencies, or 2) to transfer all competencies from the Center to the Fund, or 3) to clearly delineate or specify competencies.

Article 7, paragraph 1, item 2 “The Fund is funded from: 1) funds from the budget of the Republic of Serbia; 2) donations, contributions, gifts and aids. Failure to specify the receipt of funds through donations, contributions, aid, etc., opens the possibility of systemic corruption, because it is not specified how to receive funds and who will control these receipts and their distribution.

The Council proposes that item 2 of Article 7 be excluded, or to specify the manner of receiving these funds or to refer to the regulation that regulates this (if any), in order to legally regulate the issue of donations and aids stated in the Draft Law. At the same time, bearing in mind that one of the competencies of the Fund is the evaluation of project proposals, making donations opens the possibility for some institutions to provide more favorable reviews during the evaluation because they may state that they have provided aid or donation and thus gain an advantage over those applicants - institutions that do not have that possibility.

This especially refers to institutions which, due to the area they deal with, and due to insufficient competition in the market, cannot be competitive with other institutions (which are in a better position) and are placed in an unequal position in relation to institutions that are competitive and receive donations and other assistance. Based on this article of the Draft, competitive institutions are brought into a prestigious position in competitions before the Fund and thus systematically creates discrimination, and opens the possibility of systemic corruption. Also, this form of financing opens the possibility of influencing Serbian science

and loses the clear possibility of controlling the development of Serbian science, which is contrary to the interest of the state and society of the Republic of Serbia.

Article 8, paragraph 2 “The Fund, in performing its activities, and especially in the planning and use of funds, applies the principles of objectivity and responsibility, internationally recognized standards of good practice (underlined by the Council) and the public in work and decision-making.” The term “internationally recognized standards of good practice” is used. It must be admitted that in addition to the fact that the term is clumsily composed, it is at the same time imprecise and subject to different interpretations. In that way, negative consequences can be created by applying them in practice. Different interpretations of this term lead to discrimination, unequal treatment and open opportunities for corruption.

The Council proposes that this wording be deleted or to specify what is meant by it and, as far as possible, to give examples of internationally recognized standards of good practice or to indicate where they are listed.

Article 11 of the Draft Law regulates the membership in the Management Board of the Fund. The Article of the Draft does not bind members and does not provide for their responsibility for membership in the Board, given that there is a conflict of interest, except that they cannot apply or participate in projects and programs of the Fund during their membership in the Fund. The Draft provided that only members of the Board of Directors would be excluded from applying for or participating in the Fund's projects and programs, but nothing was prescribed regarding the members of the Fund's Scientific Council. Therefore, it can be interpreted that they can. It is necessary to exclude them from participation in projects, otherwise it is a direct conflict of interest and an open possibility of corruption. The Council also had in mind the difficulties with these solutions, given that it is sometimes important to include in project teams people who have significant scientific potential and are well-known scientists on a global scale, and at the same time that their presence in these projects of an international character is significant.

The Council suggests that it would be necessary for the Draft Law to stipulate that members of the Management Board be obliged not to have other functions in higher education institutions or management boards of those institutions (faculties, higher professional studies or institutes) or to find a solution to reduce corruption or discrimination.

Article 14, paragraph 4 prescribes that the competence of the Scientific Council of the Fund be regulated by the Statute of the Fund, which would be adopted later. Leaving the body to regulate itself is not a good solution. It would be correct to envisage basic competencies in the Draft, and for the Statute of the Scientific Council to elaborate and specify that.

The Council proposes that the basic competencies of the Scientific Council of the Fund be determined, and for the competencies of the Scientific Council to be further elaborated and specified by the Statute of the Fund.

RECOMMENDATIONS

1. The Draft Law on the Science Fund of the Republic of Serbia should enact a comprehensive law that would regulate all these issues. The adoption of several individual laws that would partially regulate this matter would not be a good solution, because without a comprehensive normative regulation of issues of importance for the financing of science, there is no successful regulation of this area.
2. The Draft Law on the Fund should be systematically harmonized with the Law regulating state aid of small value (Official Gazette of RS No. 51/2009) and other general acts regulating state aid, as well as bylaws and other general acts adopted for the purpose of its enforcement and the Regulation on State Aid Rules.
3. It is necessary to specify the mentioned ambiguities in order to avoid conflicts of interest and to prevent corruption and discrimination.
4. It is necessary to find a solution for the mutual relationship between the Fund and the Center for the Promotion of Science. In order to assist the Government and be operational, the Council is free to propose some of the following solutions: 1) to exclude this area from the competence of the Fund; 2) to transfer all competencies from the Center to the Fund or 3) to clearly delineate, i.e. specify competencies.
5. With regard to Article 7, paragraph 1, item 2 “Financing of the Fund”, the Council proposes that this item be excluded, or to specify the manner of receiving these funds or to refer to the regulation that regulates this (the Council did not have information that it existed), in order to legally regulate the issue of donations and aids stated in the Draft Law. At the same time, bearing in mind that one of the competencies of the Fund is the evaluation of project proposals, making donations opens the possibility for some institutions to provide more favorable reviews during the evaluation because they may state that they have provided aid or donation and thus gain an advantage over those applicants - institutions that do not have that possibility. This especially refers to institutions which, due to the area they deal with, and due to insufficient competition in the market, cannot be competitive with other institutions (which are in a better position) and are placed in an unequal position in relation to institutions that are competitive and receive donations and other assistance. Based on this article of the Draft, competitive institutions are brought into a prestigious position in competitions before the Fund and thus systematically creates discrimination, and opens the possibility of systemic corruption. Also, this form of financing opens the possibility of influencing Serbian science and loses the clear possibility of controlling the development of Serbian science, which is contrary to the interest of the state and society of the Republic of Serbia.
6. The sentence from Article 8, paragraph 2: “The Fund, in performing its activities, and especially in the planning and use of funds, applies the principles of objectivity and responsibility, internationally recognized standards of good practice” should be deleted. It is necessary to remove this criterion defined by the term “*internationally*

recognized standards of good practice". It is suggested to specify the mentioned term (what is meant by that), or to give examples of internationally recognized standards of good practice, or to state where those standards are listed.

7. It is necessary for the Law to stipulate that the members of the Scientific Council of the Fund are obliged not to have other functions in higher education institutions or management boards of those institutions (faculties, higher professional studies or institutes), as provided for members of the Management Board of the Fund.
8. It is necessary to determine and include in the Draft Law on the Fund the basic competencies of the Scientific Council of the Fund, and for the competencies of the Scientific Council to be further elaborated and specified by the Statute of the Fund.

VICE-PRESIDENT

Prof. dr. Miroslav Milicevic