

Original scientific paper

Submitted: 2020-08-24

Published: 2021-02-17

doi:10.5937/nabepo25-28116

NON-DISCLOSURE OF FINANCIAL STATEMENTS OF PUBLIC COMPANIES AS AN ECONOMIC OFFENSE IN THE REPUBLIC OF SERBIA

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Abstract: The successful functioning and development of the capital market, along with the possibility of attracting new investments is largely contingent on the quality of financial reporting and the availability of the statements themselves. In view of the fact that the new Law on Accounting of the Republic of Serbia came into force, the question arises to what extent public companies respect legally prescribed deadlines for submitting their statements and by doing so do not commit an economic offense. The primary goal of this paper is to draw attention to the importance of a standardized and efficient legal framework that obliges public companies to publish financial statements in a timely manner. A survey was conducted that encompassed 416 public companies listed on the Belgrade Stock Exchange and their corresponding financial statements for 2018, as the reporting period. We tried to establish whether the sampled companies disclosed their statements within the deadline prescribed by the Law on Accounting (Law on Accounting, Official Gazette of RS, 62/2013, 30/2018). The results show that most companies disclosed financial statements during the period when they are still considered useful to potential and existing investors. Nevertheless, practice showed that there was room for improvement, and this was achieved with the adoption of the new Law on Accounting, which took effect on January 1, 2020. It integrates the deadline for compiling and disclosing statements, which in fact shortens the time period during which information on the companies' operations should be made available to the general public and potential investors.

Keywords: Law on Accounting, financial reporting, investments, commercial offence, Republic of Serbia.

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INTRODUCTION

Despite the fact that the Republic of Serbia (RS) has not become a member of the European Union (EU) yet, it is evident that the Government is committed to harmonizing legal framework and practices with its standards. An example of this intention is reflected in the fact that the new Law on Accounting, which came into force in January 2020, largely seeks to implement the objectives of the European Union Directive (EEC) on financial reporting.² Aware of the importance of reliable financial information, we find it obvious why the RS made changes to the law, i.e. to properly join the EU as a full-fledged member – but more importantly to improve the credibility of financial information disclosed, as well as of the country's economy. The dominant segments that the directive emphasizes include: easing the burden on small and medium-sized legal entities pertaining to financial reporting and bringing micro-legal entities and entrepreneurs into focus while providing a simple reporting system, but not to the detriment of the quality of financial transactions and positions.

In order for investors to invest capital in a certain legal entity, they must have an insight into how successful it is, i.e. they must be familiar with its business performance. This means that legal entities must process the collected business transactions data, because of which they should obtain financial information, which should be then submitted to interested parties in the form of financial statements. Therefore, financial reporting has been perceived as a pro-

cess, where the product of that process is quantitative financial (accounting) information about the company's operating activities, financial structure and earning capacity (Stefanović, 1999; Karapavlović, 2011). Within that process, various activities are carried out, including: bookkeeping, then recognizing and valuing assets, liabilities, income and expenses, and finally compiling, presenting and submitting financial statements (Knezević et al., 2017).

One of the most important presumptions of fiscal market stability is profitability and liquidity of legal entities whose securities are listed on capital markets. The mentioned entities are the main driver of national economic development, and the value created on the capital market is a significant part of the gross domestic product. Based on the above said, it is clear that complete, truthful, timely and transparent financial reporting of public companies is one of the imperatives of national legislation in the area (or field) of financial market regulation. For this reason, most countries, through their legal frameworks, oblige public companies to regularly compile financial statements and submit them to the competent state institutions for disclosure. Public companies are also required to perform audit of their statements. Even so, audit offers only a reasonable guarantee and not the absolute insurance that financial statements do not have materially significant mistakes (Knezević et al., 2019). Having in mind the importance of this topic, we have conducted research that included

² Directive of the European Parliament and of the Council on the Annual Financial Statements, Consolidated Financial Statements and Related Reports of Certain Types of Undertakings, 2013/34/EU – Amending Directive 2006/43/EC and Repealing Council Directives 78/660/EEC and 83/349/EEC



all public companies³ listed on the Belgrade Stock Exchange.

Financial reporting is primarily intended for external users: investors, suppliers, creditors, state institutions, competitors, statistical services, but also for internal users such as employees and legal entity management (Đukić & Pavlović, 2014). For instance, based on financial statement data, investors make decisions whether to buy or sell securities of a particular legal entity, i.e. these data are the basis for making decisions to invest or disinvest (Krstić, 2004). That there is a link between quality financial reporting and investment is indicated by the authors (Biddle et al., 2009), who claim that companies with high quality financial reporting have predictable and stable investment inflows and are less sensitive to macroeconomic changes. Regular and quality financial reporting can be viewed through the prism of tax evasion, because the implementation of the tax system is primarily observed through the realization of public interest in the fiscal sphere, and the former is possible only if legal entities timely submit their statements based on which tax balances are compiled and tax obligation determined (Dimitrijević, 2019).

Quality financial reporting implies the inclusion of more information, which provides a better insight into the operating activities of a legal entity and strengthens the confidence of existing and potential investors (Hope et al., 2013). In this way, investors are motivated to invest additional capital, which increases the level of liquidity and solvency of the capital market. In this way legal entities gain access to more favourable

sources of financing on the stock exchange, because they pay less for capital, therefore they become more profitable, and have a possibility to develop their business further (Malinić, 2008; Petronijević, 2018). In the countries where the quality of financial reporting is not quite up to par, investors are exposed to a greater risk and are offered weaker guarantees that their roles will be protected, which is why legal entities are forced to provide capital from other, more expensive sources of financing (Chen et al., 2011).

Interested user's growing need to obtain financial information has resulted in the fact that in financial reporting special emphasis is placed on the timeliness and credibility of reports. Reliable information is that which can be confirmed by accounting documents, i.e. it is complete and objective. Timeliness means that information is available to their users while they still have time to make or change their decision (Leković & Arsenović, 2013). In other words, there needs to be a sufficient period of time between receiving the information and being able to process and use it before making a proper decision. According to the World Bank standards, timeliness is qualified as one of the crucial factors of good corporate governance, because investors are constantly interested in having access to new and current financial information (McGee & Yuan, 2012). Timeliness of financial reporting is affected by numerous factors, managerial ability and audit committee being one of them (Abernathy et al., 2018), (Ghafran & Jasmin, 2018). However, it seems that the most important factor is legal regulation.

³ Public companies are business entities whose financial instruments (securities) are traded on the market: domestic or foreign stock exchange or unofficial stock exchange OTC market (over the counter market - which does not have to have an organizer).



CURRENT POSITIVE LEGAL FRAMEWORK LAW ON ACCOUNTING RESPONSIBILITIES AND DUTIES IN FINANCIAL REPORTING

Transparency and disclosure of information are essential elements of a quality regulatory framework and corporate governance, as they provide a basis for informed decision-making by shareholders, stakeholders and potential investors regarding capital placement, corporate transactions and financial monitoring. In addition to helping investors make adequate decisions, transparency increases their confidence in the market itself and its participants (Fung, 2014).

In the Republic of Serbia, the legal framework in this area primarily relies on the Law on Accounting⁴ and partly on the Law on Capital Market⁵. By the very definition that a “regular annual financial statement is a statement that should provide a true and fair overview of the financial position and performance of a legal entity and be compiled for a business year equal to or different from the calendar year” the Law on Accounting corroborates the above statement that accurate and timely financial reporting is essential for keeping stakeholders adequately informed, and for instilling confidence in fair relations in the market.

Transparency, submission and disclosure of financial statements are regulated by Articles 33-36⁶ of the law. The Business Registers Agency (BRA) is in charge of receiving and disclosing regular annual financial statements, which should be signed by the legal representative’s qualified electronic signature, and submitted to the Agency in an electronic form and inserted into a special infor-

mation system, thereby making these statements public.

Regular annual financial statements of all legal entities and entrepreneurs conclusive with December 31 of the reporting year are to be submitted to the BRA no later than June 30 of the following year.⁷ For legal entities whose business year differs from the calendar year, this deadline is no later than six months from the day when regular financial statements are prepared. In addition to the vital and most important set of financial statements, the legal entity that submits it is obliged to submit the accompanying documentation: a decision on the adoption of the regular, i.e. consolidated annual financial report; decision on profit distribution, i.e. loss coverage under the regular annual financial statement, if it has been decided to distribute profit, i.e. to cover the loss, as well as the annual operating activities report.⁸

It is important to notice that we were conducting this research at the time when the Law on Accounting from 2018 was still in force, and the new Law was in preparation and would come into force on January 1, 2020. Therefore, it is vital to point out that the new law provides for changes in terms of submission of regular annual financial statements for public disclosure, by introducing a single deadline -March 31 of the current year. As stated in the explanation of the law, “this will allow the economy enough time (especially due to the fact that micro legal entities will have the obligation to make

4 Law on Accounting, *Official Gazette of RS*, 62/2013, 30/2018

5 Law on Capital Market, *Official Gazette of RS*, 31/2011, 112/2015 I 108/201

6 Articles 33-36 Law on Accounting, *Official Gazette of RS*, 62/2013, 30/2018

7 Article 33 Law on Accounting, *Official Gazette of RS*, 62/2013, 30/2018

8 Article 34, Law on Accounting, *Official Gazette of RS*, 62/2013, 30/2018



notes in addition to financial statements) to submit one set of statements (unlike the current law where the deadline for submitting data for statistical and other purposes was the end of February, and the deadline for submitting regular annual financial statements was June 30”).

After the BRA receives all financial reports of legal entities within the legally prescribed period, it publishes them on its website within the Registry of Financial Statements no later than 60 days from the date of receipt of a complete and accurate statement.⁹ Therefore, the condition for the report to be published is its completeness, computational and logical accuracy of the data it contains. The control of these conditions is performed in accordance with the Rulebook on the conditions and manner of public disclosure of financial reports and keeping the Registry of Financial Statements.¹⁰ Among other things, the rules stipulate that the submitted financial statement

may be given the “stop processing” status, which means that it did not meet certain rules and is qualified as inaccurate, and therefore the BRA will not incorporate it into the Registry of Financial Statements. If the statement contains certain illogicalities in terms of the reported data, it will be given the “warning” status. In that case, the legal representative of the legal entity in question can either order that corrections be made or agree with the illogical data. His consent has the force to corroborate the computational accuracy of the data and the BRA shall add such a financial statement to the Registry.

Paragraph 3 of Article 36 of the Law on accounting stipulates that the BRA is obliged “to publish on its website as incomplete and inaccurate the financial statements and documentation in which legal entities and entrepreneurs have not eliminated the identified deficiencies, no later than 31 October next year for the reporting year”.¹¹

ECONOMIC OFFENSE – FAILURE TO SUBMIT FINANCIAL STATEMENTS AND SUPPORTING DOCUMENTATION FOR PUBLICATION

After providing a detailed analysis of the obligations pertaining to the submission, disclosure and publishing of financial statements, it makes perfect sense to ask the following question: what if the holder of this obligation fails to fulfil it in a timely manner, i.e. within the legally prescribed period? In other words, in strictly legal terms – what kind of sanction will be imposed on the violator of the disposition? What kind of

responsibility is in question - collective or individual? We could keep asking questions, but will stop on these two - the most important ones.

Failure to submit financial statements to the Agency, and other documentation referred to in Article 34 of the same law for publication within the prescribed deadlines, is qualified as an economic offence.¹² In general, an economic offence is a “socially harmful violation on

⁹ Article 36, Law on Accounting, *Official Gazette of RS*, 62/2013, 30/2018

¹⁰ Rulebook on the conditions and manner of public disclosure of financial reports and keeping the Registry of Financial Statements, *Official Gazette of RS*, 127/2014, 101/2016, 111/2017 и 30/2018

¹¹ Article 36 (3), Law on Accounting, *Official Gazette of RS*, 62/2013, 30/2018

¹² Articles 34 and 46 of the Law on Accounting, *Official Gazette of RS*, 62/2013, 30/2018



economic or financial operations which has caused or may have caused graver consequences”,¹³ for which “a legal entity and a responsible person in the legal entity may be held liable”. The 2013 version of the Law on Accounting held both the company and the responsible person in the company accountable for this offence while the current version of this law (as well as the new law) stipulates that a legal entity will be punished for the offence, i.e. requires the collective responsibility of the governing body for the preparation and publication of accurate financial statements. We believe that such a solution may have been slightly premature, because the legal practice in the Republic of Serbia is not rich enough in terms of prosecuting and sanctioning companies for untimely submission of statements to the Business Registers Agency.

Immanent to the fact that it is an economic offense, and in accordance with the Law on Economic Offenses that they can only be subject to a fine¹⁴ for the act of untimely submission, i.e. failure to submit financial statements within the legal deadline, the Law on Accounting envisages a fine ranging from RSD 100,000 to 3,000,000¹⁵.

The BRA is entrusted with filing charges for omissions in the submission of financial statements in the RS, i.e. in keeping with the Opinion of the Ministry of Finance “the Agency is obliged to maintain the Registry of Financial Statements and implement the provisions of the Law and bylaws, perform activities to the extent and in the manner defined by this Law,

and also file charges with the competent authorities in accordance with the penal provisions of the Law” (Trifunović, 2018). The only data regarding the number of charges filed and further actions undertaken, which we have managed to obtain, is the following: even though this economic offense is committed by an average of about 22,000 companies and associations (out of a total of 175,000 taxpayers), the Agency filed charges against only 8% of them, and those with an annual turnover of more than half a million dinars, because competent prosecutor’s offices previously dismissed economic offense charges against the companies with a turnover of less than that amount” (Krašić, 2014). The explanation for this court practice is that these are acts that cause insignificant social harm, so they do not qualify as economic crimes. We would like to pose a very simple question here: if we know that economic offenses are punishable acts of the least danger to society, but that relevant laws envisage fines within a certain range, is it actually justified to completely absolve the perpetrators? What message does this send to shareholders, potential investors and other stakeholders regarding capital placement and corporate transactions?

As far as public companies are concerned, the Law on the Capital Market additionally prescribes their duties.¹⁶ Namely, the law obliges them to prepare, publish and submit annual financial statements to the Securities Commission, and in the case of a company whose securities are included in trading, these reports must be

13 Economic offenses act, *Official Gazette of SFRY*, 4/77, 36/77, 14/85, 10/86, 74/87, 57/89 and 3/90 and *Official Gazette of the SRY*, 27/92, 16/93, 31/93, 41/93, 50/93, 24/94, 28/96 and 64/2001 and *Official Gazette of RS*, 101/2005

14 Article 17 of the Economic offenses act, *Official Gazette of SFRY*, 4/77, 36/77, 14/85, 10/86, 74/87, 57/89 and 3/90 and *Official Gazette of SRY*, 27/92, 16/93, 31/93, 41/93, 50/93, 24/94, 28/96 and 64/2001 and *Official Gazette of RS*, 101/2005

15 Article 46 (20) of the Law on Accounting, *Official Gazette of RS*, 62/2013, 30/2018

16 Law on Capital Market, *Official Gazette of RS*, 31/2011, 112/2015 and 108/2016



submitted to the regulated market and multilateral trading platforms (MTP), no later than four months after the end of the business year.¹⁷ We would like to note that the deadline is shorter than the prescribed deadline for other legal entities, which is 6 months from the date of the report. Furthermore, as the BRA has the obligation to disclose the submitted statements within 2 months, it can be assumed that on the BRA website the fi-

ancial statements of public companies will be disclosed within 6 months from the balance sheet date, i.e. by 30/6 the following year. Non-compliance with the regulations from Article 50 is legally qualified as a misdemeanour, and Article 290 envisages a fine ranging from RSD 100,000 to 2,000,000 with responsibility being collective and borne by the public company.¹⁸

METHODOLOGY AND RESEARCH RESULTS

Given the goal of this paper, we have conducted a research encompassing 416 public companies listed on the Belgrade Stock Exchange and coming from different sectors. At the time of the research, a total of 582 companies were active on the stock exchange which means that the sample included 71.5% of the total number. We ran checks to see if the sampled companies had their regular financial statements published on the website of the Business Registers Agency of the Republic of Serbia on July 1, 2019. Namely, as previously mentioned, legal entities were under the obligation to compile and disclose regular financial statements for 2018, as the reporting period, by June 30, 2019. Consolidated financial statements were not the subject of research, because, from a legal point of view, they refer to two or more independent legal entities, which is why a longer deadline for their submission is prescribed (consolidated financial statements could not be compiled without individual statements).

The survey results show that close to 61% of the sampled companies published their financial statements within 180 days after the balance sheet date, while

the remaining number of companies did not publish their reports within the legally prescribed deadline. If we compare the obtained results with the results of a similar research conducted in Greece, we will notice that the percentage is quite low. Namely, Owusu-Ansah and Leventis (2006) concluded on the sample of 95 public companies from the Athens Stock Exchange that 92% of companies published their statements before the statutory deadline of 161 days. The rest of the companies did it with a maximum delay of 23 days. In another research, all sampled public companies (116) disclosed their statements within the legally prescribed deadline (Leventis & Weetman, 2012). Similar research results were published by the authors who analysed public companies on the Istanbul Stock Exchange. Of 221 sampled companies (66% of the total number of companies on the stock exchange), it was noticed that 72% informed the public about their business (Turel & Dal, 2010).

The table below shows the results according to the size of legal entities, in accordance with the criteria for division defined by the Law on Accounting.¹⁹

17 Article 50, Law on Capital Market, *Official Gazette of RS*, 31/2011, 112/2015 and 108/2016

18 Article 290, Law on Capital Market, *Official Gazette of RS*, 31/2011, 112/2015 and 108/2016

19 Article 6 (2), Law on Accounting, *Official Gazette of RS*, 62/2013, 30/2018



Table 1. *Availability of financial statements of sampled public entities in the Republic of Serbia*

Size of legal entities	Financial statements are available		Financial statements are not available		Total
	Number of legal entities	Percentage	Number of legal entities	Percentage	Number of legal entities
Micro	79	31.35%	71	43.29%	150
Small	60	23.81%	71	43.29%	131
Medium	67	26.59%	12	7.32%	79
Large	46	18.25%	10	6.10%	56
Total	252	60.58%	164	39.42%	416

It can be noticed that the majority of legal entities that did not submit their statements belong to the group of micro and small business entities. Every other entity fails to submit a statement within the legally prescribed deadline. Nevertheless, it is encouraging that a significantly larger number of medium and large legal entities submit

statements on a regular basis. Given that financial reporting is more complex for certain activities, because it includes the recording of specific transactions, it can be assumed that legal entities from certain sectors need a longer period of time to compile and submit reports. Table 2 provides more detailed information.

Table 2. *Timeliness of public companies' financial reporting by sectors*

Sectors	Market capitalization in RSD	Financial statements are available		Financial statements are not available		Sample
		Number of legal entities	Percentage	Number of legal entities	Percentage	
Processing industries	123,780,180,837	85	63.43%	49	36.57%	134
Mining	112,226,715,500	4	66.67%	2	33.33%	6
Financial and insurance sector	72,431,820,926	13	92.86%	1	7.14%	14
Wholesale and retail and repair of motor vehicles	39,849,230,761	29	46.03%	34	53.97%	63
Real estate	29,972,691,480	9	60.00%	6	40.00%	15
Construction	8,326,472,916	26	55.32%	21	44.68%	47
Agriculture, forestry and fishing	15,418,527,188	19	65.52%	10	34.48%	29



Electricity, gas and steam supply	14,633,799,312	0	0.00%	1	100.00%	1
Transportation and storage	11,419,285,435	16	72.73%	6	27.27%	22
Professional, scientific, innovative and technical sectors	9,812,737,817	15	62.50%	9	37.50%	24
Accommodation and catering services	2,903,264,905	8	33.33%	16	66.67%	24
Information and communication	2,959,364,439	9	64.29%	5	35.71%	14
Administrative and support services	589,026,516	8	88.89%	1	11.11%	9
Education	314,739,720	3	75.00%	1	25.00%	4
Other service industries	199,587,957	6	75.00%	2	25.00%	8
Arts, entertainment and recreation	102,219,000	1	100.00%	0	0.00%	1
Health and social protection	3,792,040	1	100.00%	0	0.00%	1
Total	444,943,456,750	252	60.58%	164	39.42%	416

It is not surprising that almost all companies from the financial sector, dominated by banks, submitted their financial statements on time. This does not come as surprise because the Republic of Serbia has a status of an EU candidate country, and such countries pay special attention to improving regulations and reforms in financial sector.

Bearing in mind that on the Belgrade Stock Exchange, the majority of public companies belong to the sectors of processing industry as well as wholesale and retail and repair of motor vehicles,

we will particularly focus on their indicators. The manufacturing sector has 134 companies (more than a quarter of the total sample), of which 85 (63.43%) submitted their financial statements on time, while for 49 (36.57%) there are no financial statements available on the Business Registers Agency's website. When it comes to the second dominant sector - wholesale and retail and repair of motor vehicles, the results are worse, because only 29 companies submitted financial statements, which accounts for 46% of their total number. Therefore,



the data obtained give a serious cause for concern, given that 37 companies, i.e. 54% of them, do not disclose their financial statements in a timely manner and thus probably commit an offense. Bearing in mind that companies from these two sectors make up almost half of the total sample encompassed by this research, we believe that it is necessary to step up the system of control over timely submission of financial statements for disclosure and ensure that sanctions are imposed if an offense is committed. This primarily refers to the companies from the aforementioned sectors. Consequently the number of companies whose statements are accessible to the public will rise, which would increase the trust of external users, primarily investors.

In the end, we will amend the results of the research with information on the number of sampled legal entities whose financial statements are available on the Business Registers Agency's website at the end of 2019. Because financial statements may not be financially or formally accurate in some cases, companies may be late in disclosing their statements. As a consequence of that, these companies report on their business activities nearly two years after they had taken place, which decreases timeliness of their financial statements. At the end of 2019 (December 23), 405 out of 416 sampled companies (97.36%) disclosed financial reports on the official website of the Business Registers Agency.

CONCLUSION

In June 2019, the Republic of Serbia opened Chapter Nine on financial services in the process of accession negotiations with the European Union, whereas in early December, it opened Chapter Four on free movement of capital. The former represents a positive and encouraging signal for our country and potential investors, primarily outside the country. The companies whose securities can be invested into usually represent the core of a country's economy and are expected to comply fully with legal norms, including timely, truthful and objective financial reporting. Related to the aforesaid, the opening of these chapters is evidence that Serbia is implementing economic and legal reforms, but it needs to be said that there is still room for improving the quality of financial reporting in the RS. This statement is based on the results of the research presented in this paper, and refers to the percentage of public com-

panies that (do not) disclose financial statements within the legally prescribed period. Namely, for about 61% of the sampled companies (254), the financial statements for 2018 are available on the official website of the Business Registers Agency one day after the deadline. For other companies (162) statements were not disclosed. From an economic point of view, the former means that despite all the efforts of the Government to meet the requirements and standards of the European Union and attract foreign investment, these data are certainly not encouraging. In other words, at the micro level, public companies cannot count on this form of funding source, because potential investors do not have an adequate information base that could facilitate decision-making. From a legal point of view, it can be assumed that about 39% of the sampled companies committed an economic offense in



accordance with Article 46 of the Law on Accounting. Thus, the legal framework is adequately established and can be effective from a legal point of view. However, the legal practice is not rich enough in the sense of prosecuting and sanctioning the companies that commit this type of economic offense (especially bearing in mind that of the observed number of companies, nearly 3% still failed to disclose their statements at the end of 2019). It is beyond doubt that the Government of the Republic of Serbia is committed to attracting as many foreign investors as possible, that it undertakes serious activities towards harmonization with the European Union acquires and standards and therefore, we conclude that the number of publicly available and accurate financial statements must increase dramatically in the shortest possible time, so that potential investors could begin to have confidence in the stability, orderliness and fairness of the national capital market.

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