



Project against Money Laundering and Terrorist Financing in Serbia (MOLI Serbia)

Activity Report – 41

SYNOPSIS OF THE PROJECT ACTIVITY

Field of activity:

Economic Crime Unit, Action against Crime Department, Information Society and Action against Crime Directorate, DGI – Human Rights and Rule of Law

Type of activity:

Meeting of the Working Group for Drafting the Amendments to the Law on the Prevention of Money Laundering and Terrorism Financing (AML/CFT Law).

Programme:

Joint EU/ CoE Project against Money Laundering and Terrorist Financing in Serbia (MOLI Serbia)

Country/Region:

Serbia

Date and place:

Belgrade, 5-7 February 2013.

Budgetary reference:

1.1.1

Council of Europe experts:

Mr Herbert Zammit LaFerla, Short-term Expert

Council of Europe Secretariat:

Ms Teodora Lukovic, Local Project Officer

Participants:

Administration for Prevention of Money Laundering (APML), National Bank of Serbia, Deputy Prime Minister's Office.

Total number of participants:

10 (6 women)

Partner institutions/organisations:

APML, National Bank of Serbia

Origin/reference to other activities:

n/a

Objectives:

To support the APML in finalising the amendments to the AML/CFT law and related financial by-laws and regulations.

General Assessment:

The Workshop was conducted on hands-on participation basis following an introductory part where the Council of Europe Expert briefed all participants on the outcome of the November 2012 and the August 2013 assessments of various laws and regulations with proposed amending draft text provided. The objective of the amendments to the laws and regulations was primarily to upgrade them in further compliance with the 2012 revised Standards of the Financial Action Task Force (FATF).

In the course of the three day Workshop participants managed to cover the whole agenda and agree on the majority of the proposed amendments to the AML/CFT Law and the relevant by-laws issued by the National Bank of Serbia and the Securities Commission of Serbia. The representatives of the Serbia Authorities present showed a cordial and receptive attitude throughout and participated actively in the discussions. Consequently the discussions on the proposed amendments to the AML/CFT Law were of a very high level with valid input from participants, particularly in the interpretation of certain provisions of the AML/CFT Law to avoid repetition of what already exists in the Law. Thus, for example, discussions on the introduction of new provisions in the AML/CFT Law as proposed by the Council of Europe Expert in order to introduce new elements from the 2012 FATF were to a high degree with positive results obtained as indicated below.

Results/conclusions:

The majority of the proposed amendments to the AML/CFT Law according to the Technical Paper of November 2012 by the Council of Europe Expert have been accepted by the Serbia Authorities present at the Workshop albeit with some redrafting of the proposed text to bring the text in accordance with the terminology used in the Serbia legislation.

Recommendations adopted.

Some of the main recommended amendments adopted refer to:

- Definition of terms, such as the definition of 'property' in accordance with current definitions of same term in other legislation; definition of money laundering to include 'participation' in committing the offences; the definition of 'beneficial owner of customer'

to include third party relationships and the proposed definition of 'domestic official' introducing the concept of the domestic politically exposed person.

- Amendments to 'obligors' in the accountancy profession i.e. audit firms, licensed auditors and the provision of accounting services to include references to the activities under the FATF Standards attributed by the AML/CFT Law to the legal profession.
- The inclusion of 'notaries public' within the provisions of the AML/CFT Law attributed to lawyers.
- Obligations on obligors, the lawyer and the notary public to develop internal policies and procedures and to maintain comprehensive meaningful statistics.
- Provisions for strengthening the risk based approach, the management of risk and the application of risk assessments on business-based and relationships-based methodologies.
- Amendments to various provisions of the AML/CFT Law whereby if unable to complete the verification process because of doubts on information and documents received, obligors are currently allowed to obtain a declaration on veracity to this effect from the customer itself. This has now been amended to obtain a declaration on the veracity of the information and documents through an identified third part (being an obligor under the AML/CFT Law as defined in a new paragraph (5) to Article 13) otherwise not to accept the proposed business relationship and to consider reporting to the APML in accordance with the relevant provisions of the AML/CFT Law.
- Amendments to the identification of the beneficial owner of legal persons and legal arrangements and the beneficiaries of life insurance policies or investment related life insurance products.
- Amendments to the procedures for reliance on third parties to undertake some elements of the customer due diligence measures.
- Extension of the obligation on obligors to pay special attention to new technologies to include also new products that can be used for anonymity.
- New provisions for the application of enhanced due diligence to identified domestic officials (politically exposed persons) who are assessed to represent a higher risk.
- New provisions for audit firms, licensed auditors and persons providing accounting services to introduce a level playing field with the obligations of the lawyer and notary public in accordance with the international standards and consistent with the proposed amendments to the definition of these terms.
- Provisions for the appointment of the compliance officer where the obligor, lawyer or notary public is a sole practitioner.
- Amendments to place further responsibilities on the role of the compliance officer upon the top-management of an obligor as defined in the AML/CFT Law.
- Enhancement of international cooperation by the supervisory bodies recognised under the AML/CFT Law with their foreign counterparts in cooperation with the APML.

Recommendations not adopted

- Amendment to paragraph (3) of Article 37 in the case of obligors and paragraph (2) of Article 48 in the case of lawyers on the reporting obligation to cover past transactions as, according to the Serbia authorities present, the obligation is already covered by paragraph (5) and paragraph (3) of the same respective Articles.
- Periodic examination of the implementation of internal procedures for the prevention of money laundering and terrorism financing as this is already provided for under paragraph (1) of Article 44.

New proposals adopted

Further to the provisions introducing the principle of a domestic official – politically exposed person – and the application of enhanced customer due diligence measures where the domestic official represents a higher risk to the obligor, some of the main proposals for introducing new concepts within the AML/CFT Law upon which agreement for adoption has been reached include:

- The obligation for the authorities to undertake an assessment of risks and vulnerabilities of money laundering and terrorism financing at a national level in accordance with Recommendation 1 of the 2012 FATF Standards – National Risk Assessments.
- The obligation on the APML to collect and maintain comprehensive and meaningful statistics and to periodically measure the effectiveness of the system for the prevention of money laundering and terrorism financing.
- Measures to be taken by obligors, lawyers and notaries public when transacting with or in high risk countries including the powers of the APML to take action, in cooperation with the relevant supervisory authorities, where measures undertaken by obligors, lawyers and notaries public are not sufficient to counter the risk exposure in such countries in accordance with the new Recommendation 19 of the 2012 FATF Standards.
- Lifting of confidentiality where a domestic obligor provides relevant information to its parent institution whether domestic or foreign for the purposes of group monitoring and compliance.
- Prohibition for obligors, lawyers and notaries public in applying professional secrecy for the purposes of not complying with any of the provisions of the AML/CFT Law except where specifically provided for in the AML/CFT Law itself with respect of lawyers, notaries public and the accountancy profession.
- Provision of supervisory powers to supervisory authorities, including the APML, recognised under the AML/CFT Law including the application of a risk based approach for the purposes of on-site examinations.

New proposals not adopted

On the other hand, for reasons as explained below, participants agreed not to accept some new proposals made in the November 2012 Technical Paper by the Council of Europe Expert. These refer to:

- Defining and introducing Trust and Company Service Providers (TCSP) as an obligor for the purposes of the AML/CFT Law as this function is not recognised in Serbia. Participants claim that moreover this function does not happen in practice.
- Acceptance of third party introduced business by obligors in addition and separate from third party reliance for specific elements of the due diligence measures. Serbia authorities were of the opinion that this activity does not happen in practice and there is a need for additional studies to be undertaken for the authorities to better understand the concept, identify related risks and vulnerabilities and determine whether such practices should be introduced.
- Recommendation 17 of the 2012 FATF Standards introduces the concept of reliance on and accepting introduced business from a third party that forms part of the same group to which the obligor belongs. Although recognising the benefits of such legal provisions for domestic subsidiaries of foreign institutions in particular within the financial sector, participants were of the opinion that the proposed introduction of this concept under a new Article 26A in the AML/CFT Law as proposed should not be introduced at this stage. General opinion was that more studies on this principle need to be undertaken in conjunction with the above mentioned studies on the principle of introduced business.

FATF Recommendation 16 – Wire Transfers

Further to the proposed amendments in the November 2012 Technical Paper of the Council of Europe Expert on the implementation of Recommendation 16 of the 2012 FATF Standards on wire transfers (replacing the previous Special Recommendation VII), the Serbia Authorities had been provided with a further separate expert's opinion on the adequacy of Articles 12A – 12C of the AML/CFT Law. This additional opinion, the text of which is inspired from and modelled on the European Union Regulation¹ was reviewed in the August 2013 Technical Paper by the Council of Europe Expert. In the course of the Workshop the two opinions were discussed separate from the other amendments to the AML/CFT Law.

The Workshop discussed to what extent the present provisions in the AML/CFT Law cover the requirements under the international standards for wire transfers. These requirements mainly cover the obligations and responsibilities of the payment service provider of the originator of the payment, those for the payment service provider when acting as an intermediary in the payment process, and the obligations and responsibilities of the payment service provider of the beneficiary of the payment. These obligations refer to the customer due diligence and the provision of the relevant full customer details throughout the whole payment process and the retention of records accordingly. In acknowledging that the present legal text could be better structured, participants were of the opinion that the main requisites of FATF Recommendation 16 are adequately covered. In the discussion participants took into consideration the information provided by the National Bank of Serbia that the Bank is in the process of transposing the European Union Payments Services Directive² for implementation in Serbia and that the transposition will cover a number of issues raised in connection with the provisions of the AML/CFT Law in this respect. Participants

¹ Regulation No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds – OJ, L345, 8/12/2006 P. 0001 - 0009

² Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC (Text with EEA relevance). OJ, L 319 , 05/12/2007 P. 0001 - 0036

also considered that the EU Regulation is currently under review by the European Union and hence there may be the need for further reviews once the new Regulation is published. Participants therefore agreed to maintain the present text of the Law and to introduce the amendments recommended by the Council of Europe Expert in the November 2012 and the August 2013 Technical Papers to enhance harmonisation with international standards. These amendments refer to:

- The inclusion of headers to Article 12A and 12B for better restructuring denoting the objectives of the two Articles.
- The introduction of a new paragraph (3a) to Article 12B defining the obligations and responsibilities of the payment and collection service provider when acting as an intermediary in the payment process.
- An amendment to paragraph (6) of Article 12B requiring payment and collection service providers to have risk-based policies and procedures for determining when to execute, reject or suspend a wire transfer lacking the required information and for follow up action.
- The introduction of a new Article 12BB establishing the record keeping requirements of the payment and collection service provider in the roles of the originator, intermediary and beneficiary service provider.
- The introduction of a new Article 12D requiring money or value transfer services providers who appoint agents to maintain a list of such agents who, for the purposes of the AML/CFT Law, are considered as a part of the obligor itself – this amendment will be adopted following the introduction of the Payment Services Directive by the National Bank of Serbia which will clarify the appointment of agents.

Sanctions

The November 2012 Technical Paper made recommendations for a review of the sanctioning regime under the AML/CFT Law as the current legal provisions;

- Provide only for financial penalties to be imposed through the Courts.
- Do not provide for the powers of the relevant authorities to impose administrative sanctions whether financial or non-financial.
- Do not provide for a graduated structure of the imposition of sanctions proportionate to the offence.
- Are not clear whether they cover all breaches of the Law, while not providing for breaches of regulations and bye-laws issued in terms of the AML/CFT Law.

Moreover the Technical Paper expressed concern on the possible imposition of sanctions envisaged by other legislation (e.g. the Law on Banks) for the purposes of breaches of the AML/CFT Law thus creating double jeopardy.

During the Workshop the Serbia Authorities present informed that a study was to be undertaken to completely overhaul the sanctioning regime under the AML/CFT Law to introduce a more flexible and appropriate way of imposing sanctions, both pecuniary and non-pecuniary in nature,

on obligors in a graduated systematic way in proportion to the seriousness and the frequency of the offence, and modelled on the sanctioning regime applied by the National Bank of Serbia under the Law on Banks. Within this context the minor proposed amendments in the AML/CFT Law will not be implemented.

Decisions, Regulations and Rulebooks

In addition to the proposed amendments to the AML/CFT Law the Workshop also discussed proposed amendments to Decisions, Rulebooks and Guidance issued by the National Bank of Serbia and the Securities Commission of Serbia either directly for the purposes of the implementation of the AML/CFT Law or indirectly as they would impact on the application of the obligations under the AML/CFT Law. The November 2012 Technical Paper had reviewed 19 such documents issued by the National Bank of Serbia and proposed amendments to 13. The Paper had further reviewed 16 documents issued by the Securities Commission of Serbia and made recommendations for 5 of them.

The Workshop discussed all the amendments and in principle agreed on all of them as the amendments reflect the amendments to the AML/CFT Law. It was agreed not to accept changes relating to principles not adopted in the main AML/CFT Law, such as reference to introduced business. Participants therefore agreed that the necessary amendments to these documents will only be effected upon the proposed amendments to the AML/CFT Law being enacted and implemented.

Conclusions

In conclusion, the Serbia authorities present requested:

- (i) A revised version of the AML/CFT Law with comments and amended draft text following the decisions taken at the Workshop;
- (ii) A Risk Matrix table for applying a business based risk assessment by obligors as proposed in the amendments to the AML/CFT Law and as exposed in the relevant Decisions and Guidance of the National Bank of Serbia and the Securities Commission of Serbia; and
- (iii) Details on the general roles and responsibilities of the Compliance Officer for a further review of the relevant Articles in the AML/CFT Law or for the issue of a document with the relevant information to guide obligors, lawyers and notaries public accordingly.

The three documents have been completed and forwarded by the Council of Europe Expert to the Council of Europe Secretariat in Belgrade on 10 February 2014.

In conclusion, it is opined that the objectives of the Workshop have been adequately reached. With the revised AML/CFT Law, once enacted and implemented, Serbia should register positive advance in its compliance with the international standards. The effectiveness of such advance depends on the way the relevant supervisory authorities ensure that obligors, lawyers and notaries public fully and effectively implement and fulfil their obligations.