COMMITTEE OF EXPERTS ON THE EVALUATION OF ANTI-MONEY LAUNDERING MEASURES AND THE FINANCING OF TERRORISM (MONEYVAL)

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Mutual Evaluation Report

Anti-Money Laundering and Combating the Financing of Terrorism

SERBIA

8 December 2009

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TABLE OF CONTENTS

I. PREFACE.......... 5

II. EXECUTIVE SUMMARY.......... 6

III. MUTUAL EVALUATION REPORT.......... 20

1 GENERAL.......... 20

1.1 General Information on the Republic of Serbia.......... 20
1.2 General Situation of Money Laundering and Financing of Terrorism.......... 23
1.3 Overview of the Financial Sector and Designated Non-Financial Businesses and Professions (DNFBP).......... 25
1.4 Overview of Commercial Laws and Mechanisms Governing Legal Persons and Arrangements.......... 34
1.5 Overview of Strategy to Prevent Money Laundering and Terrorist Financing.......... 37

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES.......... 46

2.1 Criminalisation of Money Laundering (R.1 and 2).......... 46
2.2 Criminalisation of Terrorist Financing (SR.II).......... 56
2.3 Confiscation, Freezing and Seizing of Proceeds of Crime (R.3).......... 59
2.4 Freezing of Funds Used for Terrorist Financing (SR.III).......... 69
2.5 The Financial Intelligence Unit and its functions (R.26).......... 73
2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27 and 28).......... 85
2.7 Cross Border Declaration or Disclosure (SR.IX).......... 100

3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS.......... 107

3.1 Risk of money laundering / financing of terrorism.......... 109
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to R.8).......... 111
3.3 Third Parties and Introduced Business (R. 9).......... 129
3.4 Financial institution secrecy or confidentiality (R.4).......... 131
3.5 Record Keeping and Wire Transfer Rules (R.10 and SR. VII).......... 138
3.6 Monitoring of Transactions and Relationships (R.11 and 21).......... 146
3.7 Suspicious Transaction Reports and Other Reporting (R. 13, 14, 19, 25 and SR.IV).......... 153
3.8 Internal Controls, Compliance, Audit and Foreign Branches (R.15 and 22).......... 163
3.9 Shell Banks (R.18).......... 173
3.10 The Supervisory and Oversight System - Competent Authorities and SRO-s / Role, Functions, Duties and Powers (Including Sanctions) (R. 23, 29, 17 and 25).......... 174
3.11 Money or value transfer services (SR.VI).......... 212

4 PREVENTIVE MEASURES – DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS.......... 215

4.1 Customer due diligence and record-keeping (R.12).......... 215
4.2 Suspicious transaction reporting (R. 16).......... 221
4.3 Regulation, supervision and monitoring (R. 24-25).......... 228
4.4 Other non-financial businesses and professions/ Modern secure transaction techniques (R.20) 236

5 LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANISATIONS.......... 238

5.1 Legal persons – Access to beneficial ownership and control information (R.33).......... 238
5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34).......... 242
5.3 Non-profit organisations (SR.VIII).......... 243

6 NATIONAL AND INTERNATIONAL CO-OPERATION.......... 248

6.1 National co-operation and co-ordination (R. 31 & R.32).......... 248
6.2 The Conventions and United Nations Special Resolutions (R. 35 and SR.I).......... 251
6.3 Mutual legal assistance (R. 36-38, SR.V).......... 253

6.4 Extradition (R. 37, 39, SR.V) 263
6.5 Other Forms of International Co-operation (R. 40 and SR.V) 268
7 OTHER ISSUES 276
7.1 Resources and Statistics 276
7.2 Other Relevant AML/CFT Measures or Issues 277
7.3 General Framework for AML/CFT System (see also section 1.1) 277
IV. TABLES 278
8 Table 1. Ratings of Compliance with FATF Recommendations 278
9 Table 2. Recommended Action Plan to improve the AML/CFT system 293
10 Table 3: Authorities' Response to the Evaluation (if necessary) 315
V. COMPLIANCE WITH THE 3RD EU AML/CFT DIRECTIVE 316
VI. LIST OF ANNEXES 339

I. PREFACE

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of the Republic of Serbia was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), complemented – due to the specific scope of evaluations carried out by the Committee – by issues linked to the Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (hereinafter the "Third EU Directive" and Directive 2006/70/EC "implementing Directive", in accordance with MONEYVAL's terms of reference and Procedural rules, and was prepared using the 2004 AML/CFT Methodology [1].

2. The evaluation was based on the laws, regulations and other materials supplied by the Republic of Serbia, and information obtained by the evaluation team during its on-site visit to Serbia from 9-16 May 2009, and subsequently. During the on-site visit, the evaluation team met with officials and representatives of all relevant Serbian government agencies and the private sector. A list of the bodies met is set out in Annex II to the mutual evaluation report.

3. The evaluation was conducted by an assessment team, which consisted of members of the MONEYVAL Secretariat and MONEYVAL and FATF experts in criminal law, law enforcement and regulatory issues. The evaluation team consisted of: Gábor Simonka, acting as legal evaluator (Head of Financial Intelligence Unit, Central Criminal Investigation Bureau, Customs and Finance Guard, Hungary); Andrea Havelkova, acting as law enforcement evaluator (Senior police officer, International Co-operation Department, Financial Intelligence Unit, Slovak Republic), Arakel Meliksetyan acting as financial evaluator (Deputy Head of the Financial Monitoring Center, Central Bank of Armenia), DeAnna Fernandez, acting as FATF financial evaluator (Policy Advisor, Office of Terrorist Financing and Financial Crimes, U.S. Department of the Treasury) and Livia Stoica Becht (MONEYVAL Secretariat). The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examined the capacity, the implementation and the effectiveness of all these systems.

4. This report provides a summary of the AML/CFT measures in place in the Republic of Serbia as at the date of the on-site visit or immediately thereafter. It describes and analyses these measures, and provides recommendations on how certain aspects of the systems could be strengthened (see Table 2). It also sets out Serbia's levels of compliance with the FATF 40 + 9 Recommendations (see Table 1). Compliance or non-compliance with the EC Directives has not been considered in the ratings in Table 1.

[1] As updated in February 2009.

II. EXECUTIVE SUMMARY

1. Background Information

1. This report provides a summary of the AML/CFT measures in place in Serbia as at the date of the on-site visit from 9-16 May 2009 or immediately thereafter. It describes and analyses these measures, and provides recommendations on strengthening certain aspects of the system. It also sets out Serbia's levels of compliance with the FATF 40 plus 9 Recommendations (see Table 1). The evaluation also includes Serbia's compliance with *Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing* (hereinafter "3rd EU AML Directive") and the *Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis* (hereinafter "Implementing Directive 2006/70/EC"). However, compliance or non-compliance with the 3rd EU AML Directive and the Implementing Directive 2006/70/EC has been described in a separate Annex and it has not been considered in the ratings in Table 1.

2. This is the second evaluation of Serbia by MONEYVAL. Since the last evaluation visit in 2003, Serbia has made a number of changes with a view to improving the legal framework as well as the AML/CFT requirements on banking and non-banking financial institutions. These include substantial changes to the criminal legislation (amendments to the ML offence, the criminalisation of the TF offence, changes to the Criminal Procedure Code covering provisional measures and confiscation), and the adoption of new legislation regarding liability of legal entities, seizure and confiscation of proceeds from crime and mutual legal assistance. The Law on the prevention of money laundering and the financing of terrorism (hereinafter AML/CFT Law) sets out the scope and basic AML/CFT obligations for financial institutions and designated non financial businesses and professions (DNFBPs). The law was adopted shortly before the on-site visit (18 March 2009) and entered into force on 27 March 2009, repealing the 2005 Law on the prevention of money laundering (hereinafter the previous AML Law). The regulations adopted on the basis of the previous AML Law continue to be applied until the adoption of regulations on the basis of the AML/CFT law in so far as they are not contradictory to the new provisions. A number of additional regulations and guidance were adopted to assist financial institutions and DNFBPs in fulfilling their obligations. The Government of Serbia also adopted a National Strategy against Money Laundering and Terrorism Financing in 2008 and established a Standing Coordination Group to monitor the implementation of this strategy.

3. As regards the money laundering situation, the Serbian authorities advised that the most significant forms of organised crime are trafficking in human beings, smuggling of narcotic drugs and of weapons, vehicle theft as an organised criminal activity and that proceeds are in general reinvested in the purchase of business companies (privatised ones), real estate, luxurious cars and are also used for lending money with high interest rates. Economic crimes are characterised by serious and complex criminal acts, particularly in banking operations, external trade and in the privatisation process. The most widespread form of economic crime is various forms of the abuse of office in all sphere of economic operations. There has been no study on methods, techniques and trends regarding ML or TF, however, the authorities indicated that most of laundered proceeds in ML cases originate from tax evasion. Profits deriving from business activities are usually transferred from firms through fictitious domestic, foreign or offshore companies by using fictitious invoices where service or transfer of goods have never been carried out. Then the money is returned to Serbia in cash, where the legalization takes place. Fraudulent activities, unlawful privatisation and different activities of corruption can be also linked to situations of money laundering.

4. Concerning terrorist financing, there have been no criminal reports filed regarding FT according to the statistics provided and there are no confirmed cases of terrorist financing in Serbia to date.

2. Legal Systems and Related Institutional Measures

5. Since the last evaluation, with the adoption in 2005 of a new Criminal Code , the offence of money laundering is set out under Article 231 of the CC in a much broader and more complex approach than previously. The conducts that constitute the ML offence are largely in line with the material elements listed in Article 3 of the Vienna Convention and Article 6 of the Palermo Convention. The offence extends to 'property' that derives from a criminal offence, which would appear to cover any types of property and to represent all sorts of proceeds of crime.

6. The criminalisation of money laundering has been explicitly based on an 'all crime approach'. Predicate offences for ML cover any 'criminal offence' of the CC and the range of offences set out in the CC which are predicate offences to ML include all required categories of offences with the exception of insider trading and market manipulation. The offence does not cover explicitly self laundering however this matter has been clarified both in a mandatory instruction (2008) of the Public Prosecutor's Office and by recent case practice. There are appropriate ancillary offences to the ML offense.

7. Natural and legal persons are subject to effective, proportionate and dissuasive criminal sanctions. The corporate criminal liability was introduced into the Serbian legislation by the Law on Liability of Legal Entities for Criminal Offences, which entered into force in November 2008.

8. Between 2007-2008, 5 convictions were successfully achieved and 2 final judgments were confirmed by the Supreme Court. All judgments relate to concealing of cash proceeds derived from tax evasion, legalised through use of false invoices, fictitious legal transactions, and sometimes use of fictitious companies. Perpetrators were convicted for committing abuse of office (article 359 CC) in concurrence with money laundering. The sentence applied specifically for money laundering in all cases amounted to one year imprisonment, however the consolidated sentence was higher (according to the judgments received, for instance to 2 years and 6 months in one case and to five years and six months in another case). In all cases the perpetrators were also deprived of the pecuniary benefit obtained and proceeds were confiscated. The number of yearly initiated criminal money laundering report sent to court has doubled in 2007 and remained constant in 2008 while the number of cases in which charges were brought has clearly increased.

9. Serbia ratified the UN International Convention for the Suppression of the Financing of Terrorism in October 2002. The financing of terrorism was criminalised as an autonomous offence in article 393 of the CC. However there are still several shortcomings with respect to the implementation of the convention in the criminal substantive law. The provision or collection of funds to finance a terrorist organisation and individual terrorists does not appear to be covered. The term "funds" is not defined in the CC, nor has it been interpreted by judicial authorities, thus there is no legal certainty that the FT offence shall extend to any funds as defined in the FT Convention. Furthermore, due to references to specific criminal offences from other articles of the CC ("intended for financing of criminal offences referred to in Articles 312, 391 and 392 of the present Code"), the definition of terrorist financing requires the funds to be linked to a specific terrorist activity. Also, the offence does not fully cover the financing of terrorist organisations and the financing of individual terrorists regardless of whether the financing is for criminal activities, legal activities or general support. At the time of the on-site visit, there had been no investigations or prosecutions for terrorism financing.

10. The confiscation and the provisional measures in Serbia have gone going through a considerable change since the previous evaluation. The current legal framework is rather complex, given the parallel regimes both in terms of criminal substantive and procedural law. The recent adoption of

the Law on seizure and confiscation of the proceeds from crime (2008) is undoubtedly a major step forward, however, given its recent entry into force, it has not yet been applied.

11. The current regime needs reviewing in order to ensure that the competent authorities have the necessary tools to clarify the application of the relevant provisions and regimes and ensure that they can make full use of the existing legal framework. Amendments are necessary to clarify the scope of property subject to confiscation, to ensure that value based confiscation can be applied in the case of instrumentalities used in and intended for use in the commission of ML, FT or other predicate offences and that confiscation of instrumentalities is possible when they are held by a third party (legal entity or natural person). The statistics provided did not demonstrate the overall effectiveness of the application of provisional measures and confiscation regime.

12. The Serbian legal framework does not enable the competent authorities to take the necessary preventive and punitive measures to freeze and if appropriate, seize terrorist related funds or other assets without delay, in accordance with the relevant United Nations resolutions. There are no specific laws and procedures which would specifically implement the above-mentioned resolutions in terms of roles, responsibilities and conditions. Neither the AML/CFT law nor the Criminal Procedure Code can be applied in this respect. There have been no instances of freezing of funds or other assets of persons designated in the context of these resolutions.

13. The Administration for the Prevention of Money Laundering (APML), the Serbian FIU, is the lead agency responsible for AML/CFT issues. It is established as an administrative body within the Ministry of Finance. The AML/CFT Law clearly sets out all three core-FIU functions (reception, analysis and dissemination). The Serbian FIU has been a member of the Egmont Group since 2003.

14. The AML/CFT Law sets out the APML's role in the detection of ML and FT, international co-operation and in the prevention of ML and FT. In regard to its role in the detection of ML and FT, the APML can:
    1. request data from obligors and lawyers when it assesses that there are reasons to suspect ML or FT in certain transactions or persons ;
    2. request data from competent State bodies and public authority holders ;
    3. issue written orders to obligors to temporarily suspend transactions when there are reasonable grounds to suspect ML or FT with respect to a person or transaction or to oblige obligors to monitor transactions and business operations;
    4. disseminate data to competent bodies;
    5. provide feedback to obligors, lawyers and state bodies;
    6. co-operate internationally;

15. As regards its role in the prevention of ML and FT, the APML shall:
    1. conduct the supervision of the implementation of the provisions of this Law and take actions and measures within its competence in order to remove observed irregularities;
    2. submit recommendations to the Minister for amending this Law and other regulations governing the prevention and detection of money laundering and terrorism financing;
    3. take part in the development of the list of indicators for the identification of transactions and persons with respect to which there are reasons for suspicion of money laundering or terrorism financing;
    4. make drafts and give opinions on the application of this Law and regulations adopted based on this Law;
    5. make drafts and issue recommendations for a uniform application of this Law and regulations made under this Law in the obligor and lawyer;
    6. develop plans and implement training of APML's employees and cooperates in matters of professional education, training and improvement of employees in the obligor and lawyer in relation to the implementation of regulations in the area of the prevention of money laundering and terrorism financing;

7. initiate procedures to conclude cooperation agreements with the State bodies, competent bodies of foreign countries and international organisations;
8. participate in international cooperation in the area of detection and prevention of money laundering and terrorism financing;
9. publish statistical data in relation to money laundering and terrorism financing;
10. provide information to the public on the money laundering and terrorism financing manifestations;
11. perform other tasks in accordance with the law.

16. The traditional tasks of the FIU (receiving, analysing and disseminating STRs) are performed efficiently by the APML, which receives an increasing number of disclosures from reporting entities and has timely access to financial, administrative and law enforcement information as well as additional information from reporting entities. It is to be noted that the FT reporting obligation only came into the remit of the FIU as of March 2009.

17. Guidance to financial institutions and other reporting entities on reporting STRs has been provided on the basis of the requirements of the previous AML Law and reporting forms have been elaborated only for banks, capital market participants and insurance companies. Additional measures are required to ensure that comprehensive and adequate guidance based on the new legislation is introduced to support obliged entities in better understanding their reporting requirements and outreach should be conducted to under-reporting sectors.

18. The APML submits a yearly progress report to the Government, which may be made available to the public only upon request. Such reports don't include information on current ML/FT techniques, methods, and trends (typologies), or sanitized examples of actual money laundering cases. It was not possible to identify how many investigations commenced as a result of FIU's disclosure in the absence of such statistics.

19. The APML's effectiveness has been strengthened comparatively to the situation in the previous evaluation round and despite concerns regarding the quality of reports received and the level of non/under-reporting by certain sectors, the APML has at its disposal an important amount of financial information, which is likely to increase once the implementation of the AML/CFT law by reporting entities is fully operational. Also, the AML/CFT Law sets out an important number of additional tasks which are likely to impact and overload the daily operation of the APML.

20. The law enforcement bodies competent for the investigation and prosecution of ML and FT offences are: the Ministry of Interior, the Tax Police, the Security Information Agency and the Public Prosecutor's Office. These bodies have all been established by law, as are their activities. In addition, there are specific arrangements regarding the designation of authorities competent to investigate and prosecute organised crime offences (including ML or FT offences), namely pursuant to the Law on Organisation and Jurisdiction of Government Authorities in Suppression of Organised Crime: the Special Prosecutor's Office for Suppression or Organised Crime (within the District Public Prosecutor's Office in Belgrade), the Service against Organised Crime (within the Ministry of Interior) and the Special Departments for processing criminal cases under this law (within the Belgrade District Court and the Belgrade Appellate Court).

21. The legal framework for investigation and prosecution of ML and FT offences and for confiscation and freezing is undoubtedly complex. Responsibilities of prosecutors and law enforcement agencies are covered in a variety of acts, that is not only in the criminal legislation but also in the Law on organisation and jurisdiction of government authorities in suppression of organised crime and the recently adopted Law on Seizure and confiscation of the proceeds of crime. The authorities are able to postpone or waive the arrest of suspects and seizure of property. The use of special investigative techniques in the Criminal Procedure Code is limited to a range of specific criminal offences that are being investigated. Competent authorities responsible for conducting investigations of ML, FT and other underlying predicate offences can compel

production of, search persons and premises for and seize and obtain transaction records, identification data obtained through the CDD process, account files and business correspondence, and other records, documents or information, held or maintained by financial institutions and other businesses or persons. They also have the necessary powers to summon persons and take witness statements for use in investigations and prosecutions of ML, FT, and other underlying predicate offences, or in related actions.

22. However, the merits of creating a two tier system for investigation, prosecution and adjudication of the ML/FT offences, as the jurisdiction and competencies of law enforcement actors in the investigative and criminal process of such offences is differentiated based on the existence of an element of organised crime was questioned. Leaving aside the potential jurisdictional issues in concrete cases, the current provisions do not appear to provide for a comprehensive framework to ensure functional co-operation and communication between competent authorities.

23. Serbia has put in place measures to detect the physical cross border transportation of currency and a declaration system. The declaration system in force at the time of the on-site visit does not ensure that all persons making a physical transportation of currency and bearer negotiable instruments of a value exceeding the prescribed threshold are required to submit a declaration to the Customs authorities. New requirements were introduced with the AML/CFT law, which were not in force at the time of the on-site visit, as the law provided that they would become applicable six months later (September 2009). Based on the information gathered, there are reservations about whether the detection of cross-border movement of currency was adequately conducted. Further action is needed to ensure that the new requirements are speedily implemented and additional measures are required to bring the current system in compliance with SR.IX, in particular as regards the introduction of effective, dissuasive and proportionate sanctions.

3. Preventive Measures – Financial Institutions

24. The AML/CFT Law sets out the scope of AML/CFT obligations for financial institutions and is supported by numerous sectoral laws, including the Law on Banks, the Law on Securities and Other Financial Instruments Market, the Law on Insurance, the Law on Voluntary Pension Funds and Pension Schemes, the Law on Financial Leasing, the Law on Foreign Exchange Operations, and the Law on Investment Funds. For the purposes of the evaluation, these laws qualify as "law or regulation" as defined in the FATF Methodology.

25. A number of additional decisions and books of rules have been issued which assist financial institutions in fulfilling their obligations under the laws mentioned above. The AML Book of Rules is the primary act that describes the methodology, requirements, and actions financial institutions are expected to undertake under the previous AML Law. The Decision on Minimal Content of the KYC Procedure and Decision on Guidelines for assessing the risk of money laundering and financing terrorism are two of the major decisions that are accompanied by many sectoral decisions. These qualify as "other enforceable means" as defined in the FATF Methodology.

26. The Republic of Serbia has not undertaken a systemic review of the ML and FT threats and risks that exist within the financial and non financial sector in Serbia. Under the previous AML Law and Book of Rules, the Republic of Serbia did not apply AML/CFT measures using a risk-based approach. The AML/CFT Law introduced requirements to conduct an analysis of the ML and FT risks, which must include a risk assessment for each group or type of customer, business relationship, or service offered by the obligor and competent supervisory bodies are required to adopt guidelines for implementation.

27. The customer due diligence (CDD) obligations are set out in the AML/CFT Law and apply equally to all obligors as identified in the law. The Decision on KYC Procedure also outlines

further CDD requirements for banks; voluntary pension funds, financial leasing providers; and insurance companies, brokerages, agency companies and agents. There are only a few minor deficiencies, mostly stemming from the newness of the legislation. Competent authorities have yet to issue implementing measures for the AML/CFT Law and related guidance. In practice, there is awareness of the requirements and the application of due diligence measures, particularly in the banking sector. However, this compliance level does not cover the financial sector as a whole, since significant parts have not sufficiently implemented not only the due diligence controls of the AML/CFT Law, but also of the previous AML Law.

28. There were no requirements under the previous AML Law for financial institutions to determine whether a client is a politically exposed person (PEP) and apply enhanced measures, apart from the banking sector which was obliged to identify and apply enhanced measures to clients based on risk, which included PEP-s. The AML/CFT law covers comprehensively the requirements of Recommendation 6. Additional measures are required to ensure that Serbian financial institutions clearly understand and uniformly apply their obligations under the law to conduct enhanced on-going monitoring on business relationships with PEPs. Furthermore, training seminars and additional guidance on risk assessment would assist financial institutions outside of the banking sector in order to identify foreign officials and apply enhanced due diligence, per the new requirements of the AML/CFT Law.

29. As regards correspondent banking, prior to the AML/CFT Law, only banks were obliged to consider the AML/CFT regime of correspondents and there were no express requirements for all financial institutions to understand fully the nature of a respondent institution’s business or to determine the reputation of the institution and quality of supervision, including whether it has been subject to a ML or FT investigation or regulatory action. The AML/CFT Law sets out requirements for financial institutions to follow when establishing or maintaining LORO correspondent relationships. According to the current legal framework and practice, correspondent relationships do not involve the maintenance of “payable through accounts”. The banking sector demonstrated a clear understanding of the requirements of the AML/CFT Law, however financial institutions outside of the banking sector that conduct securities transactions or funds transfers demonstrated no implementation of Recommendation 7.

30. While the NBS Decision on Guidelines for assessing the risk of money laundering and financing terrorism introduce measures that require financial institutions to pay attention to money laundering and terrorism financing risks that may arise from the use of modern technologies that provide anonymity (e.g. ATMs, internet banking, telephone banking, etc) such requirements are not in place for certain financial institutions (licensed bureaux de change, investment fund management companies, persons dealing with postal communications, and broker-dealer companies).

31. The AML/CFT Law introduced the possibility for financial institutions to rely on third parties to perform CDD in specific cases. Until the Serbian authorities have determined in which countries financial institutions are permitted to reply on third parties, there can be no implementation of the respective provisions.

32. The AML/CFT Law grants adequate exceptions to Serbian secrecy requirements, particularly concerning financial institutions’ ability to report to Serbian authorities as required by the law. However the AML/CFT Law does not provide for the ability of financial institutions to share information with foreign financial institutions as part of their obligations under R.7 or R.9.

33. Record keeping requirements are comprehensively covered by the AML/CFT Law, the Law on accounting and auditing and relevant regulations. The financial institutions, unlike DNFBPs, appeared to be knowledgeable of their record keeping obligations and supervisors did not report any problems with timely access to customer and transaction records and information. However,

considering the limited number of inspections of financial institutions, in particular regarding non banking financial institutions, it was not possible to conclude that record-keeping requirements are effectively implemented by financial and non financial institutions.

34. Serbia has implemented some of the detailed criteria under SR. VII. However important gaps remain such as the absence of requirements for obtaining full originator information in the case of domestic payment transactions, verification of the identity of the originator in accordance with Recommendation 5, at least for all wire transfers of EUR 1.000 and more, the absence of sanctions applicable to money transfer businesses for their failure to meet the requirements of SR VII. Also there was no evidence on effective mechanisms available for ensuring compliance of money transfer businesses (particularly, PTT "Srbija") with SR .VII.

35. A number of requirements are in place for financial institutions to pay special attention to complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose, however these appear to be insufficient to meet the requirements of Recommendation 11 for all financial institutions.

36. Furthermore, requirements for financial institutions to examine as far as possible the background and purpose of transactions which have no apparent economic or lawful purpose, and make written findings available for authorities are not applicable to all financial institutions. Serbian authorities also need to keep up to date the list of countries that do not or insufficiently apply international standards.

37. The AML/CFT Law requires obligors to file a report to the APML whenever there are reasons for suspicion of money laundering or terrorism financing with respect to a transaction or customer, to develop a list of indicators to recognise persons and transactions with respect to which there are reasons for suspicion of ML or TF and to apply these lists of indicators when determining whether there are reasons for suspicion of ML or TF. There is no threshold for reporting suspicious transactions and the requirements includes the reporting of attempted (planned) suspicious transactions. Furthermore suspicious transaction reports should be filed regardless of whether they are thought, among other things, to involve tax matters. However, specific guidance on the legal definition of the reporting obligation should be provided to reporting entities, so as to prevent its possible restrictive interpretation, as well as further measures are required to ensure that obligors understand it in the broadest meaning of the AML/CFT Law and pertinent regulations/ guidelines.

38. While there has been a constant and significant increase in the number of submitted STR-s, around 97-99% of all STR-s have been filed by banks. However, along with a positive, growing dynamic of STR-s made by banks, there is a general perception of their low quality, which is indicative of an insufficient level of understanding and implementation of the reporting requirement by financial institutions, specifically non banking financial institutions. No STR-s have been made relating to suspicions on terrorism financing, which has been only introduced in March 2009.

39. The safe harbour provisions require further amendments in order to ensure that financial institutions are protected from criminal liability for breach of any restriction on disclosure of information if they report their suspicions in good faith to the APML and the scope of the tipping off provisions should be expanded to include the cases where an STR or related information is in the process of being reported. Adequate guidance should be also provided to financial institutions and employees so that they are aware of and sensitive to these issues when conducting CDD.

40. The guidance and feedback provided by the competent authorities to assist financial institutions in implementing their AML/CFT obligations is insufficient.

41. Serbia has considered the feasibility and utility of a currency transactions reporting system and upon considerations that the cash economy was a serious issue, it has decided to introduce a requirement for obligors to report any cash transaction amounting to RDS equivalent of EUR 15,000 or more, with a few exemptions for certain institutions and certain types of transactions. There is an uneven implementation of the cash transaction reporting requirements by obligors.

42. The main deficiency of the AML/CFT requirements for internal controls, compliance and audit is that financial institutions with less than four employees are exempted from designating a compliance officer. In addition, not all financial institutions have internal procedures, policies and controls to prevent ML and FT, training programs lack components on CFT; and not all financial institutions conduct audits that include an AML/CFT component. There are requirements in place to ensure the application of AML/CFT controls in foreign branches and subsidiaries of Serbian financial institutions.

43. Serbian law prohibits financial institutions from maintaining relationships with shell banks and ensuring correspondents do not allow accounts to be used by shell banks by requiring all correspondent relationships to apply the same level of AML/CFT controls as Serbian banks. While Serbian law does not expressly prohibit the creation or continued operation of shell banks, the NBS requires such stringent identifying information when incorporating a bank in Serbia, that it could be concluded that shell banks were not operating within the country.

44. In Serbia, competence for the supervision of compliance with the national AML/CFT requirements does not lie with a single authority.

45. Article 82 of the AML/CFT Law designates as many as eleven bodies, which are empowered to exercise supervision over implementation of the Law, including :
    - the APML (in the capacity of the national financial intelligence unit),
    - the National Bank (in the capacity of supervisor for banks, exchange bureaus, insurance companies, insurance brokerage companies, insurance agency companies and insurance agents with a license to perform life insurance business, companies for the management of voluntary pension funds, and financial leasing providers);
    - the Securities Commission (in the capacity of supervisor for investment fund management companies, broker-dealer companies, as well as banks licensed by the Commission for doing custody and broker-dealer business);
    - the Ministry of Finance (in the capacity of supervisor for persons dealing with postal communications [with respect to domestic payment operations] and for persons involved in professional activities of intermediation in credit transactions and provision of loans, factoring and forfeiting, provision of guarantees, and provision of money transfer services),
    - the Ministry of Telecommunications and Information Society (in the capacity of supervisor for persons dealing with postal communications [with respect to valuable mail operations],
    - the Foreign Currency Inspectorate (in the capacity of supervisor for persons involved in professional activities of factoring and forfeiting, and provision of money transfer services [with respect to international payment transactions]).

46. None of the sectoral laws provide directly for regulatory and supervisory powers of the mentioned bodies to ensure that financial institutions adequately comply with the requirements to combat money laundering and terrorist financing.

47. Serbian legislation defines a licensing procedure for all to-be-established financial institutions, and for those subject to the Core Principles the "fitness and properness" of management members is tested against specific criteria. However, for certain types of financial institutions the licensing/registration procedures are either non-existent, or non-functional (particularly, the PTT

"Srbija"). In terms of supervisory tools such as the planning and methodology of supervision, apart from banking supervision, all other supervisors lack well-defined and appropriately tailored instruments for the risk-based surveillance and examination of obligors both for prudential and for AML/CFT compliance.

48. The supervisory mandate of the financial supervisors is rather comprehensive and encompasses powers for general regulation and supervision, with instrumentalities such as off-site surveillance and on-site inspections, unhindered access to all records, documents, and information relevant to monitor compliance of supervised entities with applicable legislation, and enforcement and sanctioning tools.

49. Results of supervision vary throughout supervisory bodies and among types of financial institutions. In general, over the last four years of implementation of the AML/CFT legislation the whole system initiated as many as 30 AML/CFT-related inspections, which resulted in less than 30 supervisory measures such as written warnings, ordering letters, and resolutions on orders and measures, and in an unclear amount of pecuniary sanctions.

50. The AML/CFT Law directly and the respective sectoral laws indirectly establish both administrative and pecuniary sanctions for the failure to meet the requirements of the AML/CFT obligations. Infringements of the AML/CFT law are either economic offences or minor offences, and for such infringements, supervisors are obliged to refer the case to law enforcement bodies for prosecution. However, no sanctions are envisaged in case of violating provisions of certain requirements (eg. obligors' obligation to perform enhanced CDD in case of estimated high level of ML/FT risks; to ensure that the tasks of compliance officers and their deputies are carried out by persons meeting certain requirements; the prohibition for employees of obligors to tip off, etc).

51. The AML/CFT Law does not provide for any sanctions with regard to directors/senior management of financial institutions and businesses for their failure to abide by national AML/CFT requirements. Various pieces of legislation establishing enforcement and sanctioning powers of supervisory bodies contain provisions that indirectly provide for sanctioning directors/senior management of institutions for non-adherence to the requirements of national AML/CFT legislation.

52. Administrative sanctions are, although indirectly and not clearly in all cases, available under various sectoral laws governing activities of financial institutions and businesses. Usually they include supervisory measures such as: written warning, ordering letter; orders and measures to remove irregularities; order for temporary prohibition on performing all or particular activities specified in the working license, for a certain period; measures against management members, members of the supervisory board, key functionaries (in some cases, against qualified stakeholders); institution of proceedings before a competent authority; receivership; revocation of operating license of institution. In addition, some sectoral laws also provide for imposing pecuniary sanctions on obligors, which in practice leads to imposing a sum total of fines for all irregularities, including those related to AML/CFT.

53. It is considered that the distribution of sanctioning powers between supervisory bodies (NBS, Securities Commission, different ministries) – in respect to administrative and, in some cases, pecuniary sanctions available under various sectoral laws, and law enforcement bodies (prosecutors and courts) – in respect to pecuniary sanctions available under the AML/CFT Law, does not provide for an effective mechanism for a dissuasive application of the sanctions within the AML/CFT context.

54. In regards to money and value transfer services (MVT) only banks and in some cases the Post Office which may conduct international remittances. Serbia's compliance in this aspect is linked to compliance with other recommendations applicable to financial institutions. Under the

AML/CFT, the Ministry of Telecommunications and Information Society has become the competent supervisor authority, but the Post Office has not yet been subject to AML/CFT supervision. There is no requirement for MVT service operators to maintain a current list of its agents which must be made available to the designated competent authority

4. Preventive Measures – Designated Non-Financial Businesses and Professions

55. The AML/CFT Law covers the following categories of DNFBP-s:

1) organisers of special games of chance in casinos;
2) organisers of games of chance operated on the Internet, by telephone, or in any other manner using telecommunication networks;
3) auditing companies;
4) licensed auditors;
5) entrepreneurs and legal persons exercising the following professional activities:
    a. intermediation in real-estate transactions;
    b. provision of accounting services;
    c. tax advising;
6) lawyers and lawyer partnerships.

56. DNFBPs are subject to the same requirements as financial institutions under the AML/CFT Law. Trusts and company service providers are not considered obligors under either the previous AML Law or the AML/CFT Law as domestic trusts cannot be established in Serbia. Dealers in high value goods such as metals or stones were subject to the controls set out in the previous AML Law; however they were excluded as obligors from the AML/CFT Law because they are forbidden from engaging in cash transactions that exceed the amount of 15,000 Euros. Notaries are unknown to the Serbian legal system.

57. Many of the deficiencies with the compliance of FATF Recommendations are the same for obligor -DNFBP-s as they are for financial institutions. Overall, the DNFBP sector demonstrated little awareness and understanding of obligations under the AML/CFT Law or of the previous AML Law. In particular, while the casino applied some CDD measures, it was not apparent that other operators of games of chance or any other DNFBP-s applied any CDD measures. There is no bylaw or regulation that requires DNFBP-s to screen employees to ensure a high quality of staff.

58. The deficiencies of the reporting regime impact on obligor DNFBP-s and lawyers. There are no lists of indicators developed by the APML and to be taken as basis by obligor DNFBP-s and lawyers for developing their own lists of indicators and none of DNFBP-s and lawyers have ever developed their own lists of indicators, or have been supervised for controlling compliance with the respective requirements of the law. Casinos, accountants/auditors, and lawyers have not filed a single STR either related to money laundering or terrorist financing over the whole period of implementation of the AML legislation since 2002.

59. Competent authorities entrusted with supervisory functions over compliance of DNFBP-s with the AML/CFT Law and with the task of guiding the obligors so as to ensure such compliance, are the Ministry of Finance (supervising activities of audit companies), the Tax Administration (supervising persons involved in provision of accounting services and tax advising), the Administration for Games of Chance (supervising casinos and organizers of games of chance operated via telecommunication networks), the Ministry of Trade and Services (supervising persons involved in real estate transactions), the Bar Association (supervising activities of lawyers), and the Chamber of Certified Auditors (supervising activities of licensed auditors). None of these authorities have provided any guidance or guidelines to their supervised entities on the matters relating to ML/FT and the effective implementation of the national (and international) framework.

60. There is a lack of AML/CFT supervision of DNFBPs. The current regulatory and supervisory regime applicable to gambling institutions needs to be reviewed in order to ensure that casinos are subject to and effectively implementing the AML/CFT measures required under the FATF recommendations.

61. Furthermore, as regards casinos, sanctions available under both the AML/CFT Law and the Law on Games of Chance do not appear to set out an effective sanctioning regime. The legislation in force does not define measures aimed at preventing individuals with a criminal background from acquiring or becoming the beneficial owner of a significant or controlling interest, holding a management function in, or being/becoming an operator of a casino.

62. There was limited information on the legislative provisions establishing regulatory, supervisory, and sanctioning powers of the above-mentioned bodies, as well as on the powers for applying sanctions in case of non compliance of auditing companies, licensed auditors, lawyers and lawyer partnerships, persons exercising professional activities of intermediation in real estate transactions, accounting as well as on technical and other resources of these bodies. There are no results of AML/CFT supervision of DNFBPs.

63. It was thus concluded the Serbian authorities have not taken effective measures to ensure compliance of auditing companies, licensed auditors, lawyers and lawyer partnerships, dealers in precious metals and dealers in precious stones, persons exercising professional activities of intermediation in real estate transactions, accounting, and tax advising, with the national AML/CFT requirements.

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64. The Serbian authorities need to conduct sector-specific assessments of MT and FT risk posed by other non-financial businesses and professions, and based on those results, consider extending the requirements of the AML/CFT law to additional obligors.

5. Legal Persons and Arrangements & Non-Profit Organisations

65. The Serbian authorities have put in place a system of central registration for business entities. The Register of business entities is "a unique, central, public electronic database about business entities, established in the territory of the Republic of Serbia. The Register is managed by the Serbian Business Registers Agency (SBRA), through its Belgrade Head office and 12 branch offices throughout Serbia. It became operational as of 1 January 2005. Due to the lack of information on measures taken to ensure that the data is accurately kept in the registers and on sanctions applied so far, it remains uncertain whether the existing system achieves adequate transparency regarding the beneficial ownership and control of all legal persons.

66. In regard to non profit legal entities, there is no central system for registration and these are registered either in the Register of associations, social organisations and political organisations; in the Register of associations and social organisations; in the Register of foreign associations or in the Register of Legacies, Foundations and Funds, depending on the legal basis according to which they operate. The laws and mechanisms in place do not require adequate transparency concerning the beneficial ownership and control of non profit legal entities. Furthermore, it was not demonstrated that the mechanism in place ensures that information registered is adequate, accurate and up to date nor that competent authorities are able to obtain in a timely fashion such information on the beneficial ownership and control of these entities.

67. In the Serbian legal framework, trusts or other similar legal arrangements do not exist. Recommendation 34 is not applicable.

68. Serbia has not reviewed the adequacy of domestic laws and regulations that relate to non profit organisations aimed at identifying the features and types of NPO-s that are at risk of being misused for terrorist financing by virtue of their activities or characteristics nor has conducted

periodical reassessments by reviewing new information on the sector's potential vulnerabilities to terrorist activities nor has implemented any of the requirements of Special Recommendation VIII.

69. There are no measures to raise awareness in the NPO sector about risks and measures available to protect them against such abuse. Legal requirements need to be introduced to ensure that NPOs maintain information on the identity of person(s) who own, control or direct NPOs activities, including senior officers, board members and trustees and that such information, as well as data on the purpose and objectives of the NPOs activities should be publicly available. Furthermore, there are no legal requirements in place for NPOs to maintain for a period of at least 5 years records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a consistent manner with the purpose and objectives of the organisation and to make them available to appropriate authorities.

6. National and International Co-operation

70. Since the last evaluation, Serbia has taken steps towards enhancing co-operation between the various authorities. Policy level co-ordination and co-operation between all the agencies involved in the AML/CFT efforts was undertaken in the context of the work of the Permanent Coordinating Group, which resulted in the adoption of several important policy and legal proposals, and following the adoption of the AML/CFT Strategy, through the Standing Co-ordination Group for Monitoring the Implementation of the National Strategy against Money Laundering and Terrorism Financing established by a Government decision of 9 April 2009.

71. The authorities have reviewed the effectiveness of the system for combating money laundering in the context of the preparation of the National Strategy against Money Laundering and Terrorism Financing which was drafted in the course of 2007 and adopted on 25 September 2008. Further reviews will be undertaken under the scope of activities of the Standing Co-ordination Group, which is responsible for monitoring the implementation of the strategy. Current efforts should be pursued to develop the strategic and collective review of the performance of the AML/CFT system as a whole.

72. As regards operational co-operation, the situation has improved as of 2008, with a number of successes in handling specific cases. In particular, all operational bodies, supervisory authorities and the APML have formally appointed liaison officers in order to facilitate such co-operation. The AML/CFT law also includes a number of provisions requiring relevant States bodies and agencies to cooperate and provide specific data to the APML on information deriving from their supervisory functions, if they establish or identify, while executing tasks within their competence, facts that are or may be linked to ML or FT. Agreements on co-operation have been signed by the APML with the NBS and with the Customs Administration. Co-operation on the basis of these agreements appeared to be satisfactory.

73. The Republic of Serbia has signed and ratified the Vienna Convention, the Palermo Convention and its additional protocols and the Terrorist Financing Convention. There remain certain gaps in the implementation of the provisions such as in particular the criminalisation of FT offence, the freezing and confiscation mechanisms, as well as the measures to address the requirements under S/RES 1267 (1999) and successor resolutions and S/RES 1373 (2001) and successor resolutions.

74. Serbia has ratified a number of international conventions, which create a thorough legal basis for international co-operation in criminal matters and has signed an important number of bilateral agreements. In the absence of an international treaty or where certain aspects are not regulated by treaty, mutual legal assistance is extended in conformity with the provisions of the Law on Mutual Legal Assistance in Criminal Matters (in force from 28 March 2009), the Criminal Procedure Code (which provides for the direct application of the Strasbourg Convention (CETS No. 141), and of the Vienna Convention in relation to criminal offences with elements of organised crime)

and of the Law on Seizure and Confiscation of the Proceeds from Crime in relation to specific criminal offences.

75. Serbia is able to provide a broad range of mutual legal assistance both on the basis of the provisions of internationally ratified treaties and also in the absence of such treaties, based on the provisions set out in the national legislation. The applicable conditions do not seem to unduly or unreasonably restrict the provision of mutual legal assistance. The Ministry of Justice is the designated central authority under the Strasbourg Convention. With respect to the European Convention on Mutual Assistance in Criminal Matters and the second additional protocol, the authorities declared that regular courts and the State Prosecutors' Offices are to be considered as judicial organs. Additional authorities are competent for specific measures: the Republic Office of the Prosecutor (article 17 – cross border observations, article 18 – controlled deliveries, article 19 – covert investigations), and the Ministry of Interior (article 17 – cross border observations, article 19 – covert investigations).

76. For a better provision of mutual legal assistance, it was recommended that a system be put in place to monitor the quality and speed of executing requests and to set out explicitly clear timeframes in which MLA requests have to be handled. Also, Serbia should consider lifting the dual criminality requirement for less intrusive and non compulsory measures and clarify whether the application of dual criminality may limit its ability to provide assistance in certain situations, particularly in the context of identified deficiencies with respect to the FT offence.

77. Additionally, as regards providing extradition related assistance, the recently enacted legislation and information provided did not enable an assessment of the effectiveness of the extradition procedure. The evaluation team advised that in cases of non-extradition of its own citizens, the Serbian authorities should ensure that internal criminal proceedings are instituted efficiently and in a timely manner and take steps to improve the overall effectiveness of the extradition framework, develop general reference materials, models forms and circulars or practical guidelines which cover practical aspects of extradition and issue commentaries on the existing legal provisions.

78. A thorough review of the legal framework which governs international co-operation and information exchange of other competent authorities (law enforcement and supervisory bodies) is required, with relevant amendments as appropriate to the existing laws governing the scope of action of all competent financial sector and non financial sector supervisory authorities, in order to ensure that they allow the widest range of co-operation and that these bodies can exchange information both spontaneously and upon request in line with the FATF standards under Recommendation 40, without subjecting such co-operation to disproportionate or unduly restrictive conditions.

7. Resources and Statistics

79. Not all required statistics are kept by the relevant Serbian authorities and the collective review of the performance of the system as a whole and risk assessment of the various sectors in relation to ML and FT risks need development.

80. Additional measures should be taken by the authorities to adequately fund and staff the APML. There remained concerns regarding the operational autonomy and independence of the prosecution service to ensure freedom from undue influence or interference as well as the framework applicable to law enforcement and prosecution to ensure that they are required to maintain high professional standards, including high integrity, and be appropriately skilled. In regards to human and technical resources, a particular concern was that the judicial system and specialised law enforcement services as a whole experienced a heavy workload - some of them due to the lack of sufficient human resources (unoccupied posts, high turnover) and lack of sufficient technical (premises, equipment etc) resources, to fully and effectively perform their functions. Also,

information provided by supervisory bodies did not enable the evaluation team to conclude on the adequacy or sufficiency of such resources. Additional requirements are necessary in providing for professional standards, including confidentiality and integrity requirements and expertise/skills of the staff of the supervisory bodies. Lack of training is a major problem throughout all supervisory bodies and needs to be addressed.

81. In the light of the information received, it appears that the resources allocated to relevant authorities should be increased in order to ensure that they have the capacity to adequately perform their functions.

III. MUTUAL EVALUATION REPORT

1 GENERAL

1.1 General Information on the Republic of Serbia

1. The Republic of Serbia is located in the central part of the Balkan peninsula of South-eastern Europe, sharing borders with Bulgaria in the East, with Romania and Hungary in the North, with Croatia in the northwest, with Bosnia and Herzegovina and Montenegro in the West, with Albania and "the former Yugoslav Republic of Macedonia" in the South. It is placed at the crossroads between central, southern and eastern Europe, on the main routes which connect western Europe with Turkey and the Middle East. It has a territory of 88 361 square kilometres and a population of about 7 498 002 inhabitants (2002 census), among which approximately 1.6 million live in the capital, Belgrade. The official language is Serbian and the script in official use is Cyrillic, while Latin script is also used. The Dinar (RSD) is the official currency in Serbia[1].

2. Serbia was one of the six republics which constituted the Socialist Federal Republic of Yugoslavia. From 2003 to 2006, Serbia was part of the State Union of Serbia and Montenegro, into which the Federal Republic of Yugoslavia (FRY) had been transformed. Following Montenegro's declaration of independence after a referendum in May 2006, and the dissolution of the State Union, Serbia continued the membership in the international organisations and remained bound by the commitments deriving from international treaties concluded by Serbia and Montenegro.

3. The Republic of Serbia is a member of the Council of Europe, of the United Nations, the Organisation for Security and Cooperation in Europe, the International Monetary Fund, the World Bank, and Interpol. Serbia is a potential candidate country for EU accession. On 29 April 2008, Serbia signed a Stabilisation and Association Agreement and an Interim Agreement on trade related measures with the EU. Furthermore, Serbia supports and participates in various regional cooperation fora such as the South-East Cooperation Process (SEECP), the Stability Pact for South-Eastern Europe (SP), the Central European Initiative (CEI), the Adriatic-Ionian Initiative (AII), the South-East Cooperative Initiative (SECI), the Danube Cooperation Process, the Black Sea Economic Cooperation and Sava Commission.

Economy

4. Serbia had the 73rd largest economy in the world in 2008 according to the International Monetary Fund, with Gross Domestic Product (GDP) valued at 50,061 millions USD. The World Bank classified Serbia as an "upper middle income "country based on a per capita Gross national Income of 5,700 USD ranking 78th in the world on this measure. The average monthly net wage amounted to RSD 32,746 in 2008.

5. The Serbian economy has been growing strongly over the past couple of years. In the 2005-2007 period, the average annual GDP growth amounted to 6.2%, however in 2008 it decelerated to 5.4% in the context of the impact of the global economic crisis. Sectors influencing the growth of the GDP are: transport sector, financial intermediation sector, trade sector, and industry sector. The share of the private sector remains between 55 and 60% of the total output. Total inflation, cumulatively from December 2007 to the end of October 2008 reached 8% and was affected by a 9% increase of the base inflation. According to the Statistical Office of the Republic of Serbia, in the period January – September 2008 the external trade grew by 38.4% (external trade of USD 26,730 millions), main export partners including Montenegro, Bosnia and Herzegovina, Germany. Foreign investments in the period January – September 2008 amounted to EUR 1.6 billion. At

[1] Indicative exchange rate on 06/05/2009 : 1 Euro = 95 Dinars.

end-2008, Serbia's overall external debt was USD 30,708.2 million or EUR 21,801 million[2]. For further information, see Annex IV – Basic macroeconomic indicators.

6. As regards the business environment, Serbia has implemented economic reforms to liberalise the economy and has simplified procedures for registration of companies and corporate forms. Overall, the business environment was assessed as having much improved relative to a few years ago, but surveys continue to reveal significant barriers to doing business, including corruption.

System of Government

7. Serbia is a parliamentary representative democratic republic. The current Constitution of the Republic of Serbia was adopted on 30 September 2006 and entered into force on 8 November 2006. The President is directly elected for a term of 5 years. Its functions include the promulgation of laws and proposing candidates for Prime Minister to the National Assembly. The executive power rests with the Government, which consists of the Prime Minister, one or more Vice Presidents and ministers. Ministers are nominated by the Prime Minister and confirmed by the National Assembly.

8. The National Assembly is a unicameral legislative 250-seat body, whose members are directly elected for four-year terms. Among its powers it ratifies international treaties, grants amnesty for criminal offences, enacts laws and other general acts within the competence of the Republic of Serbia. Within its election powers, it elects the Government, appoints and dismisses judges of the Constitutional Court, appoints the President of the Supreme Court of Cassation, presidents of courts, Republic Public Prosecutor, public prosecutors, judges and deputy public prosecutors, in accordance with the Constitution. Every member of the National Assembly, the Government, assemblies of autonomous provinces or at least 30,000 voters have the right to propose laws, other regulations and general acts.

Legal system and hierarchy of laws

9. The Constitution is the supreme legal act of the Republic of Serbia. All laws and other general acts enacted in the Republic of Serbia must be in compliance with the Constitution. Ratified international treaties and generally accepted rules of international law shall be part of the legal system of the Republic of Serbia. Ratified international treaties may not be in non-compliance with the Constitution. Laws and other general acts enacted in the Republic of Serbia may not be in non-compliance with the ratified international treaties and generally accepted rules of the International Law (article 194 of the Constitution).

10. At the time of the on-site visit, courts which exercise jurisdiction in criminal matters in the Republic of Serbia are:

- the Municipal Courts: first instance court for criminal offences sanctioned by fine or imprisonment of maximum 10 years.
- the District Court: first instance court for offences carrying a sentence of more than 10 years imprisonment and also specific offences (e.g. disclosing a state secret). It also conducts proceedings for surrender of accused and convicted persons, enforces criminal verdicts of foreign courts, decides on recognition and enforcement of foreign judicial and arbitration decisions.
- Court of Appeal: hears appeals against decisions of district courts and against decisions of municipal courts in criminal proceedings.
- the Supreme Court: decides on regular and extraordinary legal remedies against decisions of courts.

[2] 2008 Annual Report of the National Bank.

11. The judicial system underwent a major reform with the adoption of a new set of laws in 2008 (Law on the High Court Council, Law on the State Prosecutorial Council, Law on Judges, law on Public Prosecutors, law on the Organisation of Courts, Law on Seats and Territories of Courts and Public Prosecutor's Offices).

Transparency, good governance, ethics and measures against corruption

12. Serbia ranks 85th out of 180 countries in the 2008 Transparency International Corruption Perception Index, as opposed to 79th in the 2007 one. Serbia is a party to the United Nations Convention against Corruption, and to the Council of Europe's criminal law and civil law conventions on corruption[3]. The latter has been ratified and came into force on 1 May 2008. The Group of States against Corruption (GRECO) adopted the joint first and second round evaluation report[4] on Serbia in June 2006 followed by a compliance report[5] in June 2008. The findings of the report acknowledged that Serbia had taken important steps in the right direction, in particular as regards the reform of the judiciary to increase independence and impartiality of judges and prosecutors, the promotion of specialisation of law enforcement bodies in the fight against corruption, enhancing transparency in public administration. Out of 25 recommendations, half were partly implemented and implementation challenges laying ahead concerned the establishment, capacities and full operation of a number of key monitoring/oversight bodies, notably the Anti-Corruption Agency, the Ombudsperson, and the State Audit Agency.

13. The Serbian Government adopted a National anti-corruption strategy in December 2005 and its implementation action plan in December 2006. The 2005 Criminal Code criminalises active and passive bribery of domestic and foreign officials and within the private sector (articles 367 and 368), with sanctions ranging from 2 to 15 years imprisonment for passive bribery and from 6 months to 5 years for active bribery. In October 2008, Serbia adopted several relevant legal acts, among which the Law on the anti-corruption agency, amendments and additions to the Law on the financing of political parties and the Law on liability of legal persons for criminal offences. The implementation of the law on the Anti-corruption agency was postponed to 2010. According to the statistics provided, in the period 2004-2008, 513 criminal reports were filed on the basis of these 2 articles involving 727 persons.

14. Serbia undertook a broad reform of its judiciary with the adoption of a set of judicial laws in December 2008, including laws on the High Judicial Council, on judges, on the organisation of courts, on the State Prosecutorial Council and on the public prosecution service. Two new bodies, the High Judicial Council and the State Prosecutorial Council, which were established in April 2009, are responsible for the election and promotion of judges and prosecutors and for defining criteria and implementing reappointment procedures for judges and prosecutors. These laws introduce a number of measures aimed at strengthening the ethical and professional requirements for judges and prosecutors, however a number of concerns were raised in various fora with respect to the fact that these acts did not sufficiently support judicial independence, the autonomy of the prosecution service and left room for political influence. The backlog of civil, criminal, commercial and administrative cases and the enforcement of judgements remain an issue of concern.[6]

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[3] Law on confirmation of Criminal Law Convention on Corruption (SRJ Official Journal – International Treaties No. 18/2005), Law on Confirmation of additional Protocol to the Criminal Law Convention on Corruption (RS Official Journal – International Treaties No. 102/2007), Law on confirmation of civil law Convention on Corruption (RS Official Journal – International Treaties No. 102/2007),

[4] http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval1-2(2005)1rev_Serbia_EN.pdf

[5] http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC1&2(2008)1_Serbia_EN.pdf

[6] See European Commission's progress report on Serbia and the Council of Europe's European Commission for Democracy through Law opinions (2009).

15. The current law on accounting and audit was adopted on 2 June 2006 and led to the creation of two bodies: the Chamber of Certified Auditors and the National Accounting Committee. No additional information was made available to the evaluation team regarding ethical and professional behaviour requirements for professionals such as accountants and auditors, and lawyers.

1.2 General Situation of Money Laundering and Financing of Terrorism

16. Owing to its geographical location in the Balkans, the transition and the impact of the past regional conflicts, there is ample evidence of proceeds generating crimes. Serbia was listed under the category "country of concern" for money laundering in the 2009 International Narcotics Control Strategy Report.

17. According to the authorities, organised criminal groups from Serbia establish functional relations with other similar foreign groups, in particular from neighbouring countries, including "the former Yugoslav Republic of Macedonia", Montenegro, Bosnia and Herzegovina, Croatia, Romania and Bulgaria, primarily in order to execute joint plans using the international routes for drug trafficking ("the former Yugoslav Republic of Macedonia", Montenegro, Bosnia and Herzegovina, Croatia, Bulgaria), illegal migration (Romania, Bosnia and Herzegovina, Croatia), money counterfeiting (Bulgaria, Bosnia and Herzegovina) and illegal arms trade (Bosnia and Herzegovina). The money for these services is transferred and paid in cash, through couriers and Western Union. The most significant forms of organised crime are organised trafficking and smuggling in narcotic drugs, directed towards western Europe, while small quantities remain on the domestic drugs market. In the period 2004-2008, the quantity of seized narcotic drugs was 60% higher than in the previous 5 years. Human trafficking and human smuggling also represent one of the most profitable organised crime forms. Other organised forms of crimes include vehicle theft (as an international organised criminal activity), weapons smuggling, counterfeiting of money, falsification of documents, securities and payment cards, smuggling of cigarettes and other accise goods. Proceeds are reinvested in the purchase of business companies (privatised ones), real estate, luxurious cars and also used for the purpose of lending money with high interest rates.

18. The most frequent forms of general crime are the criminal acts against property (60%), followed by minor general criminal acts and criminal acts. As in other countries in the region, economic crimes are characterised by rather serious and complex criminal acts, particularly in the banking operations, external trade and privatisation process. The most widespread form of economic crime is various forms of the abuse of office in all spheres of economic operations. There are also abuses in the trade of accise goods and consumable, fraud in economic transactions, different forms of tax evasion.

19. The following statistics were provided by the authorities (Ministry of Interior and Ministry of Justice):

Table 1. Structure of predicate offences (during preliminary investigations)[7]

	2004/2005	2006	2007	2008 (Jan-Oct)
Abuse of office (art 359)	1	23	84	75
Official document forgery (art 357)		11	26	43
Human trafficking – organised criminal group		1		
Criminal association (art 346)		9	1	3
Document forgery (art 355)	1	13		1
Abuse of authority in economy (art 238)	2	2	2	3
Fraud (art 208)			9	

[7] Statistics provided by the Ministry of Interior

Smuggling (art 230)			1	
Illegal trade (art 243)	2		1	6
Tax evasion (art 229)			4	10
Unauthorized use of copyright work or objects of related rights (art 199)			1	
Damage to the creditor				1
Membership in a group of perpetrators of a criminal offence (art 349)				2
Incitement to certify a false content (art 358)				1
Receiving of a bribe				1
Offering of a bribe				1
Art 172 of the law on tax procedure and taxation administration	2			
Aggravated larceny	1			
Vehicle theft	1			
Money counterfeiting	1			
Kidnapping	1			
Other criminal offences			13	2
TOTAL	**12**	**59**	**142**	**149**

Table 2. Structure of possible predicate offences[8]

	2005	2006	2007	2008
Offences against the economy				
Criminal report	5402	4234	4576	4899
Dismissal of report	1488	980	855	749
Investigation	931	1522	2110	2370
Indictment	788	2205	2071	2579
Condemning judgment	2783	1456	1320	1370
Offences against official duty				
Criminal report	7241	8219	7511	7334
Dismissal of report	3064	3621	3241	2965
Investigation	3364	3110	3158	3188
Indictment	2506	2429	2343	2378
Condemning judgment	1294	1208	1182	1221
Offences against property				
Criminal report	26070	26481	24925	27869
Dismissal of report	5567	5885	5383	5569
Investigation	15987	10532	10457	11876
Indictment	13920	15091	13678	16121
Condemning judgment	10177	10164	9374	11442
Offences against human health (narcotics, art 246 & 247 CC)				
Criminal report	-	5263	5308	5501
Dismissal of report	-	238	103	190
Investigation	-	1631	1771	1926
Indictment	-	4896	4904	4749
Condemning judgment	-	4054	4050	5670
Abuse of office (article 359 CC)				
Criminal report	2791	2750	2675	2661
Indictment	947	1116	950	966
Condemning	459	606	524	514

[8] Statistics provided by the Ministry of Justice indicate data on any criminal offences as a result of which proceeds were generated that may become the subject of a money laundering offence.

judgment				
Human Trafficking (388 CC)				
Criminal report	-	72	78	94
Dismissal of report	-	6	5	4
Investigation	-	55	66	63
Indictment	-	28	56	57
Condemning judgment	-	23	12	174

20. The authorities have not conducted a comprehensive study on the methods, techniques and trends that have been observed regarding money laundering or terrorist financing. According to the information received, in terms of money laundering, most of laundered proceeds originate from tax evasion. The most common predicate offence is "abuse of office". Perpetrators of these crimes are mainly persons with experience in business and economics. The authorities explained that profit deriving from business activities is usually transferred from firms through fictitious domestic, foreign or offshore companies by using fictitious invoices where service or transfer of goods have never been carried out. Then the money is returned to Serbia in cash, where the legalization takes place. Fraudulent activities, unlawful privatisation and different activities of corruption can be also linked to situations of money laundering.

21. As regards the financing of terrorism, the 2008 National Strategy against ML and FT refers to organised criminal group activities in Kosovo in the 1990s as well as to the presence of the Wahhabi movement members in the Raska district, financed with foreign donations delivered in cash via a courier. There have been no criminal reports filed regarding FT according to the statistics provided and there are no confirmed cases of terrorist financing in Serbia to date.

1.3 Overview of the Financial Sector and Designated Non-Financial Businesses and Professions (DNFBP)

1.3.1 Financial Sector

22. The table below indicates what types of financial institutions in Serbia conduct the financial activities that are specified in the Glossary of the FATF 40 Recommendations.

Table 3. Financial Activities listed in the Glossary of the 40 Recommendations which are conducted by financial institutions in Serbia

Financial activity		Type of financial institution	AML/CFT	
			Regulator	**Supervisor**
1.	Acceptance of deposits and other repayable funds from the public	Banks	NBS	NBS
2.	Lending	Banks	NBS	NBS
3.	Financial leasing	Financial leasing companies	NBS	NBS
4.	The transfer of money or value	Banks Post Office[9]	NBS MoF MoTIS FCI (MoF)	NBS MoF MoTIS FCI (MoF)

[9] Pursuant to Article 84 of the AML/CFT Law, the Serbian Post Office (PTT "Srbija") is supervised by the Ministry of Finance [with respect to domestic payment operations], by the Ministry of Telecommunications and Information Society [with respect to valuable mail operations], and by the Foreign Currency Inspectorate of the Ministry of Finance [with respect to international payment transactions].

5.	Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	Banks	NBS	NBS
6.	Financial guarantees and commitments	Banks	NBS	NBS
7.	Trading in:(a) money market instruments (cheques, bills, CDs, derivatives etc.);(b) foreign exchange; (c) exchange, interest rate and index instruments;(d) transferable securities; (e) commodity futures trading	Banks, broker-dealer companies, companies for investment fund management, voluntary pension funds management companies	NBS MoF SEC	NBS SEC
8.	Participation in securities issues and the provision of financial services related to such issues	Banks	NBS	NBS
9.	Individual and collective portfolio management.	Banks, broker-dealer companies, companies for investment fund management, voluntary pension funds management companies	NBS MOF SEC	NBS SEC
10.	Safekeeping and administration of cash or liquid securities on behalf of other persons	Banks	NBS	NBS
11.	Otherwise investing, administering or managing funds or money on behalf of other persons	Banks, broker-dealer companies, companies for investment fund management, voluntary pension funds management companies management	NBS MoF SEC	NBS SEC
12.	Underwriting and placement of life insurance and other investment related insurance	Insurance companies	NBS	NBS
13.	Money and currency changing	Banks/Bureaus de change	NBS	NBS

23. The Serbian financial sector comprises:
   - Banks (including services offered at Post Offices)
   - Bureaus de change
   - Management Fund companies
   - Investment funds
   - Voluntary pension Fund management companies
   - Insurance companies, insurance brokerages, insurance agency companies, and insurance agents possessing a license to perform life insurance.
   - Financial leasing companies

Table 4. Financial Sector Structure [1]

	2006	2007	2008	May 2009
Number of financial institutions	70	79	84	84
Banks	37	35	34	34
Insurance companies	17	20	24	24
Leasing companies	15	17	17	17
Voluntary pension funds management companies	1	7	9	9
Number of employees	36,429	40,617	44,789	44,761
Banks	28,092	30,246	32,342	31,761
Insurance companies	7,876	9,697	11,713	12,288
Leasing companies	388	478	516	514
Voluntary pension funds	73	196	218	198

management companies				
% of total financial sector assets				
Banking sector	90.5	90.2	89.3	89.3
Insurance sector	4.3	4.1	4.3	4.7
Financial leasing sector	5.2	5.5	6.2	5.8
Voluntary pension funds	0.02	0.18	0.23	0.3

Source: NBS

[1.] *Including only financial sector segments under the supervision of the NBS.*

Banks

24. The core of Serbia's financial sector is dominated by banks, which account for about 90% of the total financial sector assets. Thirty four banks were operating as of December 2008, the 5 largest banks in terms of assets accounting for 46.2 % of the total banking sector.

Table 5. Network of banks

Network of banks	**2006**	**2007**	**2008**	**May 2009**
No. of business units	82	80	70	70
No. of branches	413	519	588	586
No. of branch offices	1,387	1,544	1,763	1,756
No. of teller units	276	258	256	262
No. of agencies		33	33	32
No. of Regional's centers				4
Total	**2,158**	**2,434**	**2,710**	**2,710**

25. Foreign ownership dominates among the largest 15 Serbian banks, especially from Italy, Greece, Austria and Germany (see tables below). As regards their ownership:
    - 20 banks were in majority foreign ownership (hereinafter referred to as foreign banks),
    - 8 banks were in the majority ownership of the Republic of Serbia[10] (hereinafter referred to as state-owned banks),
    - 6 banks were in the majority ownership of domestic natural persons and legal entities (hereinafter referred to as private banks).

Table 6. Market shares in terms of ownership (%)

	31.12.2006.	**31.12.2007.**	**31.12.2008.**	**31.05.2009**
Market shares in balance sheet totals:				
Foreign banks	78,6	75,5	75,3	74,0
State owned banks	14,9	15,8	16,0	17,0
Private banks	6,5	8,7	8,7	9,0
Market shares in credit activity				
Foreign banks	77,7	72,9	75,2	74,5
State owned banks	15,0	16,6	15,4	16,3
Private banks	7,3	10,5	9,4	9,2
Market shares in deposit potential				
Foreign banks	76,1	73,2	71,8	70,2
State owned banks	18,0	18,6	19,2	20,6
Private banks	5,9	8,2	9,0	9,2

[10] Banks in which the RS is the largest majority or individual, direct or indirect shareholder.

Table 7. Market shares of foreign banks in terms of countries (%)

								31.12.2008.
COUNTRY	**Shares in balance sheet**		**Shares in loans**		**Shares in deposit potential**		**Shares in loans from abroad**	
	foreign banks	all banks	foreign banks	all banks	foreign banks	all banks	foreign banks	all banks
Italy	26.2	19.7	25.3	18.7	27.8	20.0	35.7	35.1
Austria	20.6	15.5	17.9	13.2	18.7	13.4	25.1	24.7
Greece	22.4	16.8	23.6	17.4	25.0	18.0	0.4	0.4
France	8.0	6.0	8.3	6.1	8.5	6.1	5.8	5.7
Germany	13.3	10.0	15.7	11.6	11.3	8.1	21.9	21.6
Slovenia	2.9	2.2	2.7	2.0	3.5	2.5	4.1	4.0
Cyprus	1.3	1.0	1.0	0.7	1.5	1.1	0.9	0.8
Hungary	3.6	2.7	4.2	3.1	2.0	1.4	5.1	5.0
USA	0.3	0.3	0.3	0.3	0.1	0.1	1.1	1.1
Belgium	1.2	0.9	1.0	0.7	1.5	1.1	0.0	0.0
Russia	0.1	0.1	0.0	0.0	0.1	0.0	0.0	0.0

26. The Law on Banks provides that banks may perform the following activities:
    1) Deposit activities (accepting and placing deposits);
    2) Credit activities (granting and taking credits),
    3) Foreign exchange, foreign exchange-currency transactions, and exchange operations;
    4) Activities regarding payment operations;
    5) Issuing payment cards;
    6) Activities regarding securities (issuing securities, custody bank activities etc.);
    7) Brokerage – dealership activities;
    8) Issuing guaranties, sureties and other types of warranties (guarantee operation);
    9) Purchase, sale and collection of receivables (factoring, forfeiting etc.)
    10) Insurance agency activities;
    11) Activities for which they are authorized by the law;
    12) Other activities which are essentially similar or connected to activities specified in Items 1- 11 of this Paragraph, and are in compliance with founding act and Articles of association of the Bank.

27. As only banks are authorized to perform domestic and international payment transactions, other financial institutions, including Western Union are required to make all payment transactions through banks. Banks are permitted, through to contract out services through agents.

Exchange dealers/ Bureaus de Change

28. Exchange operations in Serbia include the operation of purchasing from and selling to domestic and foreign natural persons effective foreign cash and foreign currency checks cashable in foreign currency. Exchange operations may be performed by banks and resident legal entities and entrepreneurs licensed by the NBS to perform exchange operations. Licenses for performing exchange transactions also are granted by the NBS. Licensed dealers may enter into agreements with both banks and with the NBS.

29. As of 31 December 2008, there were 1811 licensed exchange dealers operating in Serbia and performing exchange operations in 2370 exchange offices. More than 70 percent of exchange offices are owned by entrepreneurs and most others work within companies.

30. Both Serbian authorities and members of the private sector indicated that there were no informal or non-certified exchange houses operating in the country.

Capital market sector participants

31. The investment funds sector consists of broker-dealer companies, mutual fund management companies, pension fund management companies, a stock exchange, and a central securities depository and clearing house. Participants in the sector include brokers, portfolio managers, investment advisory, members of the stock exchange, and members of the central securities depository and clearing house. There is no over-the-counter market operator in Serbia.

32. The chart below demonstrates the breakdown of market participants in the capital market sector:

Table 8. Market participants

Participants	**Total number** *(December 31st 2008)*		
	2007	**2008**	**index**
Broker - Dealer Companies	74	72	97.3
Authorised Banks	19	20	105.3
Custody Banks	10	12	120.0
Management Companies (MF)	10	15	150.0
-mutual funds (MF)	10	16	160.0
Management Companies (PF)	7	9	128.6
-pension funds (PF)	7	10	142.9
Brokers	983	1,066	108.4
Portfolio Managers	40	86	215.0
Investment Advisers	11	20	181.8
Stock Exchange	1	1	100.0
-members of Stock Exchange	88	88	100.0
Central Securities Depository and Clearing House	1	1	100.0
-members of Central Securities Depository and Clearing House	106	101	95.28
List of active securities	2,385	2,503	105.0

Voluntary Pension Fund management companies

33. The Law on Voluntary Pension Funds and Pension Schemes entered into force only in April 2006, laying down the legal foundations for the incorporation of voluntary pension fund management companies in Serbia. They currently have a market share of around 0.2% in total financial sector assets.

34. Voluntary pension funds (VPF) represent the sum of assets owned by the fund's members, in proportion with their share in the fund's assets (shares are acquired by paying contributions to the VPF). Contributions are paid to the VPF by: 1) a member, or another person for the account of a member; 2) an organizer, in its name and for the account of the employee, or trade union member, subject to pension scheme; 3) an employer, in the name and for the account of the employee, subject to contract of membership concluded between the VPF member and management company. Contributions can be paid only through cashless transactions. Paid contributions are converted into investment units and distributed to individual member's account that paid contributions. The fund assets are managed by the VPF management company (that is its

exclusive activity), but the fund assets are separated from the assets of the management company. The assets of the VPF are maintained in an account with the custody bank.

35. In June 2009, nine VPF management companies are operating in the Serbian market; along with 10 VPFs (one pension company manages two pension funds). The first VPF was started in 2007. Qualified stakeholders of the VPF management companies are insurance companies and banks. Eight out of nine pension companies are in ultimate foreign ownership. The VPF market is highly concentrated, with three funds controlling approximately 90 percent of the market. Total net assets of VPFs are worth just over EUR 63 million with 162 550 total clients (each client can be member of several funds). The organisational network of management companies includes a total of 27 business units, with most of them belonging to one pension company. VPF management companies employ 198 staff, with the majority of them engaged in sales and marketing.

Financial Leasing Companies

36. As of 31 December 2008, there were 17 licensed financial leasing providers operating in Serbia, t. Eleven leasing providers are 100% or majority owned by foreign legal entities, 5 leasing providers are 100% or majority owned by domestic entities (of which 4 are owned by domestic banks with a share of foreign capital), and 1 leasing provider is jointly owned by a domestic bank with a share of foreign capital and a foreign legal entity, each holding a 50% stake in the leasing provider's capital. All foreign owners or co-owners have head office within an EU member state.

37. Total employment in the financial leasing sector is 516, with an average number of employees between 25-30 people per company. As of 31 December 2008, total balance sheet assets of the leasing sector stood at RSD 122.5 billion.

Insurance Sector

38. The Serbian insurance sector is small. Insurance companies manage around 4.5% of total financial system assets. The share of premium in GDP remained unchanged from 2006 (1.8% vs. EU-27: 9%).

39. The participants in the insurance market in Serbia are insurance companies, reinsurance companies, insurance brokerage companies, insurance agencies, insurance agents – natural persons (entrepreneurs), and legal entities which offer other insurance services.

40. In May 2009, there were 24 joint stock companies operating in the insurance market in Serbia. Eight insurance companies carry out only non-life insurance operations, 6 insurance companies carry out only life insurance operations, 6 insurance companies carry out both life and non-life operations, 1 company provides life and non-life insurance and reinsurance[11] and 3 companies carry out exclusively reinsurance operations. Breakdown by ownership indicates that 17 were majority foreign-owned and 7 companies were locally owned, out of which 1 company was state – owned and 6 companies were privately owned.

41. Apart from insurance companies, the insurance sales network also included 11 banks licensed to engage in insurance agency activities, 60 legal entities licensed to engage in insurance brokerage and agency activities as well as 121 natural persons – insurance agents (entrepreneurs) licensed to engage in insurance agency. Other legal persons can also perform insurance brokerage and agency activities in accordance with a separate law, however they are not within the competence of the NBS for AML/CFT aspects.

[11] Pursuant to Article 234 of the Insurance Law, this company shall separate its life and non-life operations by 31 December 2009, and pursuant to Article 235 it shall also separate insurance and reinsurance operations.

42. Figures published by the NBS (September 2008) indicate that motor vehicle liability insurance accounted for the largest share of total premiums (29.9%), followed by property insurance (28,3%) while life insurance accounted just 10.9% of total premiums.

Post Office (Public Enterprise of PTT Communications "Srbija")

43. Apart from providing traditional postal services, post offices of the national postal company – Public Enterprise of PTT Communications "Srbija" (hereinafter: the PTT "Srbija") – throughout Serbia are permitted to offer some financial services. Particularly, PTT "Srbija" operates postal and PosTneT money orders for both domestic and international payment operations, as well as for valuable mail transactions. According to the Law on Payment Transactions, the company performs the following payment operations based on a respective agreement with Postal Savings Bank: a) acceptance of in-payments from natural persons to bank accounts and making out-payments to these persons, b) acceptance of in-payments of daily receipts for the account of bank clients, and c) acceptance and honoring cheques in relation to citizens' current accounts. Postal Savings bank is not authorized to transfer funds domestically nor from Serbia to foreign countries. The only in-payment legal persons are permitted to make is in payment of daily receipts or payments of bills with barcodes (i.e. telephone bill) and not in cash. At that, the client must have an account with the Postal Savings Bank. Around 4000 employees in 1500 postal centers have received AML training.

1.3.2 Designated Non-Financial Businesses and Professions (DNFBP)

44. Serbia has designated the following non-financial businesses and professions (DNFBP) listed in the Glossary of the FATF 40 Recommendations:

Table 9. Designated non-financial businesses and professions

Sector	Designated/no designated	Supervised or monitored for compliance (for AML/CFT purposes only)
Casinos (including Internet casinos)	Designated	Administration of Games of Chance (MoF)
Real estate agents	Designated	Ministry of Trade and Services
Dealers in precious metals	Not designated	No
Dealers in precious stones	Not designated	No
Lawyers	Designated	Bar association
Notaries	N/A	N/A
Accountants	Designated	Tax administration
Trust and company service providers	N/A	N/A

Casinos (including internet casinos)

45. Organisation of games of chance is regulated in the Law on Games of Chance[12], in force since 25 July 2004, which distinguishes among classic games of chance (lottery, sports betting, lotto, keno, tombola and fonto), special games of chance (games organised in gaming facilities/casinos, games played on gaming devices and wagers placed on sports and other events) and prize winning competitions.

46. The Serbian State Lottery is entitled to organize classic games of chance. The right to organise special games of chance in casinos is granted through a license issued by the Government. The Government can issue a maximum of 10 licenses for the organisation of special games of chance

[12] Official Gazette of RS No. 84/04 and 85/05.

in casinos, each issued for a maximum period of ten years. Two licensees have been granted so far: one to Grand Casino doo Beograd, which started operating on 30 June 2007, and the second to Hit International doo Beograd (which should start operating by 31 December 2010).

47. The Administration for Games of Chance within the Ministry of Finance is the state body vested powers for supervising implementation of the national AML/CFT requirements in respect of: a) organizers of special games of chance in casinos, and b) organizers of games of chance operated on the Internet, by telephone, or in any other manner using telecommunication networks.

48. Special games of chance are organised by 28 legal entities with the total of 1526 places (points) where payments and withdrawals are made. Revenues generated from the special games of chance – betting in 2007 amounted to 148.986.624,35 RSD (based on licensing fee) and to 754.349.437,08 RSD (based on organizing fee). In 2008 the revenue was 152.610.457,19 RSD (based on licensing fee) and 808.819.629,93 RSD (based on organising fee).

Table 10. Gaming activities in Serbia

Type	2005	2006	2007	2008	Licensing authority	Supervisory authority (for AML/CFT purposes only)
Casinos			2	2	Government	Administration for Games of Chance (Ministry of Finance)
Organisers of special games of chance	110	113	114	108		

Real estate agents, dealers in precious stones and dealers in precious metals

49. The evaluation team did not receive information on the regulatory framework, the types of activities or business these professions typically engage in, or are permitted to engage in, on the number and size of these businesses and professionals[13]. During the on-site visit, the evaluation team met with two real estate agents, who advised that there is a National Association of Mediators of Serbia, which consisted of 50 business entities in the country. To be admitted as a member of the association, one should pass through certain procedures, prove the good standing and the availability of adequate business premises, etc. Real estate agencies usually prepare the relevant papers for real estate transactions, negotiate the terms of the contract, make the contract itself, prepare documentary grounds for the payment of taxes and final conclusion.

Lawyers

50. Activities of legal professionals in Serbia are regulated by the Attorney-at-Law Act[14], which provides the definition of legal profession, the constituents of legal aid that can be provided by legal professionals, the conditions for engaging in such activities, etc. As provided by the authorities, the Bar Association of Serbia consists of 8 regional bar associations (with the one in Belgrade being the largest), incorporating both legal professionals and businesses (law firms) as follows:

[13] As advised by the Ministry of Trade and Services, the official data of the Statistics Office is that the activity of real estate intermediation was performed by 385 economic operators in 2005, 461 in 2006, 790 in 2007, and 1074 in 2008.

[14] "Official Gazette of FRY No. 24/98, 26/98 – corr. 69/2000 – decision of the Federal Constitutional Court, 11/2002 and 72/2002 – decision of the Federal Constitutional Court.

Table 11. Bar Association statistics

		2006	2007	2008
Bar Association of Serbia	***Professionals***	6546	6731	6974
	Businesses (Law firms)	8	13	16

51. As advised by the representatives of the industry, the Bar Association has a Board comprising 19 members delegated by member associations. All bar associations have a board and an executive organ headed by the president and the deputy president. However, there is no regulatory/ supervisory function vested in a separate or collective division/ arm of the association. The representatives of legal profession found it difficult to articulate how the AML/CFT Law were to be practically implemented (both in terms of structure and contents).

Auditors/ Accountants

52. The 2006 Accounting and Auditing Law establishes the positions of a certified auditor and a certified internal (staff) auditor, as well as the body authorized to certify them and keep the register of the persons who undergo certification, that being the Chamber of Certified Auditors. According to the information available to the Chamber as of August 2009, 149 persons are certified as auditors, out of whom 130 persons are licensed to perform audits of financial reports, and 22 persons are certified as internal auditors.

53. However, the Law is silent about any licensing/ certification requirements and procedures in respect of accountants. As advised by the representatives of the industry, the accounting profession is not regulated and/or supervised in the country. The National Accounting Committee stipulated by Article 60 of the Law does not have a regulatory/ supervisory mandate over the accounting profession.

54. The Serbian Association of Accountants and Auditors indicated that it counted 3750 members in 2008 (3982 in 2007, 4724 in 2006).

Notaries

55. Notaries do not exist in Serbia. Courts and municipalities perform the functions which are usually within notaries' competence.

Trust and company service providers

56. According to the authorities, trust and company service providers are not recognised as legal forms of legal persons or arrangements in Serbia, though there are no explicit prohibitions to such activities contained in the legislation. The AML/CFT law defines "trusts and company service providers" in its general part, however the authorities indicated that this was intended to cover the operation of foreign trusts and that to date, there has been no demand for the establishment of such activities.

1.4 Overview of Commercial Laws and Mechanisms Governing Legal Persons and Arrangements

57. Companies' founding, internal organisation and registration are governed by the Law on Business Companies[15] and the Law on Registration of Business Entities[16]. According to the law, a company is a legal entity founded by legal entities and/or natural persons for the purpose of generating profit. The most important types of business companies are as follows:

- *General partnership (Article 53*): company established on the basis of an agreement between two or more legal entities and/or natural persons individuals, with joint and individual liability, undertaking to conduct certain business activities under a common registered name.
- *Limited partnership (Article 90):* company established on the basis of an agreement between two or more legal entities and/or natural persons, who undertaken to conduct business activities under a common registered name, and in which at least one partner is jointly and individually liable (general partner) and the risk of at least on person is limited to his/her contracted investment (limited partner).
- *Limited liability company (Article 104):* company established for the purpose of conducting business activities by corporate bodies and individuals who are not liable for the company's commitments and who bear the risks for the company's transactions to the extent of their investments. The company's initial capital is composed of members' investments, and any member may acquire a stock in the company in proportion to the value of his/her investment.
- *Joint stock company (Article 184)*: company established by individuals or corporate bodies for the purpose of conducting business activities, the initial capital of which is set and divided into shares specified by value.

Table 12. Basic company types

	Limited liability Company	Joint stock company	General Partnership	Limited Partnership
Legal abbreviation	d.o.o.	a.d.	o.d	k.d
Minimum capital	€500 in RSD equivalent	€10,000 for closed €25,000 for open	No minimum	No minimum
Directors	Appointed by decision or contract	Appointed by decision or contract	Appointed by decision or contract	Appointed by decision or contract
Partners/shareholders	Established by max. 50 shareholders, individuals or legal entities	Closed JSC – max. of 100 shareholders Open JSC – unlimited number of shareholders	2 or more	2 or more
Liability of partners	Limited to the value of ownership shares	Limited to the value of ownership shares	Partners are jointly liable	General partner is jointly liable, while limited partner is liable only up to the % of his ownership shares

58. The most common forms of business in Serbia are Limited Liability Companies and Joint Stock Companies.

[15] Official Gazette of RS No. 55/2004 and 61/2005
[16] Official Gazette of RS No. 55 of 21 May 2004 and No. 61 of 18 July 2005.

Limited Liability Company

59. A Limited Liability Company is a business company founded by one or more legal and/or natural entities, as members of the company, to conduct certain business activities under a common registered name (Article 104.1 of Law on Business Companies). It is liable for its obligations with all of its assets (Article 104.2 of Law on Business Companies). A member of a limited liability company is not liable for the obligations of the company, except up to the amount of any agreed but unpaid contribution to the company assets (Article 104.3 of Law on Business Companies).

60. A limited liability company may have a maximum of 50 members (Article 104.4 of Law on Business Companies). The minimum initial capital is the RSD equivalent of EUR 500. Its capital is divided into stakes which are not securities and are not listed and traded in an organised market.

61. The company is funded under a Memorandum of association if there is more than one founder, and if is funded by one founder, under the Deed of Incorporation. The bodies are the General Meeting, the Director of a Board of Directors (Article 153 of the Law on Business Companies), and the Internal Auditor of the Auditing Board.

62. The following documents are required to establish a limited liability company, along with the business registration form (Article 35 of the Law on Registration of Business Entities):
a) Proof of identity of the founders (copy of ID or passport of a natural person and/or certificate of registration for foreign legal entities);
b) Articles of Association (decision or contract) with certified signatures of the founders;
c) Bank certificate on deposit of the monetary contribution to an interim account or a certified statement of the founder that the monetary contribution has been provided;
d) Agreement of the founders about the value of the in kind contribution, unless it is contained in the Articles of Association;
e) Decision on the appointment of the company representative, unless the representative has bee designated in the Articles of Association;
f) Certified signature of the authorized representative

Joint Stock Company

63. A Joint Stock Company is a company founded by one or more legal entities and/or natural persons, as shareholders of the company, to conduct a specific business activity. A shareholder is an individual or a legal entity inscribed as the owner in the record of ownership kept with the Central Registry of Securities. The basic capital is defined and divided into shares (Article 184 of Law on Business Companies), which can be ordinary, preferred, or authorised (the latter must be stated in the Foundation document).

64. The company is founded under the Memorandum of Association if there is more than one founder, and if it is founded by one founder, under the Deed of Incorporation. The company can be either closed or open. The minimum initial capital of a closed joint stock company is the RDS equivalent of EUR 10,000 while for an open joint stock company it is EUR 25,000[17]. Closed companies may not have more than 100 shareholders.

65. A joint stock company is liable for its obligations with all of its assets (Article 184.1 of Law on Business Companies). The shareholders of a joint stock company are not liable for the obligations of the company, except up to the amount of any agreed but unpaid contribution to the company assets, in accordance with the law (Article 184.3 of Law on Business Companies).

[17] There are higher minimum capital requirements for companies acting as banks, insurance companies, leasing companies.

66. Along with the application for the registration of a joint stock company, the applicant is required to submit the following (Article 36 of Law on Registration of Business Entities):
a) Proof of identity of the founders (copy of ID or passport for a natural person and/or certificate of registration for foreign legal entities);
b) Articles of Association (decision or contract) with certified signatures of the founder;
c) Bank report on subscribed shares;
d) Bank certificate on deposit of the monetary contributions to an interim account;
e) Proof confirming publication with the contents of a public invitation for registration and depositing of shares (a prospect) with the authorization of a prospect by a competent body;
f) An estimate by an authorized evaluator of the value of in kind deposit of the founder;
g) A decision on the nomination of representative if a representative was not designated in the Articles of Association;
h) Certified signature of representative.

67. The Law on Business Companies and the Law on Registration of Business Entities do not differentiate between foreign legal and natural entities founders, the same company start up related requirements are prescribed for domestic natural and legal entities as for foreign natural and legal entities.

68. Business entities come into legal existence by registration in the Business Register, in accordance with the Law on the registration of business entities[18]. This is a unified electronic database created on all registered commercial entities in Serbia. Previously, registration of business entities was within the competence of commercial courts and local authorities. The Register of Companies became operational as of 1 January 2005. It is managed by the Serbian Business Registers Agency (SBRA), which conducts registration activities in its Belgrade Head office and in its 12 branch offices throughout Serbia. Registered data is public and published on the Agency's website[19].

69. In order to operate, companies must be registered with the Business Register Agency, obtain a Tax Payer ID number from the Tax Administration, file with the National Employment Agency and open an account in a commercial bank. They have to have an official address in Serbia in order to be eligible for registration. All legal documents must be authenticated with the Court, and foreign documents must be translated in Serbian and be certified by the court appointed translator.

70. According to the data available to the Serbian Business Registers Agency, the statistics regarding business companies and their types is as follows (inclusive to May 2009):
   - 3.904 general partnerships,
   - 617 limited partnerships,
   - 93.795 limited liability companies,
   - 361 closed joint stock companies and 2.536 open joint stock companies,
   - 2.816 cooperatives and cooperative unions.

71. In May 2009, the total number of registered business entities in the territory of the Republic of Serbia was 107.634, which includes, apart from the business companies above, branches and representative offices of foreign legal entities, public enterprises, business associations and socially owned enterprises.

72. As regards non profit entities, the founding, operation and dissolution are governed by various legal acts such as the 1982 Law on Social Organisations and Citizens' Associations of the Socialist Republic of Serbia, the 1990 Law on association of citizens in associations, social organisations and political organisations established for the territory of the SFRY and the 1989 Law on

[18] Official Gazette of RS No. 55 of 21 May 2004 and No. 61 of 18 July 2005.
[19] http://www.apr.gov.rs

Legacies, Foundations and Funds. Non profit entities can operate in Serbia under different legal forms:

- *Associations:* Under the 1982 Law, associations and social organisations are defined as groups of "working people and citizens" organised for "developing personal inclinations and creativity in social, humanitarian, economic, technical, scientific, cultural, educational, sports and other activities." Under the 1990 Law, associations and social organisations are functionally equivalent and are defined as membership organisations with national activities and membership. It is not clear to what extent associations are established on the basis of the 1982 or 1990 Law, particularly when requirements are different or less stringent.
- *Foundations:* can be established only by legal persons using "socially owned resources" (i.e., public property or that belonging to a collective).
- *Legacies* can be established only by natural persons using private resources. A legacy may be established inter vivos or by a testamentary act.
- *Funds:* can be established by natural or legal persons using "socially owned resources" or a combination of "socially owned resources" and private assets.

73. These entities are registered in 4 Registers, kept by different authorities, namely: the Register of associations, social organisations and political organisations (kept by the Ministry of Public Administration and Local Self-Government), the Register of associations and social organisations (kept by the Ministry of Interior), the Register of foreign associations (kept by the Ministry of Foreign Affairs and the Register of Legacies, Foundations and Funds.

74. The evaluation team was informed that there are over 10,822 civil associations and social organisations registered in the Register of associations, social organisations and political organisations and more than 14,000 foreign NGOs in the Register of foreign associations. These figures do not enable to have a clear picture of the exact numbers of non-profit entities registered in the 4 existing Registers.

1.5 Overview of Strategy to Prevent Money Laundering and Terrorist Financing

a. AML/CFT Strategies and Priorities

75. The Government of Serbia adopted a National Strategy against Money Laundering and Terrorism Financing on 25 September 2008[20]. The purpose of the strategy is to give recommendations for the resolution of problems and improve the current AML/CFT system. The strategy indicates that the key objectives are:

    a) to influence the reduction of money laundering and terrorism financing related crimes by talking preventive and repressive measures;

    b) to implement the international standards leading to membership or an improved status of Serbia in international organisations

    c) to develop a system of co-operation and responsibilities of all stakeholders in combating money laundering and terrorism financing

    d) to improve the cooperation between the public and private sectors in the fight against money laundering and terrorism financing

    e) to ensure the transparency of the financial system.

76. The Strategy provides that the recommendations formulated shall be further developed in an Action Plan which will provide for the responsibilities of all bodies referred to in the strategy as well as the relevant deadlines, however at the time of the on-site visit, this action plan had not been adopted[21]. The Strategy further provides that the recommendations will be implemented within five years from the date of its adoption.

[20] RS Official Gazette No. 89/08.

[21] The Action Plan was adopted on 16 October 2009 and covers the period 2009-2013.

77. The body responsible for monitoring the implementation of the Strategy is the Standing Coordination Group for Monitoring the Implementation of the National Strategy against Money Laundering and Terrorism Financing (hereinafter referred to as: Standing Coordination Group). This body was established 7 months after the adoption of the Strategy, by a Government decision of 9 April 2009 and held its first meeting before the on-site visit of the evaluation team.

b. The institutional framework for combating money laundering and terrorist financing

National AML/CFT Coordination

- Standing Coordination Group for Monitoring the Implementation of the National Strategy against Money Laundering and Terrorism Financing

78. The Standing Coordination Group for Monitoring the Implementation of the National Strategy against Money Laundering and Terrorism Financing was established through a decision of the Government of 9 April 2009. It is composed of officials of relevant state institutions competent for AML/CFT matters (National Bank, the Securities Commission, the APML, the Customs Administration, the Tax Administration, the Foreign Exchange Inspectorate, the Ministry of Justice, Ministry of Interior, the Security Information Agency, Military Security Agency and the Military Information Agency) as well as of judges of the Supreme Court of Serbia and deputy public prosecutors and chaired by the State Secretary of the Ministry of Finance. Representatives of obligor associations may also take part in the work of this group. The Standing Coordination Group is required to report on its work to the Government every 90 days.

Ministries

Ministry of Finance

79. The Ministry of Finance carries out public administration tasks relating to the prevention of money laundering and proposes regulations governing the area. The following separate bodies have been established within the Ministry of Finance having the fight against money laundering and terrorism financing within their remits: the Administration for the Prevention of Money Laundering, Tax Administration, Foreign Currency Inspectorate and the Games of Chance Administration. The Ministry of Finance is supervising persons dealing with postal communications [with respect to domestic payment operations] and persons involved in professional activities of intermediation in credit transactions and provision of loans, factoring and forfeiting, provision of guarantees, and provision of money transfer services pursuant to Article 84.4 of the AML/CFT Law).

- Administration for the Prevention of Money Laundering (APML)

80. The Administration for the Prevention of Money Laundering (APML) is the financial intelligence unit (FIU) of the Republic of Serbia. The APML collects, analyses and keeps data and information and, where it suspects money laundering, it notifies the competent state bodies (the police, judiciary, and inspectorate authorities) so that they can take measures within their competence. The APML is an administrative body within the Ministry of Finance. Internal organisational units in the APML are: Analytics Department; Suspicious Transactions Department comprising the Suspicious transactions team monitoring banks and other financial institutions, and Suspicious transactions team monitoring the capital and securities market and other obligors; International and National Cooperation Department, and Section for legal, material and financial affairs.

❖ Tax Administration

81. The Tax Administration is an administrative body within the Ministry of Finance. In 2003, the Tax Police Sector was established with competences to detect tax criminal offences and their perpetrators. This sector has about 220 employees, and it is managed by the chief inspector who is appointed by the Government at the proposal of the minister of finance. The Tax Police Sector consists of two departments at the level of the Republic, located at the sector's head office (Department for the coordination of tasks concerning tax crime identification and Department for analysis and IT), and four regional departments (Belgrade, Novi Sad, Kragujevac, and Niš), which are subdivided into 26 operative sections. Tax Police competencies are laid down in the Law on the Taxation Procedure and Administration. The Tax Police acts as an internal affairs body during the pre-trial procedure and has powers to apply, in accordance with law, all the investigative actions except for the restriction of movement. The Tax Police also applies the provisions of the Criminal Procedure Code governing the pre-trial procedure.

❖ The Administration for Games of Chance

82. The Law on Games of Chance[22] entered into force on 25 July 2004. This law sets up the Administration for Games of Chance (hereinafter: AGC), as an administrative body within the Ministry of Finance, whose responsibility is to administer the games of chance sector. The AGC became operational on 1 January 2005.

❖ Foreign Currency Inspectorate

83. The Law on Foreign Exchange Operations defines that the Foreign Currency Inspectorate within the Ministry of Finance shall conduct supervision of foreign exchange operations of residents and non-residents. The AML/CFT, in turn, establishes the Foreign Currency Inspectorate as the responsible authority to supervise compliance of persons involved in professional activities of factoring and forfeiting, and provision of money transfer services [with respect to international payment transactions] with the applicable AML/CFT requirements. However, the assessment team was not provided any information on the legislative provisions establishing regulatory and supervisory powers of the Foreign Currency Inspectorate in respect of such persons, for monitoring and ensuring their compliance with AML/CFT requirements, as well as for applying sanctions in case of incompliance.

❖ Customs Administration

84. The Customs Administration is an administrative body within the Ministry of Finance. Within its Internal Control Department, the Customs Administration established a Team against terrorism, organised crime and money laundering. This team has primarily a coordinative role and works with other state bodies, including by sharing operative data and conducting checks in certain cases when requested by other bodies. The Customs service is authorized to conduct foreign currency controls in the international passenger traffic. Where it identifies an infringement of foreign currency regulations it makes a report on the perpetrated foreign currency offence. If the Customs service officers obtain indications, during the customs procedure or when they apply the measures of customs supervision and inspection, that a legal person committed a foreign currency offence they will report it to the Foreign Currency Inspectorate. The Foreign Currency Inspectorate will decide on any further action concerning such a report.

[22] Official Gazette of RS No. 84/04 and 85/05.

Ministry of Interior

85. The organisation of the Police, as well as the requirements for human, technical and financial resources are set forth in the Law on Police adopted on 14 November 2005. The organisation of the Police Directorate encompasses organisational units in the City of Belgrade, regional law enforcement departments and police stations. Within the General Police Directorate, the Criminal Police Directorate is responsible for criminal investigations. The organigramme is set out in Annex IV. Within this Department, a significant role is performed by the Service against Organised Crime. Within the Service and its Unit against organised financial crime, a Section Against Money Laundering has been set up.

86. The Ministry of Interior also keeps the Register of associations and social organisations on the basis of the Law on Social Organisations and Civil Associations.

Security Information Agency

87. The Security Information Agency (hereinafter: BIA), under the Law on the Security Information Agency[23], also deals with countering organised international crime. It works on detecting, investigating and documenting the most serious forms of organised crime with a foreign element such as drug smuggling, illegal migrations and human trafficking, arms smuggling, money counterfeiting and laundering, and it also deals with the most serious forms of corruption linked to international organised crime. BIA also has special tasks concerning the prevention and suppression of the internal and international terrorism.

88. An important area of BIA's activity is investigating, detecting and documenting links between individuals, groups and organisations involved in the international organised crime and terrorism. Separate departments have been created within the Counter-Intelligence Administration carrying out security operative activities against terrorism and international organised crime, as well as the appropriate organisational units in the BIA's territorial centers.

89. Within the Counter-Intelligence Administration, a Center for Education and Research (CER) is operational and implementing basic operative and specialist professional training courses for staff working on countering international organised crime and terrorism.

Ministry of Defence

90. The Ministry of Defence, pursuant to the Law on Ministries (RS Official Gazette No. 65/08), performs, among other things, public administration tasks related to security matters relevant for defence. On the basis of the Law on Basis of Organisation of the Republic of Serbia Security Services (RS Official Gazette No. 116/07) the Military Security Agency and the Military Intelligence Agency were established as administrative bodies within the Ministry of Defence, having the status of a legal entity. The Law on Security Services (FRY Official Gazette, No. 37/02 and SCG Official Gazette No. 17/04) lays down the competences of military security forces – Military Security Agency and Military Intelligence Agency in the combat against terrorism and organised crime, which includes prevention of money laundering and terrorism financing.

- Military Security Agency

91. The Military Security Agency is a security service performing tasks relevant for defence. Pursuant to the law, the Military Security Agency, among other things, detects, investigates, monitors, suppresses and intercepts national and transnational terrorism, as well as detecting, investigating and documenting most serious crimes with elements of organised crime aimed against commands, institutions and units of the Serbian Army and the ministry competent for defence matters. Given

[23] RS Official Gazette No. 42/02.

the competences of the Military Security Agency as stipulated by law, one of major tasks in protecting defence system is the prevention of money laundering and terrorism financing.

- Military Intelligence Agency

92. The Military Intelligence Agency is a security service performing tasks relevant for defence which collects, analyses and evaluates potential and real threats posed by transnational and foreign organisations, groups and individuals aimed against the sovereignty, territorial integrity and defence of the Republic of Serbia, including on ML and FT aspects. The Agency established cooperation with counterpart agencies abroad in the field of prevention of ML and FT.

Ministry of Justice

93. The Ministry of Justice performs public administration tasks relating to criminal legislation, international legal assistance, etc. Within its Sector for normative tasks and international co-operation, the Ministry of Justice has two organisational units, including the Department for normative tasks and international co-operation dealing with drafting and monitoring of the implementation of laws, development and improvement of the legal system in the Ministry's remit; legal harmonisation with the Council of Europe and United Nations' conventions and monitoring of the implementation of the rights and obligations deriving from relevant international conventions within its competence. The Ministry's International legal assistance department deals with requests of the domestic and foreign courts, other state bodies and individuals for international legal assistance.

Ministry of Public Administration and Local Self-Government

94. The Ministry of Public Administration and Local Self-Government keeps the Register of associations, social organisations and political organisations on the basis of the Law on Association of Citizens to Form Associations, Social Organisations and Political Organisations Established in the Territory of the SFRY.

Ministry of Trade and Services

95. The Ministry of Trade and Services is responsible for supervising implementation of the AML/CFT Law by intermediaries in real estate transactions. However, the assessment team was not provided any information on the legislative provisions establishing regulatory and supervisory powers of the Ministry in respect of the persons involved in professional activities of intermediation in real estate transactions, for monitoring and ensuring their compliance with AML/CFT requirements, as well as for applying sanctions in case of incompliance.

96. The Ministry is also responsible for supervising implementation of Article 36 of the Law, which prohibits persons selling goods or rendering a service in the Republic of Serbia to accept cash payments from a customer or third party in the amount greater than EUR 15.000. Actually, this prohibition is meant to, *inter alia*, eliminate the need for involving dealers in precious metals and dealers in precious stones as obligors[24].

Ministry of Telecommunications and Information Society

97. As advised by the authorities, the Ministry of Telecommunications and Information Society is responsible for the regulation and supervision of activities of legal persons dealing with postal communication pursuant to Articles 87-93 of the Law on Postal Services and Articles 22-33 of the Law on Public Administration. However, the assessment team was not able to assess how these

[24] Since the FATF Recommendations 12 and 16 establish for them a requirement to perform CDD and to make STR-s only when they engage in cash transaction with a customer equal to or above EUR 15.000

laws define regulatory and supervisory powers of the Ministry of Telecommunications and Information Society in respect of persons dealing with postal communications [with respect to valuable mail operations], as prescribed by Article 84 of the AML/CFT Law.

Public Prosecutor's Office

98. The Public Prosecutor's Office is an independent state body whose jurisdiction is governed by the Constitution of the Republic of Serbia and the Law on Public Prosecutor's Office. In the Republic of Serbia, there are the State Public Prosecutor's Office, 30 District Prosecutors' Offices, and 109 Municipal Public Prosecutors' Offices. A Special Department of the District Prosecutor's Office in Belgrade for the Suppression of Organised Crime (hereinafter: the Special Prosecutor's Office) is competent to act in cases of organised crime in the Republic of Serbia.

Courts

99. Article 142 of the Republic of Serbia Constitution states that the courts in the Republic of Serbia are autonomous and independent and that they adjudicate in cases based on the Constitution, laws and other general acts where required by the law, as well as based on generally accepted rules of the international law and ratified international agreements. The judicial power is exercised through the courts of general and special jurisdiction whose establishment, organisation, jurisdiction, arrangements and composition are determined in the law. The highest instance court in the Republic of Serbia is the Supreme Cassation Court. Currently, there are 187 courts of general and special jurisdiction. Most of the cases are dealt with in a number of courts located in larger cities.

Judicial Training Centre

100. The Judicial Training Center is an organisation offering training and professional improvement programs for judges, prosecutors and other employees in the Republic of Serbia judiciary. The founders of the Judicial Training Centre are the Ministry of Justice and the Judges' Association of Serbia.

National Bank of Serbia

101. The National Bank of Serbia is the central bank of the Republic of Serbia and its competencies are laid down in the Constitution of the Republic of Serbia and the Law on the National Bank of Serbia. The National Bank of Serbia is an independent and autonomous institution. Its main objective is to maintain financial stability. The National Bank of Serbia, among other things:

- improves the functioning of payment operations and the financial system;
- controls the solvency and legality of operations of banks and other financial organisations;
- issues licenses to companies for the management of voluntary pension funds and supervises the implementation of the law by companies dealing with the management of voluntary pension funds and financial leasing providers;
- is the supervisor for banks, exchange bureaus, insurance companies, insurance brokerage companies, insurance agency companies and insurance agents with a license to perform life insurance business, companies for the management of voluntary pension funds, and financial leasing providers pursuant to Article 84.1 of the AML/CFT Law

The Securities Commission

102. The Securities Commission is an independent and autonomous organisation of the Republic of Serbia. Its competences are defined in the Law on Securities and Other Financial Instruments, Law on Investment Funds, Law on the Prevention of Money Laundering and other laws. The Commission, among other things, performs the following tasks:

- issues licenses to broker-dealer companies;
- issues licenses to companies for the management of investment funds and to investment funds;
- conducts the monitoring of the operation of broker-dealer companies, stock-markets, investment funds management companies as well as the Central register of securities, licensed banks, custody banks, securities issuers, investors and other persons with respect to their business conducted in the securities market, etc;
- conducts the monitoring of the implementation of the Law on the Prevention of Money Laundering by broker-dealer companies, custody banks, stock markets and investment funds management companies.

Serbian Business Registers Agency

103. The Serbian Business Registers Agency (SBRA) conducts registration activities in its Belgrade Head office and in its 12 branch offices throughout Serbia and manages the Register of Companies. It was established on 4 January 2005, following the transfer of the competence for registration of business entities from commercial courts and local authorities within its remit. Registered data is public and published on the Agency's website[25].

Professional associations and organisations

104. The following professional associations are in place in Serbia:

❖ Association of Serbian Banks

105. This association gathers all banks in the Republic of Serbia[26]. In January 2005, the Association of Banks of Serbia set up a working group for compliance, which was transformed into a Committee for the banking operations compliance. The Association of Banks of Serbia holds professional training for its members.

❖ Association of Accountants and Auditors of Serbia

106. This is a professional organisation of accountants and auditors in the Republic of Serbia gathering several thousand members.

❖ Bar Association

107. The Bar Association[27] consists of 8 regional bar associations (with the one in Belgrade being the largest), incorporating around 7000 professionals and 16 law firms (as of August 2009).

c. The approach concerning risk

108. The Republic of Serbia has not undertaken a systemic review of the ML and FT threats and risks that exist within the financial and non financial sector in Serbia. Under the previous AML Law and Book of Rules, the Republic of Serbia did not apply AML/CFT measures using a risk-

[25] http://www.apr.gov.rs
[26] http://www.ubs-asb.com/e/News.htm
[27] http://www.advokatska-komora.co.yu/index-e.htm

based approach. Article 7 of the AML/CFT Law introduced requirements to conduct an analysis of the ML and FT risks, which must include a risk assessment for each group or type of customer, business relationship, or service offered by the obligor. The NBS issued on May 12, 2009, a draft of specific guidelines for assessing the risk of ML and FT which applies to voluntary pension fund management companies, financial leasing providers, insurance companies, insurance brokerage companies, insurance agency companies, and insurance agents licensed to carry on life insurance operations. The NBS informed the evaluation team that it had plans to issue further guidance and trainings for financial institutions to be able to apply the new requirements.

109. As the AML/CFT Law came into effect late March 2009, and the NBS guidance was issued after the on-site visit, the evaluation team was unable to determine how the risk-based approach would work in practice.

d. Progress since the last mutual evaluation

110. MONEYVAL adopted at its 16th Plenary Meeting (17-21 January 2005) the first round mutual evaluation report on Serbia and Montenegro. At that time, Serbia was evaluated according to the 2003 FATF Methodology and MONEYVAL's reference documents, including Directive 91/308/EEC and Directive 2001/97/EC. Following the adoption of this report, Serbia submitted a progress report in September 2006. Numerous measures were undertaken to address the practical implementation of the recommendations formulated in the first round mutual evaluation report as well as for strengthening the overall AML/CFT regime in line with the international and European standards.

111. The following table reflects actions taken by the authorities in this area:

Reference FATF Recommendation	Recommended Action	Action taken
Scope of the criminal offence of money laundering (FATF 1-2)	To redefine to scope of their respective money laundering offence in order to make sure that all the physical elements as required by the Council of Europe 1990 Convention are covered, including to conceal, acquire, possess or use the proceeds from crime. In Serbia, at the time of the on-site visit, a law to cover those elements was being drafted.	The ML offence was modified in 2005 (Article 231. Money Laundering – Criminal Code of RS (RS Official Gazette No. 85/05, in force on 1 January 2006). Serbia also adopted a Law on Liability of Legal Entities for Criminal Offences, which entered into force in November 2008.
Provisional measures and confiscation (FATF 3)	To adopt provisions making it possible to seize and confiscate both proceeds, property, and instrumentalities. To adopt provision making it possible to seize and confiscate money intended to finance terrorism.	The confiscation and provisional measures have been going through considerable changes and are covered in the CPC (as amended in 2005), in the Law on Seizure and Confiscation of the Proceeds of crime (dated 4 November 2008, in force as of 1 March 2009).
Customer identification and record-keeping rules (FATF 10-13)	To adopt special requirements for the banks to have in place graduated customer acceptance policies and procedures that require more extensive due diligence for higher risk customers. To adopt special requirements for banks to apply enhanced diligence procedures to a customer, if there are	Requirements were introduced or further detailed in the new AML/CFT Law, and in the Decisions on Minimum Contents of the Know Your Customer Procedure, adopted by the National Bank of Serbia (of 2006 and of 2009).

	reasons to believe that the customer is being refused by another bank. To create special policies and procedures for handling banking facilities with politically exposed persons. To adopt a provision which clearly defines the period of time to keep the information related to the identity of a client (article 25 of the Money Laundering Act only provides that the information should be stored until 5 years after the transaction.)	
Increased diligence of financial institutions (FATF 15)	To adopt provisions for the performance of on-going monitoring of accounts and transactions	Requirements were introduced or further detailed in the new AML/CFT Law, and in the Decisions on Minimum Contents of the Know Your Customer Procedure, adopted by the National Bank of Serbia (of 2006 and of 2009).
Measures to cope with countries with insufficient AML measures (FATF 20-21)	To consider on an up-dated basis providing all relevant intermediaries with information about which countries and jurisdictions should be considered non-cooperative in an AML/CFT context.	Book of Rules Establishing Methodology, Obligations and Actions to for Performing Tasks in Compliance with the Law on the Prevention of Money Laundering («Official Gazette of RS, No.» 59/06) establishes a list of countries that do not apply anti-money laundering standards.
Administrative Co-operation – Exchange of information relating to suspicious transactions (FATF 32)		Information sharing mechanisms between the FIU and the other relevant state authorities is provided for under the AML/CFT Law. Task Forces are established ad hoc in order to process the case in a more efficient and comprehensive manner, and in order to coordinate actions and measures within competence of each authority.
8 Special recommendations on terrorist financing		
II. Criminalising the financing of terrorism and associated ML	To adopt a separate offence on terrorist financing.	Terrorism financing was criminalised in Article 393 of the Criminal Code («Official Gazette of RS» No. 85/05)
III. Freezing and confiscating terrorist assets	To adopt a comprehensive normative act providing a mechanism to implement the freezing without delay of assets suspected to be related to the financing of terrorism.	Was not adequately addressed.
IV. Reporting suspicious transactions related to terrorism	To adopt for all relevant intermediaries a mandatory reporting regime on suspicious transactions and activities related to the financing of terrorism.	FT Reporting obligation was introduced in the new AML/CFT Law in March 2009. No STR-s have been made in relation to FT.
VI. Alternative remittance	To have all alternative remitters comprised by the Money Laundering Act, and thus oblige them to comply	Not applicable

	with the requirements regarding customer identification, record-keeping, suspicious transaction reporting etc	
Law Enforcement and Prosecution	To adopt a comprehensive training strategy for the agencies involved in AML/CFT issues.	General AML/CFT Strategy sets out the development of a Training Strategy for the stakeholders involved in AML/CFT issues. Training is still carried out on a case by case basis.
	To introduce a further use of investigative means, including special investigative techniques, such as controlled deliveries.	Use of special investigative means is provided for under the CPC.
	To see to that all relevant law enforcement authorities and the Office of the Prosecutor General address the issue of the importance of financial investigations.	The analysis of the situation so far suggests that still this issue has not been addressed in a satisfactory manner by all relevant law enforcement authorities and the Office of the Prosecutor General.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of Money Laundering (R.1 and 2)

2.1.1 Description and analysis

Recommendation 1

Legal Framework

112. The Socialist Federal Republic of Yugoslavia had ratified the UN 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (hereinafter referred as Vienna Convention) on 3 January 1991. The UN 2000 Convention Against Transnational Organised Crime (hereinafter referred as Palermo Convention) and its supplementary protocols were signed in December 2000 and ratified in September 2001. The Republic of Serbia is a successor to the UN international treaties previously concluded by Serbia and Montenegro from 3 June 2006. The Council of Europe 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg Convention) was ratified in 2004.

113. Money laundering was not qualified as a sui generis criminal offence in Serbia until 2002. The Law on the Prevention of Money Laundering (previous AML Law) classified money laundering as a separate criminal offence of money laundering until 2006[28]. The criminalisation of money laundering has been significantly changed with the introduction of a new Criminal Code[29] (hereinafter referred as CC) in 2005, which entered into force on 1st January 2006. Chapter 22 – Offences against economic interests - sets forth the offence of money laundering under Article

[28] The money laundering offence was then limited in scope to depositing cash into accounts kept with banks or other financial organisations (article 27 of the AML Law).
[29] RS Official Gazette Nos. 85/2005, 88/2005-corrigendum and 107/2005-corrigendum.

231 of the CC in a much broader and more complex approach than previously. It has also to be pointed out that the money laundering offence is also defined in the AML/CFT law[30] (Article 2).

Criminalisation of money laundering (c.1.1 – Physical and material elements of the offence)

114. Article 231 of CC reads as follows:

Money Laundering (Article 231)

(1) Whoever converts or transfers property while aware that such property originates from a criminal offence, with intent to conceal or misrepresent the unlawful origin of the property, or conceals or misrepresents facts on the property while aware that such property originates from a criminal offence, or obtains, keeps or uses property with foreknowledge, at the moment of receiving, that such property originates from a criminal offence, shall be punished by imprisonment of six months to five years.
(2) If the amount of money or property specified in Paragraphs 1 of this Article exceed one million five hundred thousand Dinars, the offender shall be punished by imprisonment of one to ten years.
(3) Whoever commits the offence specified in Paragraph 1 and 2 of this Article, and could have been aware or should have been aware that the money or property represent proceeds acquired by criminal offence, shall be punished by imprisonment of up to three years.
(4) The responsible officer in a legal entity who commits the offence specified in Paragraphs 1 through 3 of this Article shall be punished by the penalty stipulated for that offence, if aware or should have been aware that the money or property represents proceeds acquired by criminal offence.
(5) The money and property specified in Paragraphs 1 through 4 of this Article shall be confiscated.

115. Article 231 sets forth the following types of conducts that constitute the ML offence, all of which are largely in line with the material elements listed in Article 3 of the Vienna Convention and Article 6 of the Palermo Convention:

- Conversion or transfer of property for the purpose of concealing or misrepresenting the illicit origin of the property (Article 3 Paragraph 1 (b) i) of the Vienna Convention and Article 6 Paragraph 1 (a) i) of the Palermo Convention);
-
- Concealing or "misrepresenting facts" on the illicit origin of the property (Article 3 Paragraph 1 (b) ii) of the Vienna Convention and Article 6 Paragraph 1 (a) ii) of the Palermo Convention);

- Acquisition, possessions or use of property knowing that at the time of receipt such property is the proceeds of crime (Article 3 (1) c)ii of the Vienna Convention and Article 6 Paragraph 1 (b) i of the Palermo Convention).

116. The structure appears to be transposed from the Vienna and Palermo Conventions into the CC literally. However, a few words are translated differently in the English version of the Article 231 of CC. The authorities claimed that "misrepresenting the unlawful origin of the property" amounted to "disguising". They also indicated that the terms *misrepresenting "any facts on the property*" and of "the illegal origin of property" would cover the 'true nature, source, location, disposition, movement, or ownership of, or rights in respect to property' and it might be even broader than the Convention term.

117. Article 231 and the ML offence in the AML/CFT law are different, the latter specifically listing the situations of misrepresentation ("of the true nature, source, location, movement,

[30] Article 2 – "For the purposes of this law, money laundering shall mean the following:
(1) conversion or transfer of property acquired through the commission of a criminal offence
(2) concealment or misrepresentation of the true nature, source, location, movement, disposition, ownership of or rights with respect to the property acquired through the commission of a criminal offence
(3) acquisition, possession, or use of property acquired through the commission of a criminal offence."

disposition, ownership of or rights with respect to the property acquired through the commission of a criminal offence”). However the latter is used only for the purposes of the application of the AML/CFT law.

The laundered property (c.1.2) & Proving property is the proceeds of crime (c.1.2.1)

118. The offence extends to ‘property’ that derives from a criminal offence, which would appear to cover any types of property and to represent all sorts of proceeds of crime. While the CC defines “money”[31], there is no definition of “property”. The authorities indicated that the term ‘property’ includes property of any kind, the ‘money’, ‘objects’ and ‘rights’ as well. However, the second and third paragraphs of the Article 231 explicitly refer to ‘money or property’. Judicial authorities stated that this is not an error of translation, but a legislative mistake which had no impact on the judicial application of Article 231. The AML/CFT law defines separately the terms “property” as “assets, money, rights, securities, and other document in any form whose right of ownership and other rights can be established”. The evaluation team remains concerned that the scope of property captured within the ML offence in the CC does not provide for legal certainty.

119. The authorities indicated that conviction of an offender for the predicate offence is not a necessary precondition to bringing charges for money laundering. Judicial authorities reaffirmed that the actual commission of underlying criminal act and evidence that the property originates from the underlying criminal act are sufficient to prosecute for money laundering. In all ML judgments, convictions for ML were obtained either based on or together with a conviction for the predicate offence. They indicated that the evidence that the property originates from committed criminal offence are established through the procedure of identification of the important elements which constitute the criminal offence of money laundering. Also, there is a possibility to constitute evidence that the property originates from criminal offence for the purposes of an individual case of money laundering.

120. The evaluation team was told that that the level of proof required to prove the predicate offence approached “reasonable doubt”, and that the evidence had to be undoubtedly established. This amounts in practice to proving the specifics of the predicate offense, which is a rather high standard of proof. It seems that the practice so far is that prosecution for the ML offence and the predicate offence is conducted simultaneously, so the specific predicate offence has to be identified and proved. The fact that the predicate offence is regularly prosecuted simultaneously with the money laundering offence implies that there might be an evidential problem when the predicate offence cannot be prosecuted. This could present an effectiveness problem.

The scope of the predicate offence (c.1.3) & Threshold approach for predicate offences (c.1.4)

121. The criminalisation of money laundering has been explicitly based on an ‘all crime approach’. Predicate offences for ML cover any ‘criminal offence’ of the CC (see Annex IV for a list of designated categories of offences based on the FATF Methodology). The authorities indicated that it is irrelevant which criminal offence has been committed as well as the amount of property acquired as a result of the offence.

122. The range of offences set out in the CC which are predicate offences to ML include all required categories of offences with the exception of insider trading and market manipulation. The

[31] Article 112: “ metal and paper money or money fabricated of other material that is legal tender (…)”. The authorities informed the evaluation team that legislative amendments to article 112 were adopted after the visit (Law on amendments and additions to the Criminal Code, RS Official Gazette No. 72/09) which define property as assets of every kind, tangible or intangible, movable or immoveable or the estimates and invaluable documents in any form that evidence a title to or interest in such assets. Property is considered also income or other benefit that originates, directly or indirectly, from a criminal offence as well as in which it is converted or with which it is merged.

authorities advised that article 359 (abuse of office) and article 240 (disclosing a business secret) could be used in this context.

Extraterritorially committed predicate offences (c.1.5)

123. The criminal legislation of Serbia also applies for criminal offences committed abroad by Serbian citizens (Article 8) or foreign citizens (Article 9) who commit a criminal offence abroad against Serbia or its citizens, if the person is found on the territory of Serbia or is extradited to Serbia. In the case of predicate offences committed abroad by foreigners against a foreign state or foreign citizen, this applies only to offences punishable by 5 years imprisonment or more, pursuant to the laws of the country of commission, and if the person is found on the territory of Serbia and not extradited. Criminal prosecution in such cases shall be undertaken only when criminal offences are also liable to prosecution according to the laws of the country where they were committed. If the law of the country does not criminalise such conduct, criminal prosecution can be undertaken only with the permission of the Republic Public Prosecutor (Article 10(2)). There were no cases where permission of the Republic Public Prosecutor for prosecution of the ML offence so far.

124. In respect to money laundering offence, the evaluation team was advised by the Serbian authorities that money laundering can be prosecuted, if the predicate offence having generated the laundered proceeds is punishable in the foreign country, where it has been actually committed and it can also be prosecuted if the predicate offence does not constitute a criminal activity in the foreign country. If the Serbian judicial authorities have no jurisdiction to prosecute the predicate offence on the basis of the provisions detailed above, the money laundering offence can be prosecuted, insofar as the jurisdiction of Serbian criminal legislation (for prosecuting money laundering) is established. Whether the predicate offence constituted an offence in the foreign country, but the subsequent laundering activity is committed domestically or by Serbian citizens, the prerequisite of instituting criminal prosecution in money laundering is to carry out 'special prosecution' by using channels of mutual legal assistance on the predicate crime, where the facts that the predicate offence had actually been committed shall be established. If the foreign country does not criminalise the predicate crime, Serbian authorities indicated that theoretically speaking carrying out 'special prosecution' in the criminal procedure in money laundering might be sufficient, where the facts of evidentiary value shall be established that the unlawful activity being criminalised by Serbian criminal legislation had been committed. Nevertheless, examiners and judicial authorities were of the common opinion that proving the guilty mind of the perpetrator of the laundering activity in the latter case appears to be extremely challenging. The dual criminality principle on predicate offence does not serve as a legal obstacle for prosecuting money laundering domestically on the basis of the Serbian criminal legislation.

125. When it comes to the case where both the predicate offence and laundering activity have been committed extraterritorially and by foreign citizens, the conditions listed above need to be fulfilled. In order to institute criminal prosecution under the jurisdiction of Serbia in money laundering offence in such a case, as a general rule, the dual criminality together with the 5 years imprisonment condition are required, if the person is found on the territory of Serbia or is extradited to Serbia. However, the Article 10 Paragraph 2 (permission of the Republic Public Prosecutor) serves as a possible supplementary basis for establishing the jurisdiction of Serbian authorities in order to prosecute the money laundering offence.

Laundering one's own illicit funds (c.1.6)

126. The offence in the Criminal Code does not cover explicitly self laundering[32]. The authorities indicated that in practice, nothing prevented to apply the offence to persons who commit the

[32] This matter was also addressed by the amendments to article 231 as adopted following the on-site visit (Law on amendments and additions to the Criminal Code, RS Official Gazette No. 72/09)

predicate offence and that this had been clarified both in a mandatory instruction (2008) of the Public Prosecutor's Office and by recent case practice.

Ancillary offences (c.1.7)

127. The general part of the Criminal Code provides for the following ancillary offences to the offence of ML:

- *Attempt* is criminalised for offences which are punishable by law with a term of 5 years imprisonment or more and for other offences, only when the law explicitly provides for the punishment of attempt (Article 30 CC). Taking into consideration that the money laundering is punishable by law with a term of imprisonment from 6 months to 5 years, the attempted criminal offence of money laundering is also penalised by law.
- *Aiding, facilitating and counselling the commission of the offence* are covered by Article 35 CC, which covers in particular "giving instructions or advice on how to commit a criminal offence, supply of means for committing a criminal offence, creating conditions or removal of obstacles for committing a criminal offence, prior promise to conceal the commission of the offence, offender, means used in committing a criminal offence, traces of criminal offence and Items gained through the commission of criminal offence".
- *Abetting* is covered by Article 33 (co-perpetration): "If several persons jointly take part in committing a criminal offence, or jointly commit an offence out of negligence, or by carrying out a jointly made decision, by other premeditated act significantly contribute to committing a criminal offence, each shall be punished as prescribed by law for such offence"
- *Incitement* (Article 34): covers whoever with intent incites another to commit a criminal offence.

128. Furthermore, under the Chapter 31 on offences against public peace and order, the following offences are also covered:

- *Conspiracy to commit a crime:* is a separate criminal offence under Article 345 which provides that whoever conspires with another to commit an offence punishable by imprisonment of 5 years or more shall be punished by fine or imprisonment up to 1 year.
- *Criminal alliance*: that is the organisation of a group or other alliance with the purpose of committing criminal offences punishable by imprisonment of three years or more, is also a separate offence under Article 346 CC which is punishable by imprisonment of 3 months up to 5 years.

129. The evaluators consider that there are appropriate ancillary offences to the offence of ML.

Additional element – If an act overseas which does not constitute an offence overseas but would be a predicate offence if occurred domestically leads to an offence of ML (c.1.8)

130. The ML offence from Article 231 of CC can also be applied in situations when criminal proceeds originate from activities committed in a foreign country, which are not criminalised in that country, but which would be regarded as a predicate criminal offence had they been committed in Serbia, as described above.

Recommendation 2

Liability of natural persons (c.2.1)

131. The Serbian criminal law provides that a criminal offence is an offence set forth by the law as criminal offence, which is unlawful and committed with 'guilty mind'/mens rea (Article 14). In the case of ML, the acts of concealing/misrepresenting have to be committed with intent.

132. The negligent commission of the offence is also penalised under Paragraph (3) of Article 231: if the perpetrator of the money laundering 'could have been aware or should have been aware

that the property represents proceeds acquired by criminal offence, shall be punished by imprisonment of up to three years'.

133. Paragraph (4) of Article 231 of CC stipulates that the responsible officer in a legal entity who commits either intentionally or negligently the money laundering offence shall be punished by the penalty stipulated for that offence, if aware or should have been aware that the money or property represents proceeds acquired by criminal offence.

The mental element of the ML Offence (c.2.2)

134. Criterion 2.2 requires that the law should permit the intentional element of the offence of money laundering to be inferred from objective factual circumstances. Albeit the Serbian legislation has no explicit provision for this requirement, this is acknowledged by the general rules related to evidence.

Liability of legal persons (c.2.3)

135. The corporate criminal liability was introduced into the Serbian legislation by the Law on Liability of Legal Entities for Criminal Offences[33], which entered into force in November 2008. It prescribes and regulates the conditions governing the liability of national and foreign legal entities for criminal offences, penal sanctions that may be imposed on legal entities as well as procedural provisions for determining criminal liability of legal entities and imposing penal sanctions. According to the Law, the criminal liability of the responsible person of a legal entity is the prerequisite for determining the criminal liability of a legal entity. Liability of legal entities shall be based upon culpability of the responsible person. A legal entity shall be held accountable for criminal offences which have been committed for the benefit of the legal person by a responsible person within the remit, that is, powers thereof. As a rule, the criminal proceedings are instituted and conducted jointly against a legal entity and the responsible person, and a single sentence shall be passed.

136. Such liability also arises where the lack of supervision or control by the responsible person allowed the commission of crime for the benefit of that legal person by a natural person operating under the supervision and control of the responsible person. Under the aforementioned conditions a legal person shall be held accountable for criminal offences committed by the responsible person even though criminal proceedings against the responsible person have been discontinued or the act of indictment refused.

Liability of legal persons should not preclude possible parallel criminal, civil, or administrative proceedings (c.2.4)

137. According to Serbian legislation, parallel criminal and civil and administrative procedures are possible in all cases when damage has been inflicted upon a legal or natural person through the commission of a criminal offence, regardless of whether the perpetrator is a natural or legal person. The institution of proceedings before courts is not conditioned by the criminal conviction so as not to delay unduly the procedure to the detriment of the individuals that suffered the damage. As for the administrative procedures, there is a possibility that a same action is provided as a criminal offence action or a minor offence action; what kind of punishable offence it is, it will be established in the course of proceedings, after establishing in a valid way the subjective element on the side of the immediate perpetrator, and consequently also the responsibility of the legal person for the criminal offence. If in the course of the criminal procedure against a legal person no liability is found on the part of its responsible person for the criminal offence, there are no obstacles to institute or continue the procedure both against the legal and against the natural

[33] RS Official Gazette No. 97/2008 of 27 October 2008.

person for a related minor offence, if such minor offence is provided for in the law. This does not mean that a parallel punishment of the legal and the responsible persons is possible both in the minor offence procedure and in criminal procedure, given that the Criminal Code as well as the Law on Minor Offences govern the manner of aggregation of punishments pronounced in the minor-offence proceedings, in case of the conviction for a criminal offence.

138. At the time of the on-site visit, the provisions of the Law on Liability of Legal Entities for Criminal Offence had not yet been tested.

Sanctions for ML (c.2.5)

Natural persons

139. The perpetrator of a basic ML offence (defined in Paragraph 1) can be sanctioned with a penalty of imprisonment from 6 months to 5 years. When money or property exceeds RSD 1,500,000, a higher penalty of imprisonment from 1 year to 10 years is applicable. In cases of negligence, the punishment is maximum 3 years. The money and property originating from a criminal offence shall be seized. The penalties applicable for ML appear to be in line with provisions for other financial offences. Chapter X of the CC provides for statutory limitations, and according to the rules of relative limitation of criminal prosecution, the possibility to institute a criminal proceeding against a person may only be instituted for money laundering within five years (basic form of the offence of money laundering), ten years (qualified offence of money laundering) or three years (negligent money laundering offence) from the time of the commission.

Legal persons

140. The Law on Liability of Legal Entities for Criminal Offences (article 12) determines the sentences that may be imposed against a legal person. The following types of sanctions may be imposed against legal persons for ML:

7) sentence
8) suspended sentence
9) security measure

141. According to article 13, fine and the termination of the status of a legal entity may be imposed solely as principal sentences. Fines range between a minimum of RSD 100,000 and maximum 500,000,000. The fines which could be imposed for the basic ML offence (6 months-5 years imprisonment) could range up to RSD 5 millions and where the assets exceed RSD 1,500,000, the fine could reach RSD 10 to 20 millions (article 14).

142. Security measures such as prohibition to practise certain registered activities or operations, confiscation of instrumentalities, the publicising of the judgement may be imposed for criminal offences which legal entities are liable for. The court may impose on the liable legal person one or several security measures where conditions to impose them exist, provided for by law. Security measures for the confiscation of instrumentalities or the publicising of the judgment may be imposed if the suspended sentence has been imposed on the liable legal person.

143. However, according to Article 19 of the law, a legal entity may be exonerated from punishment if a) it detects and reports a criminal offence before learning that criminal proceedings have been instituted or b) if on a voluntary basis or without delay it removes incurred detrimental consequences or returns the proceeds from crime unlawfully gained. The evaluation team wondered why such an exonerating ground was provided for, as it leaves room for abuse and could hamper the effective application of the criminal liability provisions. The authorities stressed that this exonerating ground is not mandatory.

Recommendation 32 (money laundering investigation/prosecution data)

144. As regards statistics, different figures have been provided by the Ministry of Interior, the Ministry of Justice, the Public Prosecutor's Office and the Courts. It was noted that producing statistics has been improved much comparing it with the previous evaluation.

145. The Ministry of Interior provided figures on the number of preliminary investigations in money laundering offence, the number of offenders, number of criminal reports and the amount of the laundered money. It is apparent that all of the figures have been constantly increased since the introduction of the CC.

Table 13. Preliminary investigations

	Number of ML offences (Article 231)	**Number of offenders**	**Number of criminal reports**[34]	**Amount of money laundered**
2004/2005	8	8	8	RSD 194,300,000
2006	16	54	13	RSD 90,883,403
2007	38	101	22	RSD 1,648,034,858
2008 (Jan/Oct)[35]	45	47	21	RSD 2,297,291,532.26 EUR 2,500,000 CHF 700,000
Total	**107**	**210**	**64**	**RSD 4,230,509,793.26 EUR 2,500,000 CHF 700,000**

146. The statistics of the public prosecutor's office and the courts are provided with a breakdown of criminal reports, charges brought (indictment), convictions and final convictions since 2006.

Table 14. Money laundering cases

	Criminal reports	**Charges brought**	**Convictions**	**Final decisions**
2006	13	2		
2007	28	5	1	
2008	26	12	4	2

147. The evaluation team was pleased to note that since the last evaluation, when there was no court practice, several convictions were successfully achieved, and in particular 2 final judgments were confirmed by the Supreme Court of Serbia. It has to be noted that the courts convicted perpetrators on the basis of the money laundering offence laid down by the previous AML Law. The new ML offence is as yet untested.

148. All judgments received by the evaluation team relate to concealing of cash proceeds derived from tax evasion, legalised through use of false invoices, fictitious legal transactions, and sometimes use of fictitious companies. Perpetrators were convicted for committing abuse of office (article 359 CC) [36] in concurrence with money laundering. The sentence applied specifically for

[34] The column 'number of criminal reports' shows the number of criminal reports submitted to the Public Prosecutor's Office

[35] At the time of the on-site visit, statistics in this particular breakdown were available only until October 2008.

[36] Abuse of Office, Article 359 of CC

(1) An official who by abuse of office or authority, by exceeding the limits of his official authority or by dereliction of duty acquires for himself or another any benefit, or causes damages to a third party or seriously violates the rights of another, shall be punished by imprisonment of six months to five years.

money laundering in all cases amounted to one year imprisonment, however the consolidated sentence was higher (according to the judgments received, for instance to 2 years and 6 months in one case and to five years and six months in another case). In all cases the perpetrators were also deprived of the pecuniary benefit obtained and proceeds were confiscated.

149. Considering the information received and statistics on the structure of predicate offences (see section 1.2), the evaluators were surprised to note that there were no convictions obtained in relation to other proceeds generating predicate offences, in particular those related to organised drug trafficking, human trafficking and human smuggling. One could consider that, when comparing with the number of ML investigations and also with the number of investigations and convictions for serious offences that generate proceeds, the number of convictions for ML is rather low. The information provided demonstrates nevertheless no apparent lack of will in prosecuting money laundering offences.

150. The evaluation team was informed of practical difficulties in gathering evidence to secure successful prosecutions for money laundering and the tendency to pursue the easier option of investigating and prosecuting abuse of office (Article 359 of CC) rather than of prosecuting the money laundering offence. The lack of financial expertise and knowledge to deal with economic crime cases was also mentioned.

151. It was also explained that for instance, in cases where the preliminary investigation is commenced for abuse of office and money laundering, the request to the investigative judge is submitted exclusively for abuse of office The reasons of this practice are to overcome the impediments of the strict deadlines of investigation (6 months)[37] carried out by the investigative judge and the difficulties of verifying the evidences. Since the abuse of office offence is less specific than money laundering, it was more likely to go through the investigation. Once the trial has been started, the prosecutor is not legally bound to the qualification, so he/she can easily extend the indictment to money laundering as well. Judicial authorities have not confirmed if this practice gives a potential explanation for the digression of figures between the criminal reports and the indictments (charges brought). It has to be noted that sentences for abuse of office are higher than those for money laundering.

152. These results can be seen as encouraging, however the evaluation team remains reserved on the implementation of the ML offence in Serbia.

2.1.2 Recommendations and comments

153. The authorities should:

Recommendation 1

- Clarify that the offence of ML extends to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime,

- Criminalise insider trading and market manipulation,

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(2) If the commission of the offence specified in Paragraph 1 of this Article results in acquiring material gain exceeding four hundred and fifty thousand dinars, the offender shall be punished by imprisonment of one to eight years.
(3) If the value of acquired material gain exceeds one million five hundred thousand dinars, the offender shall be punished by imprisonment of two to twelve years.
(4) The responsible officer in an enterprise, institution or other entity who commits the offence specified in Paragraphs 1 through 3 of this Article shall be punished by the penalty prescribed for such offence.

[37] Article 258 of CPC

- Develop comprehensive training materials and strengthen training programmes in order to enhance the capacity of investigative judges and prosecutors to investigate and prosecute ML cases and of judges to effectively apply the new ML offence as well as undertake appropriate initiatives to raise their awareness on the importance of integrating financial investigations into investigations of proceeds generating offences.

Recommendation 2

- Monitor in time the application of the exonerating ground under article 19 of the Law on Liability of Legal Entities for Criminal Offences with a view to taking any corrective action, should it be demonstrated that it impacted negatively on the effective application of the criminal liability provisions;

- Raise awareness on the statutory requirements of the newly adopted Law on Liability of Legal Entities for Criminal Offences through adequate training of competent authorities;

Recommendation 32

- Considering the various statistics presented to the evaluation team before the visit and afterwards, the evaluation team recommends the authorities to consider designating one single institution responsible for keeping integrated statistics related to AML/CFT. Also, the authorities may consider keeping records on the underlying predicate offences, on cases where there was an autonomous money laundering prosecution, cases which were tried in the same indictment as the predicate offence, cases which are self laundering and sanctions applied, as this would enable them to monitor the effectiveness of implementation of the ML provision.

2.1.3 Compliance with Recommendations 1 and 2

	Rating	Summary of factors underlying rating
R.1	**LC**	• Lack of clarity as to the scope of property[38] • The list of predicate offences does not cover 2 out of 20 designated categories of offences (insider trading, market manipulation) • Low number of convictions and indictments for ML compared to the number of ML criminal investigations and investigations for serious offences that generate proceeds indicates an issue of effectiveness
R.2	**LC**	• The effectiveness of the new sanctions regime could not be fully assessed as provisions on criminal liability of legal persons have not yet been applied and the sanctions under the new ML offence remained untested in practice

[38] The scope of property was clarified through amendments to the definition of property, which were adopted after the visit.

2.2 Criminalisation of Terrorist Financing (SR.II)

2.2.1 Description and analysis

Special Recommendation II

Legal framework

154. The UN 1999 International Convention for the Suppression of the Financing of Terrorism (FT Convention) was signed in November 2001 and ratified in October 2002[39] without any declaration or reservation and a number of additional conventions related to the prevention and suppression of international terrorism[40]. The previous evaluation report pointed out the lack of adequate implementation of the FT Convention. Meanwhile, the authorities have criminalised the financing of terrorism as an autonomous offence in article 393 of the CC. At the time of the on-site visit, there have been no investigations or prosecutions for terrorism financing.

Criminalisation of financing of terrorism (c.II.1)

155. Article 393 of CC[41] reads as follows:

Financing of Terrorism (Article 393)

1) Whoever provides or collects funds intended for financing commission of criminal offences specified in Articles 312, 391 and 392 hereof, shall be punished by imprisonment of one to ten years.
(2) The funds specified in Paragraph 1 of this Article shall be confiscated.

156. The criminal offence of financing of terrorism is a sui generis act of the CC. This Article criminalises the provision or collection of funds with the intention that such funds are used for committing one of the three listed offences (terrorism, international terrorism or taking hostages)[42].

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[39] Official Gazette of SRJ – international treaties No. 7/2002.

[40] Convention for the Suppression of unlawful seizure of aircraft (1970) ratified in 1972 (SFRJ Official Gazette No. 33/72) ; Convention for the suppression of unlawful acts against the safety of civil aviation (1971), ratified in 1972 (SFRJ Official Gazette No. 33/72); Convention on the prevention and punishment of crimes against internationally protected persons, including diplomatic agents (1973) ratified in 1976 (SFRJ Official Gazette No. 54/76); International convention against the taking of hostages (1979) ratified in 1984 (SFRJ Official Gazette No. 9/84); Protocol for the suppression of unlawful acts of violence at airports serving international civil aviation (SFRJ Official Gazette No. 14/89) ; Convention for the suppression of unlawful acts against the safety of maritime navigation (1988) ratified in 2004 (S&M Official Gazette No. 2/2004); Protocol for the suppression of unlawful acts against the safety of maritime navigation (1988) ratified in 2004 (S&M Official Gazette No. 6/2004); International Convention for the suppression of terrorist bombings (1997) ratified in 2002 ((FRY Official Gazette No. 12/2002).

[41] This article was amended after the visit and a new paragraph 2 provides that “whoever encourages and assists in providing or collecting funds for carrying out criminal acts specified in articles 312, 391 and 392 of this Code, regardless of whether the act is committed, or whether the funds are used for the committing of these criminal offences, shall be punished by imprisonment from 6 months to 5 years (Law on amendments and additions to the Criminal Code, RS Official Gazette No. 72/09).

[42] ***Terrorism (Article 312)***
Whoever with intent to compromise the constitutional order or security of Serbia or SaM causes an explosion or fire or commits another generally dangerous act or commits an abduction of a person or some other act of violence, or by threat of committing such generally dangerous act or use of nuclear, chemical, bacteriological or other dangerous substance and thereby causes fear or insecurity among citizens, shall be punished by imprisonment of three to fifteen years.
International Terrorism (Article 391)
(1) Whoever with intent to cause harm to a foreign state or international organisation commits abduction of a person or other violent act, causes explosion or fire or commits other generally dangerous acts or threatens use of nuclear, chemical, bacteriological or other similar means, shall be punished by imprisonment of three to fifteen years.

157. Under Articles 312 and 391 only the acts intended to cause harm to the constitutional order of Serbia, or to a foreign state or international organisation are criminalised. The offences listed in Article 393 do not mirror fully the offences which fall within the scope of the nine international treaties appearing in the annex to the FT convention and thus the language of Article 2 Paragraph 1(a) and (b) of the FT Convention. The scope of the FT offence therefore does not extend to "all terrorist acts" as defined in the FT Convention.

158. In respect to the material elements of the Article 393 of CC the actus reus is the activity of providing or collecting funds, which is in line with Article 2 of the Convention.

159. The offence of financing of terrorism is committed intentionally. The intention has to be aimed at financing of specified criminal offences. Accordingly, the offence is applicable to any person who wilfully provides or collects funds with the unlawful intention that these funds should be used, or in the knowledge that these funds are to be used to carry out terrorist act as it is required by the essential criterion II.1(a)(i).

160. The provision or collection of funds to finance a terrorist organisation and individual terrorists do not appear to be covered (c.II.1a)(ii) and (iii)). Thus, the FT provision does not cover all the requirements of SR.II on this point.

161. The term "funds" is not defined in the CC, nor has it been interpreted by judicial authorities, thus there is no legal certainty that the FT offence shall extend to any funds as defined in the FT Convention.

162. The financing of terrorism offence formally does not require that the provided or collected funds were actually used to carry out or attempt a terrorist act. However, due to its references to specific criminal offences from other Articles of the CC ("intended for financing of criminal offences referred to in Articles 312, 391 and 392 of the present Code"), the definition of terrorist financing requires the funds to be linked to the specific terrorist activity. This is not is not in line with the convention which doesn't require such link to be established and could be an important limitation for effective use in the practice.

163. The provisions in the general part of the CC defining ancillary offences (attempt, co-perpetration, incitement, aiding, abetting, facilitating) apply to all crimes, including FT. As for the conspiracy with another person to commit financing of terrorism is also subject to criminal liability due to the sui generis offence of conspiracy to commit a crime. The authorities also pointed out the possible application in this context of article 346 CC (criminal alliance). All ancillary offences as defined in Article 2(5) of the FT Convention are covered under Serbian law.

164. The offence of FT is also not entirely consistent with SR.II as it does not fully cover the financing of terrorist organisations and the financing of individual terrorists regardless of whether the financing is for criminal activities, legal activities or general support. The provision/collection

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(2) If the offence specified in Paragraph 1 of this Article resulted in death of one or more persons, the offender shall be punished by imprisonment of five to fifteen years.
(3) If in commission of the offence specified in Paragraph 1 of this Article the offender kills another person with intent, the offender shall be punished by imprisonment of minimum ten years or imprisonment of thirty to forty years.
Taking Hostages (Article 392)
(1) Whoever abducts another person and threatens to kill, injure or keep hostage with intent to force another country or international organisation to do or not to do something, shall be punished by imprisonment of two to ten years.
(2) The offender specified in Paragraph 1 of this Article who voluntarily releases the abducted person although not achieving the objective of the abduction, may be remitted from punishment.
(3) If the offence specified in Paragraph 1 of this Article results in death of the abducted person, the offender shall be punished by imprisonment of three to fifteen years.
(4) If in commission of the offence specified in Paragraph 1 of this Article the offender intentionally kills the abducted person, the offender shall be punished by imprisonment of minimum ten years or imprisonment of thirty to forty years.

of funds in such cases would not amount to a criminal offence unless it can be established that the perpetrator knew that the funds were intended to be used in the commission of the terrorist acts provided for. The evaluation team was advised by authorities on-site that the provisions for aiding and abetting (Article 35 of CC) might be relevant in such a sense. In their view whether the perpetrator provides funds with the intention that they are used for the purpose of international terrorism, but without the knowledge on the particular terrorist act, the turn 'creating the conditions for committing a criminal offence' roughly covers the elements of the respective essential criteria of SR II. Regarding this explanation the examiners consider the explicit expression 'aiding another with intent in committing a criminal offence' as the legal obstacle.

165. It has to be pointed out that the AML/CFT Law defines comprehensively terrorism financing (article 2(2)), a terrorist act (article 2(3)), terrorist (article 2(4)), a terrorist organisation (article 2(5)), however these are not applicable in criminal cases.

Predicate offence for money laundering (c.II.2)

166. The FT is a predicate offence to ML.

Jurisdiction for Terrorist financing offence (c.II.3)

167. As already mentioned in relation to ML, the extraterritoriality of the FT offence is not an issue.

The mental element of the FT (applying c.2.2 in R.2)

168. The mental element for terrorism financing is intent. The intent is extrapolated from factual circumstances of the case based on a principle of free evaluation of evidence which is one of the basic principles of the Code of Criminal Procedure.

Liability of legal persons (applying c.2.3 & c.2.4 in R.2)

169. Liability of legal persons is provided for in the Law on Criminal Liability of Legal Entities which in its Article 2 provides that a legal entity may be liable for criminal offences constituted under a special part of the Criminal Code and under other laws if the conditions governing the liability of legal entities provided for by this Law are satisfied. In this respect, the analysis given under Section 2.1 applies also for terrorist financing respectively.

170. As explained under Recommendation 1, parallel litigations or administrative proceedings are not excluded.

Sanctions for FT (applying c.2.5 in R.2)

171. The sanction for natural persons is a penalty of imprisonment of one to ten years and the funds provided or collected fall under mandatory confiscation by virtue of Article 393 Paragraph 2 of CC. The penalty for legal persons can result in dissolution or a fine from 10 to 20 million RSD. Sanctions seem to be proportionate and dissuasive, however in the absence of any case law, it is impossible to establish whether they are effective.

Implementation and effectiveness

172. As of the time of the on-site visit, there were no criminal investigations, indictments or convictions in connection with financing of terrorism in Serbia. The authorities indicated that they deemed the risk of FT low and that authorities in charge of security were monitoring intensively all activities of radical Islamist movements.

2.2.2 Recommendations and comments

Special Recommendation II

173. Though the FT Convention has been signed and ratified a while ago, there are still several shortcomings with respect to the implementation of the convention in the criminal substantive law. To address these gaps, the authorities should:

- Extend the criminalisation of FT in all instances envisaged in SR.II with reference to the financing of terrorist organisations and the individual terrorists;
- Extend the criminalisation to the whole range of activities envisaged by Article 2(1) (a) and (b) of the FT convention;
- Define "funds" so as to cover "assets of every kind, whether tangible or intangible, movable or immovable, however, acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit"
- Amend the FT offence as it should not require that funds are linked to a specific terrorist act.

Recommendation 32

- Though there are no statistics due to the absence of relevant proceedings, Serbia should ensure that there is a requirement for competent authorities to maintain comprehensive annual statistics on FT investigations, prosecutions and convictions, should there be such cases.

2.2.3 Compliance with Special Recommendation II

	Rating	**Summary of factors underlying rating**
SR.II	**PC**	• Article 393 does not criminalize the financing of a terrorist organisation or of an individual terrorist • The offence does not cover the whole range of activities envisaged by Article 2(1) (a) and (b) of the FT Convention (thus not all of them being predicate offences to ML) • In the absence of a definition of funds, it is unclear that the offence encompasses the notion of funds as defined in the FT Convention • The FT offence requires that funds are linked to a specific terrorist act

2.3 Confiscation, Freezing and Seizing of Proceeds of Crime (R.3)

2.3.1 Description and analysis

Recommendation 3

Legal framework

174. The confiscation and the provisional measures in Serbia have been going through a considerable change since the previous evaluation. The following provisions of the Criminal Code[43], Criminal Procedure Code[44] and of the Law on Seizure and confiscation of the proceeds from crime (2008) are relevant in this context:

[43] RS Official Gazette No. 85/2005, 88/2005, 107/2005.

- As regards confiscation:
  - Criminal Code: Chapter VII - Confiscation of material gain (Articles 91-93) and specific confiscation measures under relevant criminal offences if provided (e.g. ML offence - Article 231(5), FT – art 393(2)).
  - Criminal Code: Chapter VI – Security Measures (Article 87)
  - Criminal Procedure Code[45]: Chapter XXX –Proceedings for implementation of security measures for the confiscation of pecuniary benefit (Articles 512, 513-520)
  - Law on Seizure and confiscation of the proceeds from crime (2008)[46] : c) Permanent confiscation of assets (Articles 28-36)

- As regards seizure:
  - Criminal Procedure Code: Chapter VII – Evidentiary actions (Temporary seizure of objects - Articles 82-86), Article 238 (seizure of objects before the beginning of the investigation)
  - Criminal Procedure Code: Chapter XXXIX A – Special provisions governing proceedings of organised crime criminal offences (Temporary seizure of assets, revenues and property - Articles 504a, 504r – temporary seizure of assets or pecuniary benefit - 504h)
  - Law on Seizure and confiscation of the proceeds from crime (2008): c) Temporary seizure" of assets (Articles 21-27)

- As regards freezing:
  - Criminal Procedure Code: Temporary ban of transactions suspected to represent a criminal offence or to be done for the purpose of committing a criminal offence or hiding of a criminal offence or profit gained (Article 234);
  - Criminal Procedure Code: Chapter XXIX A – Special provisions governing proceedings of organised crime criminal offences - Temporary ban of payment or issuance of suspicious money, valuable papers or objects(Article 504k of CC);
  - Law on Seizure and confiscation of the proceeds from crime (2008): ban on use of assets (Article 22)
  - Temporary suspension of transactions (Article 56 and 63 of AML/CFT Law).

175. The Law on Seizure and Confiscation of the Proceeds from Crime lays down comprehensively the requirements for, the procedure on and the authorities responsible for tracing, seizing/confiscating and managing the proceeds from crime. It has to be underlined that the scope of the Law is limited to particular criminal offences as laid down in its Article 2. Thus, it is applicable for money laundering (Article 231.2 of the CC) and financing of terrorism offence only if the material gain or the value of objects acquired from the crime exceed the amount of RSD 1,500,000.

Confiscation of property (c.3.1)

176. As a general rule, confiscation is conviction based. Article 517 provides that "the court may order the confiscation of pecuniary benefit by a judgment of conviction, by a penal order issued without the trial, by a ruling on a judicial admonition or by a ruling on the application of an educational measure, as well as by a ruling on the imposition of a security measure of mandatory psychiatric treatment", however the use of the verb "may" is not related to whether the

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[44] FRY Official Gazette No. 58/2004, 85/2005, 115/2005 and 49/2007. New amendments were adopted by Parliament on 31 August 2009. It also has to be pointed out that Serbia adopted a new Criminal Procedure Code in 2006 which reforms substantially the entire system of criminal proceedings, however the implementation of this Code had been postponed several times and in the end it was abrogated.

[45] FRY Official Gazette No. 70/2001, No. 68/2002, Official Gazette of RS No. 58/2004

[46] RS Official Gazette No. 97/08, in force on 4 November 2008 and applied as of 1 March 2009.

confiscation is of mandatory or discretionary character. However, objects can also be confiscated in cases where criminal proceedings do not result with a conviction, provided that "this is required by considerations of public safety or the protection of moral" (Article 512 CPC).

177. The main provisions on the confiscation of proceeds from crime is set out in Chapter VII of the Criminal Code, provides that confiscation of the proceeds from crime is a criminal sanction. Article 91 of the CC provides that "material gain obtained through a criminal offence" shall be confiscated according to the conditions and the decision of the court determining the commission of a criminal offence. Confiscation of the proceeds from crime is mandatory. Article 92 CC further provides that "money, items of value and all other material gains" obtained by a criminal offence shall be confiscated from the perpetrator.

178. Article 87 of the CC provides also for the confiscation of instrumentalities used or intended to be used in the commission of a criminal offence if they belong to the perpetrator. If they are not the property of the perpetrator, they can be confiscated only if it is required by the interest of general safety of it there is still a risk that they will be used to commit a criminal offence. Article 87 of the CC provides that the law may stipulate the mandatory confiscation of objects[47] and/or their mandatory destruction. Thus there is no mandatory confiscation of instrumentalities and leaves confiscation to the court's discretion, unless specifically provided so by law.

179. The ML offence provides for a mandatory confiscation rule in Paragraph 5 of Article 231 CC which provides that "money and property" originating from the criminal offence shall be confiscated. However, these cannot be classified as "instrumentalities" but as "laundered property". Thus there seems to be no provision which would prescribe for a mandatory confiscation of instrumentalities used in or intended for use in the commission of a ML offence.

180. The FT offence, in Paragraph 2 of Article 393 provides that " funds " provided or collected which are intended for financing of the commission of criminal offences of terrorism, international terrorism and taking hostages shall be confiscated.

181. Article 25 of the Law on the Liability of Legal Entities from Criminal Offences provides that the instrumentalities used or which were intended for use to commit a criminal offence or that derived from the commission of a criminal offence may be confiscated if they are in the possession of the legal entity concerned. They can also be confiscated where they are not in the possession of the legal entity concerned if so required for the purpose of interests of overall safety and by reasons of morals, but the right of a third party to compensation shall not be infringed.

182. As for value confiscation, if direct confiscation is not possible, the perpetrator is obliged to pay an equivalent amount of money (Article 92 CC). Value confiscation however appears to be applicable exclusively for the proceeds deriving from the commission of an offence, and thus not in the case of instrumentalities used in and intended for use in the commission of ML, FT or other predicate offences. There are no provisions applying value confiscation in the case of legal persons (in so far as instrumentalities are concerned).

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[47] The CC requires mandatory confiscation of objects in the following criminal offences: Giving and Accepting Bribes in connection with voting (article 156), violation of moral right of author and performer (article 198), unauthorised use of copyrighted work or other work protected by similar right (article 199), violation of patent rights (article 201), unauthorised use of another's design (article 202), forging value tokens (article 226), smuggling (article 230), money laundering (article 231), unauthorised use of another's company name (article 233), illegal production (article 242), illegal trade (article 243), forging symbols for marking of goods, measures and weights (article 245), unlawful production, keeping and circulation of narcotics (article 246), facilitating the taking of narcotics (article 247), production and putting in circulation of harmful products (article 256), damaging computer data and programs (article 298), creating and introducing of computer viruses (article 300), illegal organisation of gaming (article 352), unlawful mediation (article 366), soliciting and accepting bribes (article 367), financing terrorism (article 393).

183. Instrumentalities can be confiscated if they are no longer in the property of the perpetrator if it is required by considerations of general safety or if there is still a risk that they will be used to commit a criminal offence, if without prejudice to the rights of third parties to compensation of damages by the perpetrator (Article 87(2) CC).

184. Confiscation of material gain from third parties – both natural and legal persons - is also covered. "Material gain obtained by a criminal offence" transferred without compensation or with compensation that is not equivalent to their actual value to a third party can also be confiscated" (Article 92 Paragraph 2 CC).

185. As mentioned earlier, the Criminal Code does not define property. The above-mentioned provisions could be interpreted to cover property that is derived directly or indirectly from proceeds of crime, including proceeds transformed or converted into other properties. Judges confirmed that what is not covered are non-material advantages of personal nature, unless it resulted in immediate financial advantage, or savings. However, this issue would benefit from being clarified explicitly in the context of application of the CC and CPC provisions.

186. Article 3[48] of the Law on Seizure and confiscation of the proceeds from crime defines assets as "goods of any kind, tangible or intangible, movable or immovable, estimable or of inestimably great value and instruments in any form evidencing rights to or interest in such goods. Assets shall also denote revenue or other gain generated, directly or indirectly, from a criminal offence as well as any good into which it is transformed or which it is mingled with". The confiscation of assets can be ordered by the court. The public prosecutor has to initiate the confiscation. Restricted time limitation is in place. The public prosecutor shall initiate confiscation *'after the legal entry into force of indictment and not later than one year following the final conclusion of criminal proceedings'* (Article 28.1).

187. The Serbian authorities pointed out that one of the major steps forward regarding efficient regime of seizure and confiscation of the proceeds from crime is the introduction of the term 'bequeather'. The 'bequeather' is the person against whom, due to his/her death, criminal proceedings are not instituted or are discontinued, whereas it has been demonstrated in criminal proceedings against other persons that he/she had committed a criminal offence (which falls under the scope of the Law on SC) together with the persons concerned. The assets

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[48] Article 3 - The following terms in this Law shall mean:

1) "Assets" shall denote goods of any kind, tangible or intangible, movable or immovable, estimable or of inestimably great value, and instruments in any form evidencing rights to or interest in such good. Assets shall also denote revenue or other gain generated, directly or indirectly, from a criminal offence as well as any good into which it is transformed or which it is mingled with.
2) "Proceeds from crime" shall denote assets of an accused, cooperative witness or bequeather being manifestly disproportionate to his/her lawful income.
3) "The accused" shall denote a suspect, a person against whom criminal proceedings are instituted or a person convicted for a criminal offence constituted under Article 2 of this Law.
4) "Bequeather" shall denote a person against whom, due to his/her death, criminal proceedings are not instituted or are discontinued, whereas it has been demonstrated in criminal proceedings against other persons that he/she had committed a criminal offence under Article 2 of this Law together with the persons concerned.
5) "Legal successor" shall mean an inheritor of a convicted person, cooperative witness, bequeather or inheritors thereof.
6) "Third party" shall mean a natural person or a legal entity to which the proceeds from crime have been transferred.
7) "Owner" shall refer to an accused person, a cooperative witness, a bequeather, and a legal successor or a third party.
8) "Confiscation" shall denote temporary or permanent seizure of the proceeds from crime from the owner.

shall be confiscated from above mentioned persons, as well as from the legal successor and third party.

188. There is no effectiveness for the special provisions for confiscation of assets under the Law on Seizure and confiscation of the proceeds from crime, they had not been applied.

Provisional measures to prevent any dealing, transfer or disposal of property subject to confiscation (c.3.2)

Seizure

189. The Criminal Procedure Code (Article 82) provides for the mandatory seizure of two categories of objects: (1) objects which have to be confiscated pursuant to the CC and (2) objects, which may be used as evidence in the criminal proceeding. This applies for the proceeds from crime as well as for instrumentalities of or objects resulting from a criminal offence. Such objects shall be temporarily seized and deposited in a court or their safekeeping would be secured in another way.

190. In the pre-investigation phase, when there are grounds for suspicion that a criminal offence subject to public prosecution has been committed, the police may issue a warrant for seizure of objects (Article 225 CPC). In this phase, if there is a danger in delay, objects may be seized temporarily even before the commencement of the investigation (Article 238 CPC). The police authorities are bound to immediately return the temporarily seized objects to the owner or holder if the criminal proceedings are not instituted or if they fail to submit a crime report to the Public Prosecutor having jurisdiction within a term of three months.

191. When the investigation is initiated, seizure can only be undertaken on the basis of the execution of a court warrant for seizure, when the investigative judge, public prosecutor or the police authorities have reasonable grounds for suspicion that a criminal offence has been committed. According to Article 246 CPC, the investigating judge may entrust the police authorities with the execution of an order for the temporary seizure of objects. The investigative judge or the court can order provisional security measures with the purpose of securing a claim for compensation (Article 210 CPC).

192. Having a look at the other provisions of the Article 82 of CPC, detailed rules are determined for the possessors of the objects to be seized. 'Whoever keeps such objects is obliged to submit them upon court order. A person who refuses to hand over objects may be punished by a RSD 100.000 fine, and if afterwards they refuse to hand over the objects, they can be punished once again with the same punishment. In the same way shall be treated an official or a responsible person in a state authority, enterprise or some other legal entity.

193. As regards organised crime offences, Article 504r of the CPC provides that if there are grounds for suspicion or a grounded suspicion that an organised crime offence was committed, the court can determine a measure of temporary seizure of objects and material gain (in application of Articles 82-88 and 513-520 CPC).

194. The court, in its ruling imposing the seizure of objects or pecuniary benefits, shall state the value and the kind of objects or pecuniary benefit and the time during which they are seized (Article 504t CPC). The measure of temporary seizure of objects and material gain may last until the end of the criminal proceedings before the first instance court at the latest.

195. The Law on Seizure and confiscation of the proceeds from crime sets out the procedure for instituting a financial investigation against an owner when reasonable grounds exist to suspect that he/she possesses considerable assets deriving from a criminal offence (Articles 21-27). It is

recalled that provisional measures on the basis of this law would apply only in the context of investigating selected criminal offences, including ML and FT, if the value of objects acquired from crime exceeds RSD 1,500,000.

196. Search of the apartment and other premises of the owner or other persons as well as temporary seizure of assets may be undertaken by the Financial Investigation Unit, upon decision made by the competent court. The public prosecutor may order banking or other financial organisation to transmit to the Unit data on the status of the owner's business and private accounts, and safety deposit boxes. The public prosecutor may permit the Financial Investigation Unit to undertake automatic data processing on the status of the owner's business and private accounts, and safety deposit boxes.

197. In application of the law, if there is a risk that subsequent seizure of the proceeds from crime could be hindered or precluded, the public prosecutor may file a motion for temporary seizure of assets to the competent court. The motion shall be decided upon, depending on the phase of proceedings, by the investigating judge, president of the trial chamber and/or the trial chamber conducting the main hearing.

198. After the legal entry into force of the indictment and not later than one year following the final conclusion of criminal proceedings the public prosecutor shall file a motion for permanent seizure of the proceeds from crime.

199. However, it remains unclear whether seizure of proceeds of an intangible nature (e.g. cash, deposit on a bank account) would be seized. The authorities indicated that this would be possible on the basis of the provisions of the Law on Seizure and confiscation of the proceeds from crime and article 234 of the CPC. However both legal basis have certain limitations as regards the offences covered (article 234 limited to offences punishable by at least 4 years imprisonment, and Law on Seizure limited to specific forms of ML and FT).

Freezing

200. The Criminal Procedure Code sets out various freezing measures. For all criminal offences, Article 234 CPC provides that the investigating judge, upon request from the public prosecutor, may temporarily freeze financial transactions suspected to represent a criminal offence or to be done for the purpose of committing a criminal offence or hiding of a criminal offence or profit gained through the commission of a criminal offence. The cash related to this transaction is temporarily deposited in a special account and secured until the proceedings are completed. This measure is applicable only in cases where there is a suspicion that a criminal offence is punishable by at least 4 year imprisonment. These measures can be appealed by the prosecutor, owner of financial resources or cash, suspect and bank or other financial institution; however the appeal does not postpone the execution of the decision.

201. As regards organised crime offences, Chapter XXIXa of the CPC allows the prosecutor to order the freezing of any payment or issuance of suspicious money, valuable paper or objects (Article 504k).

202. The Law on Seizure and confiscation of the proceeds from crime, for offences to which it is applicable, provides that if there is a risk that the owner will make use of the proceeds from crime before the court decides on the motion, the public prosecutor may issue an order banning the use of assets, and on temporary seizure of movable assets. This freezing measure shall be in force until ruling of the court on the prosecutor's motion.

203. According to the AML/CFT Law the APML is authorized to suspend a transaction. This measure had been introduced by the former AML Law and the new AML/CFT Law transferred

the provisional measure of temporary suspension. Pursuant to Articles 56 and 63, the APML is authorized to issue a written order to the obligor for a temporary suspension of a transaction. Comparing it with the former legislation, the new AML/CFT Law provides a more robust basis for the application of the temporary suspension. This provision has been extensively used by the APML, as evidenced by the statistics provided below.

204. The temporary suspension of a transaction can be commenced by the APML or the obligor. It lasts for maximum 72 hours following the moment of the suspension. The obligor is obliged to react without any delays. As a general rule, the form of the order is a written order, but 'the APML director or a person authorises by him may, in urgent cases, issue an oral order temporarily suspending a transaction, which shall be confirmed in writing no later than the next business day.' If the APML does not inform the obligor on the results of its actions within 72 hours, the obligor shall be considered to have the permission to execute the transaction. The APML might give its permission to perform the transaction before the elapse of the 72 hours.

205. The APML can issue an order for temporary suspension on the basis of its autonomous decision, or upon a request of a law enforcement authority or a foreign FIU[49]. It has to be noted that only the latter case appears in the new AML. Article 63 of the AML/CFT Law provides the legal basis for executing a temporary suspension of a transaction upon a request of the foreign FIU.

206. As for the level of grounds for money laundering or terrorism financing suspicion, reasonable ground for suspicion is not required for issuing an order for the suspension. Despite the misleading wording (it assesses that there are reasonable grounds for suspicion of money laundering or terrorism financing) the existence of reasonable grounds for suspicion has just to be assessed by the APML. Thus, the prompt action is not hindered by the high level of grounds for suspicion.

Management of property

207. *Measures implemented on the basis of the CPC*: As regards the management of seized property, objects seized must be managed by the court or secured in another way, whereas property or proceeds seized in relation to a criminal offence with elements of organised crime must be placed with a competent state authority.

208. *Measures implemented on the basis of the Law on Seizure and confiscation of the proceeds from crime:* Until revoking the decision on temporary seizure of assets and/or until final conclusion of proceedings for permanent seizure of assets, the Directorate for management of seized and confiscated assets within the Ministry of Justice shall manage the seized assets with due diligence and/or due and reasonable professional care. At the time of the on-site visit, this Directorate was not fully operational.

Initial application of provisional measures ex-parte or without prior notice (c.3.3)

209. The Serbian legislation (CPC and the Law on seizure and confiscation of the proceeds from crime) provides implicitly for possibilities of applying provisional measures ex-parte or without prior notice.

210. On the basis of Articles 82, 225 and 238 police may seize objects temporarily if there are grounds to suspect that a criminal offence has been committed. In such cases police is be bound to take necessary measures aimed at – inter alia – discovering and securing objects, which may serve as evidence in the criminal proceeding or may fall under confiscation and subsequently to issue a

[49] The provisions for the temporary suspension of a transaction at the request of the competent body of a foreign country is fully in compliance with the Article 47 of the Warsaw Convention.

warrant for seizure of objects. Police officials indicated that the only preconditions for searching and seizing objects by the police are the existence of grounds for suspicion of a committed criminal offence and the danger in delay. As it has been described under Recommendation 3, theses articles are applied for the proceeds from crime as well as for instrumentalities of or objects resulting from a criminal offence. The police has to return the temporarily seized objects to the owner or holder if the criminal proceedings are not instituted or if they fail to submit a crime report to the Public Prosecutor within a term of three months.

211. On the basis of Article 234 CPC, the investigative judge may at the proposal of the public prosecutor issue a decision ordering the bank, financial or other organisation to temporarily ban financial transactions which are suspected to represent a criminal offence or to be done for the purpose of committing a criminal offence or hiding of a criminal offence or profit gained through the commission of criminal offence. This decision shall order that the deposited and cash funds in the local and foreign currency intended for the specified transactions be temporarily seized, deposited in a special account and secured by such time as the proceedings are completed or conditions for their return met. This measure is applicable both in the preliminary investigation and the investigation phases. It has to be noted that the provisional measure laid down by the Article 234 has limited scope, since only financial transactions connected to accounts are subject to the freezing/seizure, and it does not cover freezing/seizure of objects.

212. The Law on Seizure and confiscation of the proceeds from crime, in its Article 22, provides that if there is a risk that the owner will make use of the proceeds from crime before the court (investigative judge/president of the chamber) decides on the motion of temporary seizure (article 21), the public prosecutor may issue an order banning the use of assets, and on temporary seizure of movable assets. Albeit the object of this provisional measure appears to extend not only to financial transactions, but any other assets, the Law has a limited scope as it is applicable for specific forms of criminal offences (see Article 2).

Adequate powers to identify and trace property that is or may become subject to confiscation (c.3.4)

213. Both the CPC and the Law on Seizure and confiscation of the proceeds from crime provide for a range of measures to identify and trace property that is or may become subject to confiscation.

214. The analysis of the provisions concerning access to competent authorities to information covered by financial secrecy and access to information protected by professional secrecy are covered under Recommendations 4, 26.4 and 28.

Protection of bona fide third parties (c.3.5)

215. The Serbian legal framework sets out measures to provide for the protection of the rights of bona fide third parties in line with the Palermo convention requirements. Also the Law on Seizure and confiscation of the proceeds from crime (Article 33(3) provides that the property which was transferred to a third party without compensation, or with compensation which obviously does not correspond to its real value with the aim of thwarting the confiscation, can be permanently confiscated in the relevant procedure for a permanent confiscation of property, with the third party being entitled to take part in the proceedings and to question the claim that the property was transferred in the said manner.

Power to void actions (c.3.6)

216. There seems to be no authority to take steps to prevent or void actions where the person involved knew or should have known that as a result, the authorities would be prejudiced in their

ability to recover property subject to confiscation. The evaluators were not provided with any provision or other information about the existence of such authority.

Additional elements (c.3.7)

217. The authorities indicated that the Law on Seizure and confiscation of the proceeds from crime sets out a mechanism enabling to trace and confiscate property in the absence of conviction.

Statistics

218. The Serbian authorities were unable to provide comprehensive statistics on property frozen, seized and confiscated. According to the authorities there are no official statistics kept on such data.

219. The Ministry of Interior provided the following statistics related to the cases which it has investigated and the number of reports that have been filed with the Public Prosecutor's Office:

Table 15. Proceeds seized

	ML Preliminary investigations		Proceeds seized	
	Cases[50]	Persons	Cases	Amount (EUR)
2006	16	54	1	114,000
2007	38	101	1	164,000
2008	24	48	1	192,987
2009 (May)	6	8	Not available	Not available

220. The Special Department for fighting against organised crime of District Court in Belgrade does not keep evidence on the cases of temporarily seized assets and the value of permanently seized assets. In practice, so far, the temporary seizure has been performed on the basis of the Article 516 of the CPC during investigation procedure and on the basis of the ruling of investigation judge. An example was provided of two cases where it had been ordered to the bank to withhold the payment of currency form running account up to the amount of 273.331.037,84 Dinars, and respectively of the amount of money up to the 16.555.612,00 Dinars from running accounts. However, such cases regarded the investigation for criminal offences of misuse of official position (359 Paragraph 3 in connection with Paragraph 4 and 1 CC).

221. Upon request by the evaluation team, the State Public Prosecutor's Office has asked for a special report gathering such data from the Special Prosecutor Office for Fight Against Organised Crime, District Prosecutor Office in Belgrade, Nis, Novi Sad and Kragujevac. Replies received indicated that there were no cases of temporarily seized assets in ML cases and Article 27 of the AML/CFT Law. Also, there was no data of permanently seized assets for these criminal offences. As regards final convictions issued by the Special Department of the District Court in Belgrade, in 12 criminal cases, assets confiscated amounted to 110.000 DM; 10.003.000 USA dollars; 326.200 Euro 34.875.500,00 Dinars and 2.500.000 Swiss francs.

222. Also, the District Public Prosecutors Office in Belgrade provided information of one case in application of Article 234 Paragraph 2 of the CPC in 2008 whereby the investigating judge had ordered a bank to stop all financial transactions from an account where there were RSD 66.000.000, 00. Also, measures pursuant to Article 234 Paragraph 1 of the CPC were applied in 4 cases: 2 in 2006, 1 in 2007 and 1 in 2009. In all those cases the control of business management of

[50] The column "cases" provides the number of preliminary investigations in ML cases. It has to be noted that one case can involve several ML offences depending on the number of suspected perpetrators and the nature and duration of the suspected act.

certain persons has been performed, but in neither one the forbidding of financial transactions was required.

223. The following statistics were provided regarding the application of the temporary suspension of transactions on the basis of article 56 and 63 of the AML/CFT Law

Table 16. Temporary suspensions of transactions

Legal basis	2007	2008	2009 (May)
Article 56 (previous AML Law – article 17)	47	80	11
Article 63 (at the request of a foreign competent body)	-	1	

Effectiveness

224. The above-mentioned statistics do not enable the evaluation to determine the extent of practice and to form a substantiated judgment about the overall effectiveness of the application of provisional measures and of the confiscation regime.

225. The persons whom the evaluation team met indicated that objects and instruments used for the commission of a crime are regularly seized.

226. Furthermore, various interlocutors expressed their views on the complexity of the current system, and the unclear division of powers and tasks which might impact negatively on the effective application of these provisions. Some of them shared their negative views on the current criminal procedure that have no strict provisions for the division of powers at certain stages of the criminal procedure.

227. Difficulties in identifying money or funds (particularly when taken abroad) were mentioned and in proving the link with the offence. The authorities mentioned that very often funds are in the account of a third party, which makes it difficult to trace, and even when traced, it is difficult to gather valid evidence which is acceptable in court. It was also mentioned that criminals often used the obligatory compensation provisions to access funds from their own account and/or to ensure that payments to third parties/companies (which they controlled).

2.3.2 Recommendations and comments

228. As detailed earlier, the Serbian legal framework setting out provisional measures and confiscation is rather complex, given the parallel regimes both in terms of criminal substantive and procedural law. The recent adoption of the Law on seizure and confiscation of the proceeds from crime is undoubtedly a major step forward, however, given its recent entry into force, it has not yet been applied. At the time of the on-site visit, the authorities were still in the process of discussing the procedures and of putting into place the structures required for its implementation.

229. It is thus recommended to the Serbian authorities:

- To review the current regime and satisfy themselves that the competent authorities have necessary tools to clarify the application of the relevant provisions and regimes and ensure that they can make full use of the existing legal framework;

- To amend the legislation as necessary to:

    - Clarify the scope of property subject to confiscation

- Ensure that value based confiscation can be applied in the case of instrumentalities used in and intended for use in the commission of ML, FT or other predicate offences
- Ensure that the legislation provides for the confiscation of instrumentalities when it is held by a third party (legal entity or natural person)
- Remove the limitation to offences punishable by at least 4 years imprisonment under article 234

- Speed up the implementing measures required in relation to the Law on Seizure and confiscation of the proceeds from crime (appointment of relevant persons, adoption of internal acts, etc) and ensure that competent authorities are adequately trained in the application of these new provisions;

- Maintain comprehensive and precise annual statistics on the number of cases and the amounts of property frozen, seized and confiscated relating to ML, FT and criminal proceeds.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	**PC**	• Confiscation of instrumentalities is in most cases only discretionary • Value confiscation is not possible for instrumentalities used in and intended for use in the commission of ML, FT or other predicate offences • Due to the complexity of the system, provisional measures and confiscation seem to be rarely applied, absence of statistics to demonstrate effective results • No authority to take steps to prevent or void actions where the persons involved knew or should have known that as a result, the authorities would be prejudiced in their ability to recover property subject to confiscation • Effectiveness concerns (new provisions only recently entered into force, information available does not enable to demonstrate the effectiveness of application of the provisional measures and confiscation provisions)

2.4 Freezing of Funds Used for Terrorist Financing (SR.III)

2.4.1 Description and analysis

Freezing assets under S/Res/1267 (c.III.1) and under S/Res/1373 (c.III.2)

230. There are no specific laws and procedures which would specifically implement the above-mentioned resolutions in terms of roles, responsibilities and conditions. The National Strategy against money laundering and terrorism financing provides that a law on repressive measures applied based on the relevant UN SC resolutions is in the process of being drafted, which would lay down restrictions on the disposal of the property of natural and legal persons designated by the UN SC as terrorists or terrorist organisations. However, this evaluation team could not identify during the visit which competent authority had been allocated this responsibility nor how advanced this drafting process was.

231. The authorities explained that the implementation of SR.III was being covered by the provisions of the Criminal Procedure Code, the Law on seizure and confiscation of the proceeds from crime and the AML/CFT Law.

232. As far as the AML/CFT Law is concerned, the APML has been authorised to suspend a transaction on a temporary basis (72 hours), if it assesses that there are reasonable grounds for suspicion of terrorism financing with respect to transaction or a person (Article 56 of the AML/CFT Law). In line with the same Article the obligors are also entitled to temporarily suspend the transaction, if they have reasonable grounds to suspect terrorism financing.

233. Taking into account the immediate nature of this legal instrument and the fact that it is rather administrative than criminal, in a broader sense it might be considered as an administrative freezing mechanism with a limited scope. Apart from the fact that it only applies in cases where there are 'reasonable grounds for suspicion of FT' the limitation is threefold:

- Firstly, only obligors are obliged to monitor only their clients and their transactions, so it is not a general requirement.
- Secondly, the obligors are not expressis verbis obliged to suspend the transaction. The language of the Article 56.8 of the AML/CFT Law is the following: '*The obligor may temporarily suspend a transaction*'.
- Thirdly, the period of the administrative freezing (i.e. the suspension) can last at the latest 72 hours. In so far as the APML has reasonable grounds to suspect terrorism financing, it turns into a criminal proceeding, otherwise the suspension terminates and the transaction can be executed.

234. Any further provisional measures for the seizure of the money or assets involved can only be taken in application of the provisions of the Criminal Procedure Code, when grounds for suspicion exist that a criminal offence was committed, or of the Law on seizure and confiscation of the proceeds from crime.

235. Having a look at the practice, the starting point is that obligors defined under the AML/CFT Law are required to send STR-s whenever there are reasons for suspicion on money laundering or terrorism financing with respect to a transaction to a customer (Article 37(2) of the AML/CFT Law). In the context of the co-operation between banks and the APML it was informally agreed that the banks should report any possible match of names from the lists and their customers. As a result financial institutions would promptly file a terrorist financing STR to the APML in the case of the emergence of a name of terrorist listed by the UNSCR 1267. As for the figures of STR-s, 1432 STR-s in the year of 2007, 2884 STR-s in the year of 2008 were reported to the APML, and two STR-s in 2007 were related to financing of terrorism. The examiners received no information whether the abovementioned two STR-s were accompanied with the suspension of transactions either ordered by the APML or initiated by the obligors on their own decision.

236. In conclusion, the current framework does not appear to set out effectively procedures to freeze terrorist funds or other assets of persons designated by the United Nations Al-Qaeda and Taliban Sanctions Committee in accordance with S/RES/1267(1999) and S:RES/1373(2001).

Freezing actions taken by other countries (c.III.3)

237. There appear to be no effective laws and procedures in place to examine and give effect to, if appropriate, the actions initiated under the freezing mechanisms of other jurisdictions.

Extension of c.III.3 to funds or assets controlled by designated persons (c.III.4)

238. The evaluators were not pointed to any actual legislation on the basis of which they could have a picture as to whether freezing measures would extend to "funds or other assets" as defined by the Interpretative Note to SR.III.

Communication to the financial sector (c.III.5)

239. The authorities were informed that the APML publishes the list of UNSCR 1267 and the list of UNSCR 1483 and 1518.[51] Additionally, the document determines the list of indicators contains a reference to the consolidated list to the UNSCR 1267 Sanctions Committee.[52]. The evaluation team was advised by the representatives of banks during the visit that most of them apply the so-called 'terrorist lists' and the other annexes of financial restrictive measures. A filtering mechanism is introduced into their monitoring system that indicates certain matches or the possible matches with the lists.

240. However, it remained unclear whether requirements were clearly articulated to the private sector. The explanations received did not appear to articulate that there is an effective system for communicating actions taken under the freezing mechanism to the financial sector immediately upon taking such action.

Guidance to financial institutions and other persons or entities (c. III.6)

241. No guidance has been provided to financial institutions or to designated non financial businesses and professions and high risk sector entities that may be holding targeted funds or other assets on the freezing of terrorist assets.

De-listing requests and unfreezing funds of de-listed persons (c.III.7), Unfreezing procedures of funds of persons inadvertently affected by freezing mechanisms (c.III.8), Access to frozen funds for expenses and other purposes (c.III.9), Review of freezing decisions (c.III.10)

242. There are equally no formal procedures for evaluating de-listing requests and unfreezing funds of persons of delisted persons or persons inadvertently affected by freezing mechanisms, for authorising access to authorising access to frozen resources when deemed necessary for basic expenses and for reviewing freezing decisions.

Freezing, seizing and confiscation in other circumstances (applying c.3.1-3.4 and 3.6 in R.3, c.III.11)

243. Accordingly, the rules mentioned under R.3 are appropriate for financing of terrorism, the confiscation provisions laid down by the CC or the Law on SC and the provisional measures of the CPC or the Law on SC are equally applicable to the offence of financing of terrorism (Article 393 of CC).

244. It has to be pointed out that the procedures set out in the Law on seizure and confiscation of the proceeds from crime apply to the offence of terrorist financing (Article 393) only in so far that the material gain acquired from crime exceeds the amount of RDS 1,500,000 and are not applicable to proceeds deriving from Article 391 (international terrorism) and Article 392 (taking hostages).

245. The respective description and the findings outlined under the R.3 are also applicable in assessing the compliance with the essential criterion III.11 with one reservation. Consistent to the shortcomings of the criminalisation of financing of terrorism by the Article 393 of CC, the scope

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[51] The UNSCR 1483 and 1518 are financial restrictive measures against Iraq. The examiners were not advised of the reason of publishing only UNSCR 1267 and the UNSCRs against Iraq.

[52] "Ordering customer or beneficiary of a payment order is a national of a non-cooperating country or territory or is included on the consolidated list of the United Nations Security Council Resolution 1267 Sanctions Committee. The list of countries is placed on the website of the Administration for the Prevention of Money Laundering. The United Nations list is available at http://www.un.org/Docs/sc/committees/1267/1267ListEng.htm

of the abovementioned confiscation and provisional measures is limited as well to the supporting the commission of a terrorist act. Hence the financial support to individual terrorists and terrorist groups (without supporting a concrete act) are legally not subject to confiscation and provisional measures.

Protection of rights of third parties (c.III.12)

246. As explained earlier, the Serbian legal framework sets out measures to provide for the protection of the rights of bona fide third parties.

Enforcing obligations under SR.III (c.III.13)

247. There are no measures which would enable to monitor effectively the compliance with implementation of obligations under SR.III and to impose sanctions.

Additional element – Implementation of measures in Best Practices Paper for SR.III (c.III.14) & Implementation of procedures to access frozen funds (c.III.15)

248. As Serbia is not yet active in the legal implementation of SR.III, no measures were taken to address the additional elements III.4 & III.5.

Recommendation 32 (terrorist financing freezing data)

249. No assets related to designated persons or entities have been detected and therefore been frozen.

250. The Law on seizure and confiscation of the proceeds from crime entered in force on 4 November 2008 and the authorities indicated that it started being applied on 1 March 2009, that is two months before the on-site visit.

2.4.2 Recommendations and comments

251. The current legal framework does not enable the Serbian authorities to take the necessary preventive and punitive measures to freeze and if appropriate, seize terrorist related funds or other assets without delay, in accordance with the relevant United Nations resolutions. Neither the AML/CFT law nor the Criminal Procedure Code can be applied in this respect. In addition, the authorities had mentioned of a legislative process underway which would address separately international restrictive measures, however the evaluation team were not provided with sufficient details to form an opinion as to whether such a law would address this issue.

252. Consequently, the evaluators strongly recommend that the authorities adopt a comprehensive set of rules (judicial or administrative) which would enable them to adequately implement the targeted financial sanctions contained in the United Nations Security Council Resolutions (UNSCRs) relating to the prevention and suppression of the financing of terrorist acts – UNSCR 1267 and its successor resolutions and UNSCR 1373 and any successor resolutions related to the freezing, or, if appropriate, seizure of terrorist assets and address all requirements under the 13 criteria of SR.III.

253. The authorities could also consider implementing the measures set out in the Best Practices Paper for SR.III.

2.4.3 Compliance with Special Recommendation SR.III

	Rating	Summary of factors underlying rating
SR.III	NC	• No effective laws and procedures in place for freezing of terrorist funds or other assets of designated persons and entities in accordance with S/RES/1267 and 1373 or under procedures initiated by third countries and to ensure that freezing actions extend to funds or assets controlled by designated persons • No designation authority in place for S/RES/1373 • No effective systems for communicating actions under the freezing mechanisms to the financial sector immediately upon taking such action • No practical guidance to financial institutions and DNFBP-s • Lack of effective and publicly known procedures for considering de-listing requests and for unfreezing funds or other assets of delisted persons or entities and persons or entities inadvertently affected by a freezing mechanism • No procedure for authorising access to funds or other assets frozen pursuant to S/RES/1267 in accordance with S/RES/1452 • No procedures to challenge frozen measures taken pursuant to the implementation of S/RES/1267 and 1373 • Shortcomings in the legal framework related to freezing, seizing and confiscating of terrorist related funds or other assets • No measures which would enable to monitor effectively the compliance with implementation of obligations under SR.III and to impose sanctions.

Authorities

2.5 The Financial Intelligence Unit and its functions (R.26)

2.5.1 Description and analysis

Recommendation 26

Legal framework

254. Serbia had a financial intelligence unit since 2002. The Law on the Prevention of Money Laundering[53] had established a Federal Commission for the Prevention of Money Laundering. Following the promulgation of the Constitutional Charter of Serbia and Montenegro[54], the Commission became a body within the Ministry of Finance on 10 December 2005 and changed its name to the Administration for the Prevention of Money Laundering (APML). Its competencies were regulated by the Law on the Prevention of Money Laundering[55] which was in force until late March 2009. The new AML/CFT Law provides in its article 1 that it shall govern the competencies of the APML and sets out in Chapter V its role in the detection of ML and FT, international co-operation and in the prevention of ML and FT.

255. As regards its role in the detection of ML and FT, the APML can:

[53] FRY Official Gazette No. 53/01
[54] SM Official Gazette No. 01/03 and 26/05
[55] RS Official Gazette No. 107/05 as amended in 117/05

7. request data from obligors and lawyers when it assesses that there are reasons to suspect ML or FT in certain transactions or persons (articles 53- 54)
8. request data from competent State bodies and public authority holders (article 55)
9. issue written orders to obligors to temporarily suspend transactions when there are reasonable grounds to suspect ML or FT with respect to a person or transaction (article 56) or to oblige obligors to monitor transactions and business operations (article 57)
10. disseminate data to competent bodies (article 59)
11. provide feedback to obligors, lawyers and state bodies (article 60)
12. co-operate internationally (article 61-64).

256. As regards its role in the prevention of ML and FT (article 65 of the AML/CFT Law), the APML shall:

12. conduct the supervision of the implementation of the provisions of this Law and take actions and measures within its competence in order to remove observed irregularities;
13. submit recommendations to the Minister for amending this Law and other regulations governing the prevention and detection of money laundering and terrorism financing;
14. take part in the development of the list of indicators for the identification of transactions and persons with respect to which there are reasons for suspicion of money laundering or terrorism financing;
15. make drafts and give opinions on the application of this Law and regulations adopted based on this Law;
16. make drafts and issue recommendations for a uniform application of this Law and regulations made under this Law in the obligor and lawyer;
17. develop plans and implement training of APML's employees and cooperates in matters of professional education, training and improvement of employees in the obligor and lawyer in relation to the implementation of regulations in the area of the prevention of money laundering and terrorism financing;
18. initiate procedures to conclude cooperation agreements with the State bodies, competent bodies of foreign countries and international organisations;
19. participate in international cooperation in the area of detection and prevention of money laundering and terrorism financing;
20. publish statistical data in relation to money laundering and terrorism financing;
21. provide information to the public on the money laundering and terrorism financing manifestations;
22. perform other tasks in accordance with the law.

Establishment of an FIU as national centre (c.26.1)

257. The APML is established as an administrative body within the Ministry of Finance. The AML/CFT Law clearly sets out all three core-FIU functions (reception, analysis and dissemination). Article 52 of the AML/CFT law provides that "*the APML shall collect, process, analyse and disseminate to the competent bodies the information, data and documentation obtained as laid down in this Law and shall carry out other tasks relating to the prevention and detection of money laundering and terrorism financing in accordance with the Law*".

258. The legal framework enables the FIU to receive disclosures of STR-s and other relevant information concerning suspected ML, and since March 2009 only, regarding FT activities. The following is to be reported to the APML:

- obligors[56] shall report specific data "whenever there are reasons for suspicion of money laundering or terrorism financing with respect to a transaction or customer, before the transaction" is carried out as well as planned transactions (article 37)

[56] Obligors include: banks, licensed bureaux de change, companies for the management of investment funds, companies for the management of voluntary pension funds, financial leasing providers, insurance companies, insurance brokerage companies, insurance agency companies and insurance agents with a license to perform life

- auditing companies, licensed auditors or legal or natural persons providing accounting or tax services shall inform also the APML promptly when a customer seeks advice concerning ML or FT (article 37(4))
- lawyers are required by law to report to the APML in specific cases persons and transactions with respect to which there are reasons for suspicion of ML or FT or where a customer requests advice concerning ML or FT (Article 48).

259. In addition, the APML receives also the following reports and information:
- obligors are required to report to the APML cash transactions amounting to RSD equivalent of EUR 15.000 or more, immediately after such transaction has been carried out and no later than 3 business days following the transaction (article 37);
- information from organisers of the securities market and the securities Central register, securities depository and clearing when they establish or identify any facts, when performing tasks within their remit, that are or may be linked to ML or FT (article 71),
- data and information on proceedings concerning minor offences, economic offences and criminal offences related to ML and FT, about perpetrators and about the confiscation of proceeds generated offences by courts, public prosecutor's offices and other state bodies on a regular or annual basis as well as data on received and sent extradition requests from the Ministry of Justice (article 72),
- data sent by the Customs authorities regarding declared or non declared cross-border transportation of physically transferable payment instruments (article 70)[57]

260. The Serbian FIU receives reports from obliged entities either in paper form or in electronic form [58] via security e-mail. All paper reports received are entered daily into the database together with the additional information related to STR-s and CTR-s.

261. The STR-s and information received are firstly analysed by the Analytical Department with the assistance of the software. The analysis process of STR-s and information received is described to comprise:
- an analysis of the documentation received (if submitted together with the STR)
- checks against information contained in the databases of the APML (cash and suspicious transactions database, information from the Tax and Customs administration, information from the National Bank regarding international payment operations and information from Western Union)
- checks with data from the database of the Business Registers Agency, Central Register for Securities, World Check, public websites)
- analysis consisting in the preparation of a report by the Analytical Department on the basis of which the degree of suspicion is assessed:

insurance business, persons dealing with postal communications, broker-dealer companies, organisers of special games of chance in casinos and organises of games of change operated on the internet, by telephone and other telecommunications network, auditing companies and licensed auditors. Obligors include both entrepreneurs and legal persons exercising the following professional activities: intermediation in real estate transactions, provision of accounting services, tax advising, intermediation in credit transactions and provision of loans, factoring and forfeiting, provision of guarantees, provision of money transfer services.

[57] Applicable as of September 2009 only.

[58] In the framework of TMIS Project (Transaction Management Information System), the APML implemented a new software system which ensures electronic compilation of data from the obligors through the Internet, interactive completion of prescribed forms, sending and receiving files containing completed forms and other documentation through the Internet, exchange of data and statistical reports for the obligor. The TMIS was introduced in April 2008. Also a Case and Document Management Project was being implemented into the workflow which should provide for fully computerised work that is, management of electronic and paper documents, as well as opening and managing the cases, and purchase of hardware onto which this will be installed.

a) if the transaction is not suspicious, the report is archived in the database or placed on a monitoring regime
b) if suspicion is established, the report is submitted to the Director who decides on the opening of a case;

- the report is sent to the Department of Suspicious Transactions which requests additional information as relevant from obligors and/or state authorities and/or foreign FIUs pursuant to the procedure for initiating collection of data and information (from obligors and/or state authorities and/or foreign FIUs) set out in article 58 of the AML/CFT Law
- on the basis of the additional information received and analysis, the report is finalised (with a proposal at analyst level, Head of Analytical Department or Head of Suspicious Transactions Department), it is reviewed and finalised by the Head of the Department of Suspicious Transactions and submitted to the Director;
- The Director decides on whether the report is approved, refused or sent back for further analysis or be disseminated to competent state bodies pursuant to article 59 of the AML/CFT law and to which state body specifically.

262. Internal procedures had been developed by the APML however it was mentioned that these were not fully implemented at the time of the visit, given that they were due to include the developments of the on-going case management project.

263. The detailed breakdown of statistics of CTR and STR reports received by the FIU, cases opened and disseminated to the state bodies are provided in Annex IV of the report. Most of there reports originate from the banking sector (over 80%), followed by the insurance sector, bureaux de change, real estate agencies and PTT Srbija Public enterprise.

Table 17. Reports received by the FIU & cases opened and disseminated

Year	CTR-s	STR-s	Cases opened (ML only)	Cases disseminated
2005	160 932	138	88	64
2006	155 727	622	62	66
2007	233 909	1432	42	43
2008	355 903	2901	65	67
31 March 2009	59 565	605	14	10

264. The 2007 Annual Report of the APML indicates that the decrease in the number of cases opened in 2007 was a consequence of the nature of the cases, which involve primarily organised crime offences and a large number of suspicious transactions and persons involved. In parallel this was accompanied by an increase in the number of exchanges of information and data with state bodies and foreign FIUs. The 2008 Annual report confirms this trend and notes that the increase in the number of opened cases is also a result of a more intensive co-operation of the APML with the Public Prosecutor's Office, especially with the Special Prosecutor's Office against Organised Crime.

265. In meetings held on-site, the evaluation team was informed that the quality of the disclosures received was not adequate and that given that the NBS sanctioned seriously upon discovery of non-reporting, there was a certain tendency to over report. This tends to indicate a defensive reporting approach on the obligors' side. However it was considered that obligors had initiated to pay more attention to quality, and that the situation was improving gradually. The authorities also

indicated that they were in the process of planning meetings with additional sectors (e.g. real estate associations) in order to take up the issue of under-reporting.

Guidance to financial institutions and other reporting parties on reporting STR-s (c.26.2)

266. Based on Article 13 of the previous AML law, the Minister of Finance had issued, upon proposal of the APML Director, the methodology to be used by obligors when sending reports to the FIU. The Book of Rules on establishing the methodology, requirements and actions for performing tasks in compliance with the Law on the Prevention of Money Laundering[59] is the only guidance available regarding the manner of reporting. According to article 93 of the AML/CFT Law, this act remains in force until the adoption of new regulations, in so far as its provisions do not contradict the requirements of the new law.

267. The AML Book of Rules further defines the details of the reporting regime, including the mode and deadlines for filing reports, the reporting forms etc. Before 2008, paper forms were prescribed by law. There was only one type of form and obligors could report only 3 interconnected transactions, which was limiting them in their reporting obligations. The authorities advised that though it was possible to report three interrelated transactions in one report, nothing prevented obligors from filing as many reports as necessary. With the TMIS system, this issue has been overcome.

268. When an CTR/STR is submitted electronically, the system provides the obligor with the information (PDF or XML) that the report is correct in terms of form or if it is not, so a correction or supplement is required. If the report is correct, the system generates an ID of the report and records the date and time when the report is received.

269. When a CTR/ STR is submitted in paper form, the check is done on the spot, and if the CTR/ STR is correct, a copy of it is certified and returned to the obligor (if it is in paper form), and the copy kept by the APML is given a reference number and dated. If the STR is not correct, it is returned to the obligor for correction and/or supplement by contacting directly the obligor.

270. However, there are only three reporting forms prepared (in April 2008) which are for banks, securities sector participants and insurance companies. These forms contain mandatory fields but also free format fields. Other obligors and lawyers, should they wish to make suspicious transaction reports to the APML, would face practical problems in doing so due in the absence of guidance on the manner of reporting, no specification forms nor information on procedures. As regards the level of understanding by obligors of their reporting requirements, meetings on-site appears to indicate that additional efforts would be required to raise awareness and understanding, as many reports covered transactions without a real suspicious ground (a mention was made about 30% useless transactions reported).

271. Furthermore, the AML Book of Rules does not contain any reference to the reporting of suspicions related to terrorist financing, due to the fact that it was adopted before the current AML/CFT Law and in fact is outdated, in many cases repeating the provisions of the previous/current laws or even containing provisions[60] incompatible with the legislation in force and the best practice.

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[59] RS Official Gazette No. 59/2006 and 22/2008.

[60] For example, the list of countries that do not apply anti-money laundering standards is defined as follows:

a) Countries of African continent, except for the Arab Republic of Egypt, the Republic of South Africa and Mauritius;

b) Countries of Asian continent, except for the State of Israel, Japan, the Republic of Korea, the Republic of Singapore, the Kingdom of Thailand, the Republic of Georgia, the Republic of Indonesia, Bahrain, the Republic of Lebanon, Malaysia, the Republic of Turkey, the State of Qatar and United Arab Emirates;

c) The Republic of Moldova.

272. In conclusion, additional measures are required to ensure that comprehensive and adequate written guidance, based on the new legislation, is introduced in order to further support obligors in understanding better the reporting procedures and requirements, as well as outreach measures to under-reporting sectors. In addition, the specification of reporting forms should be made for all reporting obligors.

Access to information on timely basis by the FIU (c.26.3)

273. The previous AML Law (article 21) sets out the right for the APML to request state bodies, organisations and legal entities entrusted with public authority to provide data, information and documentation necessary for the APML to perform its functions. In addition, the APML can also request an attorney, law firm, auditing company, certified auditor and tax advisory businesses or professions. Requested institutions and professions are bound to provide the requested data in writing within 8 days after receiving such a request, and in the case of public authorities only, they may also grant direct electronic access to the data free of charge.

274. Access to financial, administrative and law enforcement information by the APML on the basis of the new AML/CFT Law is covered under article 55 (requesting data from competent State bodies and public authorities holders). The APML may also request data, information and documentation required to detect and prove ML and FT in relation to persons that have participated or cooperated in transactions or business operations of persons in relation to which there are reasons for suspicion of ML or FT.

275. Competent State bodies and public authority holders shall be bound to provide AMPL with requested data within eight days and in urgent cases within a shorter time frame or to provide a direct electronic access to the data and information free of charge.

276. In addition, state bodies, courts, public prosecutor's offices and others are required by law to send to the APML data and/or reports on specific issues (articles 70-72). As informed during the on-site visit, this obligation had not been complied with fully in the course of 2008; however, following bilateral meetings held, all state prosecutor's offices and courts had started sending information on ML proceedings.

277. The APML has direct access to records from Tax and Customs (received in electronic form and integrated into the APML database), from the National Bank (international payment operations) and to the Business Registers Agency. It has indirect access to information held by the Ministry of Interior and other databases of public agencies and State Bodies.

278. It has to be noted that article 102 of the Criminal Code provides that data from criminal records may be disclosed only to a limited list of authorities, that is courts, state prosecutor, organ of internal affairs in respect of criminal proceedings conducted against a person with prior conviction, the body in charge of enforcement of criminal sanctions, the body involved in the procedure of granting amnesty, pardon, rehabilitation or deciding on termination of legal consequences of conviction, and social welfare authorities. Such data may also be disclosed upon motivated request to a government authority, enterprise, other organisation or entrepreneur if legal consequences of a conviction or security measure are still in force and if there exists a justified reason based on law. The wording of this article seems to exclude disclosure of criminal records to the APML[61], however such information is available to the APML upon request on the basis of the above-mentioned provision of the AML/CFT Law. Access to criminal records is usually

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[61] Article 102 of the CC has been amended after the visit and provides now that "data from criminal records may be disclosed to the other government authority responsible to identify and prevent committing of criminal offences when it is determined by the special law", which would encompass the APML.

satisfied within a week and it was explained that for other information in urgent cases, direct contacts are made with the Ministry of Interior liaison officer.

279. From the information received on-site, the evaluation team formed nevertheless an opinion that in practice, the lack of direct access to certain databases might have an impact on the APML's ability to properly undertake its functions, including the analysis of STR-s. The evaluation team was told by some interlocutors during the visit that law enforcement information available is not always accurate or up to date, however the authorities indicated that this statement did not reflect the existing situation.

Additional information from reporting parties (c.26.4)

280. Access to additional information from reporting entities by the APML on the basis of the new AML/CFT Law is covered under articles 53 (requesting data from obligor) and 54 (requesting data from lawyer). Communication of data, information and documentation by the obligor, lawyer or their employee is not considered an infringement of the obligation to keep a business, banking or professional secret (Article 74 AML/CFT Law).

281. If the APML assesses that there are reasons to suspect ML or FT in certain transactions or persons, it may request the following information from an obligor:

1. Data from the customer and transaction records kept by the obligor;
2. Data about the money and property of a customer of the obligor;
3. Data about transactions of money and property of a customer in the obligor;
4. Data about other business relations of a customer established in the obligor;
5. Other data and information needed in order to detect and prove ML and FT;
6. Data and information on the above-mentioned aspects concerning the persons that have participated or cooperated in transactions or business activities of a person with respect to which there are reasons for suspicion of ML or FT.

282. As regards lawyers, the APML may request data, information and documentation required for detecting and proving ML and FT as well as such data and information concerning persons that have participated or cooperated in transactions or business activities of a person with respect to which there are reasons for suspicion of ML or FT.

283. Obligors and lawyers shall be bound to provide AMPL with requested data within eight days or provide direct electronic access free of charge, and in urgent cases within a shorter time frame set by the APML. The APML may also set a longer period to obligors for sending the documentation in cases which involve a large number of documents or for any other justified reason.

284. The APML did not indicate having any issues of concern as regards the timeliness of receipt of additional information.

Dissemination of information (c.26.5)

285. Article 59 of the AML/CFT Law provides that if the APML assesses, based on the obtained data, information and documentation, that there are reasons for suspicion of money laundering or terrorism financing in relation to a transaction or person, it shall inform the competent State bodies in writing, in order that they may undertake measures within their competence, and send them the obtained documentation.

286. The APML told the evaluation team that in practice, if additional measures are required, the report is disseminated to the Police. Also, it is often disseminated to the PPO, through the nominated responsible person, as it is a better position to co-ordinate the law enforcement

authorities' action. If it is necessary, the report is provided both to the Police and the PPO. In cases with organised crime elements, as the co-ordination among relevant authorities is mandatory and takes place through an operational task force, it is disseminated to several recipients. In general, most of the cases are transferred to the Tax Administration, Ministry of Interior. In 2008, the APML disseminated most of the cases to the Tax Administration (20), Ministry of Interior (14), Foreign Currency Exchange (13), Security Information Agency (11), Special Prosecutor's Office against Organised Crime (5), Prosecutor's office (2), courts (1).

Table 18. FIU disseminated reports

Disseminated to	01.07.2002-31.12.2002	2003	2004	2005	2006	2007	2008	TOTAL
Police	15	9	25	15	31	41	85	**221**
Tax administration	-	-	13	26	37	44	68	**188**
Tax administration (art. 17/18 of the previous AML law)						69	125	**194**
Courts						3	3	**6**
Prosecutor's office (as dissemination of replies to info requests				2	1	3	6	**12**
Special Prosecutor against Organised Crime						1	5	**6**
Foreign Currency Inspectorate				1	7	13	16	**37**
Budgetary Inspection					1			**1**
Customs Administration					1	1	2	**4**
Security Information Agency					4	5	7	**16**
Khov				1				**1**
Privatisation Agency					1		3	**4**
TOTAL	**15**	**9**	**38**	**45**	**83**	**180**	**320**	**690**

287. The full analysis report is only disseminated to the PPO, Police or the courts in the context of criminal proceedings (investigated criminal case). It was indicated that disseminations to the Customs and Foreign Inspectorate relate more to requests of additional information or action.

288. No information was available on the average length of time required between the opening of a case and dissemination to the authorities, though it was mentioned that in certain complex cases, the analysis could last over a year, nor on the number of investigations commenced as a result of FIU's disclosure. The information gathered during the visit appeared to indicate that the quality of the reports and analysis of the APML had improved with time. Competent bodies did not express concerns regarding the timeliness of dissemination of reports by the APML.

Operational independence and autonomy (c.26.6)

289. The evaluation team was told that with the new changes, the APML has a higher degree of independence than previously. The Head of the FIU is appointed by decision of the Government for a 5 year mandate (renewable) following a public competition process which includes written

tests, psychological and qualification tests. The Director reports to the State secretary of the Ministry of Finance for general administrative measures which require coordination with different sectors within the Ministry. There have been three Heads since 2002, the current Director having been appointed in September 2007.

290. The APML indicated that they can carry out their tasks independently without any influence or interference from third parties.

Protection of information held by the FIU (c.26.7)

291. The evaluators had the possibility to visit the APML's offices during the on-site visit. Several measures have been taken to ensure the protection of information:

- entrance to FIU premises is guarded,
- the Unit is located in separate building,
- all computers in the FIU are protected by the password and,
- access to the database is based on the position of employee and level of security access.

292. Depending on the type of job, the staff has access to the Internet or a local closed network. Both networks are Firewall protected (IBM). Usernames and passwords are needed to access the computers. Oracle database contains information obtained from the obligors through the TMIS. The staff has access rights to certain information only, depending on the job they perform. The computers are protected by an IBM Intrusion Prevention System, as well as by the last-generation Symantec antivirus software.

Publication of periodic reports (c.26.8)

233. The AML/CFT Law, in its article 66, requires the APML to submit a progress report to the Government before 31 March for the previous year. The evaluation team has seen two reports covering the periods of respectively January 1, 2007 – November 30, 2007 and January 1, 2008 – December 31, 2008.

234. Such reports, which are brief in nature (3 to 5 pages), contain the following type of information:

- statistical information (e.g. number of over-threshold cash transaction and suspicious transaction reports received by the APML, as well as on the number of reports sent by the Customs Administration on cross border transportation of cash and valuables, number of cases opened by the APML and disseminated to law enforcement authorities),
- information on legislative activities in which the APML was involved in the reporting period,
- FIU developments regarding equipment and IT improvements,
- training activities,
- International cooperation information (statistics on requests sent and received by the APML, general information on participation in meetings in international fora and co-operation with other countries and relevant organisations)

235. Such reports are not publicly released; they are addressed to the Government and are made available to the public only upon requested. They don't include information on current ML/FT techniques, methods, and trends (typologies), or sanitized examples of actual money laundering cases. The authorities advised that such information is usually provided orally during regular meetings with obligors.

Membership of Egmont Group & Egmont Principles of Exchange of Information among FIUs (c.26.9 & 26.10)

293. The Serbian FIU gained Egmont Group membership in July 2003. As a member of the Egmont Group, the APML applies the Egmont Group Principles of Exchange of Information among FIUs which were adopted in the Hague on June 13, 2007. The APML has signed MoU-s with the following countries: Slovenia, Croatia, Bosnia and Herzegovina, Montenegro, "the former Yugoslav Republic of Macedonia", Romania, Bulgaria, Albania, Belgium, Ukraine, Poland, and Georgia. Signature of a MoU is not a prerequisite for information exchange.

294. With regard to the notion included in the Egmont Statement of Purpose which refers to organising regional workshops/seminars, and providing space for education and training, the APML participates at regional conferences organised by neighbouring FIUs. The Serbian FIU will host such a conference in 2010.

295. The APML has exchanged information with more than 30 members of Egmont Group, and it abides by the principles of information exchange, as stated in relevant Egmont Group documents. Additional information on international co-operation is provided under the analysis for R.40.

Recommendation 30

Adequacy of resources to FIU (c.30.1)

296. The structure of the APML includes the following Departments: the Analytical Department (Head, 3 analysts, 2 IT position, 1 post for data reception, 1 post for records and complaints), the Suspicious Transactions Department (Head, 2 deputies heading the Groups for suspicious transactions of banks and other financial institutions and the Group for suspicious transactions in capital market and securities, 2 STR analysts, 3 positions for workpost processing and evaluation), the International and national cooperation Department (7 posts) and the Legal and Financial Affairs Team (Team leader, Human Resources officer and 1 post for finance and accounting).

297. In 2006, the APML counted 24 employees . Currently, the Act on Internal Organisation and Job Classification within the Ministry of Finance provides 29 positions for civil servants and officials of the APML. At the time of the on-site visit, 4 posts were vacant (Team Leader, one deputy, one workpost for co-operation with other state bodies and one for administrative affairs).

298. The budget of the FIU is as follows:

Table 19. Budgetary resources in RSD

2006	2007	2008	2009
35,119,000	30,406,000	46,137,000	52,610,000

299. The evaluation team was informed about plans to increase the number of positions to 39 however recruitments were stopped due to the financial context. Salaries of civil servants, including the APML, were decreased by 10-15% depending on the salary. The team was also informed that the APML is threatened by a certain level of turnover, given the attractiveness of salaries in the private sector.

300. With the exception of the Director, all staff members shared offices, with some of them being in rather overcrowded small offices.

301. Technical resources of the APML include among other the following equipment (39 workstations, 9 servers, Firewall, Intrusion prevention system, 11 printers, 3 scanners) and software (TMIS Application, Oracle Database 10g, Symantec EndPoint protection, TrendMicro

Antivirus, I2 Analyst Notebook, ZyImage Document Management System, ABBY Fine Reader OCR Software).

302. Overall, the evaluation team had the impression that additional measures should be taken by the authorities to adequately fund and staff the APML, in particular in order to reinforce its analysis capacities. Also, additional technical resources would also be required. This assessment should be read also from the perspective that, apart from its FIU core functions, the APML has also been entrusted with some 12 additional duties under article 65.

Integrity of FIU authorities (c.30.2)

303. All APML posts have job descriptions with clear requirements for the professional background and experience as well as other relevant skills. APML's staff has legal or economic background and 19 out of 27 employees hold a university degree. Staff is required to maintain high professional standards, including concerning confidentiality. Staff is recruited pursuant to the Law on civil servants. Vacancies are filled on the basis of a competition process, upon proposal of a Commission composed of 2 APML experts and the Human resources Management Agency, the final decision being made by the APML Director. As a general requirement for occupying a position in civil service, persons should not have been convicted of at least six months of imprisonment nor suspended from duty in a state body for serious violations of professional duties. Employees are required to maintain the confidentiality of all information concerning money laundering cases; APML correspondence with other state bodies is confidential. All data and information received by the APML is classified official secret, disclosure constituting a criminal offence punishable by imprisonment of maximum 5 years.

Training of FIU staff (c.30.3)

304. Employees are trained internally within the APML immediately upon recruitment. In the course of the first three months they are moved from one department to another and receive basic training on all procedures, information flows, data analysis and use of IT tools. In addition, a regular weekly training is provided for all employees. Presentations are given by other colleagues regarding issues that are dealt with in daily work.

305. Employees are also trained externally by taking part in seminars regarding AML/CFT matters. The Administration for the Prevention of Money Laundering has organised and participated in a number of seminars and workshops which were mostly implemented in cooperation with and assisted by international organisations and partners (World Bank, International Monetary Fund, European Bank for Reconstruction and Development, European Commission, Organisation for Security and Co-operation in Europe, Council of Europe, United Nations, USAID, US Treasury etc). These seminars were mostly intended for the staff of the Administration for the Prevention of Money Laundering, the police, prosecutor's office and courts. Several seminars have been organised also for the representatives of the bodies competent to monitor the implementation of the Law on the Prevention of Money Laundering and for compliance officers in banks.

306. From information received, it appears that internal training programs would need to be tailored , to ensure that APML staff, including newly recruited employees, receive specialised and on-going training suited to their responsibilities. Such training could include in particular analyst training, training on specialised products, trend and typologies, IT and software training.

Recommendation 32

307. The APML maintains comprehensive statistics on reports received (STR-s and above-threshold transaction reports), on cases disseminated to competent authorities and on international

cooperation with foreign FIUs. The database enables it to visualise statistics with relevant breakdowns (for details see above and Annex IV).

Effectiveness

308. It is undoubtedly that the effectiveness of the APML has been strengthened comparatively to the situation in the previous evaluation round. Nevertheless, a number of aspects may affect its effectiveness. Despite concerns regarding the quality of reports received and the level of non/under-reporting by certain sectors, the FIU has at its disposal an important amount of financial information, which is likely to increase once the implementation of the new AML/CFT law by reporting entities will be fully operational. It was not possible to identify how many investigations commenced as a result of FIU's disclosure in the absence of such statistics. It is also to be noted that the FT reporting obligation only came into the remit of the FIU as of March 2009. Thus, in order to be able to cope with its core functions, the Serbian FIU should satisfy itself that it has adequate capacities, including that all positions are filled, and that staff are adequately trained. In particular it is to be noted that at the time of the on-site visit, two posts were vacant, namely the Head of the team responsible for suspicious transactions received from banks and other financial institutions (Suspicious Transactions Department) as well as the post responsible for co-operation with State Authorities. These comments should also be seen in the light of the fact that the AML/CFT Law sets out an important number of additional tasks which are likely to impact / overload the daily operation of the APML.

2.5.2 Recommendations and comments

Recommendation 26

- The Serbian authorities should:

  - provide financial institutions and other reporting entities with comprehensive and adequate written guidance, based on the new legislation, is introduced in order to further support obligors in understanding better the reporting procedures and requirements and undertake outreach measures to under-reporting sectors
  - develop reporting forms and procedures for all obligors and lawyers
  - clarify through relevant amendments article 102 of the Criminal Code;

- The APML should also publicly release periodic reports which include in an adequate manner statistics, typologies and trends and information on its activities.

Recommendation 30

- Additional measures should be taken by the authorities to adequately staff the APML as well as provide to them with adequate offices, technical resources and equipment.

- Internal training programs would need to be tailored , to ensure that APML staff, including newly recruited staff, receives specialised and on-going training suited to their responsibilities. Such training could include in particular analyst training, training on specialised products, trend and typologies, IT and software training.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**LC**	• Guidance for financial institutions and other reporting parties regarding the manner of reporting is based on previous legal requirements, specification of reporting forms and procedures do not cover all

		reporting entities (only banks, insurance, securities) • Reports prepared by the FIU do not include typologies and trends and they are released only upon specific request • Effectiveness concerns (CFT requirement remains untested as it has only been introduced in March 2009, additional efforts required to improve quality of reports disseminated)

2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27 and 28)

2.6.1 Description and analysis

Recommendation 27

Legal Framework

309. The legal framework is mainly constituted by the Criminal Code, the Criminal Procedure Code, and specific applicable laws such as the Law on Police[62], the Law on Security State Agency[63], the Law on Tax Procedure and Tax Administration (26 November 2002)[64], the Law on Public Prosecution[65], the Law on organisation and jurisdiction of government authorities in suppression of organised crime[66] and the Law on Seizure and confiscation of the proceeds of crime[67].

310. The CPC is based on the inquisitorial model criminal proceedings. The procedure is divided into three phases: (1) the preliminary investigation (literally 'pre-investigatory proceedings'), (2) the judicial investigation by the investigative judge (literally 'pre-trial proceedings') and (3) the trial.

311. According to the CPC the preliminary investigation is led by the public prosecutor and its tasks are carried out by the police authorities. The preliminary investigation starts if there are grounds for suspicion that a criminal offence subject to public prosecution has been committed. In such cases the police authorities are bound to take necessary measures. The main objective of the preliminary investigation is collecting evidences in order to justify the existence of the ground for reasonable suspicion.

312. As for the second phase, the investigation is conducted by the investigative judge. An investigation is initiated when a reasonable suspicion exists that the suspected person has committed a criminal offence (Article 241 of the CPC). The investigation shall be carried out upon the request of the public prosecutor that is submitted to the investigating judge of the court having jurisdiction. The request shall contain: the personal data of the suspect, the description of those factual aspects of the act which constitute the elements of the definition of the criminal offence, the statutory title of the criminal offense, the circumstances on which the reasonable suspicion is founded, and the existing evidence. The public prosecutor shall submit all files and records concerning the actions undertaken to the investigating judge, together with objects of

[62] RS Official Gazette No. 101/05 of December 2005.
[63] RS Official Gazette No. 42/02
[64] RS Official Gazette No. 80/02 and 20/09
[65] RS Official Gazette No. 63/01, 42/02, 39/03, 44/04, 61/05, 46/06 and 106/06
[66] RS Official Gazette No. 42/02; 27/03; 39/03, 67/03, 29/04, 58/04, 45/05, 61/05
[67] RS Official Gazette No. 97/08 in force as of 4 November 2008 (applied as of 1 March 2009).

evidentiary value, or shall indicate their location (Article 242 of CPC). Prior to deciding on the request of the public prosecutor, the investigative judge may summon the public prosecutor and the suspect to a preliminary hearing if clarification is needed of circumstances being relevant for starting investigation or if the investigative judge finds that the preliminary hearing would be expedient because of other reasons. At the preliminary hearing the parties may make their motions (proposals) orally, and the public prosecutor may alter or supplement his request for investigation or may propose the proceedings be conducted upon an indictment without investigation (Article 244).

313. As a rule, admissible evidence can only be collected by the investigative judge or upon his order (except for police interrogation of the suspect/accused).The investigating judge may entrust to the police authorities the execution of an order for a search of a dwelling or a person or an order for the temporary seizure of objects (article 246) and pursuant to article 260, police authorities and other state authorities are bound to assist the investigating judge upon his request. If the investigation is not concluded within 6 months, the investigating judge should notify the president of the court of the reasons, the latter being entitled to undertake measures in order to conclude the investigation (article 258).

314. Chapter XXIX A (articles 504a – 504h) of the Criminal Procedure sets out special rules of criminal procedure for investigating and prosecuting perpetrators of criminal offences of organised crime, temporary seizure of assets, revenues and property[68].

Designation of authorities to investigate ML/FT (c.27.1)

315. The law enforcement bodies competent for the investigation and prosecution of ML and FT offences are: the Ministry of Interior, the Tax Police, the Security Information Agency and the Public Prosecutor's Office. These bodies have all been established by law, as are their activities.

316. According to the Law on Police, police work includes preventing, detecting and solving criminal offences, fighting organised crime and other crimes and finding and apprehending perpetrators of criminal offences as well as other persons wanted by the authorities (article 10). Police powers are set out in Section IV of the Law on Police and include inter alia warning and orders, checking and establishing the identity of persons and objects, summons, temporary seizure of objects, search of premises and facilities, inspection of documents and anti-terrorist search, search of persons, objects and vehicles, targeted search measures, etc (article 30).

317. The Tax Police is a special organisational unit of the Tax Administration, which is an administrative body within the Ministry of Finance and Economy. It acts as an internal affairs body during the pre-trial procedure and has powers to apply investigative actions when carrying out its duties, primarily related to the detection of tax related criminal offences and perpetrators (article 160-161 of the Law on Tax Procedure and Tax Administration). They can undertake a number of actions "apart from limitation of freedom of movement, as well as to summon and hear the suspect, without the right to bring suspects in forcefully" (article 135 of the Tax Law).

318. The Security Information Agency's responsibilities include combating and eliminating activities of organisations and individuals engaged in organised crime and criminal acts with elements of foreign, domestic and international terrorism and the most severe forms of criminal acts against humanity and international law, the protection of security of the Republic of Serbia; the discovery and prevention of activities threatening to undermine or disrupt the constitutional order of the Republic of Serbia and other tasks defined by the Law. Overall, for most types of crimes, the Security Information Agency would focus on the most serious forms of organised

[68] Chapter XXIX A of the Criminal Procedure Code (Official Gazette of the FRY No. 58/2004, 85/2005, 115/2005 and 49/2007) "Special Provisions on Proceedings for Criminal Offences of Organised Crime".

crime, criminals and criminal groups (in particular smuggling of narcotics, illegal smuggling, human trafficking, arms trafficking, counterfeiting, money laundering).

319. The Public Prosecution's competences and organisation are set out in the Law on Public Prosecution and in the Criminal Procedure Code. Pursuant to the CPC (Article 46), the public prosecutor is competent to :

- conduct the preliminary investigation;
- render rulings on instigating the investigation and guide the activities of the preliminary investigation in accordance with this Law;
- raise and represent the indictment, that is, the motion to indict before a court that has jurisdiction;
- take an appeal to the court decisions that are not final and file extraordinary legal remedies against final court decisions;
- perform other activities stipulated by this Law.

320. There are specific arrangements regarding the designation of authorities competent to investigate and prosecute organised crime offences (including ML or FT offences).

321. The Law on Organisation and Jurisdiction of Government Authorities in Suppression of Organised Crime sets out the competences and organisation of specific offices and departments:

- the Special Prosecutor's Office for Suppression or Organised Crime (within the District Public Prosecutor's Office in Belgrade),
- the Service against Organised Crime (within the Ministry of Interior) and
- the Special Departments for processing criminal cases under this law (within the Belgrade District Court and the Belgrade Appellate Court).

322. It also regulates selected aspects regarding co-operation with other government bodies and services, appointments and dismissals, salaries and other employment rights, etc. The specialised services act in accordance with the above-mentioned law and the specific provisions of the CPC (Chapter XXIX A). When it comes to the implementation of the CPC provisions, the range of investigative actions that may be taken when the criminal offence is qualified as an organised crime offence is much wider than that of other criminal offences.

323. It has to be noted that organised crime offences under the Law on Organisation and Jurisdiction of Government Authorities in Suppression of Organised Crime are defined as criminal offences committed by an organised criminal group (of three or more persons, which exists for a certain period of time, acts consensually) which may be sentenced by 4 years of imprisonment or more (see articles 2 and 3 of the Law). The CPC special provisions in Chapter XXIX A are applicable when a criminal offence that is the result of organised actions (of two or more persons) with the aim of committing grave criminal offences in order to gain proceeds or power and when, in addition at least three of the following conditions have been met:

- that each member of the criminal organisation had previously designated curtained task or role;
- that the activity of the criminal organisation was planned for an extensive or indefinite period of time;
- that the activities of the organisation are based on implementing certain rules of inner control and discipline of members;
- that the activities of the organisation are planned and implemented internationally;
- that the activities include applying violence or intimidation or that there is readiness to apply them;
- that economic or business structures are used in the activities;
- that money laundering or illicit proceeds are used;

- that there exist influence of the organisation, or part of the organisation, on political structures, the media, legislative, executive or judicial authorities or other important social or economic factors.

324. Article 6 of the Law on Organisation and Jurisdiction of Government Authorities in Suppression of Organised Crime provides that upon becoming aware that a particular case is a case of organised crime, for which the envisaged sentence is imprisonment of four years or more, the Special Prosecutor shall approach the Republic Public Prosecutor in writing, requesting him to confer or delegate jurisdiction to the Special Prosecutor's Office. The latter shall decide on this request within eight days.

325. The law is rather brief on matters governing the relationship and cooperation between the Special Prosecutor's Office and law enforcement bodies, including the Service against Organised Crime. It does not include any requirements for other law enforcement bodies or prosecutors to inform the Special Prosecutor when they come across a criminal offence falling under the jurisdiction of the Special Prosecutor's Office. Article 10 provides that the police officials of the Service against Organised Crime shall act upon requests of the Special Prosecutor's Office. Under article 11, the duties of the law enforcement agencies (though this is under the Section specifically devoted to the Service against Organised Crime) are sets out in the context of a specific request by the Special Prosecutor's Office only:

a) to enable without delay the use of any technical means at their disposal
b) to ensure timely response of each of their members and employees, including superiors of the bodies or agencies, to give information or for questioning as suspect of witness
c) to hand over without delay to the Service every document or other evidence in their possession or otherwise deliver information that may assist in uncovering criminal offences.

326. Furthermore, the Law on Seizure and Confiscation of the Proceeds from Crime establishes a specialised organisational unit – the Financial Investigation Unit - within the Ministry of Interior responsible for detecting the proceeds from the following criminal offences:

1) Organised crime;
2) Showing pornographic material and child pornography (Article 185, paragraphs 2 and 3 of the Criminal Code);
3) Against economy (Article 223 paragraph 3, Article 224 paragraph 2, Article 225 paragraph 3, Article 226 paragraph 2, Article 229 paragraphs 2 and 3, Article 230 paragraph 2, and Article 231 paragraph 2 of the Criminal Code);
4) Unlawful production, keeping and distribution of narcotics (Article 246 paragraphs 1 and 2 of the Criminal Code);
5) Against public peace and order (Article 348 paragraph 3, and Article 350 paragraphs 2 and 3 of the Criminal Code);
6) Abuse of office (Article 359 paragraph 3, Article 363 paragraph 3, Article 364 paragraph 3, Article 366 paragraph 5, Article 367 paragraphs 1 through 3, 5 and 6, and Article 368 paragraphs 1 through 3, and 5 of the Criminal Code);
7) Against humanity and other goods protected by international law (Article 372 paragraph 1, Article 377, Article 378 paragraph 3, Article 379 paragraph 3, Articles 388 through 390, and Article 393 of the Criminal Code).

327. Provisions of this Law shall apply to selected forms of criminal offences - including ML and FT - "if the material gain acquired from crime, that is, the value of objects acquired from crime exceeds the amount of one million five hundred thousand dinars".

328. The Financial Investigation Unit undertakes its tasks ex *officio* or at the order of the public prosecutor and the court. Government and other authorities, organisations and public services are required to extend their assistance to the Unit. It is responsible for initiating financial investigations against the owner when there are reasonable grounds to suspect that he/she

possesses considerable assets deriving from a criminal offence. Financial investigations are initiated at the order of the public prosecutor (article 17), who shall manage such investigation. Evidence can be collected by the unit at the request of the prosecutor or ex officio.

Ability to postpone/waive arrest of suspects or seizure of property (c.27.2)

329. There is no explicit provision in the CPC addressing the ability to postpone or waive the arrest of suspects or seizure of property. The evaluation team was advised that the law enforcement authorities are able to postpone or waive the arrest of suspected persons or the seizure of property, as this would be part of the regular evidence building process and could be used when investigating money laundering, terrorism financing or predicate offences.

Additional elements – Ability to use special investigative techniques (c.27.3) and their use when conducting ML/FT/underlying predicate offences investigations (c.27.4); Use of specialised investigation groups & conducting multi-national co-operative investigations (c.27.5); Review of ML/FT methods, techniques and trends & dissemination of results (c.27.5)

330. The use of special investigative techniques is limited in the Criminal Procedure Code to a range of specific criminal offences which are being investigated. The law enforcement authorities met on site indicated that they used rather frequently these techniques, especially in the context of organised crime offences.

331. Measures for the surveillance and recording of telephone and other conversations or communications by other technical means as well as optical recording of persons can be ordered when there are grounds for suspicion that a person has committed a criminal offence against the constitutional order or security or with elements of organised crime (for counterfeiting of money, money laundering, illicit manufacturing and trafficking in narcotic drugs, illegal trade of weapons, munitions and explosive substances, trafficking in persons), offer and acceptable of bribe, extortion and kidnapping have been committed (Article 232 CPC).

332. Also, disclosure of data (statement of balance of a suspect's business and private accounts) by a bank or financial institution may be ordered for criminal offences punishable by at least 4 years imprisonment (Article 234 CPC).

333. These measures can be applied as of the preliminary investigation phase. They are ordered by an investigative judge upon reasoned order which shall include data on the person against whom the measure is applied, grounds for suspicion, way of implementation, scope and duration of the measure. These measures may last up to three months and may be extended three more months.

334. When investigating organised crime offences (Chapter XXIX A of the CPC), the following additional special investigative techniques can be used:

- surveillance and recording of telephone and other conversations or communications by other technical means as well as optical recording of persons measures can be ordered (Article 232 CPC)
- providing simulated business services, simulated legal acts and contracts (article 504lj CPC)
- use of undercover agents[69] (article 504lj CPC)
- controlled deliveries (article 504 o CPC)

[69] It is surprising to note that the Minister of Interior, who is a political person, may also, in addition to an authorised person, appoint an undercover agent (article 504nj).

335. The above-mentioned measures can be implemented by police authorities for a period of up to 6 months. They may be extended by the investigative judge upon the proposal of the public prosecutor two times, for three months at most.

336. All the above –mentioned special investigative techniques can be used only against a suspect of a criminal offence, and not against other persons who are for instance communicating with the suspect but are not themselves suspected of a criminal activity. All information gathered through these means is considered official secret. There was no information as to whether there are any additional internal implementing regulations regarding the use of the special investigative techniques.

337. It is to be noted that there is a difference approach in regulating the handling of the material obtained through the use of special investigative means. All documentation collected through the implementation of the measures under article 232 is to be submitted by the police to the investigative judge, who "shall invite the public prosecutor to make himself familiar with the material obtained", while all documentation collected through the implementation of the measures under article 504 is to be submitted by the police to the public prosecutor without any reference to communication by the prosecutor of the material to the investigating judge. Similarly, the timeframe and procedures for destroying data are drafted in different terms under article 233 and 504. Finally, while article 232 and following are silent on notification of the targeted person, article 504 requires unconditional notification.

338. The evaluators were not made aware of any permanent or temporary groups specialised in investigating the proceeds of crime (financial investigators).

339. The evaluators were not made aware of any ML or FT co-operative investigations with appropriate competent authorities in other countries.

340. The evaluators were not made aware of interagency review on a regular basis of ML and FT methods, techniques and trends reviewed by law enforcement authorities.

Recommendation 28

341. The Criminal Procedure Code allows for the competent authorities responsible for conducting investigations of ML, FT and other underlying predicate offences to compel production of, search persons and premises for and seize and obtain transaction records, identification data obtained through the CDD process, account files and business correspondence, and other records, documents or information, held or maintained by financial institutions and other businesses or persons. The Law on Police also regulates how police officers can seize temporarily objects (articles 60-62), when and how searches of premises and facilities and inspection of documents can be conducted, including anti-terrorism searches (articles 63, 72).

Ability to compel production of, search persons and premises and seize and obtain documents and information (c.28.1)

342. As from the preliminary investigation stage, pursuant to article 225 of the CPC, police authorities are bound to take all necessary measures aimed at discovering the perpetrator, discovering and securing facts and objects which may serve as evidence and gathering all information which could be useful for conducting criminal proceedings. In order to fulfil these duties, they can seek information from citizens, inspect means of transportation, passengers and luggage, issue a wanted notice for a person or warrant for seizure of objects, inspect premises of state authorities, enterprises, firms and other legal entities, review documentation and seize it if necessary, as well as undertake other necessary measures and actions. A record or an official note shall be made on facts determined in the course of carrying out particular actions, which may be of importance for criminal proceedings, as well as on discovered or seized objects. Based on their

powers under article 225, law enforcement authorities can have access to premises of legal entities, and obtain financial documents and information.

343. As regards financial documents and information in respect of a natural person, law enforcement authorities can obtain such information through several channels. If they need such information in the context of their investigations, such information can be obtained through the APML, pursuant to article 58 of the AML/CFT Law which provides that the APML may collect data, information and documentation from obligors (article 53 AML/CFT Law) and from the lawyer (article 54) if there are reasons for suspicion of ML or FT upon a written and grounded initiative of several institutions (court, public prosecutor, police, Security Information Agency, Military Security Agency, Military Intelligence Agency, Tax Administration, Customs Administration, etc).

344. Also, such information and documents can be compelled upon court order in application of article 234. The investigating judge can order, on the basis of article 234(1) of the CPC, that a bank or financial or other organisation submits data concerning statement of balances of the suspect's business and private accounts however this is possible only in cases of suspicion that a criminal offences punishable b**y at least** 4 years imprisonment[70] has been committed, upon the motivated written motion of the public prosecutor. These powers are available for use in investigations and prosecutions of ML, FT and underlying predicate offences.

345. The court order shall indicate the name of the person, the bank account number of the person and data can also be collected on persons having connections with the specific person being under investigation. The police authorities indicated to the evaluation team that they mostly got all requested information, and when this was not the case, it was primarily due to the fact that such documents were missing as they had not been collected by the financial institutions in the first place.

346. Chapter VII of the CPC details the rules applicable to evidentiary actions. A search of dwellings and other premises of the defendant or other persons may be carried out if it is likely that in the course of the search the perpetrator, the traces of the criminal offence or objects relevant for the criminal proceedings shall be found. It is possible to carry out a search of a law firm, but only regarding a particular case, paper or document. A search of a person may be carried out if it is likely that in the course of search traces and objects relevant for the criminal proceedings are found (Article 77 CPC).

347. Article 78 of CPC regulates the method of carrying out a search. A search shall be ordered by the Court, by a written warrant with the statement of reasons which is submitted prior to the commencement of the search to the person to be searched or whose premises are to be searched. The police authorities may without a search warrant and without witnesses carry out a search of a person when executing a warrant for compulsory appearance or to deprive of liberty if there is a suspicion that person is in possession of offensive weapons or tools for an attack, or if there is suspicion that he will throw away, hide or destroy the objects which need to be seized as evidence in the criminal proceedings. When conducting a search without warrant, the police authorities are bound to submit immediately a record of the search to the investigative judge, and if the proceedings are not yet pending – to the competent public prosecutor.

348. Article 80 of CPC stipulates that if in the course of search of a dwelling or a person objects are found unrelated to the criminal offence for which the search was ordered, but indicating the commission of another criminal offence subject to public prosecution, they shall be noted in the record and temporarily seized, and a receipt on seizure shall be issued immediately. The public prosecutor shall be informed immediately thereof for the purpose of institution of criminal

[70] During the previous evaluation round, this was possible only for offences carrying a penalty of more than 10 years of imprisonment.

proceedings. These objects shall be returned immediately if the public prosecutor determines that there are no grounds to institute criminal proceedings and if no other legal ground for the seizure of these objects exists.

349. For organised crime offences, on the basis of article 504k CPC, the public prosecutor may request the competent state authority, bank or other financial institution to conduct the audit of management of a person and to deliver the documentation and data that may be used as evidence about the criminal offence or property acquired, as well as information on suspicious financial transactions.

350. As indicated above, for specific ML and FT forms as well as other applicable criminal offences, the Law on Seizure and confiscation of the proceeds of crime is applicable and contains provisions regulating the procedures for conducting financial investigations against the owner when reasonable grounds exist to suspect that he/she possesses considerable assets deriving from a criminal offence (article 15). Such investigations are initiated at the order of the public prosecutor and evidence is collected by the Financial investigation unit (within the Ministry of Internal Affairs) at the request of the public prosecutor or ex officio. The law sets forth the procedures for searches of apartment and other premises of the owner and other persons (article 18), the obligations of the government and other authorities, organisations and public services when conducting inspections and gathering of evidence (article 19). The public prosecutor may order banking and other financial institutions to transmit to the Financial investigation unit data on the status of the owner's businesses and private accounts and safety deposit boxes (article 20). The law explicitly provides that the inspection and transmission of documents may not be denied on the grounds of business, official, state and/or military secret.

Powers to take witnesses' statements (c.28.2)

351. The competent authorities in Serbia have the powers to summon persons and take witnesses statements for use in investigations and prosecutions of ML, FT, and other underlying predicate offences, or in related actions (See CPC, Articles 225, 226, 243, 251 and for organised crime : 504d, 504e and following). In organised crime cases, statements collected by the public prosecutor during the pre-investigative proceedings may be used as evidence in the criminal proceedings, but the verdict cannot be based solely on them.

Recommendation 30 (law enforcement and prosecution service)

Adequacy of resources of law enforcement and other AML/CFT investigative or prosecutorial agencies (c.30.1); Integrity of competent authorities (c.30.2); Training for competent authorities (c.30.3); Additional element – training and education for judges (c.30.4)

Prosecution Service

352. The organisation of the Prosecution Service, as well as the requirements for human, technical and financial resources are set forth in the Law on Public Prosecution of Serbia[71] (LPP) and the Law on the Organisation and Jurisdiction of Government Authorities in Suppression of Organised Crime. A new Law on Public Prosecution was adopted in 2008, however its entry into force was planned as of 1 January 2010, thus the evaluation team was unable to take it into consideration in the context of this evaluation[72]. Both the Constitution (article 156) and the Law on Public Prosecution set out the independence of the Prosecution Service.

353. The Republic Public Prosecutor's Office has established Departments for Combating Corruption and Money Laundering in District Public Prosecutor's Offices in Belgrade (5 deputy

[71] RS Official Gazette No. 63/01, 42/02, 39/03, 44/2004, 61/05, 46/06, 106/06.
[72] RS Official Gazette No. 116/08 of 27 December 2008 to enter into force as of January 2010.

public prosecutors), Novi Sad (3 deputy public prosecutors), Nis (5 deputy public prosecutors) and Kragujevac (3 deputy public prosecutors). These departments deal with corruption crimes and other economic crimes connected with corruption and money laundering, whereas the Republic Public Prosecutor's Office deals with corruption crimes and economic crimes connected with corruption and money laundering involving state officials, as well as cases of interest to the wider public. Twenty one deputy prosecutors work in the Departments for Combating Corruption and Money Laundering: 5 in the Republic Prosecutor's Office, 5 deputy public prosecutors in Belgrade, 3 in Novi Sad, 5 in Nis and 3 in Kragujevac. The Special Prosecutor's Office for Organised Crime counts 14 deputy prosecutors and 8 deputy prosecutor assistants. The authorities indicated that all of them had specific expertise and experience in the field of organised crime and corruption and/or money laundering.

354. It is however to be noted in this context that several international reports, while acknowledging that the authorities have made progress in reforming the legal framework regarding the judiciary in Serbia, which is now in line with relevant European standards, expressed concerns about some of the provisions which were considered as opening up possibilities for undesired political pressure and which could weaken judicial independence, (eg. provisions for re-election of public prosecutors).[73]

355. The Law on the Organisation and Jurisdiction of Government Authorities in Suppression of Organised Crime sets out the criteria applicable for the organisation of the Special Prosecutor's Office for Suppression of Organised Crime. This office is headed by a Special Prosecutor, who is appointed by the Republic Public Prosecutor for a term of 2 years which may be renewed. Dismissal can be done before expiry of this term. Prior to appointment of the Special Prosecutor, the Republic Public Prosecutor shall first issue a decision on seconding such a person to this Office which requires the written consent of the person and may not exceed two years (article 5). The Republic Public Prosecutor may also second, following a recommendation of the Special Prosecutor, a public prosecutor or deputy public prosecutor to the Office. Such secondments cannot exceed 9 months and may be extended with the written consent of the seconded person (article 8). Furthermore, if required, the Special Prosecutor can request a government body or organisation to temporarily assign expert staff to the Office, and such secondments cannot exceed 1 year (article 9). The law also sets out specific provisions for vetting and financial status procedures and declaration of assets (article 16), regarding maximum salaries (which should not higher than two times the salary received in the previous position) and other employment rights (articles 18-19) and that the Ministry of Justice shall provide adequate premises and technical facilities.

356. The provisions of this law on these aspects are drafted in very brief terms and the assessment team could see a number of potential issues of concerns in this respect, which may be arising from:

- the absence of criteria for the dismissal of the Special Prosecutor by the Republic Public Prosecutor before the expiry of his/her term (article 5);
- the short terms of secondment of the Special Prosecutor(2 years, though renewable), and prosecutor or deputy public prosecutors (9 months renewable), compared with the usual length of proceedings in organised crime cases, let alone ML cases (articles 5 and 8)
- the absence of the consent of the public prosecutors or deputy public prosecutors for the secondment to the Special Prosecutor's Office (only the extension of the secondment explicitly requires the prosecutor's consent) (article 8)
- the lack of specific qualifications and experience requirements for all these persons.

[73] See reports of the European Commission for Democracy through Law of the Council of Europe as well as of the European Commission.

357. Serbia has adopted a Law on initial training of judges, prosecutors and deputy public prosecutors[74] in 2006, which started being applied as of 1 March 2007. Training is voluntary, with the exception of certain forms which are specified as mandatory by law or by a decision of the High Judicial Council in cases of change of specialisation, important changes in the regulations or new working techniques. The Judicial Training Centre organises the implementation of training programmes for magistrates and employees of the judiciary. In the course of 2007, the Judicial Training Centre included in its regular programme also the training of judges and prosecutors on anti-corruption, ML and organised crime aspects. The Centre's Working Group for Criminal Law and Working Group for Prosecutor developed a special curriculum on the fight against money laundering.

358. The authorities indicated that several seminars were conducted and enabled to train judges and prosecutors from the municipal and district courts, Supreme Court, the Republic Prosecutor's Office, the Special Prosecutor's Office for suppression of organised crime. A number of these seminars were organised with the support of international donors (e.g. Council of Europe, OSCE, Germany, Italy, US Department of Justice). The authorities provided the following information on organised seminars :

- In 2005: 4 one-day seminars on special investigative activities and the use of evidence (34 participants); 18 seminars on anti-corruption measures (476 participants)
- In 2006: 18 seminars organised on measures to fight money laundering (543 participants), 3 two days seminars on organised crime, money laundering and corruption (97 participants).
- In 2007: 11 seminars on investigation and investigative activities in the fight against money laundering (292 participants), 8 seminars on special investigative activities and the use of evidence on corruption (278 participants), 8 seminars on investigation and investigative activities in the fight against money laundering – the relation between the prosecution and the police (281 participants); 3 seminars on challenges and best practices in the fight against money laundering (172 participants), 12 seminars on criminal offences of money laundering (351 participants), 5 seminars on fight against organised crime, corruption and money laundering (132 participants)
- In 2008: 7 seminars on money laundering and the financing of terrorism; 5 seminars on financial investigations.

Police

359. The organisation of the Police, as well as the requirements for human, technical and financial resources are set forth in the Law on Police adopted on 14 November 2005. Within the General Police Directorate, the Criminal Police Directorate is responsible for criminal investigations. The organigramme is set out in Annex IV. The Director of the Police Directorate is appointed by the Government for a term of five years, upon recommendation of the Minister of Interior.

360. The organisation of the Police Directorate encompasses organisational units in the City of Belgrade, regional law enforcement departments and police stations. Basically ML falls within the remit of the Criminal Investigation Department (at headquarters level and within the 27 regional police directorates). Within this Department, a significant role is performed by the Service against Organised Crime. ML and FT when having elements of organised crime, fall within the remit of the Section for combating money laundering which is part of the Department for combating organised financial crime of the Service. This Section has 9 posts allocated, while at the time of the on-site visit, only 6 were occupied. Each of the 27 regional police units includes a specialised section for financial crime suppression. These have been allocated 851 work places, out of which 595 work places were filled.

[74] RS Official Gazette No. 46/06.

361. As regards the Service against Organised Crime, the Law on the Organisation and Jurisdiction of Government Authorities in Suppression of Organised Crime contains only article 10 setting out that the Minister of Interior shall appoint and dismiss the Head of the Service following the opinion of the Special Prosecutor. The Service shall act upon requests of the Special Prosecutor's Office. This article is drafted in very general terms and does not articulate clearly enough the relationship between the Special Service and the Special Prosecutor's Office. The law does not include any specific provisions on the appointment, dismissal, or professional qualifications of the staff of the Service against Organised Crime. Article 16 covers regarding vetting and financial status procedures and declaration of assets in general terms.

362. As regards the Financial Investigation Unit established within the Ministry of Interior pursuant to the Law on Seizure and Confiscation of the Proceeds from Crime, at the time of the on-site visit, the Minister had not yet adopted the separate act on the internal organisation and job classification of the Unit, nor assigned the Head of Unit. It was not possible to assess whether the plans underway would enable to adequately structure, fund and staff this new unit.

363. According to the Law on Police, employment is prohibited for persons convicted for any offence subject to public prosecution, sentenced to a non suspended term of imprisonment higher than 3 months, or whose employment with a governmental agency or public authority was terminated due to a serious professional breach (article 110). There are specific requirements foreseen in the law, regarding educational background, training, vetting procedures and security checks as well as provisions for external and internal oversight. Police officers are forbidden to engage in private business or professional activities and this is a ground for immediate termination of employment. The Police has also a Code of Ethics since 2006[75]. Disclosure of information to unauthorised persons constitutes a serious violation of duty which may be sanctions by a) fine (30-50% of salary) for 1-3 months; b) suspension of promotion for a period of 6 months to 2 years; c) transfer to another job position for a period of 6 months to 2 years; d) dismissal.

364. The police receives basic training at the Police academy and additional specialised training is being provided by international organisations on an ad-hoc basis. The evaluation team received only the information on training undertaken by the staff of the Service against Organised Crime, which included:

- In 2005: one 4 days seminar on combating ML and FT (3 participants), one 2 days seminar on fighting corruption and ML (7 participants), one 2 days seminar on combating ML (6 participants)
- In 2006: one 5 days seminar on combating money laundering
- In 2007: 1 conference on ML, search, seizure of proceeds from crime related to illicit drug trafficking (4 participants) and one international training on countering FT (1 participant)
- In 2009: one 6 days seminar on ML and organised crime investigations (8 participants)

Tax Police

365. Considering the information received both prior and during the visit, the evaluation team was unable to form a conclusion on the structure and adequacy of financial, human and technical resources, as well as the requirements regarding professional standards, integrity and skills of the Tax Police.

[75] RS Official Gazette No. 92/06

Security Information Agency

366. As regards the Security Information Agency, the evaluation team was informed that special departments were established within the Counter-Intelligence Administration to carry out operational and security activities on counteracting terrorism and international organised crime, along with the appropriate organisational units in BIA's territorial centres. No information was given on the operational independence of investigative staff, on the number of staff (overall and specifically devoted to ML and FT), budgetary information and nature of cases undertaken as these are considered confidential. Representatives stated that they believe their human and technical resources be sufficient to fully and efficiently conduct their tasks. The BIA has its own Educational and Research Centre, which provides basic operative and specialist professional training courses for staff working on countering international organised crime and terrorism however there was no information available on existing training available or conducted since the last evaluation visit.

Applicable for all prosecution and law enforcement agencies

367. In conclusion, the current legal framework does raise a number of questions regarding the operational autonomy and independence of the prosecution service to ensure freedom from undue influence or interference. Furthermore, there is room for improvement of the existing legal framework applicable to law enforcement and prosecution to ensure that they are required to maintain high professional standards, including high integrity, and be appropriately skilled. The evaluation team was informed that there were a number of pending procedures for corruption offences against judges, courts' experts, high ranking police officers, tax administration officials. Anecdotal evidence (international reports, surveys, press releases) indicates that individual and political corruption within the police and judiciary continues to remain a serious issue of concern, despite increasing efforts taken by the Serbian authorities to investigate and bring criminal charges or to apply disciplinary sanctions against police officers (primarily for abuse of office, bribery and other crimes). Such efforts should be pursued and sustained.

368. As regards human and technical resources, the evaluation team noted with concern that the judicial system and specialised law enforcement services as a whole experienced a heavy workload - some of them due to the lack of sufficient human resources (unoccupied posts, high turnover) and lacked sufficient technical (premises, equipment etc) resources, to fully and effectively perform their functions.

369. As regards all relevant institutions and state bodies, the National AML/CFT Strategy highlights the absence of a comprehensive training curriculum on ML/FT and that training was organised on a case by case basis, reduced to theoretical seminars. It affirms the intention of the authorities to institutionalise training following a needs analysis of existing professional training. It also requires that the relevant bodies, including the Ministry of Interior, Public Prosecutor's Office, Tax Administration, courts should appoint instructors responsible for professional training on AML/CFT issues, financial investigations and confiscation of proceeds.

370. The number of trainings undertaken for the prosecution and judges as of 2007 appears to be impressive, however all representatives with whom the evaluation team met stressed the need for additional practical training tailored to the specific situation of criminality in Serbia and covering the existing legal requirements. This is particularly relevant considering the new legislation recently adopted. The specialised training available for the police is clearly insufficient. The recommendations already formulated in the National Strategy remain applicable and should be implemented speedily.

Effectiveness

371. Statistics on results from the Ministry of Interior and prosecution's activities (preliminary investigations, criminal reports, charges brought against offenders) are included under Section 1.2 (General Situation of Money Laundering and Financing of Terrorism) and 2.1 (Criminalisation of Money Laundering) of the report.

372. No statistics were received from the Tax Police. The National AML/CFT Strategy includes some statistics concerning criminal reports submitted within its competence and amounts of illegal proceeds involved:

- From October 2003 to October 2006: the Tax Police submitted 3572 criminal reports, involving damage to the State Budget of RSD 26.448.784.636, 00.
- From October 2003 to September 2006, the Tax Police submitted a total of six criminal reports concerning the criminal offence of tax evasion in relation to the ML offence.

373. The legal framework for investigation and prosecution of ML and FT offences and for confiscation and freezing is undoubtedly complex. Responsibilities of prosecutors and law enforcement agencies are covered in a variety of acts, that is not only in the criminal legislation but also in the Law on organisation and jurisdiction of government authorities in suppression of organised crime and the recently adopted Law on Seizure and confiscation of the proceeds of crime.

374. Though understanding the authorities' intention to target organised crime through specific sets of rules, calling for a differentiated approach and the establishment of specialised services, the evaluation team has concerns over the merits of creating a two tier system for investigation, prosecution and adjudication of the ML/FT offences, as the jurisdiction and competencies of law enforcement actors in the investigative and criminal process such offences is differentiated based on the existence of an element of organised crime, with an additional concern as explained above regarding the definition of organised criminal activity. Furthermore, this may in practice lead to ML/FT offences being given special attention only when a connection with organised crime is established.

375. Leaving aside the concerns regarding potential jurisdictional issues in concrete cases, the current provisions of the Law on organisation and jurisdiction of government authorities in suppression of organised crime setting out the relationship between the various law enforcement bodies and the specialised services (police, prosecution) appear to envisage only for a one-way relationship (eg. article 11) and do not provide for a comprehensive framework to ensure functional co-operation and communication between competent authorities. The framework for cooperation with the newly established Financial Investigation Unit (within the Ministry of Interior) still remained to be defined, probably in the context of the bylaws to be adopted under article 64 of the law, as the law itself was again very brief on the matter.

376. The collection of evidence was one of the main issues raised during meetings, some of the persons met on-site highlighting the division of competencies between the prosecutors, investigating judges and police in the collection of evidence which led in practice to delays in criminal proceedings and practical problems of co-operation in this context.

377. While looking at law enforcement authorities' action and comparing the overall number of criminal reports and respective charges brought against criminals in ML cases with the number of predicate offences committed (see statistics on structure of predicate offences in Section 1.2), the results are low, though to a certain extent encouraging. While the relevant authorities are designated with ML and FT investigative authority, the evaluation team's perception of the situation was a lack of focus on ML investigations, and in the cases where ML investigations were being pursued, their effectiveness can be questioned, when seeing this in perspective with the

prosecution's action and results. While in 2006, out of 13 criminal reports, charges were initiated in only 2 cases (15%), in 2007 out of 28 criminal reports, charges were initiated in only 5 cases (17%) with a net increase in 2008, as 12 cases were prosecuted out of 26 criminal reports (46%). It is unknown how many of these cases had an organised crime element.

378. It has to be pointed out nevertheless that the persons met during the on-site visit expressed their willingness to deploy efforts to prove the ML offence, though both law enforcement and prosecutors admitted that staff lacked the necessary financial expertise and knowledge to deal with certain complex cases. They indicated that often they felt more secure to qualify the offence as abuse of office, as it was easier to collect more the evidence required to establish the offence compared with investigations into ML and other financial crimes which can be highly complex. The issue of insufficient human resources and lack of necessary expertise also impacts on the authorities' capacities to make full use of their investigative powers. This might explain the figures above.

379. There is no effectiveness as regards the activities of the Financial Investigation Unit which was to be established within the Ministry of Interior under the Law on Seizure and Confiscation of the Proceeds from Crime, as this unit was not operational at the time of the visit.

2.6.2 Recommendations and comments

380. The Serbian authorities should:

Recommendation 27

- Analyse the current legal framework and take legislative or other measures in order to establish an effective and functional cooperation, communication and coordination mechanisms between competent law enforcement and prosecution services responsible for investigating and prosecuting ML, FT and underlying predicate offences;

- Review the current situation in the light of the specific concerns raised in respect of practical implementation problems related to potential jurisdictional issues, to the gathering of evidence in ML/FT investigations and take necessary measures to address these concerns and prevent risks of unnecessary duplication of efforts;

- Take measures to increase the numbers and effectiveness of ML investigations, such as establishing through inter-agency meetings of enforcement authorities a concerted programme for increasing the focus on ML investigations, placing an emphasis on a more systematic recourse to financial investigations, providing guidance particularly on procedures and requirements set out under the newly adopted legislation;

- Pursue and sustain current efforts to eliminate corruption within the police and judiciary to ensure that they do not impede law enforcement authorities' action;

- Consideration should be given to amend the existing provisions so as to provide competent authorities with the legal basis to use a wide range of special investigative techniques when conducting ML or FT and underlying predicate offences;

- Consideration should be given to use mechanisms such as permanent or temporary groups specialised in investigating the proceeds of crime

- Consider conducting joint reviews of ML and FT methods, techniques and trends with law enforcement bodies, the APML and other competent authorities on a regular inter-agency basis and disseminating the results of such reviews.

Recommendation 28

- Investigation and prosecution bodies should be sensitised to the importance of the financial aspects in ML, TF and proceed-generating cases and to the full use of their powers in the context of such investigation with a view to obtaining the necessary financial documents and information.

Recommendation 30

- Review the existing legal framework and amend it, in the light of the issues of concern highlighted in the report, to ensure that adequate requirements are set out clearly for law enforcement and prosecution services, including specialised services, enabling them to maintain high professional standards, including high integrity and that the staff are appropriately skilled;

- Review the Tax Police's structure and adequacy of financial, human and technical resources, as well as the requirements regarding professional standards, integrity and skills;

- Take all necessary legislative and other measures to ensure that the Financial Investigation Unit within the Ministry of Interior is adequately structured, funded and staffed in order to become operational as soon as possible;

- Additional resources (human, premises, equipment, etc) should be allocated to the over-worked public prosecutor and police services so that they can fully and effectively performs their functions;

- Consistent with a more proactive approach to the detection and exposure of the various forms of ML, take measures to ensure a greater specialisation of police officers, prosecutors and judges in financial crime and ML cases and improve prosecutorial AML/CFT expertise. The recommendations formulated in the National Strategy regarding training should be implemented speedily.

2.6.3 Compliance with FATF Recommendations

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	**PC**	• The legal framework designating law enforcement authorities' competences and powers raises a number of issues which impact on the proper investigation of ML/FT offences; • Corruption impacts on the proper investigation of ML/FT offences; • Effectiveness concerns (law enforcement results, cooperation problems, new structure not operational)
R.28	**LC**	• Limited effectiveness (insufficiency of resources impact on capacity to implement investigative powers, insufficient attention paid to ML aspects and financial investigations, concerns as regards the obtaining of necessary information for use in ML/FT investigations).

2.7 Cross Border Declaration or Disclosure (SR.IX)

2.7.1 Description and analysis

Special Recommendation IX

Legal Framework

381. The requirements for cross-border transportation of currency and bearer negotiable instruments at the time of the visit were set out in the Law on Foreign Exchange Operations, the anti-money laundering legislation and the National Bank Decision on the conditions for effecting personal and physical transfers of means of payment to and from abroad (2006 as amended in 2009).

382. According to the Law on Foreign Exchange Operations, the National Bank of Serbia is the regulatory authority for setting out the conditions for personal and physical transfers of means of payment - cash in local and foreign currency, cheques and material securities – from and to (article 31) and the Customs authorities are responsible for the supervision of the import and export of cash, cheques and securities across the border (article 47). The Customs Law (2003) regulates inter alia the rights, obligations and powers of the Customs authorities in the customs procedure.

383. New requirements were introduced with the new AML/CFT law (Section VI) adopted in March 2009 which set out the framework for the control of the cross-border transportation of physically transferable payment instruments (articles 67-70). However, these provisions were not in force at the time of the on-site visit, as the law provided that they would start being applicable six months later (i.e. September 2009). Until then, article 9 of the Law on the Prevention of Money Laundering remains in force.

Mechanisms to monitor cross-border physical transportation of currency (c.IX.1)

384. The AML/CFT law has introduced a declaration system; however, this system was not in force and effect at the time of the on-site visit[76]. Until the entry into force of those provisions, the system applicable is regulated through the NBS Decision which establishes the conditions applicable to the import and export of currency and securities for residents and non resident natural persons and banks.

385. As regards the physical transportation of Dinars, resident and non resident natural persons can bring in and take out Dinars up to the equivalent of 10,000 Euros. Larger amounts can only be brought in if they have been purchased in a foreign bank, such evidence being required to be submitted to the Customs upon entry in Serbia.

386. As regards the physical transportation of foreign cash and cheques:

- Resident natural persons can bring freely foreign cash into Serbia and are required to declare to the customs any amount of foreign cash that exceeds the threshold[77]. Non resident natural

[76] The declaration system introduced in the AML/CFT law (article 67) and which shall be implemented from September 2009 has the following characteristics: any natural person making a physical cross border transportation of physically transferable payment instruments (defined as cash, cheques, promissory notes and other physically transferable instruments of payment that are in bearer form) that are of a value of 10,000 Euros or more either in RDS or foreign currency shall declare it to the competent customs body. Article 81 (5) and (6) of the AML/CFT Law sets out in detail the data to be provided when making such declarations.

[77] The threshold was successively 2000 Euros, then 5000 Euros, and as of June 2008, it was increased to 10,000 Euros

persons can bring foreign cash without any restrictions provided that they declare to the customs any amount that exceeds 10,000 Euros.

- Resident natural persons can take out foreign cash or cheques abroad only in amounts below 10,000 Euros. Higher amounts can be taken out only based on evidence of emigration to another country. Non resident natural persons can take out higher amounts of foreign cash only if the following conditions are complied with:
  a) they have declared such amounts upon entry into Serbia and hold a certificate of bringing foreign cash into the Republic issued and certified by the Customs authority
  b) if the foreign currency was withdrawn from a foreign currency account or passbook in Serbia, based on a certificate issued by the bank
  c) if the foreign currency was purchased by selling Dinars through the use of a payment card in Serbia, based on a certificate issued by an exchange office

387. As regards the physical transportation of securities, it remains unclear whether all persons making a physical cross border transportation of securities that exceed the threshold are required to submit a declaration to the Customs authorities.

388. The current declaration system does not ensure that all persons making a physical transportation of currency and bearer negotiable instruments of a value exceeding the prescribed threshold are required to submit a declaration to the Customs authorities.

Request information on origin and use of currency (c.IX.2)

389. The Customs authority have the authority to collect and dispose of all information necessary to administer a procedure and to take special measures in order to detect and prevent customs offences, economic frauds and criminal offences (article 259, Customs Law). They have the authority to ask passengers on amounts declared and to verify the information and documentation available.

390. Article 285 of the Customs Law also provides that when a customs officer has reasonable grounds to believe that the person has refrained from giving information or has made a false declaration while answering his questions or when the persons has concealed any goods (including cash) whose import/export is prohibited, the customs officer is entitled to search that person, subject to the agreement of his authorised line manager.

391. The Customs officers make a record on the committed offence (time, place where the offence was committed, amount of illegally transferred amount, offender’s data, name of the customs officer) and transfer it to the Foreign Exchange Inspectorate for further processing. A separate statement is also taken which includes additional information such as the origin of the foreign currency, Dinars and traveller’s cheques and intended use of those resources along with any other relevant circumstances.

Restraint of currency (c. IX.3)

392. The Customs authority have the power to temporarily seize domestic currency, foreign currency, cheques exceeding the threshold and securities which have been brought in Serbia or taken out in breach of the regulation and shall issue a certificate (Item 14 NBS Decision). The Customs authorities may only restrain the amount above the threshold. [78]

Retention of information of currency and identification data by authorities when appropriate (c.IX.4)

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[78] The new requirements under the AML/CFT law (article 69(2)) provide that the competent customs body shall temporarily detain the currency or bearer negotiable instruments that have not been declared and deposit them into the account of the National Bank of Serbia and in cases of suspicion of ML/FT, they are able to temporarily detain them, regardless of the amount.

393. The authorities told the evaluation team that the Customs authorities record and later on forward to the competent authorities information on the amount of currency or bearer negotiable instruments declared or otherwise detected and the information of the person in cases when the disclosure exceeds the prescribed threshold and when there is a false disclosure. [79]

394. However the evaluation team has not been provided with the details of the specific provisions which require the Customs to retain information on the amount of currency or bearer negotiable instruments declared or detected and on the identification data of the persons, or with information about the length of time during which such information would be retained. Furthermore no information was received on the technical capacity of Customs to store such information.

Access of information to FIU (c.IX.5)

395. Article 9 of the AML Law provides that the Customs authorities shall provide the FIU with the data on each cross-border physical transfer of Dinars, foreign cash, cheques and securities exceeding the threshold within three days after the transfer at the latest. [80]

Table 20. Data received by the FIU - Cross border currency transfers

YEAR	NUMBER OF REPORTS
2002	685
2003	18697
2004	13299
2005	21574
2006	29648
2007	12853
2008	5926

396. The authorities indicated that the drastic trend in the reduction of reports from 2006 to 2007 and then from 2007 to 2008 could be explained by an increase use of bank transfers by natural persons, as well as by the fact that the reporting threshold was twice increased in 2006, pursuant to a decision of the National Bank (at first the amount of 2000 EUR was increased to 5000 EUR and subsequently to 10.000 EUR).

Domestic co-operation between Customs, Immigration and related authorities (c.IX.6)

397. The authorities indicated that co-operation at national level is based on mutual exchange requests for assistance. The agreement on integrated border management was signed in February 2009 which provides that signatories of the agreement shall cooperate by exchanging information, providing mutual technical assistance, and mutual use of equipment.

398. Two representatives of the Customs authorities are members of the Standing coordination Group for monitoring the implementation of the national AML/CFT strategy established in April 2009 (for further details see Recommendation 31 of this report).

[79] Under the new requirements, the Customs authorities shall keep records with information on the amounts and identification data for declarations which exceed the prescribed threshold as well as when there is a suspicion of ML or FT, in cases of cross-border transportation of payment instruments in amounts lower than 10,000 Euros (article 69(1), article 81(5) and (6) of the AML/CFT Law). Such data shall be kept for at least 10 years from the date in which it was obtained (article 78 of the AML/CFT Law).

[80] Under the new requirements, the FIU shall receive from the Customs authorities within three days the data collected regarding each declared and non-declared physical cross border transportation of payment instruments as well as the data collected in cases of cross border transportation of payment instruments below the threshold when there are reasons for suspicion of ML or FT (article 70 of the AML/CFT Law).

399. The information received did not enable the evaluation team to conclude that there is adequate co-ordination among customs, immigration and other competent authorities on issues related to the implementation of Special Recommendation IX.

International co-operation between competent authorities relating to cross-border physical transportation of currency (c.IX.7)

400. The legislation provides that customs officers can exchange information on importation, exportation or transit of goods and can conduct enquiries on behalf of other customs administration (by means of request) in cases where the requesting authority has either initiated a criminal investigation or has established a fact related to a customs offence(article 259 Customs Law).

401. Such co-operation is based on bilateral agreements, which are a prerequisite for co-operation, and in the absence of such agreements, co-operation may be carried out through diplomatic channels (Ministry of Foreign Affairs).

402. The Customs administration also co-operates with other countries through the liaison officers of the SECI Centre (Southeast European Co-operative Initiative) which brings together police and customs authorities from 13 member countries in Southeast Europe.

403. The authorities indicated that the requests for exchange of information and co-operation had increased in the past two years. There were no cases of cooperation which related to ML or FT.

Sanctions for making false declarations/disclosures (applying c.17.1-17.4, c.IX.8)

404. The Law on Foreign Exchange Operations sets out the sanctions for non compliance with the NBS decision. Accordingly, resident and non resident natural persons shall be fined from 500 to 50,000 RSD (article 62(12) and 63(10)). In addition to a fine, protective measures of seizing the items used or intended for the perpetration of the offence, or a part of them, shall also be pronounced. The Foreign Currency Inspectorate is competent to run minor offence proceedings, upon information received from the Customs authorities.

405. The following data was provided by the Customs authorities:

Table 21. Data held by Customs authorities on foreign currency minor offences - Cross-border transportation of effective foreign currency

YEAR	NUMBER OF CASES	AMOUNT (EUROS)
2005	830	4,250,511 EUR
2006	633	4,493,797 EUR
2007	257	2,745,933 EUR
2008	169	1,974,375 EUR
2009 (up to 28.04.2009)	18	1,310,348 EUR

Table 22. Data held by Customs authorities on submitted reports in relation to foreign currency offences exceeding 10, 000 Euros

YEAR	NUMBER OF REPORTS	AMOUNT (EUROS)
2002	75	1 443 059
2003	87	1 895 754
2004	95	5 316 260
2005	83	1 480 956
2006 (up to 31.10.2006)	60	1 473 166

Table 23. Data on revealed foreign currencies

2006/ total number of cases – 523

EURO	$	CHF	HUF	SEK	HRK	SIT	LEI	GBP
3,351,542.00	47,260.00	16,870.00	3,442,400.00	8,900.00	121,400.00	618,750.00	184,000,000.00	1,800.00

2007/ total number of cases – 243

EURO	$	CHF	HUF
2,289,178.00	14,180.00	20,490.00	6,920,000.00

2008/ total number of cases – 177

EURO	$	CHF	TRL	ALL
2,341,521.00	95,760.00	7,000.00	2,000.00	4,300,000.00

406. The statutory sanctions, even those newly introduced which are not yet into force[81], are considered to be very low and not dissuasive. The evaluation team has received statistics on applied fines as a result of breaches of cross border physical transportation of currency legislation only after the visit. The authorities have thus not demonstrated that sanctions are effective and proportionate.

Table 24. Fines imposed on illegal export or import of RSD and foreign currency

YEAR	NUMBER OF CASES	AMOUNT OF CASH SEIZED (RESTRAINED) in EUR	AMOUNT OF CASH CONFISCATED In EUR	FINE IMPOSED In RDS
2005	792	3..935.947,00	1.464.996,00	2.295.850,00
2006	599	3.833.000,00	949.877,00	1.885.150,00
2007	250	2.346.902,00	333.516, 00	939.600,00
2008	159	1.831.470,00	242.919,00	548.500,00
2009	52	1.052.000,00	10.600,00	93.000,00

Sanctions for cross-border physical transportation of currency for purposes of ML or FT (applying c.17.1-17.4, c.IX.9)

407. There are no specific sanctions, other than those detailed in IX.8, applicable for cross-border physical transportation of payment instruments for the purposes of ML or FT. Criminal sanctions set forth in the criminal legislation, as discussed in earlier sections of this report, are available to deal with natural persons that fail to comply with AML/CFT requirements.

Confiscation of currency related to ML/FT (applying c.3.1-3.6, c.IX.10) and pursuant to UNSCRs (applying c.III.1-III.10, c.IX.11)

408. Customs officers can temporarily seize goods and funds of a person suspected of being knowingly involved in the importation or who intended to export the goods or participated in the exportation of such goods in violation of the legislation (article 259, Customs Law). If in the course of the examination and the search they uncover undeclared currency above the threshold, they have the power to temporary detain it without delay.

[81] Article 90 of the AML/CFT law sets out the sanctions which shall apply for false or incomplete declarations Failure to declare shall be punished for minor offence with a fine from RSD 5,000 to 50,000 while declarations which do not contain all required data shall be punished with a fine from RSD 500 to 50,000.

409. The freezing requirements envisaged by Special Recommendation III are not available in the case of persons who are carrying out a physical cross-border transportation of currency or bearer negotiable instruments that are related to terrorist financing. The Customs authorities are not competent for any FT related matters and as such would call upon the cooperation of other law enforcement authorities in such cases.

Notification of foreign agency of unusual movement of precious metal and stones (C.IX.12)

410. The evaluation team has not identified any formal obligations in the legislation which would require the Customs administration to notify the foreign counterparts in cases of unusual cross-border movement of gold, precious metals or precious stones. The authorities advised that such co-operation would be undertaken on the basis of bilateral agreements.

Safeguards for proper use of information (c.IX.13)

411. The authorities indicated that there are no particular records kept by the Customs administration, with the exception of records of false declarations which are transferred to the competent state authorities for action. The authorities advised that the number of employees who have access to these records is limited.

Additional elements – Implementation of SR.IX Best Practices (c.IX.14) & Computerisation of databases and accessibility to competent authorities (c.IX.15)

412. Some of the elements of the Best Practices Paper are in place, such as inspections of a person, baggage or mode of transport, profiling of passengers, threshold limit, and international co-operation.

Recommendation 30 (Customs authorities)

413. The Customs Administration is an integral part of the Ministry of Finance. The Customs authorities advised that they had a certain level of independence in the performance and decision making within the legal framework. Its budget in 2009 amounted to 5 656 869 000 RSD. Income collected on the basis of customs fines and sales of customs hoods is included in the revenue budget of the country, and 10% of the collected fines and value of goods are devolved to the Customs budget (i.e. 158143000 RSD of the 2009 budget).

414. The total number of employees was 2159 employees at the time of the visit. The authorities advised that constant training (both general and specialised, including language training) is being provided to customs officers, organised annually, and that the level of expertise and organisation is very high. Co-operation with different organisations was also pursued for organising trainings related to the fight against money laundering, from the initial to the advanced level.

415. The information received did not enable the evaluation team to conclude that the Customs authorities have adequate technical and other resources to fully and effectively perform their functions, or that they have sufficient operational independence and autonomy.

416. The recruitment follows the procedures set out in the Law on state administration and is carried out through public competition, in accordance with the level of qualification required, which involves various types of tests (e.g. language, computer skills, psychological assessment). The authorities indicated that on average 30% of its staff had a master degree, 23% bachelor degree, 43% high school degree). The general conduct of Customs officers is further prescribed in the Code of conduct and the Customs law includes specific provisions on preventing conflicts of interest (article 7, 8), dealing with presents (article 9). The authorities acknowledged that

corruption is an issue of concern within the Customs Administration, and s an Internal Control Department directly responsible to the Director General was established, however no concrete information was received on measures undertaken and results achieved in this context.

Effectiveness

417. The authorities indicated during the meetings that bringing in the country foreign currency is free and that a receipt should be requested from Customs for amounts higher than 10.000 Euros if passengers wished to be able to take out such amounts upon leaving the country. The evaluation team was unable to obtain a copy of any type of form upon entry into Serbia (both at a land border checkpoint and at the airport border checkpoint). It was later explained that only one form existed but it was available only for domestic citizens living abroad and wishing to take out of the country amounts higher than the prescribed threshold.

418. During meetings, the authorities mentioned that one of the latest seizures amounted to 350,000 Euros from a passenger travelling to South America and that they have had similar cases in the past.

419. Overall, on the basis of information received, the evaluation team remained reserved about whether detection of cross-border movement of currency is adequately conducted.

2.7.2 Recommendations and comments

420. The authorities should:

- Ensure that the new requirements introduced in the AML/CFT law are speedily implemented, that the form and content of the new declaration procedure are prescribed and that they are well disseminated at the border checkpoints,

- Introduce freezing requirements envisaged by SR.III and the UNSCR in the case of persons who are carrying out a physical cross-border transportation of currency or bearer negotiable instruments that are related to FT,

- Introduce requirements and procedures to ensure that in cases when the Customs discover an unusual cross-border movement of gold, precious metals or precious stones they should consider notifying, as appropriate, the foreign competent authorities from which these items originated and/or to which they are destined, and to enable cooperation in such cases;

- Enhance domestic law enforcement co-operation between the customs, immigration and other competent authorities to respond to detections and to analyse the information collected under the legal requirements implementing SR.IX to develop AML/CFT intelligence.

- Increase the level of sanctions to ensure that they are dissuasive,

- Strengthen the effectiveness of the sanctions to encourage declarations.

- Consider maintaining the reports in a computerised database, available to competent authorities for AML/CFT purposes and establish strict safeguards to ensure proper use of the information and data which is reported and recorded.

- Take measures as necessary to increase the technical resources of the Customs authorities and provide for further additional training on the newly introduced requirements as well as to provide additional specialised training on AML/CFT issues for Customs officials, including on detection and recognition of serious criminal activities and movements of funds possibly related to ML/FT.

- Pursue and strengthen current efforts to prevent and eliminate corruption within the Customs administration in order to ensure that they do not impede Customs' efficiency.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	**PC**	• Current declaration system does not ensure that all persons making a physical transportation of currency and bearer negotiable instruments of a value exceeding the prescribed threshold are required to submit a declaration to the Customs authorities • The freezing requirements envisaged by SR.III and UNSCR resolutions are not available in the case of persons who are carrying out a physical cross-border transportation of currency or bearer negotiable instrument that are related to FT • Statutory sanctions are low and it is not demonstrated that they are effective, proportionate or dissuasive. • Issues of effectiveness.

3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

General Overview

421. The Law on the prevention of money laundering and the financing of terrorism (hereinafter AML/CFT Law) sets out the scope and basic AML/CFT obligations for financial institutions. The law was adopted shortly before the on-site visit (18 March 2009) and entered into force on 27 March 2009[82], repealing the 2005 Law on the prevention of money laundering[83] (hereinafter the previous AML Law). The regulations adopted on the basis of the previous AML Law continue to be applied until the adoption of regulations on the basis of the AML/CFT law in so far that they are not contradictory to the new provisions.

422. The Law is supported by several sectoral laws, including the Law on Banks (2005), the Law on Securities and Other Financial Instruments Market (2006)[84], the Law on Insurance (2004 as amended)[85], the Law on Voluntary Pension Funds and Pension Schemes[86] (2005), the Law on Financial Leasing[87] (2003 as amended in 2005); the Law on Foreign Exchange Operations (2002) [88] and the Law on Investment Funds (2006)[89]. For the purposes of the evaluation, these laws qualify as "law or regulation" as defined in the FATF Methodology.

423. The competent authorities within Serbia have also issued a number of additional decisions and books of rules (which are published in the Official Gazette of the Republic of Serbia) to assist

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[82] Actions and measures under Article 6 (applicable to the existing customers of financial institutions) shall be applied by obligors within one year from the date of entry into force of the law. Articles 67 to 70 shall be applicable as of 27 September 2009 (until that time, article 9 of the Law on Prevention of Money Laundering remains applicable).
[83] Official Gazette of the Republic of Serbia No. 107/05, in force from 10 December 2005 to 27 March 2009.
[84] Official Gazette of the Republic of Serbia No. 47/2006.
[85] Official Gazette of the Republic of Serbia No. 55/2004, 61/2005 and 101/2007.
[86] Official Gazette of the Republic of Serbia No. 85/2005 in force as of 1 April 2006.
[87] Official Gazette of the Republic of Serbia No. 55/2003 and 61/2005.
[88] Official Gazette of the Republic of Serbia No. 62/2006.
[89] Official Gazette of the Republic of Serbia No. 46/2006, in force as of 11 December 2006.

financial institutions in fulfilling their obligations under the laws mentioned above and which provide further details on the basic obligations.

424. The AML Book of Rules[90] is the primary act in which Serbian authorities have described the methodology, requirements, and actions financial institutions are expected to undertake as part of their obligations under the previous AML Law. While some of the requirements have been replaced by the AML/CFT Law, Serbian authorities have indicated that financial institutions will be required to continue implementing the procedures set out in the AML Book of Rules until new AML/CFT implementing legislation is issued.

425. The NBS has issued the following sector-specific acts:

- Decision on Minimal Content of the KYC Procedure (in force on 27 June 2009) which is applicable to banks, voluntary pension funds, management companies, financial leasing providers, insurance companies, brokerage companies and agency companies and insurance agents. [91]
- Decision on Guidelines for assessing the risk of money laundering and financing terrorism (RS Official Gazette No. 46/2009, which came into force 27.06.2009) which is applicable to banks, voluntary pension funds, management companies, financial leasing providers, insurance companies, brokerage companies and agency companies and insurance agents.

For the banking sector
- Previous decision on KYC Procedure for Banks [92] (in force until 27 June 2009)
- Decision on Bank Compliance Risk (RS Official Gazette No. 86/2007, correction 89/2007),
- Decision on Bank Supervision (RS Official Gazette No.51/2006),
- Decision on Licensing of Banks (RS Official Gazette No.51/2006 and 129/2007),
- Decision on Opening, Maintaining, and Closing Bank Accounts (RS Official Gazette No. 57/2004),
- Decision on Electronic Payment Transactions (RS Official Gazette No.57/2004).
- Decision on Exchange Operations (RS Official Gazette Nos. 67/2006, correction 68/2006, 116/2006, 24/2007, 50/2007, 118/2007), Decision on Foreign Payment Transactions (RS Official Gazette Nos. 24/2007, 31/2007, 41/2007, 3/2008, 61/2008), Guidelines to the Decision on Foreign Payment Transactions and Decision on Uniform Payment Instruments.
- Decision on the Supervision on Exchange Transactions (RS Official Gazette No. 67/2006 and 118/2007)

For the insurance sector
- Decision on Internal Controls in Insurance (RS Official Gazette No. 12/2007)
- Decision on Licensing of Insurance (RS Official Gazette No.42/2005),

For the voluntary pension funds
- Decision on Pension Fund Supervision (RS Official Gazette No. 27/2006),
- Decision on Risk Control in Pension Funds (RS Official Gazette No. 27/2006), and
- Decision on Opening, Maintaining, and Transferring Individual Accounts of VPF Members (RS Official Gazette No. 24/2008).

For the financial leasing sector
- Decision on the implementation of the provisions of the Financial Leasing Law relating to the issuance of licenses and approvals (RS Official Gazette Nos. 81/2005, 60/2007).

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[90] Official Gazette of the Republic of Serbia No. 59/2006, 22/2008.
[91] Official Gazette of the Republic of Serbia No. 46/2009.
[92] Official Gazette of the Republic of Serbia No. 57/2006.

For the securities sector

426. For the securities sector, the Securities Commission has issued the following acts:

- Guidelines on KYC Procedure for Securities Market (RS Official Gazette No. 100/2006)
- Rules on conditions and manner of carrying out supervision of financial market participants (RS Official Gazette No. 116/2006).

427. All the above-mentioned acts qualify as “other enforceable means” as defined in the FATF Methodology.

428. The NBS has also issued the following non-binding guidance for the insurance sector: Guidance Paper No. 5 on AML and CFT and Guidance Paper No. 6 on Preventing, Detecting, and Remedying Fraud in Insurance (4 May 2007).

Customer Due Diligence and Record Keeping

3.1 Risk of money laundering / financing of terrorism

429. Under the previous AML Law and NBS Book of Rules, the Republic of Serbia did not apply AML/CFT measures to most financial institutions using a risk-based approach. Some elements of the risk based approach were applied to banks only through provisions of the previous Decision on KYC Procedures for Banks.

430. Article 7 of the AML/CFT Law introduced requirements to conduct an analysis of the ML and FT risk, which must include a risk assessment for each group or type of customer, business relationship, or service offered by the obligor. While the law does not provide specific instructions for conducting either the risk assessment or analysis, it obliges the body competent for the supervision to adopt guidelines for implementation.

431. Article 7 also requires the Minister of Finance, at a proposal of the APML, to specify the criteria for classifying a customer, business relationship, service provided, or a transaction into a low-risk ML/FT group.

432. After the visit (June 17, 2009) the NBS issued specific guidelines for assessing the risk of ML and FT, which are addressed to banks, voluntary pension fund management companies, financial leasing providers and the insurance sector participants. These entered into force eight days after publication. Assessments of risk are to be based on no less than four basic types of risk and to include other risk types as they are identified. Currently the four basic types include:

- *Geographic risk* – the guidelines identified the following factors obligors must use in determining whether a certain country or geographic location implies greater ML/FT risk: countries against which UN or other international sanctions, embargoes, or similar measures have been imposed; countries identified by credible institutions (e.g. FATF) as not adequately implementing AML/CFT measures; countries identified by credible institutions as those not supporting or financing terrorist activities or organisations; countries identified by credible institutions as those having high corruption and crime rates (World Bank, IMF, Transparency Serbia).

- *Client risk* – the guidelines require obligors to approach client risk autonomously. However, the guidelines set out lists of activities or clients that should be considered higher risk including a list of possible clients in which it is difficult to identify beneficial owners due to the clients’ structure, legal form, or complex and unclear relations; a list of business operations characterized by a large turnover and cash payment; and lists of other higher risk clients.

- *Transaction risk* – the guidelines provide a list of situations that would be considered risky transactions. Some examples include: transactions significantly deviating from the client's standard behaviour or transactions carried out in such a way as to evade the standards and usual supervision methods.

- *Product risk* – the guidelines set out products that are considered higher risk. Some examples include: services which are new in the market and must be specially monitored in order to establish the real degree of risk; international banking; e-banking; electronic submission of securities trading orders, or providing services outside the bank (e.g. granting consumer credits at merchants' sales outlets), insurance companies or other entities in the financial sector.

433. Under the new guidelines, an obligors' ML risk assessment may differ from FT risk. The following were provided as examples of instances of high FT risk: clients who operate mainly on the basis of cash bulk transfers, and the operations of non-profit organisations providing services to regions where terrorists conduct their activities.

434. The Decision on KYC Procedure also sets out requirements for certain obligors, banks; VPFs; financial leasing providers; and insurance companies, brokerages, agency companies and agents, to classify clients by certain risk factors. It requires that the obligors listed above to establish in the Procedure the manner of classification and provide a detailed description of categories of clients that could pose a risk to the obligor. After determining risk factors, the obligors listed above shall:

1. classify its clients in the manner determined by the Procedure
2. specify precisely the type of banking and/or other products and services within the scope of its operations which it cannot offer to certain categories of clients.

435. The evaluation team was informed by the NBS that it has plans to issue further guidance and trainings for the financial institutions to be able to apply these new obligations.

436. *Specific to the insurance sector.* Prior to the adoption of the RBA guidance, the NBS published on its official website the Guidance Paper No. 5, which suggested insurance providers to have in place internal AML/CFT rules that include: the development of internal policies, procedures and controls which, *inter alia*, should cover appropriate compliance management arrangements and adequate screening procedures to ensure high standards when hiring employees; an ongoing employee training program; and an internal audit function to test compliance. Serbian authorities, however, noted that this guidance was not obligatory as there was no legal basis for issuing such guidance in the previous AML Law.

437. As the AML/CFT Law came into effect late March 2009, the assessment team was unable to determine how the risk-based approach would work in practice, in the absence of the additional implementing measures and guidelines issued by the Minister of Finance and competent bodies for all financial institutions. The meetings with the private sector did not prove that there is an established practice of applying the risk-based approach in financial institutions. In addition to the guidance issued by the NBS, other competent Serbian authorities should issue guidance for the new risk-based approach to financial institutions and DNFBP-s not included in the list above, but which are obligors in the AML/CFT Law.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to R.8)

3.2.1 Description and analysis

Recommendation 5

438. The customer due diligence (CDD) obligations are set out in the AML/CFT Law and apply equally to all obligors as identified in the law. The Decision on KYC Procedure also outlines further CDD requirements for banks; VPFs; financial leasing providers; and insurance companies, brokerages, agency companies and agents.

439. The financial services sector is regulated by various divisions of the National Bank of Serbia. Each of these regulators has provided separate guidance on the CDD requirements specific to the various industries. In order to provide an adequate description of the requirements per section, each obligor meeting the definition of a financial institution (as defined by FATF Recommendations Glossary) will be described where possible.

440. The AML/CFT law sets out provisions for financial institutions to conduct risk-based assessments of clients and businesses, however, as this law came into effect on March 27, 2009 and draft guidance provided in May 2009, Serbian financial institutions have not yet begun to conduct CDD on a risk-based approach. Conducting CDD on a risk-based approach is a new concept for Serbian financial institutions and raises concerns about the ability for these financial institutions to soundly apply it in practice.

441. Some elements of the RBA (only for banks) were applied through provisions of the previous KYC Decision and therefore there were some CDD practices on risk-based approach, even before the adoption of the new AML/CFT Law and Decision on KYC Procedure.

Prohibition of anonymous accounts and accounts in fictitious names

442. Prior to the adoption of the AML/CFT Law, only banks were expressly prohibited from opening or maintaining accounts for anonymous clients. While not stated explicitly in the previous AML Law, Section 9 of the NBS Decision on KYC Procedure for Banks expressly prohibits banks from opening or keeping accounts for anonymous clients, without defining the concept of an anonymous client.

443. Article 34 Paragraph 1 of the AML/CFT Law prohibits obligors from opening or maintaining anonymous accounts for customers, issuing coded or bearer savings bonds, or providing any other services that directly or indirectly allow for concealing the customer identity.

444. *Specific to Insurance sector:* NBS AML/CFT Guidance Paper No. 5 provides that insurers must not offer services to customers or for beneficiaries that use anonymous accounts or accounts in obviously fictitious names.

445. Financial institutions indicated that they did not maintain anonymous accounts or maintain accounts for anonymous clients. The NBS also indicated that they found no evidence of the existence of anonymous accounts during on-site inspections of banks.

Customer due diligence

When CDD is required

446. Article 9, Paragraph 1 of the AML/CFT Law requires obligors to conduct CDD in the following cases:

1. when establishing a business relationship with a customer;
2. when carrying out a transaction amounting to the RSD equivalent of EUR 15,000 or more, calculated by the National Bank of Serbia median rate on the date of execution of the transaction (hereinafter referred to as: RSD equivalent), irrespective of whether the transaction is carried out in one or more than one connected operations.
3. when there are reasons for suspicion of money laundering or terrorism financing with respect to a customer or transaction;
4. when there are doubts about the veracity or credibility of previously obtained data about a customer or beneficial owner.

447. If the transaction amounting to the RSD equivalent of EUR 15,000 is carried out based on a previously established business relationship, Article 9.2 requires the obligor to collect the missing CDD data. While the law does not specifically contain language applying to occasional transactions over the EUR 15,000 threshold, this provision of the AML/CFT Law would be applicable to such transactions.

448. In addition, the Decision on KYC Procedure requires that obligors specify in the Procedure the activities and measures it shall implement with regard to clients with which it has not established a business relation, but for whom it performs occasional transactions (payment of bills, exchange transactions, and the similar within the scope of the obligor's activities).

449. *Specific to Voluntary Pension Funds:* According to the Decision on Opening, Maintaining, and Transferring Individual Accounts of Voluntary Pension Fund Members, VPF management companies are required to include customer identification information in an individual account of a fund member and also for contributors who are natural persons or legal entities.

450. *Specific to money exchange businesses:* Article 9 Section 3 of the AML/CFT Law specifically requires obligors operating a money exchange business to conduct CDD measures in the case of a transaction amounting to the RSD equivalent of EUR 5,000 or more, irrespective of whether such transaction is carried out in a single or more than one connected operation. The NBS indicated that during supervision of exchange operators, AML/CFT irregularities were discovered, some of which included that exchange operators had failed to identify individuals when selling foreign currency with the total sum amounting to or exceeding EUR 15,000, and it had not been reported to the APML.

<u>*Required CDD measures*</u>

Identification measures and verification sources

451. The customer identification obligation is set out in the AML/CFT Law under Article 8, which requires that obligors must:

1. identify their customers,
2. verify their identities based on documents, data, or information obtained from reliable and credible sources,
3. identify the beneficial owner and verify the identify in the cases specified in the law,
4. obtain information on the intended nature and purpose of a business relationship or transaction, and other data,
5. regularly monitor business transactions of customers and check the consistency of those activities with the nature of the business relationship and usual scope and type of the customer's business transactions.

452. In cases where the obligor is unable to apply the CDD measures above, they shall refuse the offer to establish a business relationship, as well as the carrying-out of a transaction, and shall terminate the business relationship if a business relationship has already been established.

453. When identifying a natural person, legal representative, empowered representative, or an entrepreneur, Article 13 of the AML/CFT Law refers obligors to Article 81 Paragraph 1, which lays out detailed lists of required customer information. A customer is defined as a natural person, entrepreneur, legal person, or a person under civil law that carries out a transaction or establishes a business relation with the obligor.

454. The law requires that each obligor inspect personal identity documents with the mandatory presence of the identified person. The Law also provides for CDD without the physical presence of the customer (see Article 31). Personal documents are defined in the law as a valid document with a photo, issued by the competent state body. If the required data cannot be obtained from the personal identity document, the missing data can be obtained from other official document, the latter being defined in the law as documents "issued by an official or responsible person within their authorities, whereas such persons shall be considered as those defined in the provisions of the Criminal Code". Obligors shall keep copies of the personal document of the person, indicating the date, time and name of the person who inspected the document.

455. For natural persons or their legal representatives, evidence of identity can be verified by using documents, electronic data or a combination of both.

456. In addition, the Decision on KYC also sets out additional guidelines for banks; VPFs; financial leasing providers; and insurance companies, brokerages, agency companies to identify their client in accordance with obligations under the AML/CFT Law to conduct CDD.

457. Prior to the issuance of the Decision on KYC Procedure, banks relied on previous guidance issued in the Decision on KYC Procedure for Banks, which provided banks with more detailed guidelines and instructions for the manner of identifying their client in accordance with obligations under the previous AML Law.

458. Similar measures were required under the previous AML Law, where Article 5 set out requirements for obligors to establish the identity of the customer, collect data about the customer, and the transaction as well as data relevant to the detection and prevention of AML. Article 5 also exempted obligors from conducting CDD in cases of inter-bank transactions. Article 6 of the previous AML Law set out specific requirements for obligors to follow when establishing customer identity, as laid out in Article 34, Paragraph 1 of the same law.

Identification of legal persons or legal arrangements

459. The customer identification requirements described above also pertain to legal persons as the definition of customer in the AML/CFT Law includes legal persons. Articles 15-17 of the new law lay out specific requirements for identifying legal persons and their representatives, which include: inspecting the original or certified copy of documentation from a register maintained by the competent body of the country where the legal person has a registered seat, a copy of which it shall keep in accordance with the Law. The obligor shall indicate, on the copy, the date, time, and the name of the person who inspected the original or certified copy thereof. The documentation shall be issued no earlier than three months before its submission to the obligor. If the obligor has doubts as to the veracity of the obtained data or the credibility of the presented documentation, it shall obtain a written statement from the customer.

460. In cases where obligors verify the identity of a representative of a legal person, obligors must inspect a personal document of the representative in their presence. If it is not possible to obtain

the specified data from such a document, the missing data shall be obtained from another official document submitted by the representative. If the obligor doubts the veracity of the obtained data when identifying and verifying the representative, it shall also obtain the representative's written statement thereon.

461. Under Article 7 of the previous AML Law, financial institutions in Serbia were required to request the written authorization from the customer when opening an account or establishing a business relationship for somebody else's account.

462. While the law does not specifically define trustees (for trusts), Serbian authorities indicated that "trustee" would be defined as a beneficial owner of the person under foreign law (Article 3, Paragraph 13. Item 3 of the AML/CFT Law). As such, a trustee is defined as "a natural person who, indirectly or directly, unrestrictedly manages more than 25% of the property of the person under foreign law." Article 20 of the AML/CFT Law provides the requirement for obligors to identify the beneficial owner of a legal person or person under foreign law.

463. In the Law on Business Companies, directors (for legal persons) are defined as "representatives". Article 323 of this law states that the president of a joint-stock company's management or general manager is representative of the company without any specific power of attorney. Article 157 of the above law states that for a limited liability company, a single director or board of directors shall represent the company and managing operations of the company in accordance with this Law, the Article of Association and the company agreement. The term 'representative' is distinguished from the term 'empowered representative' because the legal basis for the actions of the 'representative' is the law itself, and legal basis for the actions of the 'empowered representative' is the power of attorney, which is issued by the 'representative' of the legal person.

464. As the term 'representatives,' as described above, are directors of the legal persons, they are subject to the identification requirement set out by Article 16, paragraph 1 of the AML/CFT Law, which provides that the obligor shall establish an verify the identity of the representative and obtain the data referred to in Article 81, paragraph 1, item 2 of this law by inspecting a personal document of the representative in his presence. Article 17, paragraph 2 of the AML/CFT Law further states that in the event referred to in paragraph 1 (if a business relationship is established or a transaction performed by a procura holder or empowered representative on behalf of a legal person) the obligor shall also obtain the data referred to in Article 81, paragraph 1, item 2 of this Law about the representative of a legal person, from the written power of attorney issued to the procura holder or empowered representative by the representative.

465. *Specific for the Banking Sector:* The Decision on Exchange Operations provides banks guidelines on the opening and maintaining of foreign exchange accounts of resident legal entities, entrepreneurs, subsidiaries of foreign legal entities, and resident natural persons. The Decision on Foreign Payment Transactions provides specific requirements for the CDD of non-resident legal entities and natural persons.

Identification of beneficial owners

466. The previous AML Law did not include a definition of beneficial owner. The AML/CFT Law defines the beneficial owner of a customer as a natural person who owns or controls a customer (Article 3, Item 11). In Article 3, Item 12, the AML/CFT Law defines the beneficial owner of a company or any other legal person as:

- natural person who owns, directly or indirectly, 25% or more of the business share, shares, voting right or other rights, based on which they participate in the management of the legal person, or who participates in the capital of the legal person

with 25% or more of the share, or has a dominant position in managing the assets of the legal person;
- natural person who has provided or provides funds to a company in an indirect manner, which entitles him to influence significantly the decisions made by the managing bodies of the company concerning its financing and business operations.

467. Article 3, Item 13 of the AML/CFT Law defines the beneficial owner of a person under foreign law, which receives, manages, or allocates assets for a specific purpose as:
- a natural person using, indirectly or directly, more than 25% of the assets that are the subject matter of management, provided that the future users have been designated;
- a natural person or group of persons for the furtherance of whose interests a person under foreign law is established or operates, provided that such natural person or group of persons are identifiable;
- a natural person who, indirectly or directly, unrestrictedly manages more than 25% of the property of the person under foreign law.

468. Article 8, Paragraph 1, Item 3 under the AML/CFT Law requires obligors to identify the beneficial owner and verify the identity in the cases specified in the law, which are described in Article 9. The obligor is exempted from obtaining CDD information on the beneficial owner under Article 33, which provides requirements for cases of simplified CDD.

469. However, Article 13, Paragraph 4 of the AML/CFT Law requires obligors to identify and verify the identity in cases where a transaction is carried out or a business relationship established by an empowered representative on behalf of a customer who is a natural person. In this case, enhanced CDD is mandatory. The AML/CFT Law further states that the obligor shall, based on a money laundering and terrorism financing risk assessment, identify the beneficial owner of a legal person or person under foreign law in such a manner as to know the ownership and management structures of the customer and to know the beneficial owners of the customer (Article 20, Paragraph 4).

470. *Specific to the Insurance Sector:* Article 10 Paragraph 2 of the AML/CFT Law allows for the beneficiary of an insurance policy to be verified after the conclusion of the insurance contract, but stipulates that this must occur prior to the time of the payout of benefits under the contract.

471. Article 13 of the AML/CFT Law requires obligors to identify and verify the identity of a customer who is a natural person, legal representative of a customer, or entrepreneur by inspecting a personal identity document with the mandatory presence of the identified person. During the identification of a natural person, the obligor shall obtain a photocopy of a personal document of such person. The obligor shall indicate on the copy the date, time and name of the person who inspected the document. The photocopy referred to in this Paragraph shall be kept by the obligor in accordance with the Law.

472. Section 4 (4) of Article 13 reads as follows: if a transaction is carried out or a business relationship established by an empowered representative on behalf of a customer who is a natural person, the obligor shall, apart from identifying and verifying the identity of the customer, identify and verify the identity of the empowered representative, obtain the data referred to in Article 81, Paragraph 1, Item 3 (identifying information of the natural person, his legal representative and empowered representative), in the manner specified in Paragraph 2 of this Article, and request the written power of attorney whose copy it shall keep in accordance with the Law. In the above event, the obligor shall apply the measures specified in Article 31(identification without physical presence) of this Law.

473. Under Article 7 Paragraph 2 of the previous AML Law, financial institutions were required to request the written authorization (power of attorney) from the customer when an account is

opened or when a business relationship is started for someone else's account. The NBS Decision on KYC Procedure for Banks, in Section 10, requires banks to refuse to establish a business relation with the client or to perform a particular transaction, if there remains serious doubt regarding the identity of the actual owner of the account.

474. Article 20 of the AML/CFT Law requires obligors to:

a. Identify the beneficial owner of a legal person or person under foreign law by obtaining the data in Article 81, Paragraph 1, Item 14 (name, surname, date and place of birth, and place of permanent or temporary residence of the beneficial owner of a legal person or person under foreign law, whereas in the case referred to in Article 3, Paragraph 1, Item 13, Line 2 of this Law, data on the category of the person in whose interest the person under foreign law was founded or operates) of this Law.

b. Obtain the data referred to in Paragraph 1 of this Article by inspecting the original or certified copy of the documentation from the official public register, which may not be issued earlier than three months before its submission to the obligor. The data may be also obtained by directly inspecting the official public register in accordance with the provisions of Article 15, Paragraphs 4 and 6 of this Law.

c. If it is not possible to obtain all the data on the beneficial owner of the customer from the official public register, the obligor shall obtain the missing data by inspecting the original or certified copy of a document and other business documentation submitted by a representative, procura holder, or empowered representative of the customer. If, for objective reasons, the data cannot be obtained as specified in this Article the obligor shall obtain it from a written statement given by a representative, procura holder or empowered representative of the customer.

d. The obligor shall, based on a money laundering and terrorism financing risk assessment, identify the beneficial owner of a legal person or person under foreign law in such a manner as to know the ownership and management structures of the customer and to know the beneficial owners of the customer.

Information on purpose and intended nature of the business relationship

475. Under the previous AML Law, Article 34 Paragraph 1 Item 5, obligors were required to collect reasons for opening the account or establishing business cooperation and the information about the customer's identity.

476. Article 8, Paragraph 1, Item 4 of the AML/CFT Law requires obligors to obtain information on the purpose or intended nature of a business relationship or transaction, and other data in accordance with this law.

477. The AML/CFT Law further states that the obligor shall, based on a money laundering and terrorism financing risk assessment, identify the beneficial owner of a legal person or person under foreign law in such a manner as to know the ownership and management structures of the customer and to know the beneficial owners of the customer (Article 20, Paragraph 4).

478. *Specific for the Banking Sector*: Section 8, Paragraph 2, Item 2 of the NBS Decision on KYC Procedure for Banks states that when opening a client's account, determine the purpose of the opening of such account and expected flow of funds in the account, determine whether the client is employed and what activities does the client perform – if the account was opened for business purposes.

Ongoing due diligence on business relationship

479. Article 8, Paragraph 1, Item 5 of the AML/CFT Law requires obligors to regularly monitor business transactions of customers and check the consistency of those activities with the nature of the business relationship and the usual scope and type of the customer's business transaction.

480. While the previous AML Law did not include provisions for ongoing due diligence, the NBS Decision on KYC Procedure for Banks includes the following requirements:

1. Item 11: Supervision of client's accounts and transactions shall include in particular the updating of data and documents on the client's identity, as well as ongoing monitoring of the client's accounts and transactions with a view to detecting and reporting on suspicious transactions.
2. Item 12: The bank shall be obliged to regularly examine the accuracy and completeness of data on the client and keep updated records on such data during the period of contractual obligations.
3. Item 13: The bank shall be obliged to conduct a comprehensive supervision of client's activities on an ongoing basis by monitoring transactions conducted in all client's accounts, regardless of the type of account or bank's organisational unit at which the accounts have been opened.
4. Item 14: The bank shall be obliged to supervise transactions conducted by risky clients through their accounts on an ongoing basis.

481. Obligors are required to monitor business transactions of their customers with due care, under Article 22 of the AML/CFT Law. Obligors are required to collect information on the source of property that is involved in the business transactions of the customer, as well as ensure that the business transactions of a customer are consistent with the assumed purpose and intended nature of the business relationship that the customer established with the obligor; conduct monitoring and ensuring that the business transactions of a customer are consistent with its normal scope of business; and conduct monitoring and ensuring that the documents and data held about a customer are up-to-date to the extent and as frequently as required by the level of risk.

Risk

Enhanced due diligence for higher risk customers

482. In the previous AML Law, there were no requirements for enhanced due diligence; obligors were required to apply the same measures in all situations. Article 7 of the Decision on KYC for banks included some guidance for determining the acceptability of clients. Depending on the risk factors involved, the bank shall determine the acceptability of the client in the following manner:

1) It shall classify its clients, with detailed description of types of clients that could prove risky to the bank; determine the type of banking products and services that can be offered to certain categories of clients, as well as appraise new products and services of the bank in order to determine the risk that such products and services may bear and the risk of using them for illegal purposes;

2) It shall specify conditions under which the bank shall not conclude a contract with the client or under which it shall cancel the existing contracts.

483. For the purposes of determining the acceptability of the client, the bank shall be obliged to define the following:

1) Procedure for determining risk factors with regard to the new clients of the bank,

2) Procedure for determining risk factors during the existing contractual obligations with the client,

3) Treatment of risky clients.

484. Article 14 of the Decision on KYC for banks also states that the bank shall be obliged to supervise transactions conducted by risky clients through their accounts on an ongoing basis.

485. In the AML/CFT Law, obligors will be required to conduct a risk assessment of clients, per Article 7. As the NBS issued guidance for conducting such an assessment in June 2009, financial institutions have yet to apply this assessment to customers in practice. When financial institutions do classify clients as high or low risk for ML or FT, they will be required to perform enhanced due diligence per Article 28 of the AML/CFT Law where the obligor determines that there exists or may exist a high level of ML or FT risk or in the following circumstances:

- when establishing a LORO correspondent relationship with a bank or a similar institution having its seat in a foreign country which is not listed as complying with the international standards against money laundering and terrorism financing that are at the level of European Union standards or higher. This list shall be established by the Minister, at the proposal of the APML and based on the data held by international organisations;
- when establishing a business relationship or carrying out a transaction referred to in Article 9, Paragraph 1, Item 2 of this Law with a customer who is a foreign official;
- when the customer is not physically present at the identification and verification of the identity.

486. Articles 29-31 specify the additional data, information, and/or documentation obligors must obtain when one of the above situations occurs.

Application of simplified/reduced CDD measures when appropriate

487. The previous AML Law did not allow for any reduced or simplified CDD measures; financial institutions were required to apply CDD measures evenly for all customers, such requirements were introduced only as of March 2009.

488. Under Article 32 of the AML/CFT Law, obligors may apply simplified customer due diligence measures when establishing a business relationship with a customer or when carrying out a transaction equal or above EUR 15.000, except where there are reasons for suspicion of ML or FT with respect to a customer or transaction, if a customer is:

1) the obligor referred to in Article 4, Paragraph 1, Items 1 to 8 of this Law (banks; licensed bureaux de change; companies for the management of investment funds; companies for the management of voluntary pension funds; financial leasing providers; insurance companies, insurance brokerage companies, insurance agency companies and insurance agents with a license to perform life insurance business; persons dealing with postal communications; broker-dealer companies), except for insurance brokers and insurance agents;
2) a person from Article 4, Paragraph 1, Items 1 to 8 of this Law (see list above), except for insurance brokers and agents, from a foreign country listed as non complying with international standards against money laundering and terrorism financing at the European Union level or higher;
3) a State body, body of an autonomous province or body of a local self-government unit, a public agency, public service, public fund, public institute or chamber;
4) a company whose issued securities are included in an organised securities market located in the Republic of Serbia or in the state where the international standards applied regarding the submission of reports and delivery of data to the competent regulatory body are at the European Union level or higher.

5) a person representing a low risk of money laundering or terrorism financing as established in a regulation adopted on the basis of Article 7, Paragraph 3 of the law by the Minister of Finance (upon proposal of the APML).

489. Article 32 of the AML/CFT Law also allows an auditing company or licensed auditor, when establishing a business relationship of regarding obligatory auditing of the annual financial statements of a legal person, may apply simplified customer due diligence, unless there are reasons for suspicion of money laundering or terrorism financing with respect to a customer or the auditing circumstances.

490. Under Article 12, Paragraph 1, Item 1 of the AML/CFT Law, insurance providers are exempt from conducting CDD when concluding life insurance contracts where an individual premium instalment or the total of more than one premium instalments, that are to be paid in one calendar year, do not exceed the RSD equivalent of EUR 1,000 or if the single premium does not exceed the RSD equivalent of EUR 2,500. The insurance sector indicated that it did not conduct life insurance business with foreign countries.

491. Article 12, Paragraph 1, Item 2 of the AML/CFT Law states that VPF management companies are exempt from conducting CDD when concluding contracts on the membership in voluntary pension funds or contracts on pension plans under the condition that assignment of the rights contained under the contracts to a third party, or the use of such rights as a collateral for credits or loans, are not permitted. The Law on Pension Funds prohibits the transfer of the balance in a member's individual account in favour of a third party (with the exception in the case of a death of a fund member) under Article 44, thus Serbian authorities claim that VPF-s are in a lower risk category.

492. As the ability of financial institutions to conduct CDD on the basis of risk is relatively new, the assessment team was unable to determine how this would work in practice. The NBS issued guidance in June 2009 and has plans to issue further guidance and trainings for financial institutions to be able to apply these new regulations.

Overseas residents

493. Article 32, Paragraph 1, Items 2 of the AML/CFT Law provides that obligors may not apply simplified due diligence to a person from a foreign country listed as non complying with international standards against money laundering and terrorism financing at the European Union level or higher. Item 4 of the same article states that simplified due diligence may be applied if the customer is a company whose issued securities are included in an organised securities market located in the Republic of Serbia or in the state where the international standards applied regarding the submission of reports and delivery of data to the competent regulatory body are at the European Union level or higher.

Suspicions of ML or FT or specific higher risk scenarios

494. Article 32, Paragraph 1 states that obligors may not apply simplified CDD measures when there is suspicion of money laundering or terrorist financing with respect to a customer or transaction.

Guidelines issued by competent authorities

495. Under Article 7 of the AML/CFT Law, financial institutions are required to determine AML/CFT risks using a risk-based approach. Articles 28-31 of the AML/CFT Law describe the conditions in which an obligor should apply enhanced customer due diligence and Articles 32-33 define conditions where an obligor may apply simplified customer due diligence. On 17 June, 2009, the NBS published guidance for certain financial institutions (banks, voluntary pension fund

management companies, financial leasing providers, and insurance companies, insurance brokerages, and insurance agents licensed to carry out life insurance operations) on how to classify risk using a risk-based approach[93]. Institutions regulated by the Securities Commission have yet to receive guidance on how to fulfil their obligations under risk-based approach. Given the newness of both the AML/CFT Law and the NBS guidance, the evaluation team was unable to determine if the financial institutions noted above were able to apply the risk-based approach in a manner consistent with the guidance.

Timing of verification

496. Neither the AML/CFT Law nor the previous AML Law distinguish separate actions for occasional customers; CDD is conducted on all customers evenly. As mentioned above, Article 9 of the AML/CFT Law requires obligors to identify customers when establishing a business relationship or conducting a transaction. Article 10 of the AML/CFT Law requires obligors to apply CDD measures before the establishment of a business relationship with a customer. Article 11 of the AML/CFT Law requires obligors to complete CDD before the execution of a transaction.

497. Serbian financial institutions are only permitted to delay CDD measures in a few instances. In terms of non face-to-face customers, financial institutions indicated that there were not permitted this type of client unless it was a Serbian government bodies. In no cases did they use parent companies for identification of clients.

498. *Specific for Insurance Sector*: Article 10, Section 2 of the AML/CFT Law allows for the beneficiary of a life insurance policy to be verified after the conclusion of the insurance contract, but stipulates that this must occur prior to the time of the payout of benefits under the contract. In practice, insurance companies indicated that they identified their customers when they established a business relationship.

Failure to satisfactorily complete CDD before and after commencing the business relationship

499. Under Article 7 of the previous AML Law, obligors were bound to refuse to carry out a transaction if it is unable to establish the identity of a customer.

500. Where the financial institution is unable to comply with the core CDD requirements of the AML/CFT Law, Article 8, Section 2 of the AML/CFT Law requires obligors to refuse the offer to establish a business relationship, carry out a transaction, and it shall terminate the business relationship if one has already been established.

501. There is no obligation for obligors to consider filing an STR if they have refused to establish a business relationship, carry out a transaction, or terminate an existing business relationship. Article 37 of the AML/CFT Law requires obligors to report to the APML whenever there are reasons for suspicion of ML or FT with respect to a transaction or customer. None of the Indicators of Suspicious Transactions for any financial institution involves a failure to satisfactorily complete CDD. The closest example can be found in numbers 28 and 29 of the Indicators of Suspicious Transactions for Banks, which read, respectively:

- Evading of questions related to the transaction, given power of attorney, identification, etc, or presentation of false documents or correct data.
- Attempt by the client to prove his/her identity in another manner, rather than presenting a personal identification document as prescribed.

[93] Decision on Guidelines of assessment of risk from money laundering and the financing of terrorism, RS Official Gazette No. 46/2009.

502. While the indicators are strong enough to precipitate a financial institution filing an STR, there is the possibility that a situation might not match the list and a financial institution will not file an STR with the APML.

CDD requirements - existing customers

503. As mentioned above, there are no customers to whom Criterion 5.1 applies. The ongoing due diligence section above details obligor requirements to monitor customers with due care, including ensuring that documents and data held about a customer is up-to-date as required by the level of risk. Serbian authorities have indicated that the requirements for the application of a risk-based approach will take time financial institutions to implement. Until competent authorities have issued relevant guidance and financial institutions have adopted the risk-based guidance and implemented the AML/CFT Law, they will continue to implement controls stipulated under the NBS Decision on KYC Procedure for Banks for existing customers.

Recommendation 6

Risk management systems, senior management approval, requirement to determine source of wealth and funds and on-going monitoring

504. There were no requirements under the previous AML Law for financial institutions to determine whether a client is a politically exposed person (PEP) and apply enhanced measures. The NBS Decision on KYC Procedure for Banks lists as part of risk factors: client discharging a public function and client who is a public figure I (Section 2, Paragraph 3). Per this decision, banks are required to classify clients based on risk, determine the acceptability of a client based on that risk, and identify the client accordingly. Section 8, Paragraph 6 also requires that when banks enter into a contractual obligation with a new client, that it is previously approved by at least one manager. Furthermore, Section 14 obliges banks to supervise transactions conducted by risky clients through their accounts on ongoing basis.

505. The AML/CFT law introduced new requirements. Its Article 3 (24) defines a foreign official as: a natural person who holds or who held in the past year a public office in a foreign country or international organisation, which includes the office of:

- head of State and/or head of government, member of government and their deputies or assistants;
- elected representative of legislative bodies;
- judge of the supreme and the constitutional courts or of other high-level judicial bodies whose judgments are not subject to further regular or extraordinary legal remedies, save in exceptional cases;
- member of courts of auditors or of the boards of central banks;
- ambassador, *chargés d'affaires* and high-ranking officer in the armed forces;
- member of the managing or supervisory bodies of legal entities whose majority owner is the State;

506. Article 3, Item 25 defines close family members of a foreign official to include a spouse or extra-marital partner, the parents, the brothers and sisters, the children and their spouses or extramarital partners (hereinafter referred to as: foreign official). Article 3, Item 26 also defines close associates of a foreign official as any natural person who derives common benefit from a property or from an established business relations or who has any other close business relations with a foreign official. While Serbian authorities have indicated that regulations on foreign officials would, in practice, include close associates, there is an omission in Article 3 of the AML/CFT Law that fails to state that close associates of a foreign official are hereinafter referred to as foreign officials.

507. The definition does not appear to include "senior politicians, important political party officials" which is listed as an example under the standard (see definition of PEP-s in the FATF Recommendations Glossary). However, these would in principle be covered under the definition of PEP-s due to their participation in either the government or legislative bodies.

508. Article 30 of the AML/CFT Law requires obligors to establish a procedure for determining whether a customer or beneficial owner of a customer is a foreign official and that the procedure should be laid down in an internal document of the obligor, which should be in line with the guidelines issued by supervisors. At the time of the on-site visit, no guidelines had been issued by supervisors on this issue. Failure to set up such procedures to establish whether a customer or beneficial owner of a customer is a foreign official, or failure to establish it in the required manner is punishable with a fine amounting from RSD 500,000 to RSD 3,000,000 (Article 88).

509. The AML/CFT law refers to a one year timeframe: a person who, by the date of entry into a transaction, has not held a public office in a foreign country or foreign organisation in the past year is not considered a politically exposed person.

510. Article 28 Paragraph 1, Item 2 of the AML/CFT Law requires obligors to apply enhanced customer due diligence measures when establishing a business relationship or carrying out a transaction equal or above EUR 15,000 with a customer who is a foreign official.

511. Article 30, Paragraph 2 states that if a customer or beneficial owner of a customer is a foreign official, the obligor shall, apart from the actions and measures referred to in Article, 8 Paragraph 1 of this Law:

1) obtain data on the origin of property which is or which will be the subject matter of the business relationship or transaction from the documents and other documentation which shall be submitted by the customer. If it is not possible to obtain such data as described, the obligor shall obtain a written statement on its origin directly from the customer;

2) ensure that the employee in the obligor who carries out the procedure for establishing a business relationship with a foreign official shall, before establishing such relationship, obtain a written consent of the responsible person;

3) monitor with special care transactions and other business activities of a foreign official for the period of duration of the business relationship.

512. Article 28 Paragraph 2 requires obligors to apply enhanced due diligence actions and measures laid down in Articles 29-31 of the AML/CFT Law also in circumstances when, in accordance with the provisions of Article 7 of this law, they assess that due to the nature of the business relationship, form and manner of execution of a transaction, customer's business profile or other circumstances related to the customer, there exists or may exist a high level of money laundering or terrorism financing risk. Thus, financial institutions are legally required to apply enhanced due diligence if after this one-year period, the customer continues to present a high level of risk. Article 6 of the Decision on KYC Procedure requires obligors to classify clients based on the level of risk they are exposed to.

513. Article 30 requires the employee in the obligor who carries out the procedure for establishing a business relationship with a foreign official shall, before establishing such relationship, obtain a written consent of the responsible person. If the obligor establishes that a customer or a beneficial owner of a customer became a foreign official during the business relationship, the continuation of a business relationship with such person is subject to the written consent of the responsible person. Financial institutions are thus required to obtain the approval of a 'responsible person' for establishing a business relationship with a PEP or to continue such a relationship. The authorities advised that the 'responsible person' (*odgovorno lice*) is commonly used in the Serbian legislation as for designating a member of the executive board or other competent body or person at senior management level.

514. Financial institutions are also required to obtain data on the origin of property which is or which will be the subject matter of the business relationship or transaction from the documents and other documentation which shall be submitted by the customer. If it is not possible to obtain such data as described, the obligor shall obtain a written statement on its origin directly from the customer (Article 30 of the AML/CFT Law).

515. Financial institutions are also required to monitor with special care ("*posebna paznja*") transactions and other business activities of a foreign official for the period of duration of the business relationship (Article 30 Paragraph 2, Item 3), including in cases where a person has become a PEP in the course of a business relationship. This obligation was explained by the authorities as additional efforts which should be made by obligors in monitoring business activities and transactions of the PEP, compared with other customers considered less risky than PEP-s. However, this interpretation was not supported by any applicable regulation or guidance and thus could be interpreted by obligors at their own discretion. Overall, the evaluators do not consider that Article 30 Paragraph 2, Item 3 would amount to an 'enhanced on-going monitoring' on business relationship with PEP-s as required by criterion 6.4 in the absence of additional measures and guidance creating uniform obligations for financial institutions.

516. *Specific for the Insurance Sector:* The Guidance Paper No. 5 on AML/CFT requires insurers to have appropriate risk management systems to determine whether the customer is a politically exposed persons, obtain senior management approval for establishing business relationships with such customers, take reasonable measures to establish the source of wealth and source of funds, and conduct enhanced ongoing monitoring of the business relationship. However such guidance is of a non-binding nature.

517. The evaluation team was satisfied that the banking sector adequately determined whether a potential customer was a PEP. Serbian banks indicated that they had internal procedures which set the course they followed when screening clients. Banks indicated they screened all of their clients using commercial databases and other public data to help determine if a client is a PEP, including in some cases where the client was a domestic PEP. Banks did not, however, seem to take any measures to establish the source of wealth or funds for customers identified as PEP-s. Other financial institutions, while not required to identify or apply enhanced measures to PEP-s under the previous AML Law, indicated that they did identify PEP-s, which they considered to be risky clients. Due to the nature of their business, however, they indicated that enhanced measures were not necessary.

Additional elements

Domestic PEP-s - Requirements

518. The AML/CFT Law only refers to foreign officials. The NBS Decision on KYC Procedure for Banks applies to clients discharging a public function and clients who are public figures, without distinguishing between foreign and domestic public figures. In practice, some Serbian financial institutions indicated that they followed the same procedures for domestic officials as foreign officials. The assessment team has concerns, however, that because the AML/CFT Law uses the definition of "foreign official", Serbian financial institutions will no longer conduct additional due diligence on domestic PEP-s.

Ratification of the Merida Convention

519. Serbia signed the 2003 United Nations Convention against Corruption in December 2003 and ratified it in December 2005.

Recommendation 7

Requirement to obtain information on respondent institution & Assessment of AML/CFT controls in Respondent Institution

520. The previous AML Law had no express requirements for all financial institutions to understand fully the nature of a respondent institution's business or to determine the reputation of the institution and quality of supervision, including whether it has been subject to a ML or FT investigation or regulatory action. The insurance sector is not permitted to provide life insurance, which is the insurance product that has been identified as having the highest ML risk, to foreign entities.

521. Prior to the AML/CFT Law, only banks were obliged to consider the AML/CFT regime of correspondents. When establishing correspondent relations with other banks, especially foreign banks, the banking sector was required, through Section 18 of the NBS Decision on KYC for Banks, to cooperate exclusively with correspondent banks which implement regulations governing the prevention of money laundering and financing of terrorism, as well as the Procedure, as strictly as the bank. While this Decision does force banks to take into account the AML/CFT regime of correspondent banks, it falls short of meeting the FATF standard. [

522. Article 29, Paragraph 1 of the AML/CFT Law added new requirements for all financial institutions, stating that when establishing a LORO correspondent relationship (defined in Article 3 as a relationship between a domestic bank and a foreign bank or any other similar institution, which commences by the opening of an account by a foreign bank or another similar institution with a domestic bank in order to carry out international payment operations) with a bank or any other similar institution having its seat in a foreign country which is not listed as complying with the international standards against money laundering and terrorism financing at the European Union level or higher, the obligor shall also obtain, apart from the actions and measures laid down in Article 8, Paragraph 1 of this Law (CDD Measures), the following data, information and/or documentation:

1) date of issue and period of validity of the banking license as well as the name and seat of the competent body of the foreign country which issued the license;
2) description of internal procedures concerning the prevention and detection of money laundering and terrorism financing, and particularly the procedures regarding customer due diligence, sending of data on suspicious transactions and persons to the competent bodies, record keeping, internal control, and other procedures adopted by the bank or any other similar institution in relation to the prevention and detection of money laundering and terrorism financing;
3) description of the system for the prevention and detection of money laundering and terrorism financing in the country of the seat is located, or where the bank or other similar institution has been registered;
4) a written statement of the responsible person in a bank stating that the bank or other similar institution does not operate as a shell bank;
5) a written statement of the responsible person in a bank stating that a bank or a similar institution does not have any business relationships and or transactions with a shell bank;
6) a written statement of the responsible person in a bank stating that the bank or other similar institution in the state of seat or in the state of registration is under supervision of the competent state body and that it is required to apply the regulations of such state concerning the prevention and detection of money laundering and terrorism financing;

523. Article 29, Paragraph 4 further states that the obligor shall not establish or continue a LORO correspondent relationship with a bank or similar institution whose seat is located in a foreign country in the following cases:

1) if it has not previously obtained the data referred to in paragraph 1, item 1 and items 3 to 5 of this Article;
2) if the employed person in the obligor who is responsible for establishing a LORO correspondent relationship has not previously obtained a written authorization of the responsible person in the obligor;
3) if a bank or any other similar institution with the seat located in a foreign country has not established a system for the prevention and detection of money laundering and terrorism financing or is not required to apply the regulations in the area of prevention and detection of money laundering and terrorism financing in accordance with the regulations of the foreign country in which it has its seat, or where it is registered;
4) if a bank or any other similar institution with its seat located in a foreign country operates as a shell bank, or if it establishes correspondent or other business relationships, or if it carries out transactions with shell banks.

524. Article 12 of the Decision on KYC Procedure further requires that if an obligor is a bank, it shall:
1) specify in its Procedure the activities it shall take when establishing correspondent relations with other banks, in particular the foreign ones, and/or when refusing to establish these relations with banks which do not comply with the international standards or to at least the EU standards, regarding prevention of money laundering and financing of terrorism;
2) oversee activities of clients by tracking transactions on all their accounts regardless of the type of the account or bank organisational unit with which such accounts are opened pursuant to client classification.

525. Paragraph 2 of the same states that if the client transaction is executed pursuant to a contract on operations, a bank can obtain a copy of that contract which is certified by the signature of the bank employee, dated on receipt and kept on file for ten years.

526. While this requirement does not apply to NOSTRO correspondent relationships (defined in Article 3 of the AML/CFT Law as relationship between a domestic and a foreign bank which commences by the opening of an account by a domestic bank with a foreign bank in order to carry out international payment operations)); a study of the wording of Recommendation 7 itself and the Methodology have led the assessment team to the conclusion that Recommendation 7 is addressed to LORO correspondent relationships where financial institutions provide services to respondent banks.

Approval of establishing correspondent relationships

527. Article 29 also requires employees of obligors to obtain the written authorization of a ‘responsible person’ in order for a LORO correspondent relationship referred to above to establish a new relationship or continue with an existing relationship.

Documentation of AML/CFT responsibilities for each institution

528. There are no requirements for financial institutions to document the AML/CFT responsibilities of each institution in the context of cross border banking and similar relationships.

Payable Through Accounts

529. Serbian officials informed the evaluation team that according to the current legal framework and practice, correspondent relationships do not involve the maintenance of “payable through accounts”. While there are currently no payable-through accounts in Serbia, the evaluation team has concerns that because they are not expressly prohibited, the fact that it has not happened in practice does not mean that it cannot happen in the future.

530. Overall, the Serbian authorities need to review the existing requirements to ensure that their scope covers fully Criteria 7.1 to 7.5 in respect of all participants in the financial sector that may be involved in correspondent or similar relationships. The banking sector demonstrated a clear understanding of the requirements of the AML/CFT Law, however financial institutions outside of the banking sector that conduct securities transactions or funds transfers demonstrated no implementation of Recommendation 7.

Recommendation 8

Misuse of new technology for ML/FT

531. Item 8 of the recent NBS Decision on Guidelines for assessing the risk of money laundering and financing terrorism (for banks, voluntary pension fund management companies, financial leasing providers, insurance companies, insurance brokerage companies, insurance agency companies, and insurance agents licensed to carry out life insurance operations) provides that obligors must pay attention to money laundering and terrorism financing risks that may arise from the use of modern technologies that provide anonymity (e.g. ATMs, internet banking, telephone banking, etc).

532. Furthermore, the Decision on KYC Procedure requires financial institutions to establish procedures for the management of risks which should include the elaboration, at least once a year, of a risk assessment report and analysis, encompassing also the types of products and services offered by obligors with a special focus on the introduction and application of new technologies (Item 15).

533. In Serbia, however, financial institutions have indicated that they do not use electronic certificates. Serbian authorities have also indicated that financial institutions utilize smart cards and special passwords to preserve the identity of a client as technological developments occur.

534. *Specific for the Insurance Sector*: The Guidance Paper No.5 on AML/CFT requires insurers to pay particular attention to all ML/FT threats posed by new or developing technologies that may favour anonymity and should, where necessary, take adequate measures to prevent the use of such technologies for money-laundering purposes.

Risk of non-face-to-face business relationships

535. Under Article 7, Paragraph 7 of the previous AML Law, financial institutions were only allowed to maintain non face-to-face customers if they were non-residents, a state authority or organisation with public authorities, or a fellow obligor defined in Article 4 of the Law. Article 7 established that when opening an account or establishing a business cooperation, the obligor could perform the identification of a non face-to-face customer but when doing so, it had to establish beyond doubt the identity of the customer by establishing all the data pursuant to this Law and the regulation passed on the basis of Article 13, Paragraph 2 of this Law. The NBS Decision on KYC Procedure for Banks further stipulates that: in performing transactions of a client who has already been identified, and by using technologies that do not include direct contact (e-banking), the banks shall adopt and apply procedures enabling prior authenticity and accuracy check up of the transaction orders and identity of the person that submitted them.

536. The AML/CFT Law, in Article 31, requires obligors to apply one or more of the following additional measures, apart from the normal CDD measures, when a customer is not physically present in the course of identification and verification of identity:

1) obtaining additional documents, data, or information based on which it shall identify a customer;
2) conducting additional inspection of submitted identity documents or additional verification of customer data obtained from the obligor referred to in Article 4, Paragraph 1, Items 1 to 4, as well as 6 and 8 and Article 4, Paragraph 2, Items 5 to 7 and 9 of this Law;
3) ensuring that, before the execution of other customer transactions in the obligor, the first payment shall be carried out from an account opened by the customer in its own name or which the customer holds with a bank or a similar institution in accordance with Article 13, Paragraphs 1 and 2 of this Law;
4) other measures laid down by the body referred to in Article 82 (regulatory authorities) of this Law.

537. Regulatory authorities have not issued implementing measures or guidance on this issue. The Serbian authorities advised that this issue was discussed with obligors. Some examples were provided to them in the context of regular meetings held with obligors and they are also clarified publicly under the section "Questions and Answers" of the APML's website, which provides the official opinion of the APML on this matter.

538. *Specific for the Insurance Sector*: The Guidance Paper No. 5 on AML/CFT requires insurers to implement policies and procedures to analyze specific risks in connection with business relationships or transactions in which participants do not appear physically at the institution that performs the transaction.

539. While the Decision on KYC Procedure and NBS Decision on Guidelines for assessing the risk of money laundering and financing terrorism introduce measures that require financial institutions to consider new technologies when evaluating risk, certain financial institutions (licensed bureaux de change, investment fund management companies, persons dealing with postal communications, and broker-dealer companies) were not included as obligors for these measures. In addition, the assessment team was unable to determine the effectiveness of such measures because they were adopted after the on-site visit. During discussion with the Serbian banking sector, the banks indicated that they were currently not taking measures to protect against the risk of new technologies and demonstrated no knowledge of such risks.

3.2.2 Recommendations and comments

540. Overall, Serbia's compliance with the FATF standards on CDD requirements shows a number of essential gaps in implementation, mostly stemming from the newness of the AML/CFT Law. Further, competent authorities have yet to issue implementing measures for the AML/CFT Law and related guidance, which further weakens Serbia's compliance with the FATF standards. The Serbian authorities have indicated that they have plans to issue additional guidance and provide trainings to ensure financial institutions are aware of their new obligations under the AML/CFT Law and can implement the new elements required, particularly adopting a risk-based approach for CDD.

541. In practice, there is awareness of the requirements and the application of due diligence measures, particularly in the banking sector. However, this compliance level does not cover the financial sector as a whole, since significant parts have not sufficiently implemented not only the due diligence controls of the AML/CFT Law, but also of the previous AML Law.

542. Prior to the passage of the AML/CFT Law in March 2009, only the banking sector was obliged to identify and apply enhanced measures to PEP-s. Under those requirements, banks were not required to obtain senior management approval for existing clients that were not previously identified as PEP-s, nor were banks required to take reasonable means to establish the source of wealth and the source of funds of PEP-s. While some financial institutions outside of the banking sector did indicate that they considered PEP-s to be risky clients, there was no legal requirement

for them to take additional due diligence measures. The AML/CFT Law should help fill those previously identified gaps once implemented across all financial institutions.

Recommendation 5

- Serbian authorities should require obligors to consider filing an STR if they have refused to establish a business relationship, carry out a transaction, or terminate an existing business relationship.

- In the case of filing an STR where obligors have refused to establish a business relationship, carry out a transaction, or terminate an existing business relationship, the indicators of suspicious transactions are strong enough to precipitate a financial institution filing an STR, however, there remains the possibility that a situation might not match the list and a financial institution will not file an STR with the APML.

- Issue guidelines on instructions for the manner of identifying their clients in accordance with the obligations under the AML/CFT Law.

- As stated above, because of the newness of the AML/CFT Law, financial institutions have not yet applied the risk-based approach to clients. Serbian should work with financial institutions to ensure they understand how to effectively implement in practice.

Recommendation 6

- Serbian authorities should issue additional regulations and guidelines to ensure that Serbian financial institutions clearly understand and uniformly apply their obligations under Article 30 of the AML/CFT Law to monitor with special care ("*posebna paznja*") transactions and other business activities of a foreign official.

- Serbian authorities should assist financial institutions outside of the banking sector on how to identify foreign officials and apply enhanced due diligence, per the new requirements of the AML/CFT Law. This could include additional training seminars and additional guidance on risk assessment for investment fund management companies, licensed bureaux de change, persons dealing with postal communications, and broker-dealer companies.

Recommendation 7

- Serbian authorities should require financial institutions to document respective AML/CFT responsibilities for each party in the correspondent relationship so that there is no confusion between the financial institution and respondent bank about which one will carry out AML/CFT requirements.

- While use of payable-through accounts appears not to be common in Serbia, this practice should either be prohibited by law or should have obligations attached to it to ensure that appropriate CDD is conducted and institutions share relevant information should the practice become established in the future.

Recommendation 8

- Serbian authorities should adopt requirements for licensed bureaux de change, investment fund management companies, persons dealing with postal communications, and broker-dealer companies to develop policies and procedures to consider technological developments in ML and FT when conducting risk assessments.

- The evaluation team was unable to assess the effectiveness of the new measures on technological developments, given the newness of the regulations.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	**PC**	• No guidance on the risk-based approach has been provided for financial institutions regulated by the Securities Commission. • No explicit requirement for obligors to consider making a suspicious transaction report when they have refused to establish a business relationship, carry out a transaction, or terminate an existing business relationship. • No adequate demonstration that all financial institutions have implemented the standards of Recommendation 5, including the risk based approach.
R.6	**LC**	• Effectiveness not established (uneven implementation across all financial institutions, absence of guidelines issued by supervisors on internal procedures for determining whether a customer/beneficial owner of a customer is a foreign official)
R.7	**PC**	• Financial institutions are not required to document AML/CFT responsibilities between correspondents. • Lack of implementation of controls by all financial institutions, with the exception of the banking sector, which has implemented some controls.
R.8	**LC**	• Requirements to consider new technologies do not apply to all financial institutions. • Requirements have recently been introduced and need further guidance and monitoring before being assessed as fully implemented

3.3 Third Parties and Introduced Business (R. 9)

3.3.1 Description and analysis

543. The previous AML Law had no provisions on relying on a third party to perform some elements of the CDD process or to introduce business.

544. The legal basis allowing financial institutions to rely on third parties to perform CDD was introduced in Article 23 of the AML/CFT Law. Under the law, a third party is defined as:

1) the obligor referred to in Article 4, Paragraph 1, Items 1, 3, 4 and 8 of this Law (banks, companies for the management of investment funds, companies for the management of VPFs, and broker-dealer companies);
2) insurance companies licensed to perform life insurance business;
3) the person referred to in Article 4, Paragraph 1, Items 1, 3, 4 and 8 of this Law and the insurance company licensed to perform business of life insurance in a foreign country if it is subject to a statutory requirement to register its business, if it applies customer due diligence, keeps records in an equal or similar manner as specified in this Law, and if it is supervised in the execution of its business in an adequate manner.

545. In relying on such a third party, obligors shall not be exempt from the responsibility for a proper application of CDD. Article 23 further stipulates that the obligor may not rely on a third party to perform certain customer due diligence actions and measures if such person has identified

and verified the identity of a customer without the customer's presence. The third party also is responsible for meeting the requirements laid down in this Law, including the keeping of data and documentation.

Requirement to immediately obtain certain CDD elements from third parties; availability of identification data from third parties

546. Articles 10 and 11 of the AML/CFT Law require obligors to apply the actions and measures in Articles 8 and 9 prior to the establishment of a business relations or execution of transaction. Furthermore, at the request of the obligor, the third party should deliver without delay copies of identity papers and other documentation based on which it applied the customer due diligence actions and measures and obtained the requested data about a customer (Article 25 of the AML/CFT Law).

547. The obtained copies of the identity papers and documentation shall be kept by the obligor in accordance with this Law. If the obligor doubts the credibility of the applied customer due diligence or of the identification documentation, or the veracity of data obtained about a customer, it shall request from the third party to submit a written statement on the credibility of the applied customer due diligence action or measure and the veracity of the data held about a customer.

Regulation and supervision of third party & adequacy of application of FATF Recommendations

548. Obligors may rely on third parties as defined in the law if they are subject to business registry, CDD and record keeping requirements equal or similar as stated in the AML/CFT Law and if they are supervised in the execution of their business in an adequate manner. Obligors are required to ensure that the third party meets all the conditions laid down in the law (Article 23).

549. Article 24 of the AML/CFT Law sets out stipulations that prohibit an obligor from relying on a third party to perform certain CDD measures and reads as follows:

1) the obligor shall not rely on a third party to perform certain customer due diligence measures if the customer is an offshore legal person or an anonymous company;
2) The obligor may not rely on a third party to perform certain customer due diligence measures if the third party is from a country which is listed as not complying with the standards against money laundering and terrorism financing. This list shall be developed by the Minister, at the proposal of the APML and based on the data held by international organisations; and
3) Under no circumstances shall the third party be an offshore legal person or a shell bank.

550. The Minister has not yet developed the list referred to under Article 24 Paragraph 2.

Ultimate responsibility

551. The AML/CFT Law set out monetary fines to ensure that financial institutions are ultimately held responsible for customer identification and verification and not the third party. Article 89 Paragraph 1 Item 4 of the AML/CFT Law requires that a legal person shall be punished for an economic offence with a fine amounting from RSD 50,000 to RSD 1,500,000, if it…rel[ies] on a third party to perform customer due diligence without having checked whether such third person meets the requirements laid down in this Law or if such third person established and verified the identity of a customer without its presence or if the customer is an offshore legal person or anonymous company.

Effectiveness and efficiency

552. As noted in other sections of the report, the evaluation team was unable to assess the effectiveness of Serbia's implementation of Recommendation 9 because of the newness of the AML/CFT Law. At the time of the evaluation, the Minister of Finance had not yet issued a list of countries that do not apply international AML/CFT standards. Serbian authorities indicated that a sub-law is currently under preparation.

3.3.2 Recommendation and comments

553. Until Serbian authorities have determined in which countries financial institutions are permitted to rely on third parties, there can be no implementation of this provision. Serbian authorities should work to issue the sub-law in preparation and the list mentioned in Article 24.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**LC**	• The authorities have not yet determined in which countries the third party that meets the conditions can be based.

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and analysis

Inhibition of implementation of FATF Recommendations

554. Article 30 of the previous AML Law stipulates that data, information and documentation collected in accordance with this Law shall be considered an official secret and may be utilized in accordance with this Law. Article 30 further states that the Administration Director or a person that he authorizes may dispose of the data, information and documentation referred to in Paragraph 1 of this Article. Providing the Administration, competent state authorities and competent foreign authorities and international organisations with the data, information and documentation referred to in Paragraph 1 of this Article shall not be considered a violation of the official secret in accordance with this Law.

555. Under Article 74 of the AML/CFT Law, (1) data, information and documentation obtained by the APML shall be considered an official secret. (2) Dissemination of data, information and documentation referred to in Paragraph 1 of this Article to the competent State bodies and the foreign State bodies competent for the prevention and detection of money laundering and terrorism financing shall not be considered infringement of official secrecy, in accordance with this Law. (3) The head of the APML shall make the decision on the removal of the classification 'Official secret' referred to in Paragraph 1 of this Article. (4) Sending of data, information and documentation by the obligor, lawyer or their employees to the APML shall not be considered infringement of the obligation to keep a business, banking or professional secret.

556. In both the previous AML Law and the AML/CFT Law, information sent to the APML is not considered a violation or infringement of the obligor's requirement to protect bank or business secrets.

557. *Specific for banks:* The banking secrecy requirement is set out in Article 47 of the Law on Banks as follows: the bank and members of its bodies, shareholders and bank employees, as well

as the external auditor of the bank and other persons who, due to the nature of the activities they perform, have access to the data covered by bank secrecy may not disclose such data to third persons, use such data against the interest of the bank and its clients, nor may they enable third persons to have access to such data. The obligation to maintain secrecy applies even after termination of their status on the basis of which their access to the data has been enabled.

558. Article 47 also provides that data about a client that is considered as a bank secret may be disclosed by the bank to a third person only upon the written approval of the client, unless otherwise prescribed by this Law or some other law.

559. Data covered by the banking secrecy requirement includes the following (Article 46):
1) Data which are known to a bank, and which refer to personal data, financial status and transactions, as well as ownership or business relations of the clients of such bank or another bank;
2) Data on balance and transactions on individual deposit accounts;
3) Other data which the bank has became aware of in the course of performing business activities with clients.

560. *Specific for the insurance sector:* The Law on Insurance and relevant Decisions issued by the NBS do not lay out specific secrecy requirements for the insurance sector.

561. *Specific for the securities sector*: Article 72 of the Law on Securities Market stipulates that the person specified in Article 71 of this Law (a person possessing privileged securities information: issuer's employees; members of management and issuer's supervisory board; auditor, portfolio manager, investment adviser, broker, financial analyst, accountant, bookkeeper, practicing lawyer, actuary, appraiser, court expert, or judge; all persons holding 10% or more participation in the issuer’s capital; subsidiary of the issuer; and all persons who have acquired privileged information, and know and/or could have known that they have acquired it from persons listed in this Article) shall be obliged to keep the data on privileged information as a business secret and must not disclose them to other persons, nor recommend, based on them, to other persons to acquire, purchase, and sell securities or in any other way dispose of such securities.

- *Stock exchange*: Article 118 further stipulates that employees and stock exchange management members, and/or over-the-counter market operators shall be obliged to keep as business secret data on circulation of securities and other financial instruments which are not published, as well as other data accessible to them through the execution of their duties or in any other way, and they must not disclose them to third parties, use them or make it possible for third parties to use them.

- *Broker-dealers*: Article 161 requires that employees and members of the broker-dealer company management shall be obliged to keep as business secret the information about balance and volume of transactions in the securities accounts of company's clients, as well as other information which they learned of while performing business operations of that company, and they must not disclose the information to third parties, use the information, or allow third parties to use them.

- *Custodian bank:* Under Article 181, custodian banks opening and managing securities accounts shall be obliged to keep separate records on securities and persons (entities) on whose behalf it conducts such transactions, and to keep the data from these records as a business secret as well as to protect them from un authorized use, amendments and losses. Article 183 further stipulates that employees and members of the management of the bank that performs the transactions of custodian bank shall be obliged to keep as business secret the data about statement of account and volume of transactions in the securities accounts of company's clients, as well as other data which they learned of in performing transactions of

custodian bank, and they must not disclose them to third parties, or use or allowing third parties to use them.

562. *Specific for the voluntary pension fund sector*: Article 18 of the Law on Pension Funds defines a business secret as follows: The general manager, members of management of the management company, employees of the management company and related parties of such company shall be required to keep as business secret, and cannot disclose information on:
1) voluntary pension fund or fund management company that could create a misleading picture of the company's, or fund's, operations;
2) future activities and business plans of the management company, except in cases envisaged in the law;
3) balance and turnover in the accounts of the voluntary pension fund and its members;
4) other data that are of significance for the operations of the voluntary pension fund, and which they had acquired in the course of performing management company operations.

563. Article 18 also states that data classified as a business secret can be communicated and presented for consideration to third parties only during supervision of operations, based on an order of a court, competent administration authority, or pursuant to the law.

Ability of competent authorities to access information they require to properly perform their functions in combating ML or FT

564. *Specific for banks:* Article 48 Paragraph 1 of the Law on Banks explicitly provides a list of exceptions where the banking secrecy does not apply, among which the following:

- on the basis of a decision or request of the competent court;
- for the needs of the body competent for money laundering prevention, in compliance with anti money laundering regulations;
- to regulatory authorities for the purpose of performing activities within their field of competence;
- to tax administration pursuant to regulations which regulate activities within its field of competence;
- to the authority competent for the supervision of foreign currency operations;
- upon the request of the organisation for deposit insurance, in compliance with the law which governs deposit insurance and
- to foreign regulatory authority under the conditions stipulated in the Memorandum of Understanding, concluded between the foreign regulatory authority and the National Bank of Serbia.

565. In addition to the listed exceptions, a bank has the right to disclose such data to the investigative judge, public prosecutor and courts and/or other bodies that have public and legal authority, solely for the purpose of the protection of its rights in compliance with the law (Article 48 Paragraph 2).

566. The access to financial information (banking secrecy) stands on two pillars. As it is stated above the Law on Banks provides the provisions that list the exceptions where the banking secrecy rules are not applicable. The other pillar covers the laws which give the authorization and permission for specific actors of the system such as the investigative judge, public prosecutor, competent court, FIU, the supervisory authority to access financial information.

567. The CPC provides the legal basis for obtaining financial data by law enforcement authorities during the preliminary investigation. According to the Article 234 of CPC if there is a suspicion that a criminal offence punishable by at least four-year imprisonment has been committed, upon the written motion of the public prosecutor containing a statement of reasons, the investigating judge may order that a bank or financial or other organisation submits data concerning statement

of balances of the suspect's business and private accounts. Having regard that the money laundering and the financing of terrorism are punishable criminal offences by imprisonment more than four years, this provision is applicable accordingly. The language "bank or financial or other organisation" appears to cover all sorts of obligors that keep confidential data. As for the certain data, the order issued by the investigating judge covers explicitly financial data connected to accounts. This restrictive provision of CPC raises uncertainties as to whether confidential data that are not connected to accounts are also covered by the CPC.

568. The Article 504k of CPC lays down the authorization for obtaining financial data in organised crime cases. Thus the public prosecutor may request the competent state authority, bank or another financial organisation conduct the audit of management of certain persons and to deliver him the documentation and data that may use as evidence about the criminal offence or property acquired through commission of criminal offence, as well as the information on suspicious financial transactions with regard to the Convention on Money Laundering, Search, Seizure and Confiscation of the Benefits Acquired through Crime. Apparently the public prosecutor (and not the investigative judge) is authorized to issue this particular order, and requested data seems to be more extensive than the data determined by Article 234 of CPC.

569. It has to be added that the LSC gives additional legal basis for obtaining confidential data from obligors, while an ongoing financial investigation is carried out by the APML. Article 20 of the LSC provides that the public prosecutor may order banking or other financial organisation to communicate to the APML data on the status of the owner's business and private accounts, and safety deposit boxes. As regards the data, this provision enables the APML to require data that are connected to accounts and safety boxes as well.

570. Turning from the LEAs to the APML, the bank has the right to disclose such data to the investigative judge, public prosecutor and courts and/or other bodies that have public and legal authority, solely for the purpose of the protection of its rights in compliance with the law (Article 48 paragraph 2).

571. Article 74 Paragraph 4 of the AML/CFT Law provides that data, information and documentation sent by the obligor, lawyer or their employees to the APML shall not constitute a breach of the obligation to maintain business, banking or professional secrecy.

572. Under Article 74 of the AML/CFT Law, data, information and documentation obtained by the APML shall be considered an official secret. The APML can obtain relevant ML/FT information from obligors in accordance with the conditions set out in Article 53 of the AML/CFT Law. When requested, the obligor is obliged to send such data without delay and no later than 8 days from the date of receipt of the request (or according to the deadline set by the APML) or provide the APML with direct electronic access to such data, information or documentation. Failure to do so is sanctioned under Article 88 Paragraph 1 Item 33 (fine from RSD 500.000 –.3.000.000).

Sharing of information between competent authorities, either domestically or internationally

573. The National Bank of Serbia, courts and other bodies that have public and legal authorities may use the data obtained in compliance with Article 47 of the Law on Banks exclusively for the purpose for which the data has been acquired and may not disclose such data to third persons or enable third persons to become aware of and use such data, except in cases stipulated by law. These restrictions apply also to employees and former employees of the above-mentioned bodies (Article 49 of the Law on Banks).

574. The APML can disseminate information and documentation to the competent State bodies and foreign State bodies responsible for AML/CFT issues and grants the head of the APML the power to remove the classification of "official secret". Article 72, Item 2 of the AML/CFT Law provides

that dissemination of data, information and documentation referred to in Paragraph 1 of this Article (data collected by the APML is considered an official secret) to the competent State bodies and the foreign State bodies competent for the prevention and detection of money laundering and terrorism financing shall not be considered infringement of official secrecy, in accordance with this Law[94].

575. According to Article 85 of AML/CFT Law, supervisory bodies other than APML shall promptly inform the APML in writing of all the measures taken in the implemented supervision, any irregularities or illegalities found as well as any other relevant facts in relation to the supervision, and shall send a copy of the document that they enact. In addition this Article also sets out that supervisory bodies that have found irregularities and illegalities shall inform other supervisory bodies, if that is relevant for their work.

576. Article 86 of the AML/CFT Law lays down that supervisory bodies shall inform the APML in writing where they establish or identify, while executing tasks within their competence, facts that are or may be linked to money laundering or terrorism financing. Hence, supervisory bodies are obliged to send quasi STR-s (that is originally banking secrecy) to APML, when they find grounds for suspicion of money laundering or terrorism financing, while they are carrying out their supervisory tasks.

577. The list of exceptions under Article 48 paragraph 1 of the Law on Banks provides that data can be disclosed to foreign regulatory authority under the conditions stipulated in the Memorandum of Understanding concluded between the foreign regulatory authority and the NBS. However, the information exchange between the APML and foreign FIU is more extensively implemented, since the confidential data acquired by APML either as STR-s, information upon request, or information on suspicion of money laundering or terrorism financing sent by the supervisory body (such as NBS) might be disseminated to foreign FIU even in the absence of concluded MoU.

578. *Specific for the Securities Commission*: Article 239 of the Law on Securities Market requires that the president and the members, as well as employees of the Commission shall be obliged to keep safe the information on issuers of securities, entities that are supervised by the Commission, and other information on facts and circumstances made accessible to them due to performing of the functions and/or work, with the exception the information accessible to general public, and they shall not disclose such information to third parties, use them or enable third parties to use them. This information, with the exception of information accessible to the general public shall be considered an official secret.

579. Article 239 further stipulates that by exception to the Paragraph above, such information can be disclosed and made accessible only on the grounds of a court order and/or order of the competent administrative agency and the Commission may disclose the data referred to in that Paragraph and make them accessible to the authorized persons from the NBS for the purpose of exchange of information and data, as well as for effecting supervision.

[94] Article 30, Paragraph 3 of the Previous AML Law indicated that providing the Administration, competent state authorities and competent foreign authorities and international organisations with the data, information and documentation referred to in Paragraph 1 of this Article shall not be considered a violation of the official secret in accordance with this Law.

Sharing of information between financial institutions where this is required by R.7, R.9 or SR. VII

Sharing information with domestic financial institutions

580. Serbian authorities have indicated that where there is an explicit requirement in the AML/CFT Law or sector-specific bylaws to share information when required by R. 7, R.9, or SR.VII, it would not be considered a breach of secrecy.

Sharing information with foreign financial institutions:

581. Provisions under the Decision on Foreign Payment Transactions (Section 3) and the Guidelines to the Decision on Foreign Payment Transactions[95] provide the basis for Serbian financial institutions to send/receive information to/from foreign financial institutions when sending cross border payment transactions. As the law requires obligors to provide certain information when sending a cross border payment transfer, the evaluation team has assessed that this action would not constitute a breach of secrecy.

582. There are no provisions, however, in the AML/CFT Law, the previous AML Law, nor in sector-specific bylaws for financial institutions to share information with other financial institutions where required by R.7 or R.9. As Article 29 of the AML/CFT Law applies only to LORO correspondent relationships, and not NOSTRO correspondent relationships, Serbian authorities have indicated that sharing information with the foreign financial institution would constitute a breach of secrecy.

583. With regards to relying on a third party for CDD, Serbian authorities have indicated that since there is an explicit requirement in the Law that the third party is obliged to share information with the obligor, it would not be considered a breach of secrecy for a foreign financial institution to provide required information to a Serbian financial institution. However, Article 23 of the AML/CFT Law does not provide for Serbian financial institutions to serve as a third party for a foreign financial institutions and therefore sharing information with a foreign financial institution would constitute a breach of secrecy.

Effectiveness and efficiency

584. It appears that the APML does not encounter difficulties in obtaining the information it needs to fulfil its obligations In practice, financial institutions indicated that bank secrecy requirements did not inhibit their ability to file STR-s with the APML or answer requests for further information. Conversely, the APML indicated that financial institutions were cooperative in responding to requests for information.

585. The APML also has the ability to both receive and to disseminate information to other competent State authorities. The APML often requests information from the Ministry of Interior, and while the Interior Ministry is unable to provide information in every request (as indicated, due to the lack of such information from their database), it does not seem to be a result of secrecy requirements.

586. Article 58 of the AML/CFT Law provides that if there are reasons for suspicion of money laundering or terrorism financing in relation to certain transactions or persons, the APML may initiate a procedure to collect data, information and documentation as provided for in this Law, as well as carry out other actions and measures within its competence also upon a written and

[95] NBS Guidelines for implementing the decision on terms and conditions of performing foreign payment transactions, Republic of Serbia Official Gazette Nos. 24/2007, 31/2007, 3/2008 and 61/2008 (applicable as of April 1, 2007).

grounded initiative by a court, public prosecutor, police, Security Information Agency, Military Intelligence Agency, Military Security Agency, Tax Administration, Customs Administration, National Bank of Serbia, Securities Commission, Privatization Agency, competent inspectorates and State bodies competent for state auditing and fight against corruption.

587. The competent authorities noted above do not have direct access to APML databases and must request information directly from the APML. The Ministry of Interior also indicated that they are able to request information for cases regarding a predicate offence for ML, as long as there is also suspicion of ML.

588. Article 58 further states that the APML shall refuse to initiate the procedure based on the initiative referred to in paragraph 1 of this Article if it does not contain reasons for suspicion of money laundering or terrorism financing, as well as in circumstances when it is obvious that such reasons for suspicion do not exist. In the event referred to in paragraph 2 of this Article, the APML shall inform the initiator in writing of the reasons why it did not commence a procedure based on such initiative.

589. Reports produced by the APML, which have been approved by the director, are then disseminated to appropriate competent authorities on a case by case basis. There are some requirements to this dissemination as only full text reports can be shared with the police, prosecutors, or courts; and only when there is a criminal proceeding. Some information can be shared with the Customs and Tax Administration and Foreign Currency Inspectorate, although the APML indicated that more often than not, information is requested from these State bodies.

590. In regard to authorisations for obtaining confidential data in criminal proceeding, examiners are of the opinion that legal provisions should be more elaborated in order to cover the required confidential data more consistently. However, authorities confirmed on-site that no difficulties have emerged yet in this respect.

591. The supervisory authority does not appear to encounter difficulties in obtaining the information it needs to fulfil its obligations.

3.4.2 Recommendations and comments

- While Serbian financial institutions are able to share information with foreign financial institutions per obligations under requirements of SR.VII, Serbian authorities should amend the AML/CFT Law to also ensure that financial institutions are able to share information with foreign financial institutions, where it is required by R.7 and R.9.

- Provisions of obtaining financial information by LEA and investigative judge appear to be inconsistent and uncertain regarding the range of information that can be obtained from financial obligors.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**LC**	• Financial institutions are unable to share information with foreign financial institutions where required by R.7 and R.9 without violating secrecy laws • Inconsistency in law enforcement bodies obtaining confidential data not specifically related to accounts.

3.5 Record Keeping and Wire Transfer Rules (R.10 and SR. VII)

3.5.1 Description and analysis

Recommendation 10

Record-Keeping & Reconstruction of Transaction Records (c. 10.1 & 10.1.1)

592. The AML/CFT Law sets out the record keeping requirements in Articles 80 (record keeping), 81 (content of records), and 77 (period for keeping the data in the obligor and lawyer).

593. Obligors – and financial institutions among them – are required by Article 80 of the AML/CFT law to retain records of data concerning the customers, as well as business relationships[96] and transactions referred to in Article 9 of the Law. Article 9, in turn, expounding the application of the customer due diligence, establishes the following requirements:

- Article 9 Paragraph 1 specifies that obligors should take the actions and measures referred to in Article 8 of the Law (that is, perform CDD measures)[97] in the following cases: 1) when establishing a business relationship with a customer; 2) when carrying out a transaction amounting to the RSD equivalent of EUR 15.000 or more; 3) when there are reasons for suspicion of money laundering or terrorism financing with respect to a customer or transaction; 4) when there are doubts about the veracity or credibility of previously obtained data about a customer or beneficial owner; and

- Article 9 Paragraph 2 requires that if the transactions amounting to the RSD equivalent of EUR 15.000 or more are carried out based on a previously established business relationship, the obligor should collect the missing part of data referred to in Article 21 Paragraph 2 of the Law (obtaining data about the purpose and intended nature of a business relationship or transaction), which in turn requires obligors to obtain, within customer due diligence measures laid down in Article 9 Paragraph 1 indent 2, the data specified by Article 81 Paragraph 1, Indents 1 to 4 (identification data of the customer), Indents 8 to 11 (date, time, amount, currency, intended purpose of transaction, identification data of the intended recipient of the transaction, and the manner in which a transaction is executed) and Indents 14 and 15 (identification data of the beneficial owner and the person under civil law).

594. Such data and documentation that are obtained concerning a customer, established business relationships with a customer and executed transactions, should be kept for a period of 10 years from the date of the termination of the business relationship or executed transaction (Article 77 Paragraph 1 of the AML/CFT Law).

595. Thus, the definition provided by the AML/CFT Law for the scope of the data to be maintained by obligors is limited to the data obtained in the course and due to customer due diligence procedure and there is no requirement to keep records on transactions, for which CDD is not performed – that is all occasional[98] transactions under EUR 15,000. Thus, since the record

[96] Article 3.1(14) defines business relationship as "a relationship between a customer and the obligor based on a contract regarding the business activity of the obligor that is expected, at the time when such relationship is established, to have an element of duration".

[97] Namely, Article 8 requires that obligors: a) identify the customer, b) verify the identity of the customer, c) identify beneficial owner and verify his/her identity, d) obtain information on the purpose and intended nature of a business relationship or transaction, and e) regularly monitor business transactions of the customer.

[98] Although the Serbian legislation does not define occasional transactions, such transactions can be understood – from articles 80, 9 and 8 of the AML/CFT Law - as those: a) for which a new business relationship (based on a contract, as provided by the definition of a business relationship) is not established and b) which are not conducted on the basis of a previously established business relationship, and c) which do not exceed the RSD

keeping requirement is bound by the scope of the data obtained while performing CDD, obligors are not required by the AML/CFT Law to keep records on transactions for which customer due diligence is not required.

596. On the other hand, Article 23 of the Accounting and Auditing Law requires that:

a) journals and ledgers are kept for 10 years (journal is defined as "a book of accounts in which transactions are entered in the order of their occurrence and/or order of reception of accounting documents" while a ledger is "the complete collection of balanced accounts for a systemic coverage of status and changes in relation to assets, liabilities, equity, income and expenditures, serving as basis for the compilation of financial statements")
b) subsidiary ledgers are kept for 5 years (defined as "analytical records of intangible investments, real estate, plant and equipment, capital stock, long-term investments, stocks, receivables, cash and cash equivalents, liabilities, equity, etc")
c) documents on the basis of which data are entered in the book of account are kept for 5 years.

597. It is worth of mentioning that the Previous AML Law also established a similar requirement for keeping records on business relations and transactions for a period of five years. Nevertheless, the definition of the current AML/ CFT Law is more specific about the scope and composition of the records to be kept (encompassing data on customers, established business relationships with a customer, and executed transactions) and sets a longer minimal period for keeping such records (10 years, as opposed to the 5-year period established by the Previous AML Law).

598. Sufficiency of transaction records so as to permit reconstruction of individual transactions for providing, if necessary, evidence in order to prosecute criminal activity, can be concluded through the same logic articulated above by the respective requirements of the AML/CFT Law – for the transactions subject to CDD, and those of the Accounting and Auditing Law – for all other transactions.

Record-Keeping for Identification Data, Files and Correspondence (c. 10.2)

599. Article 77 of the AML/CFT Law requires that obligors keep the data and documentation obtained under the Law concerning a customer, established relationships with a customer and executed transactions for a period of 10 years from the date of the termination of the business relationship, executed transaction or the latest access to a safe deposit box. Article 81 Paragraph 1, indents 1 to 4, 8 to 11, 14 and 15 in turn define the scope of the data to be kept (that is, the identification data of the customer, the date, time, amount, currency, intended purpose of transaction, the identification data of the intended recipient of the transaction, and the manner in which a transaction is executed, the identification data of the beneficial owner and the person under civil law), which appears to amount to the "identification data" and "account files" as required by Criterion 10.2.

600. The wording of the law does not enable the authorities to request a longer record retention period in specific cases if necessary. However, the authorities' ability to request a longer record retention period is manifested in that they have already established a minimal retention period of 10 years.

Availability of Records to Competent Authorities in a Timely Manner (c. 10.3)

601. Financial institutions are required to provide, if requested by the APML, all the required documentation (Article 53 Paragraph 3 of the AML/CFT Law).

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equivalent of EUR 15,000 and d) concerning which there are no ML/FT suspicions or doubts about the veracity or credibility of previously obtained data.

602. Article 53 Paragraph 1 establishes that, if the APML assesses that there are reasons to suspect money laundering or terrorism financing in certain transactions or persons, it may request from obligors:

1) Data from the customer and transaction records kept by the obligor based on Article 81 Paragraph 1 (i.e. customer identification and transaction data);
2) Data on money and property of a customer, on transactions with such money and property, as well as on business relations of a customer (i.e. ongoing due diligence data);
3) Other data and information needed for detecting and proving money laundering or terrorism financing.

603. The APML may also request from obligors data and information referred above concerning persons having participated or cooperated in transactions or business activities of the person with respect to which there are reasons for suspicion of money laundering or terrorism financing (Article 53 Paragraph 2).

604. All data requested by the APML should be submitted by obligors without delay and no later than eight days from the date of receipt of the request, or the APML should be provided a direct electronic access to such data, information or documentation, without any fees. The APML may set in its request a shorter deadline for submission of data, information, and documentation, if that is necessary for deciding on a temporary suspension of a transaction or in other urgent cases, as well as a longer period due to the extensive size of documentation or to any other justified reasons. Article 55 further establishes similar powers of the APML to request data, information, and documentation from state bodies, organisations and legal persons entrusted with public authorities.

605. Powers of other competent (supervisory) bodies to request and receive from financial institutions customer and transaction records and information are covered under the description of criterion 29.3 and appear to be sufficient to meet the requirements of Criterion 10.3. Particularly, Article 104 of the Law on Banks, Article 155 of the Law on Insurance, Article 68 of the Law on Pension Funds, Article 13d of the Law on Financial Leasing, and Article 221 of the Law on Securities Market provide that the respective financial institutions shall be obliged to provide to the competent supervisory authorities unhindered access to their business books and other information/ documentation. Since there is no stipulation on the time minimal/ maximal time for the financial institutions to provide such access, it is assumed that the access is to be provided immediately, thus ensuring its timeliness as prescribed by Criterion 10.3.

606. As articulated under the analysis of R.4, Serbian legislation does not seem to contain financial secrecy provisions which could restrict availability and timely provision of customer and transaction information to competent domestic authorities upon appropriate authority.

Effectiveness and efficiency (R. 10)

607. Both the representatives of the bank compliance officers and those of the bank visited on-site were knowledgeable of the record-keeping obligations under by the AML/CFT Law and the implementing regulations. They asserted to have internal acts providing further details of the procedures for keeping records on business relations, customers, and transactions. Supervisors interviewed, in turn, did not report any problems with timely access to customer and transaction records and information.

608. As to the procedures to check effective record retention at financial institutions, Article 10 of the Memorandum for AML/ CFT Supervision of Banks establishes a requirement to examine whether the bank keeps the data and documents on CDD, opening of accounts, establishment of business relations, and transactions for the period set by the Law. However, none of the other

supervisory bodies proved to have such procedures defined by the respective internal documents regulating supervisory practice.

609. However, due to infrequent and limited inspections of financial institutions – especially that of non-bank financial institutions - for checking compliance with the AML/CFT framework, the assessors cannot arrive at a well-founded conclusion that the requirements of the Law and regulations pertaining to record keeping are effectively met. This is supported by the results of statistics on supervision, which do not refer to any cases of discovering irregularities related to record keeping requirements; accordingly no sanctions have ever been applied for non compliance. This also refers to money transfer businesses, particularly the PTT "Srbija", which currently is not recognised as a money transfer business (and as such, as a financial institution subject to record-keeping requirements).

610. Furthermore, evidence gathered during the meeting with other competent (law enforcement) bodies shows that banks often fail to have obtained and maintained complete CDD information documentation from the opening of accounts.

611. The assessors were not provided any information on sectoral laws/regulations enabling effective implementation of the record-keeping requirements by persons involved in intermediation in credit transactions and provision of loans, factoring and forfeiting, and provision of guarantees– should they start operating in the Serbian financial sector[99].

Special Recommendation VII

Obtain Originator Information for Wire Transfers (c.VII.1)

612. Article 4 of the Law on Payment Transactions[100] defines two types of payment transactions:

1) Credit transfer: when the payment transaction is initiated by the debtor issuing the payment order to its bank with the instruction to transfer the funds from its account to the creditor (or the latter's account), and

2) Debit transfers: when the payment transaction is initiated by the creditor, based on matured securities, bills of exchange or the authorization given by the debtor to its bank and to its creditor.

613. Article 9 of the Law on Payment Transactions further defines that any order for effecting a payment transaction must include the data on the remitter and the recipient of the order and their respective banks, data on the amount, as well as other prescribed data. The receiving bank shall not execute the payment order, if it does not contain all prescribed data, and/or if data inconsistency makes the execution of the order unrealizable.

614. The Decision on Electronic Payment Transactions[101] further establishes that:

1) An electronic payment shall be carried out via exchange of electronic messages in information systems of the participants of payments (Section 2);
2) An electronic message shall be any electronically generated information, electronically sent, checked, received, and saved (Section 3);
3) An electronic payment order shall contain the elements established in the decision regulating the form, contents and use of uniform payments instruments, and in the instruction regulating

[99] As presented by the authorities, these obligors, as separate organisational-legal type of entities, still do not exist in the financial system of Serbia, but are listed because they are expected to be introduced into the system in near future.

[100] FRY Official Gazette, Nos. 3/2002 and 5/2003, and Republic of Serbia Official Gazette Nos. 43/2004 and 62/2006, implemented as of June 1, 2004.

[101] NBS Decision on electronic payment transactions, Republic of Serbia Official Gazette No. 57/2004

the format and earmarking of messages in electronic exchange to be determined by the National Bank (Section 7).

615. As presented by the authorities, Serbian legislation establishes different requirements with regard to the above-mentioned uniform payments instruments used for domestic and cross-border payment transactions.

616. *Domestic cash and non-cash payments* are regulated by Decision on Uniform Payment Instruments (Section 3, Paragraph 2; Section 4, Paragraph 2). Particularly, this decision defines the instruments of non-cash payment transactions - transfer orders and collection orders, and establishes the mandatory elements that such instruments should contain:

- A transfer order should, *inter alia*, contain the names of the debtor-issuer and the creditor-payee of the order, their account numbers, the currency, amount, and purpose of payment, the seal and signature of debtor-issuer of the order
- A collection order should, *inter alia*, contain the names of the debtor and the creditor-issuer of the order, their account numbers, the currency, amount, and purpose of payment, the seal and signature of creditor-issuer of the order.

617. *Cross-border payment transactions* are regulated by the Decision on Foreign Payment Transactions (Section 3) and the Guidelines to the Decision on Foreign Payment Transactions[102]. Particularly, Section 50 of the said guidelines defines the uniform instruments, which may be used for a credit or debit transfer – payment orders, collection orders, and general foreign exchange orders. For all these instruments, there is a strictly defined minimal set of elements applicable regardless of the transaction amount, as follows:

- A payment order should, *inter alia*, contain all necessary information about order issuer (name and address, identification number and account number), as well as about payment beneficiary (non-resident's name and address, country, account, etc.).
- A collection order should, *inter alia*, contain all necessary information about order issuer (name, address and country, account number), as well as about beneficiary (name and address, identification number, account number, etc).
- A general foreign exchange order should, *inter alia*, contain the order issuer's bank (name and identification number), beneficiary's bank (name and identification number), order number, value date, amount, payment reference code, entry (to the debit of account and to the credit of the account) amount and payment reference code.

618. Thus, in the case of cross-border payment transactions all ordering financial institutions are bound to obtain (pursuant to Section 50 of the Guidelines to the Decision on Foreign Payment Transactions) and maintain (pursuant to Section 3 of the Decision on Electronic Payment Transactions) full originator information, regardless of the amount of transaction.

619. However, in the case domestic payment transactions full originator information is not obtained, since the Decision on Uniform Payment Instruments does not stipulate for obtaining and maintaining the originator's address (or the national identity number, customer identification number, or date and place of birth).

620. Moreover, the legislation does not require verification of the identity of the originator in accordance with Recommendation 5, at least for all wire transfers of EUR 1.000 and more, which is a direct requirement of SR VII.1.

[102] NBS Guidelines for implementing the decision on terms and conditions of performing foreign payment transactions, Republic of Serbia Official Gazette Nos. 24/2007, 31/2007, 3/2008 and 61/2008 (applicable as of April 1, 2007).

Inclusion of Originator Information in Cross-Border Wire Transfers (c. VII.2); Inclusion of Originator Information in Domestic Wire Transfers (c. VII.3); Maintenance of Originator Information (c.VII.4)

621. The idea of bundling several transactions into a batch file for transmission is unknown in Serbian legislation or practice. Every transfer, regardless of transaction's amount, is treated individually and executed through a separate payment order.

622. According to the Instruction for Implementation of the Decision on Electronic Payment Transactions[103], electronic messages are exchanged through either the network of the National Bank or the SWIFT network. Section 7 of the Decision requires that an electronic payment order shall contain the elements established:

- In the decision regulating the form, contents, and use of uniform payment instruments (that is, the Decision on Uniform Payment Instruments for domestic payment transactions and the Decision on Foreign Payment Transactions for cross-border payment transactions), and
- In the instruction regulating the format and earmarking of messages in electronic exchange to be determined by the NBS (that is, the Instruction for the Decision on Electronic Payment Transactions).

623. And finally, apart from the minimal set of elements applicable regardless of the transaction amount, electronic payment orders shall also contain the elements for checking authenticity and correctness of such orders and authenticity of the issuers, pursuant to Section 7(2) of the Decision on Electronic Payment Transactions.

624. Hence, the defined format of payment orders with a minimal set of elements on one hand, and the established rules for effecting electronic payments on the other hand provide that full originator information is included in the message or payment form accompanying cross border wire transfers. However, in the case of domestic wire transfers such information can not be included in the respective message or payment form, simply because it is not obtained during the acceptance of the payment.

625. This also refers to the requirement that each intermediary and beneficiary financial institution in the payment chain should ensure transmission of all originator information accompanying a wire transfer with that specific transfer.

Risk Based Procedures for Transfers Not Accompanied by Originator Information (c. VII.5)

626. As already mentioned, Article 9 of the Law on Payment Transactions defines that any payment order must include the data on the remitter and the recipient of the order and their respective banks, data on the amount, as well as other prescribed data. The receiving bank shall not execute the payment order it does not contain all prescribed data, and/or if data inconsistency makes the execution of the order unrealizable.

627. Nevertheless, neither the Law nor its implementing regulations require financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers not accompanied by complete originator information; this is especially important with respect of incoming foreign transfers, where the counterpart financial institutions are not subject to the requirements of the Serbian legislation and, therefore, such transfers are not guaranteed to include complete originator information.

628. Throughout the applicable legislation and guidelines, there is no reference that the lack of complete originator information may be considered as a factor in assessing whether a wire transfer is suspicious and, as appropriate, might be reported to the APML. Beneficiary financial

[103] Republic of Serbia Official Gazette No. 57 of 18 May 2004

institutions are not guided to consider, as necessary, restricting or terminating their business relationship with financial institutions that fail to meet the requirements of SR.VII.

629. There is no additional guidance provided to financial institutions on introducing risk-based procedures for sorting out and handling wire transfer with incomplete originator information.

Monitoring of Implementation (c. VII.6) and Application of Sanctions (c. VII.7: applying c.17.1 – 17.4)

630. Monitoring compliance of financial institutions with the rules and regulations implementing SR. VII, as well as application of sanctions are ensured under the general regime of supervision over activities of financial institutions exercised by the National Bank, as presented under Recommendations 29, 23, and 17.

631. However, there at least one company – PTT "Srbija" – which is directly and factually involved in the provision of money transfer services both domestically and internationally. The company is not subject to the supervisory framework established for financial institutions and exercised by the National Bank. Particularly, the AML/CFT Law provides that money transfer activities of PTT "Srbija" should be supervised by the Ministry of Finance (with respect to domestic payment operations pursuant to Article 84.4 of the AML/CFT Law) and by the Foreign Currency Inspectorate (with respect to international payment transactions pursuant to Article 84.11 of the AML/CFT Law). None of these supervisory bodies has defined techniques, methods, and programs for supervision of wire transfer activities of PTT "Srbija", nor they have defined powers to sanction the company for the failure to comply with the national AML/CFT requirements (particularly with SR. VII); factual results of supervisory efforts aimed at ensuring such compliance are non-existent.

632. The AML/CFT Law does not provide for specific sanctions for the failure to comply with the requirements of SR VII. The issues pertaining to these requirements are dealt with through the Law on Payment Transactions and the respective implementing regulations; namely:

- The Decision on Electronic Payment Transactions, and the Instruction for Implementation of the Decision on Electronic Payment Transactions;
- The Decision on Uniform Payment Instruments,
- The Decision on Foreign Payment Transactions, and the Guidelines to the Decision on Foreign Payment Transactions.

633. Article 51 Paragraph 1 of the Law on Payment stipulates that for the failure to meet the requirements of Article 9 of the Law – this is, for the failure to refuse to execute the payment order, if it does not contain all prescribed data, and/or if data inconsistency makes the execution of the order unrealizable – fines ranging from RSD 300.000 (approximately EUR 3.240) to RSD 3.000.000 (approximately EUR 32.400) shall be imposed on banks. Paragraph 2 of the same article defines that "for acts referred to in paragraph 1 of this Article, the person in charge within the bank shall also be fined for economic offence", the fines ranging from RSD 20,000 (approximately EUR 216) to RSD 200,000 (approximately EUR 2,160).

634. On the other hand, Article 112 of the Law on Banks establishes that should a bank act in breach of provisions of the Law on Banks, regulations of the National Bank and other regulations, the NBS shall take measures such as sending a written warning, an ordering letter, and declaring orders and measures to remove irregularities[104]. Article 113 of the same Law further establishes that independently of the measure taken under Article 112, the NBS may apply a fine to a bank, as well as to a member of the board of directors and executive board of a bank, whereas Article 118

[104] For further details on supervisory measures (including sanctions) applicable to banks please see the text under R.29 and R.17.

defines that the NBS may order the removal of a person from their position of a member of the board of directors or executive board of a bank, if it determines that such person fails to meet the requirements set forth in the Law or has acted in breach of provisions of the Law, and/or is responsible for irregularities in business operations of the bank.

635. However, as already mentioned above, there are no legislatively provided sanctions applicable to money transfer businesses (particularly, PTT "Srbija") for their failure to meet the requirements of SR VII. Moreover, due to the lack of relevant statistical data on the results of supervision, the assessment team can not conclude on how effectively those requirements are implemented by banks.

Additional elements – Elimination of thresholds (c. VII.8 and c. VII.9)

636. Pertinent laws and regulations as described above do not establish a threshold for both incoming and outgoing cross-border wire transfers to contain full and accurate originator information.

Effectiveness and efficiency (SR. VII)

637. The legislation does not require obtaining full originator information in the case domestic payment transactions, which subsequently can not be included in the message or payment order accompanying the transfer. It also fails to require verification of identity of the originator in accordance with Recommendation 5, at least for all wire transfers of EUR 1.000 and more, which is a direct requirement of SR VII.1.

638. The absence of any requirement for financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers not accompanied by complete originator information, and of guidance on introducing procedures for sorting out and handling such wire transfer may impair practical implementation of the provision that payment orders without complete originator data should not be executed – this is especially relevant to incoming foreign transfers.

639. There are no legislatively provided sanctions applicable to money transfer businesses for their failure to meet the requirements of SR VII. Moreover, due to infrequent and limited inspections of financial institutions for checking compliance with the AML/CFT framework, which is also evidenced by the results of (statistics on) such supervision, the assessors can not arrive at a well-founded conclusion that the requirements of the Law and regulations pertaining to wire transfers are effectively met.

640. And finally, the assessors were not provided any evidence on effective mechanisms available for ensuring compliance of money transfer businesses (particularly, PTT "Srbija") with SR VII.

3.5.2 Recommendation and comments

- Provide for sectoral laws/regulations enabling effective implementation of the record-keeping requirements by persons involved in intermediation in credit transactions and provision of loans, factoring and forfeiting, and provision of guarantees, should they start operating in the Serbian financial sector.

- Provide in legislation for obtaining full originator information in the case domestic payment transactions, and for including such information in the message or payment order accompanying the transfer.

- Provide in legislation for verifying the identity of the originator in accordance with Recommendation 5, at least for all wire transfers of EUR 1.000 and more.

- Define a requirement for financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers not accompanied by complete originator information.
- Legislatively provide for sanctions applicable to money transfer businesses for their failure to meet the requirements of SR VII.
- Provide effective mechanisms for ensuring compliance of money transfer businesses (particularly, PTT "Srbija") with the requirements of SR VII.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**LC**	• Lack of sectoral laws/regulations enabling effective implementation of the recordkeeping requirements by persons involved in intermediation in credit transactions and provision of loans, factoring and forfeiting, and provision of guarantees – should they start operating in the Serbian financial sector. • Lack of effective implementation of the record-keeping requirements by financial institutions (including PTT Srbija currently not recognised as a financial institution)
SR.VII	**PC**	• No requirement for financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers not accompanied by complete originator information. • Full originator information not obtained in the case domestic payment transactions and is not included in the message or payment order accompanying the transfer. • No requirement to verify the identity of the originator in accordance with Recommendation 5, at least for all wire transfers of EUR 1.000 and more. • Lack of legislatively provided sanctions applicable to money transfer businesses for their failure to meet the requirements of SR VII. • Lack of effective mechanisms available for ensuring compliance of money transfer businesses (particularly, PTT "Srbija") with the requirements of SR VII.

Unusual and Suspicious Transactions

3.6 Monitoring of Transactions and Relationships (R.11 and 21)

3.6.1 Description and analysis

Recommendation 11

Special attention to complex, unusual large transactions (c.11.1)

641. Article 50 of the AML/CFT Law requires obligors and lawyers to develop a list of indicators to recognize persons and transactions with respect to which there are reasons for suspicion of ML

or FT[105]. When doing so, obligors and lawyers are required to take into account the complexity and extent of executed transactions, unusual transaction execution patterns, value of or links between transactions which have no justifiable purpose in economic or legal terms, or transactions which are inconsistent or disproportionate to a normal, or expected, business operations of the customer, as well as other circumstances linked to the status or any other characteristics of the customer.

642. The Decision on KYC Procedure further requires certain obligors (banks, VPFs, financial leasing providers, and insurance companies, brokerages, agency companies and agents) to set up adequate systems for detection of unusual or suspicious transactions and/or clients (Paragraph 16). The Decision defines as unusual transactions (Paragraph 2, Item 3):

- Transactions which take an unusual course, including unusual frequency of withdrawing funds from the account and/or depositing funds to the account.
- Complex transactions of substantial value whereby large amounts of money are deposited or withdrawn and which involve a greater number of participants, transfers, or other transactions which are economically or legally unjustified, including transfers which are not compliant with the client's registered activity.

643. *Specific for the Banking Sector*: The Decision on KYC Procedure for Banks in Section 15 required banks to establish adequate systems for detection of unusual transactions of a client. In this context, Section 2, Item 4 defines unusual transactions as:

- Transactions not compliant with the usual practice, including unusual frequency of withdrawing funds from the account or depositing funds to the account;
- Complex transactions of substantial value whereby large amounts of money are deposited or withdrawn and which involve a greater number of participants;
- External transfers or other transactions not justifiable on any economic, trading or legal grounds, including external transfers which are not compliant with the registered business activity of the client.

Examination of complex and unusual transactions (c.11.2)

644. Articles 37 and 48 of the AML/CFT law lay out requirements for obligors to report to the APML whenever there are reasons for suspicion of ML or FT with respect to a transaction or customer. The previous AML Law, required obligors to establish the identity of the customer, collect data about the customer and the transaction in the case that any transaction, regardless of the value of the transaction, if there are reasons to suspect ML with regard to a transaction or customer. These Articles will be fully explained under the text for Recommendation 13.

645. Section 13, Paragraph 1 of the Decision on KYC Procedure requires that if an employee of the obligor who is in direct contact with the client suspects that there is a risk attached to the client or its transaction related to money laundering or financing of terrorism, he/she is obliged to draw up a report for internal use and to submit it to the authorized person in the manner and within the timeframe envisaged by the Procedure. This report should contain data on the client and the transaction enabling the authorized person to determine whether the client and/or transaction are suspicious.

646. *Specific for the Banking Sector*: Section 16 of the Decision on KYC Procedure for Banks states that should the bank officer in the course of the appraisal of a transaction determine a risk

[105] The previous AML Law also required obligors to make a list of indicators for the identification of suspicious transactions. In order to help facilitate the implementation of this requirement, the APML has developed a list of indicators of suspicious transactions for banks, money exchange operations, insurance companies, stock market exchange, which includes securities and brokerages, and leasing companies.

factor and if the transaction appears suspicious, such officer shall be obliged to prepare an internal report on this matter and, within the deadline specified by the bank's internal enactments, submit the report to the authorized person. Such report should contain data on the client and the transaction enabling the authorized person to determine whether that transaction is suspicious. Section 17, Paragraph 2 further states that the bank shall keep the reports on suspicious transactions and internal reports on transactions that have not been reported to the Administration five years after the preparation of internal report

647. There is no requirement for insurance providers, capital market participants, money remitters, or foreign exchange operators to examine as far as possible the background and purpose of unusual transactions and to set forth findings in writing.

648. According to the Serbian authorities, it is clear from the SARs received by the APML that banks understand their responsibilities under both the AML/CFT Law and the previous AML Law and indicate that there is on-going monitoring of customer activity and transactions.

Record- keeping of findings of examination (c. 11.3)

649. Section 13, Paragraph 3 of the Decision on KYC Procedure requires obligors to keep on file the reports from paragraph 1 and the note from paragraph 3 herein for the duration of five years from the date they were made.

650. *Specific for the Banking Sector:* Section 17 of the Decision on KYC Procedure for Banks requires banks to keep reports on suspicious transactions and internal reports on transactions that have not been reported to the APML for five years. All financial institutions noted that they did keep records for five years and in some instances ten years.

651. There is also no requirement for capital market participants, bureaux de change, persons dealing with postal communications, money remitters, or foreign exchange operators to examine as far as possible the background and purpose of unusual transactions and to set forth findings in writing.

Effectiveness

652. The AML/CFT Law only requires financial institutions to pay special attention to all complex, unusual large transactions or unusual patters of transactions that have no apparent or visible economic or lawful purpose when developing a list of indicators. The evaluation team has concerns that as the law is worded, it is possible that financial institutions will only pay attention to complex, unusual transactions when developing indicators and not necessarily to those unusual transactions that were not identified in the course of developing the list of indicators. While the Decision on KYC Procedure does compliment the AML/CFT Law to meet the requirements of Recommendation 11.1, it is not applicable to all financial institutions.

653. In terms of the list of indicators, there also appears to be uneven application of the existing requirement as financial institutions develop individual lists, some more extensive than others. Some financial institutions only adopt the list of indicators provided by the APML; others apply a more extensive list provided by the parent bank or company, if the financial institution is a branch or subsidiary of a foreign bank or company. While most financial institutions do use the lists to identify unusual or suspicious transactions, if a situation is not covered on the list, it will not be identified as unusual or given special attention.

654. Certain non-banking financial institutions noted that the list of indicators provided by the APML was not indicative of the practice of their industry and is not realistic to business activities in the sector, making it difficult to determine what is unusual and expected to be reported.

655. The NBS Voluntary Pension Funds Supervision Department found during its last on-site inspection that Voluntary Pension Funds failed to utilize the list of indicators altogether. The NBS Voluntary Pension Funds Supervision Department indicated that it has plans to address the deficiency.

Recommendation 21

Special attention to countries not sufficiently applying FATF Recommendations (c. 21.1 & 21.1.1), examination of transactions with no apparent economic or visible lawful purpose from countries not sufficiently applying FATF Recommendations (c.21.2)

656. Article 13, Section 2 of the previous AML Law authorised the Minister of Finance to establish a list of countries that do not sufficiently apply AML/CFT international standards, which was included in Article 16[106] of the AML Book of Rules. At the time it was adopted, the list of countries was compiled after analysis on which countries have AML/CFT legislation in place, an established FIU and a variety of other criteria.

657. Since the issuance of the list, it has not been updated, as that would require an amendment of the AML Book of Rules. The list also does not take into account recent statements issued by the FATF on countries of concern. Serbian authorities have noted their awareness that the list needs revision and have advised the evaluation team that the revision is undergoing, with sub-laws being drafted. Adoption is expected in October 2009.

658. The Law refers to two types of lists - Articles 28.1(1), 29.1, and 88.1(20), refer to the list of countries which are “not listed as complying with the international standards against money laundering and terrorism financing that are at the level of European Union standards or higher”, whereas Articles 24.2, 32.1(2) and 88.1(18) refer to the list of countries which are “listed as not complying with the standards against money laundering and terrorism financing”. The authorities indicate that “these lists can be called white and black”. The first one is the so called white list, and the second is the black one. The list of countries from the Book of Rules can be used in this manner until the new regulation is adopted”.

659. Article 28 of the AML/CFT Law requires obligors to take enhanced customer due diligence actions and measures besides those laid out in Article 8 (CDD requirements) when establishing a LORO correspondent relationship with a bank or similar institution having its seat in a foreign country which is not listed as complying with the international standards against money laundering and terrorism financing that are at the level of European Union standards or higher. This list shall be established by the Minister, at the proposal of the APML and based on the data held by international organisations.

660. At the time of the on-site visit, the only list available to financial institutions was the list published in the AML Book of Rules

[106] Article 16 reads as follows: the countries which according to the findings of international organisations and of the APML do not apply standards in combat against money laundering are as follows:

1) countries of African continent, except for the Arab Republic of Egypt, the Republic of South Africa and Mauritius;
2) countries of Asian continent, except for the State of Israel, Japan, the Republic of Korea, the Republic of Singapore, the Kingdom of Thailand, the Republic of Georgia, the Republic of Indonesia, Bahrain, the Republic of Lebanon, Malaysia, the Republic of Turkey, the State of Qatar and United Arab Emirates;
3) the Republic of Moldova.

661. Article 29 of the AML/CFT Law lays out the additional information that a bank or other similar institution having its seat in a foreign country which is not listed as complying with international AML/CFT standards at the European Union level or higher, the obligor shall obtain additional data, information and/or documentation, obtain written authorization by a responsible person in the obligor, and inspect the documents provided. The following additional information is required:

1) date of issue and period of validity of the banking license as well as the name and seat of the competent body of the foreign country which issued the license;
2) description of internal procedures concerning the prevention and detection of money laundering and terrorism financing, and particularly the procedures regarding customer due diligence, sending of data on suspicious transactions and persons to the competent bodies, record keeping, internal control, and other procedures adopted by the bank or any other similar institution in relation to the prevention and detection of money laundering and terrorism financing;
3) description of the system for the prevention and detection of money laundering and terrorism financing in the country of the seat is located, or where the bank or other similar institution has been registered;
4) a written statement of the responsible person in a bank stating that the bank or other similar institution does not operate as a shell bank;
5) a written statement of the responsible person in a bank stating that a bank or a similar institution does not have any business relationships and or transactions with a shell bank;
6) a written statement of the responsible person in a bank stating that the bank or other similar institution in the state of seat or in the state of registration is under supervision of the competent state body and that it is required to apply the regulations of such state concerning the prevention and detection of money laundering and terrorism financing;

662. Some financial institutions indicated that they maintain their own “black list” of countries that do not apply adequate AML/CFT controls. Usually the list is a combination of the list provided in the AML Book of Rules (which is out of date) and the parent institution. Oftentimes a financial institution will refuse to begin a business relationship with a customer from a “black list” country.

663. Insurance companies indicated that they did not conduct business activities with foreign countries, and therefore have not matched any list with life insurance clients.

664. Where relevant international bodies (FATF and others) have issued statements or findings about countries with inadequate AML/CFT controls, the APML website publishes the statements issued and notified financial institutions. Serbian authorities provided the assessment team with examples of the statements issued on the website, which provide a direct link to the statement of the international body.

665. The APML website has been set up as an interactive tool for helping to implement the AML/CFT Law. Financial institutions have the ability to ask questions and receive answers through the website and Serbian authorities have indicated that obligors seek information on the website daily. Financial institutions also confirmed that they did seek information on the APML website as the content changed from time to time and new information becomes available

666. Section 14 of the Decision on KYC Procedure for Banks requires banks to supervise transactions conducted by risky clients through their accounts on an ongoing basis. It defines risk factors as: home country of the client, home country of the majority founder, and/or owner of the client or a person that in any other manner exercises the controlling influence over the management and running of clients’ affairs, regardless of the position of such country on the list of non-cooperative countries and territories issued by the Financial Action Task Force (FATF), on

the list issued by the Administration for the Prevention of Money Laundering or the list of countries that the bank deems risky based on its own appraisal.

667. As described above in relation to R.11, Section 13, Paragraph 1 of the Decision on KYC Procedure requires certain obligors to draw up a report for internal use and submit to the authorized person when an obligor suspects there is risk attached to the client or its transaction. Paragraph 2 of the same section states that when an authorized person based on the report from paragraph 1 of this Section or information obtained otherwise determines that a certain transaction is suspicious, he/she shall proceed in accordance with the Law, and if he/she determines that a certain transaction is not suspicious, he/she shall make a note to that effect. Capital market participants, bureaux de change, persons dealing with postal communications, money remitters, or foreign exchange operators are not included as obligors for these provisions.

668. *Specific to the Banking Sector:* Prior to the adoption of the Decision on KYC Procedure, Section 16 of the Decision on KYC Procedure for Banks, required banks to prepare an internal report if a bank officer determines a transaction appears suspicious. A bank makes a determination based on risk factors, which are set out in the decision. Each internal report must include information on the client and transaction to allow the authorized person to determine if the transaction is suspicious.

Ability to apply counter measures with regard to countries not sufficiently applying FATF Recommendations (c. 21.3)

669. Serbian authorities have indicated that they are able to apply appropriate countermeasures where a country continues not to apply or insufficiently applies the FATF Recommendations by referring to Article 29 of the AML/CFT law which limits the establishment of LORO correspondent relationship or the continuation of business relationships with a bank or similar institution whose seat is located in a foreign country if that bank or any other similar institution has not established a system for the prevention and detection of money laundering and terrorism financing or is not required to apply the regulations in the area of prevention and detection of money laundering and terrorism financing in accordance with the regulations of the foreign country in which it has its seat, or where it is registered.

670. Furthermore, as described above, Article 28 of the AML/CFT Law calls for enhanced due diligence, including when establishing a LORO correspondent relationship with a bank or similar institution having its seat in a foreign country which is not listed as complying with the international standards against money laundering and terrorism financing that are at the European Union standards or higher.

3.6.2 Recommendations and comments

Recommendation 11

671. As the AML/CFT Law only requires financial institutions to pay special attention to all complex, unusual large transactions or unusual patters of transactions that have no apparent or visible economic or lawful purpose when developing a list of indicators, the evaluation team has concerns that it is possible that financial institutions will only pay attention to unusual transactions when developing indicators and may not pay attention to unusual transactions that are not captured in the list of indicators.

672. The evaluation team finds the list of indicators to be insufficient to meet the requirements of Recommendation 11. The Decision on KYC Procedure does meet the requirements of Recommendation 11 in regards to paying special attention to unusual transactions and examining the background and purpose of transactions and setting forth those finding in writing, however it is not applicable to all financial institutions. It is thus recommended that:

- Serbian authorities should ensure that capital market participants, bureaux de change, persons dealing with postal communications, money remitters, and foreign exchange operators are required to pay special attention to unusual transactions, examine the background and purpose of transactions and set forth those findings in writing.

- Serbian authorities should ensure that financial institutions, particularly those outside of the banking sector, are capable of adequately identifying unusual transactions, particularly through additional training and developing better lists of indicators that match the market activities of the financial institution.

Recommendation 21

673. Prior to the adoption of the AML/CFT Law, only banks were subject to paying special attention to business relationships and transactions with persons from or in countries that do not sufficiently apply FATF standards. The assessment team was unable to evaluate the effectiveness of the new controls set out in the AML/CFT Law. It is thus recommended that :

- Serbian authorities should extend the Decision on KYC Procedure requirements to examine the background and purpose of unusual transactions and set forth those finding in writing to capital market participants, bureaux de change, persons dealing with postal communications, money remitters, and foreign exchange operators.

- Serbian authorities should ensure that the lists of countries that do not sufficiently apply AML/CFT international standards are kept up to date and that financial institutions are aware of when changes are made. Serbian authorities should also issue the "white list" described above, as financial institutions may have difficulties implementing provisions of the AML/CFT Law without it.

3.6.3 Compliance with Recommendations 11 and 21

	Rating	**Summary of factors underlying rating**
R.11	**PC**	• Requirements of the Decision on KYC Procedure to pay special attention to all complex, unusual large transactions and examine the background of the unusual transaction and set for the finding in writing, are not applicable to all financial institutions. • Uneven use of the list of indicators across financial institutions, with some financial institutions failing to use the list altogether
R.21	**LC**	• Requirements for financial institutions to examine as far as possible the background and purpose of transactions which have no apparent economic or lawful purpose, and make written findings available for authorities are not applicable to all financial institutions. • No demonstration of adequate implementation of new requirements of the AML/CFT Law.

3.7 Suspicious Transaction Reports and Other Reporting (R. 13, 14, 19, 25 and SR.IV)

3.7.1 Description and analysis

Recommendations 13 & SR.IV

Requirement to Make STR-s on ML/FT to FIU (c. 13.1, c.13.2 & IV.1)

674. Article 37 of the AML/CFT Law establishes the reporting regime for all obligors defined by the Law, financial institutions being among them. Paragraph 2 of this Article requires obligors to file a report to the APML "whenever there are reasons for suspicion of money laundering or terrorism financing with respect to a transaction or customer, before the transaction" and the report shall indicate "the time when the transaction is to be carried out". In a case of urgency, such report may be delivered also by telephone, in which case it shall consequently be sent to the APML in writing, but no later than the next business day"[107].

675. Money laundering is defined in Article 2 of the AML/CFT Law as any one of the following acts:

1) Conversion or transfer of property acquired through the commission of a criminal offence;
2) Concealment or misrepresentation of the true nature, source, location, movement, disposition, ownership of or rights with respect to the property acquired through the commission of a criminal offence;
3) Acquisition, possession, or use of property acquired through the commission of a criminal offence;

676. The same Article 2 of the AML/CFT Law defines terrorism financing as providing or collecting of funds or property, or an attempt to do so, with the intention of using them, or in the knowledge that they may be used, in full or in part:

1) In order to carry out a terrorist act;
2) By terrorists;
3) By terrorist organisations.

The definition of terrorism financing also incorporates the acts of aiding and abetting in the provision or collection of property, regardless of whether a terrorist act was committed or whether property was used for the commission of a terrorist act.

677. Pursuant to Articles 6 and 50 of the Law, obligors are required to develop specific lists of indicators for the identification of persons and transactions with respect to which there are (or rather, may be) reasons for suspicion of money laundering or terrorism financing. The Law also provides that the Minister may specify a requirement to include certain indicators to those lists. Such requirement has been established by Article 7 of the AML Book of Rules[108] defining that, when developing such lists, obligors should incorporate into them the indicators of suspicious transactions defined by the APML and posted on its official website. As of the time of the assessment, the APML had posted on its website separate lists of indicators of suspicious transactions for: a) banks, b) exchange bureaus, c) insurance companies[109], d) stock market

[107] It is worth mentioning that the reporting requirement set out in the Previous AML Law referred to transactions or individuals suspected to be related to money laundering only (article 8) and provided for a similar obligation to make a list of indicators for the identification of suspicious transactions (article 11). The authorities had taken certain measures under the Previous Law to guide obligors in identifying suspicious transactions, some of which are still in force.

[108] Which refers to articles 11 (2) and article 28(4) of the previous AML Law.

[109] But, presumably, not for insurance intermediaries.

exchange[110], e) leasing companies, and f) wire transfers. For the other types of obligors no lists are defined. Such lists are documents issued by the Director of the APML and carry an issuance identification number assigned by the APML.

678. The potential problem with the legal interpretation of the reporting obligation is that the AML/CFT Law is very specific about the grounds and mechanisms for the obligors to form and report ML/FT suspicions. Particularly, obligors are bound to:

a) report to the APML whenever there are reasons for suspicion of ML or FT (Article 37(2))
b) develop a list of indicators to recognise persons and transactions with respect to which there are reasons for suspicion of ML or FT (Article 50(1))
c) apply the said list of indicators when determining whether there are reasons for suspicion of ML or FT (Article 50(3)).

679. This might be interpreted in a way that , whenever the respective indicator describing a behaviour or a pattern of activities/transactions is not articulated and incorporated in the list of indicators to recognise suspicious persons and transactions, one might question whether obligors are required to report any suspicions at all in the absence of a formal basis for forming such a suspicion. However the authorities are absolutely confident that such interpretation is not possible in the Serbian context, and that the requirements to develop lists of indicators and to apply those lists for recognizing suspicious transactions are but ancillary measures aimed at effective implementation of the general reporting obligation stipulated under Article 27 of the Law.

680. From the standpoint of the AML/CFT Law, the requirement that obligors incorporate the indicators developed by the APML into their own list of indicators for identification of suspicious transactions is not enforceable since no sanctions are determined for failure to do so[111]. On the other hand, among various pieces of sectoral legislation providing for enforcement and sanctioning powers of supervisors, there are some which do not directly or indirectly stipulate for the power to sanction for the failure to meet the requirements of the AML Book of Rules. This means that obligors in principle have full discretion in determining the contents of their own lists of indicators, which again, are the universal basis for recognising the persons and transactions with respect to which there are reasons for suspicion of ML or FT.

681. Furthermore, there is lack of clarity as to how the lists of indicators developed by the APML are uniquely and unambiguously identified to be exactly the ones, which must be taken by obligors as basis for developing their own lists; the reference in the AML Book of Rules is to the availability of the availability of those lists on website of the APML, which is a dynamic source and may change in contents from time to time. This lack of exact identification (which would be reached by means of, for example, publication of the lists in the RS Official Gazette, and/or awarding them official, publicly accessible reference numbers) might create further confusion on the reference to and usage of the said lists.

682. Given the fact that the said lists of indicators are considered to be an important constituent in the process of recognising and reporting suspicious transactions, the assessors believe that the authorities should provide specific guidance on the legal definition of the reporting obligation, so as to prevent its possible restrictive interpretation, as well as to take further measures to ensure that obligors understand it in the broadest meaning of the AML/CFT Law and pertinent regulations/ guidelines.

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[110] If this term refers to the stock exchange market as defined by Article 10 of the Law on Securities Market, then these indicators do not refer to the participants of the over-the-counter market and some professional investors, such as pension and investment funds and their management companies.

[111] The respective provisions of the Law – Article 88 Paragraph 1(32) and 89 Paragraph 1(12) – are quite specific about sanctioning obligors for their failure to develop and apply their own lists of indicators, but not for the failure to develop them in the manner stipulated by the Book of Rules.

No Reporting Threshold for STR-s (c. 13.3 & c. SR.IV.2)

683. Article 37 of the AML/CFT Law does not specify any threshold for reporting suspicious transaction reports to the APML. Paragraph 3 includes the reporting of attempted (planned) suspicious transactions.

Making of ML/FT STR-s Regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2)

684. Serbian legislation applies the "all-crime" approach. That is, suspicious transaction reports are filed regardless of whether they are thought, among other things, to involve tax matters, whereas tax evasion is a criminal offence under Article 229 of the Criminal Code.

Additional Elements – Reporting of All Criminal Acts (c. 13.5)

685. See the answer above.

Effectiveness and efficiency (R. 13 & SR. IV)

686. The lists of indicators to be developed by obligors for the identification of persons and transactions with respect to which there are reasons for suspicion of money laundering or terrorism financing are an important element underlying the effectiveness of the suspicious transaction reporting obligation. Such lists should be based on the ones developed by the APML and posted on its website. Nevertheless, as of the time of the assessment, the APML's lists were neither complete (no lists were developed for insurance intermediaries, professional investors such as pension and investment funds and their management companies), nor clearly identifiable (by means of an official, publicly accessible reference number, and/or publication in an official source). Moreover, there was insufficient clarity as to the availability and applicability of sanctions for the failure to incorporate the lists of the APML into individual lists of reporting entities, which in fact are the widely used practical basis for ensuring proper implementation of the reporting obligation. The lists developed by financial institutions, in turn, seem to be a product of a "copy and paste" exercise from the ones provided by the APML. It is unlikely that the financial institutions, for which the APML had not developed lists of indicators, would have developed such lists by themselves.

687. One financial institution met on-site asserted to have developed some indicators for identification of suspicious transactions over and above those articulated by the APML's list of indicators. While some of these additional indicators were just a rewording of the ones presented in the APML's list of indicators, others appeared to be obviously contradicting the reporting requirement set out by the Law: an example of such indicator is "every suspicious cash transaction of deposit or withdrawal in local currency, foreign currency or securities, which exceeds the value of EUR 15.000...". That is, according to this indicator, cash transactions are to be recognized as suspicious only if exceeding EUR 15.000. This demonstrates a major lack of proper understanding of the reporting requirements under the Law even among banks, which are believed to be more "advanced" in terms of implementation of the national AML/CFT framework.

688. Officials from the NBS advised that the APML is regularly provided with on-site reports of inspections in banks and exchange offices, and thus it can conclude on whether these obligors have developed adequate lists of suspicious indicators. Also, the NBS publishes on its website analysis of the data obtained from AML/CFT questionnaires, which include information on whether banks have developed adequate lists of indicators. However, the assessors believe that the said measures are not sufficient for ensuring effective implementation of the reporting obligation evenly by all financial institutions. This conclusion is supported by the lack of statistics of supervisory action (including application of sanctions) for the failure to develop such lists of indicators.

689. The AML Book of Rules, which is the only implementing regulation in terms of the reporting regime, does not address issues related to reporting suspicions on terrorist financing. The lists of indicators developed by the APML, in turn, do not differentiate between the indicators for identifying ML-related suspicions and those related to the financing of terrorism.

690. The absence of STR reporting forms and pertinent instructions for certain obligors practically makes for them very difficult, if not impossible, to report suspicious transactions, should they wish to do so.

691. The authorities provided statistic on STR-s submitted by obligors over the period of 2005-2009 (first three months) (see Annex IV). The statistics reveal that around 97-99% of all STR-s have been filed by banks. Also, there has been a constant and significant increase in the number of submitted STR-s (totalling 351% in 2006, 130% in 2007, and 101% in 2008). Such increase could be attributed to, *inter alia*, publication of the lists of indicators of suspicious transactions by the APML and other measures aimed at enhancing awareness of the obligor community on their reporting obligation.

692. The apparently low level of STR reporting by non-bank financial institutions, both in absolute numbers and in comparative terms, may also reflect lower risks run by, for example, insurance and leasing companies, which claim to refrain from cash transactions and to channel all financial operations through banks. Life insurance is still in the process of development and growth (in 2008, the share of life insurance in total premiums is 12.2% and non life 87.8%). However, along with a positive, growing dynamics of STR-s made by banks, there is a general perception of their low quality – in many cases STR-s being just a "by-product" of over-threshold reports – which again is indicative of the insufficient level of understanding and implementation of the reporting requirement.

693. No STR-s have been made relating to suspicions on terrorism financing. As this reporting obligation has recently been introduced, it is too early to assess effectiveness.

Recommendation 14

Protection for making STRs (c. 14.1)

694. According to Article 75 Paragraph 1 of the AML/CFT Law, claims for damages done to customers or third parties shall not be permitted against obligors and their employees, unless it has been proven that damages have been caused intentionally or through gross negligence, when they:

a. obtain and process data, information and documentation about customers;
b. send to the APML data, information and documentation about customers;
c. execute the order of the APML to temporarily suspend the execution of a transaction or to monitor the financial transaction of a customer
d. temporarily suspend a transaction (as prescribed by Article 56(8) of the AML/CFT law).

695. Article 75 Paragraph 1 covers both obligors and employees. Obligors are defined in article 4 of the AML/CFT law and this protection clearly extends to all financial institutions falling under the scope of the AML/CFT Law. The notion of employees seems to cover every staff in contractual relation with the financial institutions, including management staff.

696. Furthermore, under Article 75 Paragraph 2, employees are protected from disciplinary and criminal liability for breach of obligations to keep a business, banking or professional secret when:

a. they send data, information and documentation to the APML in accordance with the law;
b. when they process data, information and documentation in order to examine customers or transactions with respect to which there are reasons for suspicion of money laundering or terrorism financing.

697. Hence, employees of the reporting entities are protected from both disciplinary and criminal liability for breaches. However financial institutions are not protected from criminal liability in this context.

698. The STR reporting obligations (and the protections granted) do not require that the reporting entity knows the nature of the underlying criminal activity, nor do they require establishing whether there was in fact illegal activity; therefore, the respective requirement of Criterion 14.1 is not applicable.

699. The evaluation team was not informed of any cases where the protection under article 75 had been applied nor did the industry express any specific concerns in this matter.

Prohibition against tipping off (c.14.2)

700. According to article 73 paragraph 1 of the AML/CFT law, obligors and their employees, including the members of the governing, supervisory and other managing bodies, or any other person having access to the records of data kept by obligors pursuant to article 81 (e.g. records on customers, business relationships and transactions; records of data sent to the APML; records of orders for a temporary suspension of execution of a transaction, etc) are prohibited from disclosing to their customers or any other person:
a. that the APML was sent data, information and documentation on a customer or transaction with respect to which there is a suspicion of ML or FT;
b. that the APML has issued an order for a temporary suspension of transaction;
c. that the APML has issued an order to monitor the financial operations of the customer;
d. that proceedings against the client or a third party have been initiated or may be initiated in relation to ML or FT.

701. As indicated earlier, obligors are defined in Article 4 of the AML/CFT law. It is to be noted that the requirements under Article 73 specifically refer, in addition to obligors and employees, to the "members of the governing, supervisory and other managing bodies, and any other person" and 'any other person having access to specified data" as opposed to Article 75 (1).

702. This prohibition does not appear to apply to cover cases where an STR/related information is being considered but has not yet been submitted to the APML.

703. There are several exceptions, as the prohibition does not apply to the situations :
a. when the data, information and documentation obtained and maintained by the obligor are required to establish facts in criminal proceedings, and if such data is required by the competent court;
b. if the data is requested by the supervisory body in the context of supervision of the implementation of the provisions of the law;
c. if the lawyer, auditing company, licensed auditor, legal or natural person offering accounting services or tax services attempt to dissuade the customer from illegal activities.

704. The Serbian authorities indicated that the first two above-mentioned cases are exemptions enabling the obligors to disclose information upon court order or to the supervisory body in its

supervisory capacity and should not be read as authorizing obligors and employees for example, to inform the customer about disclosures to the FIU once a court or supervisory body has requested such data (due to the wording of the law that the prohibition on tipping off does not apply to the mentioned situations)[112]. Though such a reading could be derived from a literal interpretation of the law, this would appear to be contrary to the lawmaker's intention. Nevertheless, one could raise the question whether, considering the drafting, this provision could open the door to potential misuses and, in cases of tipping off of the customer, the authorities' interpretation could be challenged. As the law had only recently entered into force, it was too early to draw conclusions on how the respective provisions might be applied in everyday practice. Thus, the evaluation team recommends to clarify this matter so as to provide for legal certainty.

705. The infringement of the above prohibition is an economic offence under the AML/CFT law (Article 88(36)) and legal persons shall be punished with a fine between RSD 500.000 to 3.000.000. However, the AML/CFT Law does not provide for any sanctions when the no tipping off rule is breached by employees of obligors, including the members of the governing, supervisory and other managing bodies.

706. No guidance has been provided to financial institutions on situations that, when having formed a suspicion on transactions to be related to ML/FT, they should take into account the risk of tipping off when performing the customer due diligence process. In such situations, if the institution reasonably believes that performing the CDD process will tip off the customer or potential customer, it may choose not to pursue that process and should file an STR. Institutions should ensure that their employees are aware of and sensitive to these issues when conducting CDD.

707. The evaluation team has not been informed of any cases of infringements of this provision nor related sanctions applied.

Additional element – Confidentiality of reporting staff (c.14.3)

708. Article 74 (1) of the AML/CFT Law establishes that the data, information and documentation obtained by the APML under the Law shall be considered an official secret. Breaches of the official secrecy provision by an official is a criminal offence under Article 369 of the Criminal Code which is sanctioned by up to five years imprisonment and, when committed for gain, by up to eight years imprisonment. It would also apply to disclosures after a person is not longer employed with the APML.

Recommendation 25 (c. 25.2 – feedback to financial institutions on STR-s)

709. Article 60 of the AML/CFT Law provides that the APML shall inform obligors and lawyers having filed suspicious transaction reports, as well as state bodies having requested initiation of ML/FT-related analysis of the results brought about by their reporting. Such feedback can take the form of a) data on the number of reported STR-s, b) results supervening such reporting, c) information on ML/FT techniques and trends, as well as d) description of cases from the practice of the APML and other competent state bodies. In other words, the Law stipulates for general feedback only.

710. Within the context of general feedback, the assessment team was provided two work reports issued by the APML on December 7, 2007 and March 30, 2009, covering the periods of respectively January 1, 2007 – November 30, 2007 and January 1, 2008 – December 31, 2008. Both documents contain certain statistics on the number of over-threshold cash transaction and

[112] The language of the respective provision of the 3rd EU Direction (Article 28) is that "the prohibition … shall not include disclosure to the competent authorities", which is somewhat different from lifting the prohibition in the situation when the data is requested by competent bodies.

suspicious transaction reports made to the APML, as well as on the reports made by the Customs Administration on cross border transportation of cash and valuables.

711. The annual reports further provide a per obligor breakdown of submitted data, the number of cases opened on basis of analysis, and a per agency breakdown of the references made to relevant state agencies. However, the reports are silent about how many of the received STR-s, after due analysis by the APML, turned into referrals to law enforcement agencies, and eventually how many of them ended up in convictions. That is, obligors are not provided an assessment of the quality of their reporting and are not practically guided to enhance that quality. Also, the statistics on the STR-s received is not cross-referenced with the respective results so as to identify the areas, where ML/FT is being successfully detected.

712. The reports also contain information on international financial intelligence exchange with foreign FIU-s, particularly the total number of requests made to and received from them. They go further with the description of the measures taken by the APML in the development of relevant legislation, in the improvement of its internal procedures, and staff training.

713. It should be noted that no information on current ML/FT techniques, methods, and trends (typologies), or sanitized examples of actual money laundering cases analyzed by the APML is provided to financial institutions and DNFBP-s either within the annual reporting framework, or through other communication - the APML refers to having had regular meetings with obligor and lawyer community for providing general feedback, that is, statistics, trends, typologies by means of immediate communication and presentations, but the representatives of the community do not confirm the practice of such regular meetings, they recall one or two recent meetings only. And finally, the annual reports, although being public documents, are addressed to the Government and would be made available to the public only if requested. That is, there is no proactive initiative of the APML to ensure publicity and availability of the document to as many stakeholders as possible.

714. None of the other supervisory bodies is known to provide any type of feedback to the obligors and lawyers.

715. The authorities also appear to provide some specific feedback to the obligors. Thus, when an STR is submitted electronically, the system provides the obligor with information (PDF or XML format) that the report is correct in terms of form, or that it is not, so a correction or supplement is required. If the report is correct, the system generates an ID of the report and records date and time when the STR is received. When an STR is submitted in paper form, the check is done on the spot, and if the STR is correct, a copy of it is certified and returned to the obligor, and the copy to be kept by the APML is awarded a reference number and date when it was received. If the STR is not correct, it is returned to the obligor for correction and/or adjustment. [113]

716. In conclusion, the feedback provided by the APML is limited to: a) provision of an acknowledgment of the receipt of report, and b) preparation of annual reports on activities of the APML, addressed to the government, but not widely disseminated among stakeholders. That is, the requirements of the AML/CFT Law[114] concerning provision of general feedback, particularly information on ML/FT techniques and trends (typologies), as well as description of cases from the practice of the APML and other competent state bodies (sanitized cases), is not effectively implemented and relevant information is not shared with the obligor and lawyer community either within the annual reporting framework, or through other communication.

717. An overwhelming majority of the representatives of the private sector indicated the lack of both feedback as a major bottleneck and issue of concern with respect to appropriate

[113] The same mechanism is available for CTR-s.
[114] And the underlying requirements of the Criterion 25.2.

implementation of their reporting obligation. The lack of guidance impacts on the quality of STR-s, due to the fact that obligors are prone to tentatively report anything that might "create problems" with supervisors if not reported.

Recommendation 19

Consideration of Reporting of Currency Transactions above a Threshold (c. 19.1)

718. As indicated by the authorities, the reporting of currency transactions above a threshold was established at the outset of the implementation of AML measures, i.e. in mid 2002, when the first Law on the Prevention of Money Laundering was adopted. The CTR reporting system was introduced upon considerations that the cash economy was a serious issue and required a control of the cash flows.

719. Hence, Article 37 Paragraph 1 of the AML/CFT Law establishes that obligors should file with the APML reports on any cash transaction amounting to the RSD equivalent of EUR 15.000 or more, immediately after such transaction has been carried out and no later than three business days following the transaction. Article 17 of the AML Book of Rules defines the cases where certain obligors are exempt of the obligation to report cash transactions amounting to or above that threshold. Particularly, exemptions are stipulated for public enterprises, direct and indirect users of the state budget funds, local authorities and organisations of compulsory social insurance, which are included in the system of the treasury's consolidated account. There are exemptions also for certain types of transactions, such as transfer of funds from one account of the client into another kept with the same obligor, conversion of funds on the client's account into another currency, etc.

720. As regards the effectiveness of the CTR reporting system, both the results of supervision[115] and anecdotal evidence demonstrate that over threshold reporting is perceived by both supervisors and obligors and their customers as something "equalled" to STR reporting. The failure to (timely) provide the APML data on one or several interrelated cash transactions is in the first place among irregularities identified in the course of on-site inspections, especially in relation to transactions carried out through exchange offices. On the other hand, there is no data as to how many referrals have been made to law enforcement agencies based on APML's analysis of the CTR database, in order to assess their usefulness on one hand, and the APML's efficiency in using that data on the other hand.

721. The absence of CTR reporting forms and pertinent instructions for certain obligors practically makes for them very difficult, if not impossible, to report over threshold transactions should they wish to do so.

Additional Elements - Computerized Database for Currency Transactions above Threshold and Access by Competent Authorities (c. 19.2)

722. All data on cash transactions are imported into a computerized database. The data is transferred to the APML database electronically, through the TMIS (Transaction Management Information System), which allows direct import of data from the obligors via a secure website. Data submitted on hard copies are filled in electronic forms and stored in the database. The APML database of CTR-s can be searched for forty different criteria, including name and surname, ten largest amounts, ten smallest amounts etc.

723. Access of the competent authorities (particularly courts, public prosecutor, police, other law enforcement authorities, the National Bank, the Securities Commission, and the Privatization

[115] One of the main types of irregularities identified during on-site inspections is the obligors' failure to file reports on one or several interrelated cash transactions.

Agency) to the information contained in the computerised database of the APML is provided for and regulated by Articles 58 and 59 of the AML/CFT Law. The Law also stipulates for sharing information from the database with foreign FIUs, both proactively and based on a grounded request.

Additional Element—Proper Use of Reports of Currency Transactions above Threshold (c. 19.3)

724. Certain employees of the APML have direct access to the database based on their job classification and the authorizations regulated by APML rules of operation. Logging into the system is performed through digital certificates, and work in the database is monitored on user name basis. At every moment it is possible to see who has accessed the system, and what actions have been taken (for example, what queries have been made).

3.7.2 Recommendations and comments

Recommendation 13 and Special Recommendation IV

- Provide specific guidance on the legal definition of the reporting obligation, so as to prevent its possible restrictive interpretation, as well as to take further measures to ensure that obligors understand it in the broadest meaning of the AML/CFT Law and pertinent regulations/ guidelines.

- Provide for appropriate implementation of the reporting requirement throughout the obligor community, by means of ensuring that all financial institutions have developed their own lists of indicators for recognising ML/FT related suspicious transactions.

- Revise the existing lists of the indicators developed by the APML to guide obligors in recognising ML/FT related suspicious transactions; develop such lists for all financial institutions and make such lists clearly identifiable (by means of an official, publicly accessible reference number, or publication in an official source).

- Continue efforts aimed at developing and introducing a well-structured coordinated outreach programme (for example by means of series of seminars, regular training sessions for compliance officers, etc) for the financial institutions to fully understand their reporting requirements, in particular the new FT reporting requirement.

Recommendation 14

725. It is recommended to the Serbian authorities:

- to make the necessary legal amendments to ensure that:
    (a) financial institutions are protected from criminal liability for breach of any restriction on disclosure of information if they report their suspicions in good faith to the APML;
    (b)
    (c) expand the tipping-off provisions to include not only those cases where a STR or related information has been reported but also when it is in the process of being reported to the APML.

- to ensure that these provisions are appropriately implemented, through issuing adequate guidance to obligors concerning tipping off so that financial institutions and their employees fully understand the scope of the safe harbour and tipping off requirements and are aware of and sensitive to these issues when conducting CDD.

Recommendation 25 (c. 25.2 [financial institutions and DNFBP-s])

- Ensure implementation of the requirements of the AML/CFT Law concerning provision of general feedback, i.e. information on ML/FT techniques and trends (typologies), as well as sanitized cases from the practice of the APML and other competent state bodies; share information with financial institutions either within the annual reporting framework, or through other communication.

- Proactively seek to make the APML's annual reports available to the widest scope of stakeholders.

- Consider providing specific feedback (other than the acknowledgment of the receipt of report) to enable financial institutions to get an idea of the quality of their reporting, and statistics on received STR-s cross-referenced with the respective results so as to identify the areas, where ML/FT is being successfully detected.

- Ensure participatory approach to the provision of feedback, by involving other competent state authorities, for example, law enforcement agencies to regularly provide and disseminate (possibly through the APML) data on investigated cases, convictions, confiscations, etc; participate in the development of typologies and sanitized cases.

Recommendation 19

- Establish mechanisms for assessing: a) usefulness of the CTR database, and b) efficiency of the use of the CTR database by the APML.

3.7.3 Compliance with Recommendations 13, 14, 19, 25 and Special Recommendation SR.IV

	Rating	Summary of factors underlying rating
R.13	**LC**	• Not all financial institutions have lists of indicators for recognising ML related suspicious transactions. • The lists of indicators developed by financial institutions are copied from those of the APML and, in some cases, contain contradictions with applicable legislation. • The lists of indicators developed by the APML are not complete, clearly identifiable, need revision in terms of contents. • Serious lack of understanding of the reporting requirements among financial institutions, resulting in insufficient effectiveness of the reporting system; low level of STR reporting by non-bank financial institutions.
R.14	**PC**	• Protection from criminal liability not extended to financial institutions; • Issues with the scope of the tipping-off provision as it does not include cases where an STR and related information is in the process of being reported to the APML. • The AML/CFT Law does not provide for any sanctions when the no tipping off rule is breached by employees of obligors, including the members of the governing, supervisory and other managing bodies.
R.19	**LC**	• Uneven implementation of the over-threshold reporting requirement by obligors, lack of proper understanding of the CTR reporting

		obligation. • Lack of CTR reporting forms and instructions for certain types of obligors (e.g. money transfer services, casinos etc).
R.25	**PC**	• Lack of provision of adequate general feedback (in terms of information on ML/FT techniques and trends (typologies) as well as sanitized cases); available general feedback is not proactively disseminated. • No participatory approach to the provision of feedback (involvement of other competent state authorities besides the APML) • Lack of feedback is seen as a major hindrance for effective implementation of the AML/CFT requirements in general, and of the reporting obligation in particular.
SR.IV	**LC**	• Financial institutions do not have lists of indicators for recognising FT related suspicious transactions. • The APML has not developed lists of indicators for recognising FT related suspicious transactions. • Serious lack of understanding of the reporting requirements among financial institutions, resulting in insufficient effectiveness of the reporting regime.

Internal controls and other measures

3.8 Internal Controls, Compliance, Audit and Foreign Branches (R.15 and 22)

3.8.1 Description and analysis

Recommendation 15

Internal AML/CFT procedures, policies and controls

726. Article 6 of the AML/CFT Law requires all obligors to take actions and measures for the prevention and detection of ML and FT, which shall include, among other: CDD, record retention, provision for a regular internal control of the implementation of the obligations under the law, the development of list of indicators to detect suspicious transactions, and the reporting obligation to the APML. There does not seem to be a requirement to establish and maintain internal procedures, policies and controls which cover the detection of unusual transactions.

727. Section 18 of the Decision on KYC Procedure requires certain obligors to organize the internal control of the application of the Law and the Procedure in a manner which enables realistic evaluation of the obligor's risk exposure in all its organisational units regardless of how far an organisational unit is located from the seat of the obligor.

728. The AML/CFT Law and Decision on KYC Procedure, and to some extent other sector-specific laws and regulations use the term "internal control" to refer to internal procedures, policies, and controls to prevent ML and FT and also to refer to internal audits. In the cases described in this section, the evaluation team believes that the terms "internal control" refers to the former.

729. The AML Book (on the basis of requirements of Article 11, Section 2 of the previous AML Law) requires that the obligors provide and organize internal audit of the tasks undertaken in

compliance with the Law and that they provide professional training for the employees performing compliance duties.

730. *Specific for the Banking Sector:* Article 82 of the Law on Banks states that members of the bank's executive board shall be responsible for performing internal control of business activities of the bank at all levels, in compliance with the established system of internal control. The bank shall organize and implement internal control system procedures so as to enable continuous monitoring and measurement of risks which may have an adverse impact on realization of the established business aims of the bank, such as: credit risk, risk of the debtor country, foreign currency risk, market risk, interest rate risk, liquidity risk, operational, and other types of risks. The bank shall develop the internal control system so as to enable timely evaluation of the existing and new risks, including the risks that have not been supervised before and the risks beyond the banks' control (external risks), as well as the supervision of those risks which will reduce to the lowest possible level the adverse impact on the business activities and on the safety and soundness of the bank. The National Bank of Serbia may prescribe detailed requirements and manner of organizing and implementing of the internal control system.

731. The Decision on KYC Procedure for Banks also sets out requirements for banks to establish internal controls that define: acceptability of the client; manner of identifying the client; supervision of client's accounts and transactions; risk management; and staff training program. This internal document must be adopted in writing and verified by the bank's board of directors.

732. *Specific for the Insurance Sector*: Articles 19 and 20 of the Decision on Internal Controls in Insurance stipulates that: the company shall be required to set up efficient procedures for recognition and prevention of ML and FT and shall regulate:

1) company operations involving an increased probability of ML and FT;
2) rules of procedure for employees, general managers and management of the company in terms of detection and prevention of money laundering and terrorist financing in all aspects of company operations, in a defined manner and in compliance with activities and functions they exercise;
3) detection, prevention and reporting to a competent authority on transactions and persons suspected of being involved in ML and FT;
4) collection and storing of data on the company in a manner that enables detection and reporting to a competent authority on all suspicious transactions;
5) manner of communication between the person within the company responsible for detection, prevention and reporting to the competent authority on suspicious transactions, and other employees of such company;
6) practices for ensuring that company employees that cooperate with policyholders and other insurance beneficiaries and employees in charge of internal audit, as well as insurance agents of the company, have never engaged in transactions or performed activities of prejudice to the company's operations;
7) supervision of insurance agency activities by the company, and the procedure for cooperation with persons in charge of insurance brokerage for the account of the company in preventing money laundering and terrorist financing.

733. *Specific for Securities:* The KYC Procedure for Securities Market requires that for the purpose of eliminating the risk that may occur as a result of non-compliance of operation of parties subject to conform with regulations that govern prevention of money laundering and prevention of financing of terrorism, such parties referred to in Article 4 of the previous AML Law shall be obliged to specify contents of the "Know Your Client" Procedure. Article 4 of the same Procedure also requires parties subject to conform shall identify the client under the conditions and in the manner prescribed by the law governing the prevention of money laundering, and during the

period of contractual relations with a client, regularly examine the accuracy and completeness of data on the client and update the submission of documents on all changes.

734. *Specific for Voluntary Pension Funds:* Article 6 of the Decision on Risk Control in Pension Funds requires VPF providers to establish internal controls: procedures for money laundering recognition and prevention shall particularly imply the establishment of rules of conduct of employees regarding money laundering recognition and prevention in operations of the fund management company or the fund, in line with operations that these employees perform and the function they discharge, as well as the regulation of the procedure of reporting to the competent body the transactions with regard to which there are reasons for suspicion that money laundering has taken place, i.e. the regulation of the procedure of denouncing persons who perform these transactions, in line with regulations that govern money laundering prevention.

Compliance Management Arrangements

735. Under the previous AML Law, obligors were bound to appoint one or several persons to be responsible for detecting, preventing, and reporting to the APML the transactions and individuals/entities suspected to be related to ML.

736. Article 39 of the AML/CFT Law requires that an obligor shall appoint a compliance officer CO and his deputy to carry out certain actions and measures for the prevention and detection of ML and FT. In the event that an obligor has less than four employees, it shall not be obliged to appoint a compliance officer and perform the internal control under this Law. Hence, the law fails to require financial institutions with less than 4 employees to designate an AML/CFT compliance officer.

737. The law further specifies that the compliance officer and his deputy shall be employed “in a position with powers allowing for an effective, efficient and quality performance of all tasks” (Article 40 Paragraph 1, Item 1) and that the CO will be independent in carrying out his tasks and shall be directly responsible to the top management (Article 41 Paragraph 3). These requirements altogether may point in the direction that the CO is de facto a person at the management level. However, in meetings with financial institutions other than banks, the evaluation team was informed that the compliance officer was often someone who was allocated additional duties from the IT or legal departments.

738. The AML Book of Rules does not provide further details on this issue. It stipulates that the obligor must provide the APML with the name, surname, and position of the persons responsible for AML compliance and notify the APML when there are any changes.

739. *Specific to Voluntary Pension Funds:* Article 8 of the Decision on Risk Control in Pension Funds requires the fund management company to check continuously the internal control system and to adapt it or modify it according to planned or modified conditions of operations. The internal control system shall particularly establish the responsibility of competent bodies of the fund management company, management of this company and persons with special competences and responsibilities in the company. The competent bodies of the fund management companies are responsible for the proposal, preparation, supplementation, and amendment to valid procedures.

740. Article 41 of the AML/CFT Law requires that the compliance officer shall carry out the following tasks in preventing and detecting money laundering and terrorism financing:

1) ensure that a system for the prevention and detection of money laundering and terrorism financing is established, functioning and further developed, and initiates and recommends to the management appropriate measures for its improvement;
2) ensure an appropriate and timely delivery of data to the APML under this Law;

3) participate in the development of internal documents;
4) participate in the development of internal control guidelines;
5) participate in the setting up and development of the IT support;
6) participate in the development of professional education, training and improvement programmes for employees in the obligor;

741. While the previous AML Law had no explicit requirements for obligors to grant compliance officers with timely access to customer identification data, transaction records, and other relevant information, Article 42 of the AML/CFT Law requires obligors to provide the following to compliance officers:

1) unrestricted access to data, information, and documentation required to perform his tasks;
2) appropriate human, material, IT, and other work resources;
3) adequate office space and technical conditions for an appropriate level of protection of confidential data accessible to the compliance officer;
4) ongoing professional training;
5) replacement during absence;
6) protection with respect to disclosure of data about him to unauthorised persons, as well as protection of other procedures which may affect an uninterrupted performance of his duties;

742. Most financial institutions indicated that they maintained internal AML/CFT procedures that covered a broad spectrum of requirements and communicated these procedures to employees both through written documents and through training. The NBS Voluntary Pension Funds Supervision Department found that voluntary pension funds failed to maintain internal procedures for AML/CFT prevention during on-site examinations conducted in the past three years. Most financial institutions indicated that all financial transactions were conducted through banks, and therefore these sectors presented a slightly lower risk to ML and FT.

Independent Audit Function

743. Article 11 of the Previous AML Law required the obligor to undertake internal control of the activities performed in accordance with this Law.

744. Article 44 of the AML/CFT law requires the obligor to provide for a regular internal control of execution of tasks for the prevention and detection of money laundering and terrorism financing. Article 45 requires the Minister of Finance, at the APML's proposal, to specify the procedure for executing internal controls, data keeping and protection, record keeping and professional education, and training and improvement of employees in the obligor. While the Minister had not issued such guidance at the time of the evaluation, the AML Book of rules remains in force until a new sub law has been adopted.

745. Section 19 of the Decision on KYC Procedure requires that the authorized person shall submit to the relevant body of the obligor a report on its activities in the area of money laundering prevention at least once a year. The report shall contain in particular the estimate on whether anti-money laundering measures are applicable and effective, which deficiencies in the money laundering and terrorism financing prevention system have been detected during the preceding year and what type of risk they may pose to the obligor, as well as the proposal of measures by the authorized person for eliminating such deficiencies and for enhancing the system.

746. As noted above, the AML/CFT Law and Decision on KYC Procedure use the term "internal control" to refer to internal procedures, policies, and controls to prevent ML and FT and also to refer to internal audits. In the cases above, the evaluation team believes that the terms "internal control" refers to the latter. Sector-specific regulations described below, with the exception of the section on broker-dealers, use the term internal audit to refer to the internal audit function.

747. Articles 2 and 3 of the AML Book of Rules and sector-specific bylaws also set out requirements for internal controls. Articles 2 and 3 of the AML Book of Rules requires obligors to provide and organise an internal audit; introduce an act that determines the powers and responsibilities of the management, organisational units, compliance officers, and other relevant persons in the obligor when performing an audit as well as the mode and schedule of performing the audit; and make an annual report for the preceding year on the audit performed and the measures undertaken by 15 March of the current year to be submitted to the APML.

748. The annual report must include the following:

1) number of reported cash transactions or multiple interrelated cash transactions amounting to or exceeding 15.000 EUR in Dinar counter value;
2) number of reported transactions or persons suspected to be related to money laundering;
3) number of transactions or persons suspected to be related to money laundering which were reported to the compliance officer by the employees, but not to the Administration.
4) number of identifications performed when opening an account or establishing business relations with non-face to-face customers;
5) incidence of single indicators for identifying suspicious transactions (hereinafter referred to as: the indicators) when reporting transactions to the compliance officer by the obligor’s employees;
6) number of audits performed on the basis of the Book of Rules, as well as the findings of the audits (number of mistakes recognized and corrected, description of the mistakes recognized, etc);
7) measures undertaken on the basis of the audits performed;
8) data on the control performed on information technologies used in the implementation of the Law (encryption of the data transferred electronically, keeping the data on clients and transactions in the centralized data base);
9) data on the program of education in anti-money laundering field, on location and persons that completed the education program, number of employees that underwent training, as well as the need for further training and professional specialization of the employees;
10) data on the measures undertaken to store the data that are official secrecy.

749. *Specific for the Banking Sector:* Article 85 of the Law on Banks requires that each bank shall have an organisational unit in which its competencies shall include internal audit. The basic tasks of the organisational unit is to give independent and objective opinions to the bank’s board of directors on issues which are subject audit, to perform advisory activity aimed at the advancement of the existing system of internal controls and business activities of the bank, and to provide assistance to the bank’s board of directors in accomplishment if its aims, specifically through application of systematic, disciplined and documented approach to the evaluation and advancement of the existing manner of risk management, manner of control and manner of management of processes. The bank shall perform internal audit function in compliance with the regulations which regulate basic principles of organisation and activities of the bank’s internal audit. The bank shall have at least one employee in the organisational unit specified in paragraph 1 this Article, who shall have the degree specified by the law which governs auditing and other regulations in that field. Article 85 further states that the manager of the organisational unit specified in paragraph 1 of this Article shall compose the program of internal audit and determine methodology of activities of the internal audit, and particular: instructions regarding activities of the internal audit, manner and deadlines composing reports on internal audit, manner and deadlines for submitting reports on internal audit of the bank’s activities to the competent bodies of the bank, manner of monitoring the advised activities for eliminating the established irregularities and deficiencies in the bank’s activities, well as the manner and responsibility regarding composing, usage and keeping of documentation on the performed internal audit

activities in compliance with the annual plan. This manager shall report to the board of directors on the results of the performed audit.

750. The internal audit shall:
1) Assess adequacy and reliability of the bank's system of internal control and function supervision of compliance of the bank's activities;
2) Ensure adequate identification and supervision of risks;
3) Determine deficiencies in the activities of the bank and its employees, as well as cases failure to perform duties and excess of authority and prepare proposals for elimination of these deficiencies as well as recommendations for their prevention;
4) Hold meetings with the bank's board of directors, as well as with the committee monitoring business activities of the bank;
5) Prepare reports on activities of the internal audit on a regular basis and submit them the bank's board of directors, as well as to the committee for monitoring business activities of bank.

751. The National Bank of Serbia may prescribe detailed requirements and manner of performing of the functions of internal audit.

752. *Specific for the Insurance Sector:* Article 135 of the Law on Insurance requires insurance companies to organize an independent internal audit which is autonomous and independent in carrying out its tasks.. A special purpose department within the company specified in the Articles of Association conducts the internal audit of the insurance company. The internal audit unit of the insurance company reports directly to the supervisory board of the insurance company. Insurance company bodies and the employees in the insurance company must not prevent, limit or impede the reporting on the findings and assessments of the persons in charge of internal audit activities in the insurance company.

753. Article 137 of the Law on Insurance stipulates that the internal audit of the insurance company shall continuously and comprehensively control all activities of the company with special attention to:
1) Continuous monitoring, checking and improvement of the company system of operation;
2) Identification of the risks the company is exposed to or can be expected to be exposed to;
3) Assessment and evaluation of the established internal control system;
4) Issuing the appropriate recommendations for elimination of the observed irregularities and deficiencies and for improving the applied procedures and operation systems.

754. The system of internal control defined in paragraph 1 item 3) herein implies specific procedures, acts and actions which the insurance company's management is obliged to organize in a way that suits the nature, complexity and risk of the business as well as changes in the conditions of insurance company's activities that can be predicted aimed to prevent irregularities and illegalities in the company's activities. Internal audit controls and assesses:
1) Adequacy and application of prescribed policies and procedures for risk control;
2) Accounting procedures and organisation of conducting accounting activities;
3) Reliability and timeliness of financial and management information.

755. An insurance company is obliged to regulate the internal audit function according to the rules of procedure of the internal audit and the internal audit business program, according to the professional principles and internal audit practices, international standards for internal audit and ethical principles of internal audit.

756. *Specific for Voluntary Pension Funds:* According to Article 8 of the Law on Pension Funds, VPF providers are required to employ at least one certified internal auditor.

757. *Specific for Broker-Dealers:* Article 11, Section 5 of the Rulebook for Broker-Dealer Companies requires companies to set procedures and measures for establishment and operation of the system of internal control of the company's business activities in order to ensure that the company's management is informed on identified irregularities or non-compliance in company's operation and that adequate measures are undertaken in order to remove those irregularities, and/or a broker-dealer company has to have a separate organisational unit (or a person) which will be in charge of supervising the compliance with the regulations and which will directly report to the management and be independent from organisational units.

758. *Specific for Investment Funds:* Article 49 of the Rulebook for Investment Funds, investment fund management companies must have an internal control system that contains descriptions of control activities performed by staff and management, of activities related to control of compliance which are performed by examiners, of activities performed by an internal auditor, procedures for dealing with shortcomings or weaknesses of the internal control system, and procedures for controlling an intermediary.

759. While the audit requirements described above are not specific to only AML/CFT controls, the audits above could include AML/CFT components. In practice, the banking sector does conduct audits specifically to AML/CFT controls, with some banks hiring an external auditor to perform this function. Implementation of internal audits that include AML/CFT controls is uneven throughout non-bank financial institutions.

Employee Training

760. Article 43 of the AML/CFT Law requires obligors to provide regular professional training for employees carrying out tasks of prevention and detection of ML and FT annually and no later than until March for the current year. The law stipulates that the trainings should include familiarizing with the AML/CFT Law, regulations drafted based on the Law, internal documents, and reference books to include the list of indicators for identifying suspicions of ML/FT.

761. Articles 20 of the Decision on KYC Procedure set out requirements for certain obligors to determine the staff training program in accordance with the Law. To ensure that the Procedure is being applied, the obligor shall determine and implement the on-going training program for the purposes of paragraph 1 hereof, taking into account staff authorizations and responsibilities in the field of prevention of money laundering and terrorism financing. The contents of the training program from this Section must meet the needs of newly employed staff, client-facing staff or staff in charge of executing transactions, as well as staff in charge of monitoring whether the Procedure is being correctly applied.

762. Article 21 further states that the obligor shall verify when necessary, but at least once a year, the expertise of its staff in the field of prevention of money laundering and terrorism financing, and shall keep on file the results of such verification for at least one year from the date of its verification, in hard copy or electronic form.

763. Article 11 of the previous AML Law included requirements for obligors to provide AML/CFT training to employees and the AML Book of Rules further expanded on those requirements. The following sector-specific guidance has also been provided:

764. *Specific for the Banking Sector:* The Decision on KYC Procedure for Banks requires banks to define and implement a staff training program on an ongoing basis, taking into account staff authorizations and responsibilities in the field of ML prevention and requiring an annual test of staff in the field of ML prevention. Banks are required to tailor the program to adjust to the needs of new staff, client-facing staff, and staff responsible for ensuring that controls are being applied correctly.

765. *Specific for the Insurance Sector*: Article 20 of the Decision on Internal Controls in Insurance defines detailed criteria for identification of high risk clients and requires insurance companies to specify a list of suspicious transactions indicators. The company shall ensure that all its employees have received adequate training in detection and prevention of money laundering and terrorist financing, that they act in compliance with prescribed procedures, and that they are aware of their liability in the event of breach of the company's rules and procedures for prevention of the above activities.

766. *Specific for the Securities Sector:* Article 4 of the Guidelines on KYC Procedure for Securities Market requires securities firms to define and implement the staff training program on an ongoing basis, taking into account staff authorizations and responsibilities in the field of money laundering prevention.

767. In practice, most financial institutions provide some form of employee training for AML prevention. The banking sector appears to have the most advanced training program of the Serbian financial institutions. Until the passage of the AML/CFT Law, FT prevention was not included in many training programs, as it was not a requirement under the previous AML Law. CFT components should be added to future training programs. Some sectors indicated that their markets lacked experience in AML/CFT prevention as they had received no training in this area. The NBS Voluntary Pension Funds Supervision Department found that Voluntary Pension Funds failed to provide employees training and has plans to address this deficiency.

Employee Screening

768. While neither the AML/CFT Law, nor the previous AML Law sets out requirements for the screening of all employees, Article 40 of the AML/CFT Law sets out requirements for a compliance officer, or deputy compliance officer. The duties of a compliance officer shall be carried out by a person who shall:

1) be employed in the obligor in a position with powers allowing for an effective, efficient and quality performance of all tasks laid down in this Law;
2) not be sentenced by a final court decision, or recorded in the expunged sentences records, or subject to any criminal proceedings for criminal offences prosecuted ex officio or criminal offences against economy, against official duty, or criminal offences of terrorism financing.
3) be professionally qualified for the tasks of prevention and detection of money laundering and terrorism financing;
4) be familiar with the nature of the obligor business in the areas sensitive to ML or FT;

769. *Specific to the Banking Sector*: Article 20, Paragraph 4 of the Decision on Licensing of Banks requires that the bank founders submit to the NBS data on the organisation and human resource capacity of the bank. Article 24 further states that data on organisational structure shall be understood to mean the proposed organisational chart of the bank. Data on bank's human resource capacity shall be understood to mean the proposed job classification by staff, including qualification structure of staff and length of service for each job post, as well as the planned staffing schedule which has to support the planned expansion of bank's activities and organisational network.

770. *Specific to Voluntary Pension Funds:* Under Article 4, Paragraph 2 of the Decision on Minimum Requirements Regarding Organisational and Technical Resources of Voluntary Pension Fund Management Company, VPF management companies are required to have documents that stipulate the qualifications structure of employees with the required years of service for each position.

771. *Specific to the Insurance Sector:* Article 13 of the Decision on Implementing the Insurance Law states that for the purposes hereof, prescribed personnel capacity of a company shall refer to the envisaged structure of employees in terms of their professional qualifications, work experience needed for each position, as well as the planned dynamics of appointing people to systematized jobs which is to follow the planned expansion of the company's scope of activities and organisational network.

772. *Specific to the Securities Sector:* Article 127of the Law on Securities Market states that a broker-dealer company may perform activities referred to in Article 124, paragraph 1 of the present Law if it meets the requirements regarding staff and organisational capacities and technical equipment, in conformity with the present Law and the act of the Commission. The law requires broker dealer companies to permanently employ one person with the license to conduct broker activities, at least one person with the license to perform portfolio manager activities, and at least one person with the license to perform investment consultant activities.

Additional elements

773. Article 41, Section 3 of the AML/CFT Law stipulates the compliance officer shall be independent in carrying out his tasks and shall be directly responsible to the top management.

Recommendation 22

774. The previous AML Law did not include provisions for financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT Controls consistent with Serbian controls. Section 18, Item 2 of the Decision on KYC Procedure for Banks, however, required banks to ensure that the persons to which the bank is a parent company should apply the Procedure as strictly as the bank, unless the regulations of such persons' home countries does not allow it, and check whether such persons apply the Procedure.

775. Article 38 of the AML/CFT Law requires obligors to ensure that actions and measures for the prevention of ML and FT be applied to the same extent in its branches and majority-owned subsidiaries in foreign country, unless this is explicitly contrary to the regulations of such country. The obligor is also required to send its branches or majority-owned subsidiaries in a foreign country updated information on the procedures concerning the prevention and detection of ML and FT, and particularly concerning CDD, reporting to the APML, record keeping, internal control, and other circumstances related to the prevention and detection of ML or FT.

776. Article 38 also states that if the regulations of a foreign country do not permit the application of AML/CFT controls laid down in the AML/CFT Law, the obligor shall immediately inform the APML thereof, and adopt appropriate measures to eliminate the risk of ML or FT. There is no specific consideration in the law that requires financial institutions to pay particular attention to branches or subsidiaries in countries that have insufficient AML/CFT controls. Serbian authorities, however, indicated that they would not approve the establishment of branches or subsidiaries in such jurisdictions.

777. This Recommendation is not applicable to VPFs as under Article 26 of the Law on Pension Funds, VPF management companies are not permitted to have subsidiaries.

778. There is no specific requirement for branches and subsidiaries of Serbian financial institutions to maintain the highest level of AML/CFT controls, whether that of Serbia or of the host country. In cases where a host country law requires a lower standard, foreign branches and subsidiaries of Serbian financial institutions are required to implement the AML/CFT Law, thus implementing the higher standard. When the host country law requires a higher standard than the AML/CFT

Law, even though the AML/CFT Law does not provide an explicit requirement, it is implicitly understood that the foreign branch or subsidiary will have to comply with the host country's law, again implementing the higher standard

Additional elements

779. As part of the requirements for obligors to take actions and measures to prevent and detect ML and FT, the AML/CFT Law requires the implementation of the measures laid down in this Law in obligor branches and majority-owned subsidiaries located in foreign countries (Article 6, Paragraph 2, Item 8).

780. Financial institutions indicated that they are regulated in compliance with the Basel Core Principles.

3.8.2 Recommendation and comments

Recommendation 15

- Article 39 of the AML/CFT Law exempts obligors with less than four employees from designating an AML/CFT compliance officer, imposing different obligations on small and large obligors. The evaluation team has concerns that this discrepancy poses a risk to the efficiency and integrity of the entire Serbian AML/CFT system. Serbian authorities should amend the law to remove this exemption.

- While there is no blanket requirement for financial institutions to utilize a set procedure for screening employees to ensure a high standard, sectoral laws have set specific requirements for hiring employees within the sector. Serbian authorities should require a set procedure for all financial institutions to screen employees to ensure a high standard across all institutions.

Recommendation 22

- Because of the newness of the law, the assessment team was unable to assess the effectiveness of Article 38 on financial institutions. Serbian authorities have indicated that only one Serbian bank maintains branches overseas – two branches located in neighbouring countries – however the assessment team was unable to meet with that bank during the onsite visit and therefore unable to assess its compliance with Recommendation 22. Serbian authorities should issue detailed procedures for financial institutions to follow after reporting to the APML that a foreign jurisdiction does not permit implementation of AML/CFT controls, including measures to eliminate the risk of ML or FT.

3.8.3 Compliance with Recommendations 15 and 22

	Rating	Summary of factors underlying rating
R.15	**PC**	• Not all financial institutions have internal procedures, policies, and controls to prevent ML and FT. • Some financial institutions' training programs lack components on CFT, new developments and current ML and FT techniques, methods, and trends. • Law exempts financial institutions below 4 employees to designate a compliance officer • Not all financial institutions conduct audits that at least include an

		AML/CFT component. • No requirement for all financial institutions to put in place screening procedures to ensure high standards when hiring employees.
R.22	**LC**	• No demonstration that financial institutions require branches and subsidiaries overseas to observe AML/CFT measures consistent with the home branch.

3.9 Shell Banks (R.18)

3.9.1 Description and analysis

781. The AML/CFT Law defines shell banks as a foreign bank or another institution performing the same business, which is registered in a state where it does not carry out its business and which is not any part of any organised financial group.

782. While the establishment or operation of shell banks is not strictly forbidden by Serbian law, Articles 10-20 and 94-101 in the Law on Banks and the Decision on Licensing of Banks prescribe such strict conditions for obtaining a bank license, that it would be impossible to establish a shell bank in Serbia.

783. In order for a bank to obtain an operating license from the NBS, Article 18 of the Law on Banks requires founders of the bank 1) to provide proof of appropriate business premises, 2) acquire and prepare equipment for undisturbed business activities of the bank, 3) ensure that the premises meet the requirements established by the law which refer to technical equipment, work safety, and protection and improvement of the environment, as well as 4) ensure that the premises and equipment enable access to all relevant data and information required for conducting supervisory function of the National Bank of Serbia.

784. Article 42 of the Law on Banks further requires that each bank shall make general operating conditions, as well as their amendments and additions, clearly visible in its business premises, not later than 15 days prior to their implementation. Should the bank fail to do this, it shall be fined from 300,000 to 3,000,000 Dinars for a commercial offence per Article 137.

785. The NBS will refuse a request in the following cases: If the founding act and draft Articles of association of the Bank are not in compliance with the law and other regulations; any proposed members of the board of directors and executive board of the bank do not possess the appropriate qualifications, experience, and/or adequate business reputation; if the proposed program of the bank's activities, plan of business policies, and procedures for risk management and internal control are not appropriate; if the ownership and management structures of the bank fail to enable effective supervision of safety and soundness and legal compliance of the bank or appropriate external and/or internal audit of the bank; and if the structure of the banking group whose member a bank would become is not transparent or impedes performing supervision of this group on the consolidated basis or appropriate external and/or internal audit.

786. Article 35 of the AML/CFT Law prohibits obligors in Serbia entering into or continuing a correspondent relationship with a bank which operates or which may operate as a shell bank, or with any other similar institution which can reasonably be assumed that it may allow a shell bank to use its accounts. There was no similar requirement in the previous AML Law, however Section 18, Item 1 of the Decision on KYC Procedure for Banks required banks to ensure that they not enter into any correspondent relationship with a foreign bank unless it implements AML/CFT controls as strictly as the bank.

787. Also, Article 29, Section 4, Item 4 of the AML/CFT Law prohibits obligors from establishing or continuing LORO correspondent relationships with foreign financial institutions if that bank operates as a shell bank, establishes correspondent relationships or other business relationships, or carries out transactions with shell banks.

788. The NBS advised the evaluation team that despite the lack of a specific legal requirement, it has been unable to discover anything resembling a shell bank operating in the country throughout the course of its supervision of banks.

3.9.2 Recommendations and comments

789. Serbian law prohibits financial institutions from maintaining relationships with shell banks and ensuring correspondents do not allow accounts to be used by shell banks by requiring all correspondent relationships to apply the same level of AML/CFT controls as Serbian banks.

790. While Serbian law does not expressly prohibit the creation or continued operation of shell banks, the NBS requires such stringent identifying information when incorporating a bank in Serbia, the evaluation team felt confident that shell banks were not operating within the country.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**C**	

Regulation, supervision, guidance, monitoring and sanctions

3.10 The Supervisory and Oversight System - Competent Authorities and SRO-s / Role, Functions, Duties and Powers (Including Sanctions) (R. 23, 29, 17 and 25)

3.10.1 Description and analysis

Authorities/SRO-s roles and duties & Structure and resources

Recommendation 23 (c. 23.1, c. 23.2)

Regulation and Supervision of Financial Institutions (c. 23.1); Designation of Competent Authority (c. 23.2)

791. In Serbia, competence for the supervision of compliance with the national AML/CFT requirements does not lie with a single authority. Article 82 of the AML/CFT Law designates as many as eleven bodies, which are empowered to exercise supervision over implementation of the Law. At that, when such bodies in the course of conducting supervision establish irregularities or illegal acts in terms of implementation of the Law, they shall, in accordance with the respective law governing their supervisory powers, do the following:

1) Demand that the irregularities and deficiencies be removed in the period set by such bodies;
2) Lodge a request to the competent body for the initiation of an adequate procedure
3) Take other measures and actions for which they are authorized by the law.

792. As provided by the authorities, the AML/CFT supervisory arrangements work as follows: the APML, as the national body for the fight against money laundering and terrorist financing, is vested certain supervisory authority to ensure AML/CFT compliance; particularly, in the process

of receiving, analyzing, and disseminating the information submitted by obligors to the APML in accordance with the Law, it can directly request obligors to remove the irregularities disclosed during that process. The APML can also lodge a request to the sectoral supervisory bodies (such as the NBC, the Securities Commission etc.) for initiating supervisory action in respect of their respective obligors; in that case, sectoral supervisors have full discretion to apply any of the available supervisory measures, including off-site and on-site control, as well as – if provided by the relevant sectoral laws/ regulations – sending written orders, declaring measures to remove irregularities, and imposing pecuniary sanctions stipulated under such laws/ regulations.. And finally, once an economic or minor offence is disclosed under the AML/CFT Law (Articles 88-89, which actually classify all violations of the requirements of the AML/CFT Law as economic offences and Articles 90-91, which classify breaches of the Law by entrepreneurs[116] and natural persons[117] as minor offences) , both the APML and the other supervisory bodies are obliged to refer the case to law enforcement authorities (e.g. the prosecutor, court etc) for the initiation of a respective proceeding and prosecution of the economic offence. The fact that a certain action of an obligor has been imposed an applicable supervisory action by the sectoral supervisor does not prevent the court to impose penal sanctions with a separate proceeding.

793. The designated bodies vested powers for supervising implementation of the national AML/CFT requirements by financial institutions are the following, as established by Article 82 and further articulated by Article 84 of the Law.

a) APML

(in the capacity of the national financial intelligence unit pursuant to Article 83 of the AML/CFT Law)

794. Article 83 of the AML/CFT Law defines the general competence of the APML for supervising implementation of the Law, by means of collecting, processing, and analyzing the data, information, and documentation submitted to the APML under the Law by both obligors and lawyers, as well as by relevant state bodies and public authority holders. As an administrative body within the Ministry of Finance conducting supervision over implementation of the provisions of the Law pursuant to Article 65, it is authorized to take actions and measures within its competence in order to remove observed irregularities. As provided by the authorities, the APML also has a mandate for participating in on-site inspections conducted by relevant supervisory bodies; however, so far they have not seen the need to make use of that empowerment.

795. Article 65 of the AML/CFT Law defines other regulatory powers of the APML, such as initiating revision and amendment of the Law and other regulations governing the AML/CFT field; providing interpretation and making recommendations on their application based on the Law.

b) National Bank

(in the capacity of supervisor for banks, exchange bureaus, insurance companies, insurance brokerage companies, insurance agency companies and insurance agents with a license to perform life insurance business, companies for the management of voluntary pension funds, and financial leasing providers pursuant to Article 84.1 of the AML/CFT Law)

796. Pursuant to Articles 4.6 and 4.6(a) of the Law on the National Bank, the NBS carries out general regulation and supervision of activities of banks, insurance operations, and other financial

[116] When they commit any of the acts provided by Articles 88 and 89.

[117] When they fail to (appropriately) declare to the competent customs body cross-border transportation of payment instruments provided by Article 67 (with further reference to Article 81.5 of the Law).

institutions.[118.] Regulatory functions of the NBS, including those of adopting regulations laying down prudential banking standards, are further articulated by Articles 63 and 64 of the same Law.

797. Various sectoral laws refer to the regulatory and supervisory powers of the NBS. Thus:

- ***Banks*****:** Article 9 of the Law on Banks defines that the National Bank shall perform supervision of safety and soundness and legal compliance of activities of banks. Under Article 45 of the same Law, the NBS is also authorized, within its supervisory function, to inspect whether a bank acts in compliance with good business practices, disclosed general operating conditions, and provisions of contracts concluded with its clients.
- ***Insurance companies and intermediaries:*** Article 148-150 of the Law on Insurance establish the competence of the NBS in supervising activities of insurance companies and intermediaries, the subjects, and methods of supervision.
- ***Voluntary pension funds and management companies:*** Article 67 of the Law on Pension Funds defines the supervisory powers of the NBS over implementation of the Law on Pension Funds[119], whereas Article 68 defines, *inter alia,* methods of such supervision.
- ***Financial leasing companies:*** Article 13h of the Law on Financial Leasing establishes that the National Bank shall conduct the supervision of lessor operations based on the order issued by the Governor of the NBS, or by the person authorized by the Governor.
- ***Exchange dealers/exchange bureaus:*** Article 39 of the Law on Foreign Exchange Operations establishes that the NBS shall prescribe the conditions and manner of performing exchange operations and the supervision procedure applied to exchange operations, thus regulating activities of exchange dealers and exchange bureaus.

c) Securities Commission

(in the capacity of supervisor for investment fund management companies, broker-dealer companies, as well as banks licensed by the Commission for doing custody and broker-dealer business pursuant to Article 84.2 of the AML/CFT Law)

798. General regulation and supervision of activities of the above obligors is carried out by the Securities Commission pursuant to Article 220 of the Law on Securities Market, which defines the Commission's power to supervise business operation of all participants of the securities market, including *broker-dealer companies, management companies, investment funds, authorized banks, and custody banks*, in the part of the operations they conduct on the securities market in compliance with the mentioned law and other laws regulating the subject matter.

799. Article 80 and 81 of the Law on Investment Funds also provide for supervisory powers of the Securities Commission over *investment funds and management companies*, whereas Article 82 defines the measures taken in the framework of such supervision.

[118] However, Article 98 of the Law defines that "other financial institutions" are savings and savings-and-loan institutions. That is, strictly speaking, the Law on the National Bank defines supervisory powers of the NBS in respect of banks and insurance operations only. This is reinforced by the fact that Article 4.6(a) specifying NBS's supervisory powers over insurance operations was added into the Law by means of an amendment, when supervision over insurance industry came under the mandate of the National Bank, which means that the provision of Article 4.6 establishing that "tasks of the NBS shall be to...issue and revoke operating licenses, carry out supervision of banks and other financial institutions and enact regulations in this field" was not considered to be sufficient for supervising insurance market participants, which no doubt are financial institutions. Hence, this general statement of Article 4.6 on supervisory powers of the National Banks over other financial institutions is not taken as satisfactory evidence on NBS-s empowerment unless there is a specific provision in the respective sectoral law defining such powers of the NBS over the given type of financial institutions (such as for example, voluntary pension funds, financial leasing companies, etc).

[119] But not of other laws/regulations; this is an issue legally restricting the NBS's powers to exercise supervision over pension fund operations in terms of AML/CFT compliance. For more detail please see the analysis under Recommendation 29.

d) Ministry of Finance
(in the capacity of supervisor for persons dealing with postal communications [with respect to domestic payment operations] and for persons involved in professional activities of intermediation in credit transactions and provision of loans, factoring and forfeiting, provision of guarantees, and provision of money transfer services pursuant to Article 84.4 of the AML/CFT Law)

800. The assessment team was not provided any information on the legislative provisions establishing the powers of the Ministry of Finance to regulate and supervise activities of persons dealing with postal communications [with respect to domestic payment operations] and of persons involved in professional activities of intermediation in credit transactions and provision of loans, factoring and forfeiting, provision of guarantees, and provision of money transfer services.

e) Ministry of Telecommunications and Information Society
(in the capacity of supervisor for persons dealing with postal communications [with respect to valuable mail operations] pursuant to Article 84.5 of the AML/CFT Law)

801. As advised by the authorities, the Ministry of Telecommunications and Information Society is responsible for the regulation and supervision of activities of legal persons dealing with postal communication pursuant to Articles 87-93 of the Law on Postal Services and Articles 22-33 of the Law on Public Administration. However, the assessment team was not provided these acts and there was not able to assess how these laws define regulatory and supervisory powers of the Ministry of Telecommunications and Information Society in respect of persons dealing with postal communications [with respect to valuable mail operations].

f) Foreign Currency Inspectorate
(in the capacity of supervisor for persons involved in professional activities of factoring and forfeiting, and provision of money transfer services [with respect to international payment transactions] pursuant to Article 84.11 of the AML/CFT Law)

802. Article 46 of the Law on Foreign Exchange Operations defines that the Foreign Exchange Inspectorate shall conduct supervision of foreign exchange operations of residents and non-residents. Apart from that, the assessment team was not provided any information on the legislative provisions establishing the powers of the Foreign Exchange Inspectorate to regulate and supervise activities of ***persons involved in professional activities of factoring and forfeiting, and provision of money transfer services [with respect to international payment transactions].***

803. None of the laws specified above directly provide for regulatory and supervisory powers of the mentioned bodies to ensure that financial institutions adequately comply with the requirements to combat money laundering and terrorist financing. Nevertheless, the analysis of the laws provided to the assessment team[120] enables concluding that, except for the Law on Pension Funds, the regulatory and supervisory powers of these supervisory bodies in terms of controlling AML/CFT compliance can be inferred from the general empowerment to supervise the respective obligors for compliance with sectoral and other laws and regulations. A more detailed analysis of such empowerment is presented in the text under Recommendation 29.

Recommendation 30 (all supervisory authorities)

Adequacy of Resources (c. 30.1); Professional Standards and Integrity (c. 30.2); Adequate Training (c. 30.3)

804. Articles 82-84 of the AML/CFT Law define as many as eleven bodies exercising supervision of the implementation of the Law, within their respective areas of competence. Compliance of

[120] That is, all mentioned laws except for the Law on Postal Services and the Law on Public Administration.

these bodies with the requirements of the Recommendation 30 has been assessed against the following criteria:

1. Adequacy of structure, funding, staffing, and technical resources (R 30.1);
2. Professional standards (including confidentiality requirement), integrity, and skills of staff (R 30.2);
3. Adequate training of staff for combating ML/FT (R 30.3).

805. The bodies implementing supervision of the AML/CFT legislation are:

a) **APML** (in the capacity of the national financial intelligence unit pursuant to Article 83 of the AML/CFT Law);

b) **National Bank** (in the capacity of supervisor for banks, exchange bureaus, insurance companies, insurance brokerage companies, insurance agency companies and insurance agents with a license to perform life insurance business, companies for the management of voluntary pension funds, and financial leasing providers pursuant to Article 84.1 of the AML/CFT Law);

c) **Securities Commission** (in the capacity of supervisor for investment fund management companies, broker-dealer companies, as well as banks licensed by the Commission for doing custody and broker-dealer business pursuant to Article 84.2 of the AML/CFT Law);

d) **Tax Administration** (in the capacity of supervisor for persons involved in provision of accounting services and tax advising pursuant to Articles 84.7 and 84.10 of the AML/CFT Law);

e) **Ministry of Trade and Services** (in the capacity of supervisor for persons involved in real estate transactions and for implementation of Article 36 pursuant to Articles 84.6 and 84.10 of the AML/CFT Law);

f) **Foreign Currency Inspectorate** (in the capacity of supervisor for persons involved in professional activities of factoring and forfeiting, and provision of money transfer services [with respect to international payment transactions] pursuant to Article 84.11 of the AML/CFT Law);

g) **Administration for Games of Chance** (in the capacity of supervisor for organizers of special games of chance in casinos, and of organizers of games of chance operated on the Internet, by telephone, or in any other manner using telecommunication networks pursuant to Article 84.3 of the AML/CFT Law);

h) **Ministry of Finance** (in the capacity of supervisor for persons dealing with postal communications [with respect to domestic payment operations] and for persons involved in professional activities of intermediation in credit transactions and provision of loans, factoring and forfeiting, provision of guarantees, and provision of money transfer services pursuant to Article 84.4 of the AML/CFT Law);

i) **Ministry of Telecommunications and Information Society** (in the capacity of supervisor for persons dealing with postal communications [with respect to valuable mail operations] pursuant to Article 84.5 of the AML/CFT Law);

j) **Bar Association** (in the capacity of supervisor for lawyer pursuant to Article 84.8 of the AML/CFT Law);

k) **Chamber of Certified Auditors** (in the capacity of supervisor for licensed auditors pursuant to Article 84.9 of the AML/CFT Law).

806. From among the listed supervisory bodes, the Tax Administration (indent ‘d’ above), the Ministry of Finance (indent ‘h’ above), the Bar Association (indent ‘i’ above), and the Chamber of **Certified** Auditors (indent ‘k’ above) did not provide any information on the structure, funding, staffing, and technical resources available for and dedicated to the supervision of implementation of the Law by their respective obligors and lawyers. The assessment team was not provided any data on the professional standards (including confidentiality and integrity requirements), and expertise/skills of the staff at these supervisory bodies directly involved in supervision process.

807. As far as funding and staffing issues are concerned, other supervisory bodies have provided either limited and/or incomplete data, or data which is not broken down to the resources available for and dedicated to the departments/divisions directly involved in combating money laundering

and terrorist financing, which makes it very difficult, if not impossible, to come to a reasonable conclusion upon adequacy or sufficiency of such resources. Nevertheless, none of the supervisory bodies, which are either direct budgetary users or have their own budgets prescribed by the law[121], indicated about insufficiency of funding as per the classified positions within the agency. The Annex IV summarizes the data available to assessors on the staffing of supervisory bodies, insofar as it could be figured out from the information provided by the authorities.

808. All supervisory bodies having provided data on technical resources (hardware, software, telecommunication means, etc) indicate sufficiency of such resources for the purpose of doing their day-to-day work. Access to internet and other telecommunication is not reported to be a problem.

809. As presented by the authorities, recruitment procedure is the same for all ministries and it is based on certain legislative acts (i.e. laws, bylaws, regulation etc.), namely:

- Law on Civil Servants;
- Regulation on Organising a Public and Internal Competition for Filling in Vacancies in State Authorities;
- Regulation on Professional Qualifications and Skills.

810. The Law on Civil Servants, in particular, regulates issues such as the modes of recruitment in civil service positions, rules for internal and external competitions for filling positions in state authorities, selection procedures, duration of employment, probation period, rules for dismissal of civil servants (particularly, in case of a conviction to imprisonment exceeding six months, of a disciplinary sanction of termination of employment, and of an "unsatisfactory" grade upon a special performance appraisal) etc. It also defines that all civil servants have the right and obligation to improve professionally in conformity with the needs of state authorities, and the state is to secure the funds for training in its budget. Permanently employed civil servants must have passed the state professional exam, whereas government by its regulations determines in detail the program and manner of taking the state professional exam for all state authorities.

811. In addition to that, various state ministries assert to have internal acts systematizing professional requirements in respect of certain positions, such requirements including a university degree in the respective area, minimal professional experience, computer skills, and good knowledge of a foreign language.

812. As to the employment at the National Bank, rights and obligations of its staff are generally regulated by the Labour Code, as well as by those provisions of the Law on Civil Servants, which are applicable to the NBS's staff in view of its specific status as a central bank. There are also internal acts within the NBS, such as:

- Regulation on Labour Relations, which prescribes the conditions for employment, employee's rights and responsibilities, promotion etc;
- Regulation on Employee Responsibility, which determines the disciplinary and material responsibility of the NBS staff (including the responsibility for the damage inflicted to the NBS);
- Regulation on Job Classification, which defines individual job descriptions, the requirements in terms of the level and profile of educational background, work experience and professional training etc;
- Code of Conduct, which contains provisions regarding non-discrimination, employee's diligence, efficiency, responsibility, legal compliance, avoidance of external influence, gifts and honours, employee's external activities etc.

[121] Except for the Bar association and the Chamber of Certified Auditors, which are self regulatory organisations (SRO) and should be raising the funds for financing their activities through membership fees. Anyway, the assessment team has not been provided any information on this issue.

813. Concerning the Securities Commission, Article 235 of the Law on Securities Market defines that general regulations governing the labour relations are to be applied to the rights and obligations of employees. As provided by the authorities, there are also the Regulation on Labour Relations and the Regulation on Organisation and Systematization (both internal acts), which specify the conditions for the employment in the Commission; particularly, employees must have a university degree, at least five years of experience in conducting transactions with securities in the country or abroad, as well as other specific conditions depending on the complexity of the job. Article 239 further establishes that both the management and the employees of the Securities Commission shall be obliged to keep safe the information on facts and circumstances made available to them due to performing their functions and/or work, and that such information shall be considered official secret. It is also assumed, that they are not engaged (or were engaged) in any criminal activity. However, the assessment team was not provided any information, which would in documentary form substantiate such assumption.

814. Training is a major problem throughout all supervisory bodies, perhaps except for the APML, which appears to have the best indicators in terms of frequency and coverage of training events attended by the staff. The Annex IV depicts available information on the trainings incorporating/dedicated to AML/CFT issues participated by the staff of supervisory bodies. The table below presents some quantitative characteristics in the form of ratios pertinent to trainings of supervisory staff:

Table 25. Trainings of supervisory staff involved in AML/CFT Supervision

	Number of training events	**Staff attendance of trainings**	**Total number of staff involved in AML/CFT Supervision(as of 2008)**
APML	34	70	27
Bank Supervision Department (Division for Supervision of Payment and Exchange Operations)	23	86	14
Insurance Supervision Department	5	11	11
Pension Fund Supervision Department	2	6	16
Securities Commission (Supervision Department)	3	19	39
Ministry of Trade and Services (Market Inspection)	2	3	111

815. As one can see, there is a very significant difference between various supervisory agencies and even between various departments within the same agency, which means that, apart from the absolute insufficiency of the training for the majority of supervisory bodies, the employees of those bodies having secured certain training for the staff by default are in a more favourable position in terms of professional expertise and skills as compared with the staff of the bodies that have not.

<u>Authorities' powers and sanctions</u>

Recommendation 29

Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1); Authority to Conduct AML/CFT Inspections by Supervisors (c. 29.2); Power for Supervisors to Compel Production of Records (c. 29.3 & 29.3.1); Powers of Enforcement & Sanction (c. 29.4)

816. Article 4 of the AML/CFT Law, which defines the list of obligors under the Law, covers almost all financial institutions and businesses (activities) defined by the FATF Recommendations Glossary, as follows:

a) Institutions

- Banks;
- Exchange bureaus;
- Voluntary pension fund management companies;
- Financial leasing companies;
- Insurance companies, insurance brokerage companies, insurance agency companies and insurance agents with a license to perform life insurance business;
- Broker-dealer companies;
- Investment fund management companies;

b) Businesses

- Intermediation in credit transactions and provision of loans;
- Factoring and forfeiting;
- Provision of guarantees;
- Money transfer services.

817. Article 82 of the AML/CFT Law defines the bodies competent for supervision over implementation of the Law (including those empowered to supervise financial institutions and businesses), whereas Articles 83 and 84 specify the areas of responsibility of each supervisor. Hence, financial institutions in Serbia are supervised by the following bodies for compliance with national AML/CFT legislation:

- **APML** *(exercising general supervision over implementation of the Law pursuant to Article 83)*;
- **National Bank** *(in the capacity of supervisor for banks, exchange bureaus, insurance companies and intermediaries, voluntary pension fund management companies, and financial leasing companies pursuant to Article 84.1)*;
- **Securities Commission** *(in the capacity of supervisor for investment fund management companies and broker-dealer companies pursuant to Article 84.2)*;
- **Ministry of Finance** *(in the capacity of supervisor for persons dealing with postal communications [with respect to domestic payment operations] and for persons involved in professional activities of intermediation in credit transactions and provision of loans, factoring and forfeiting, provision of guarantees, and provision of money transfer services pursuant to Article 84.4 of the AML/CFT Law)*;
- **Ministry of Telecommunications and Information Society** *(in the capacity of supervisor for persons dealing with postal communications [with respect to valuable mail operations] pursuant to Article 84.5 of the AML/CFT Law)*;
- **Foreign Currency Inspectorate** *(in the capacity of supervisor for persons involved in professional activities of factoring and forfeiting, and provision of money transfer services [with respect to international payment transactions] pursuant to Article 84.11 of the AML/CFT Law).*

818. Various sectoral laws differently establish supervisory, enforcement, and sanctioning powers of the above-stated bodies in respect of financial institutions and businesses so as to ensure their

compliance with the legislative framework in general, and with the national AML/CFT requirements in particular.

819. It is worth of mentioning that Article 4 of the Law on the National Bank defines general competence of the NBS for supervising activities of banks, insurance operations and other financial institutions, whereas Article 98 defines these "other financial institutions[122]" as savings and savings-and-loan enterprises. Article 63 establishes that "the NBS shall issue and revoke operating licenses, perform supervision of banks and other financial institutions, and take other measures in accordance with the law governing the operation of banks and other financial institutions". Article 64 further defines that, in performing supervision, the NBS shall have the right to examine the books and other documentation of banks and other financial institutions, prescribing further detail, conditions, and manner of performing the supervisory function in accordance with the Law and other laws.

820. Bearing in mind this general empowerment, which mainly refers to banks and, in some cases, to insurance operations, and having regard to the fact, that due to the peculiarities of Serbian legislation such powers can be realized but in accordance with sectoral laws/regulations governing activities of certain types of financial institutions[123], assessment of adequacy of powers of the supervisors of financial institutions under Recommendation 29 has been performed without repetitive reference to the AML/CFT Law (which, again, establishes general responsibility of supervisory bodies for supervision of certain financial institutions in terms of AML/CFT) or, in the case of the obligors supervised by the National Bank, to the Law on the National Bank, and under the assumption that such powers can not be materialized unless [directly or indirectly] specified by respective sectoral laws and regulations.

821. The attached Annex IV summarizes references to the legislative provisions providing for the following powers of supervisory bodies:

1. Monitor and ensure compliance with AML/CFT requirements (R 29.1);
2. Conduct (on-site) inspections (extending to the review of policies, procedures, books and records, and sample testing) (R 29.2);
3. Compel production of or obtain access to all records, documents or information relevant to monitoring compliance (without the need to require a court order) (R 29.3);
4. Take enforcement measures and sanction both the institutions/businesses and their directors/senior management for incompliance with AML/CFT requirements (R 29.4).

822. Throughout various pieces of sectoral legislation regulating activities of different types of institutions in the financial sector, the above-mentioned powers of supervisory bodies are established as follows:

❖ **Banks**

823. Article 102 of the Law on Banks defines general competence of the National Bank for supervising banks, through both off-site surveillance and on-site inspections. Article 104 requires that supervisors have unhindered access to any documents and information pertinent to supervision.

[122] Without mentioning about insurance operations, which in Article 4 are added in the form of a separate Indent 6a.

[123] Also see the footnote on this subject under Criteria 23.1 and 23.2. Such opinion of the assessors is also supported by Article 82 of the AML/CFT Law designating the bodies empowered to exercise supervision over implementation of the Law, which establishes that, when such bodies in the course of conducting supervision establish irregularities or illegal acts in terms of implementation of the Law, they shall take certain actions in accordance with the respective law governing their supervisory powers.

824. Article 112 establishes that should a bank act in breach of provisions of the Law on Banks, regulations of the National Bank and other regulations, the NBS shall take one of the following measures:

- Send written warning;
- Send ordering letter;
- Declare orders and measures to remove irregularities;
- Introduce receivership;
- Revoke operating license of the bank.

825. Article 113 further establishes that independently of the measure taken under Article 112, the NBS may declare a fine to a bank, as well as to a member of the board of directors and executive board of a bank, whereas Article 118 defines that the NBS may order removal of a person from their position of a member of the board of directors or executive board of a bank, if it determines that such person fails to meet the requirements set forth in the Law or has acted in breach of provisions of the Law, and/or is responsible for irregularities in business operations of the bank.

826. Paragraph 1 (11) of Article 130 of the Law on Banks establishing that the NBS may revoke the bank's operating license "if the activities of the bank are related to money laundering, financing of terrorism, or performing other punishable act", can not be interpreted as a one providing for sanctions in case of the bank's failure to meet the requirements of the AML/CFT legislation; rather, it refers to the involvement of the bank itself, as a legal entity, in activities related to ML/FT, but not to its incompliance with the AML/CFT requirements as an obligor (for example, the failure to perform CDD can by no means be interpreted as "activities related to money laundering"). Nonetheless, the authorities are adamant that Item 8 of the same paragraph establishing that a bank's license may be revoked if it "has committed gross or persistent violations of the law or other regulation" can be applied, if necessary, for revocation of the bank license for its failure to adhere to the national AML/CFT requirements.

❖ **Exchange dealers/exchange bureaus**

827. Article 45 of the Law on Foreign Exchange Operations defines that the National Bank shall conduct supervision of foreign exchange operations of banks and other financial organisations, and exchange bureaus (without differentiating modalities of supervision such as off-site and on-site), thus providing for general competence of the National Bank to supervise activities of exchange bureaus. Section 4 of the Decision on Supervision of Exchange Transactions defines the modes of supervision as off-site and on-site, establishing that during on-site inspections the supervisors shall be entitled to inspect books of account and other documentation of the exchange office, as well as of the residents and non-residents related to the exchange office through property, management, or business relations.

828. Article 39 of the Law prescribes the following supervisory measures to be taken with regard to exchange dealers/bureaus:

- Suspend exchange operations for the period of up to 30 business days;
- Issue an order to remove irregularities;
- Revoke authorization for supervised exchange bureau or for all exchange bureaus of the entity;
- Revoke authorization for the performance of exchange operations.

❖ **Voluntary pension fund management companies**

829. Article 67 of the Law on Pension Funds provides for supervision exercised by the National Bank for the implementation of that Law, but not for other laws and regulations[124]. Therefore, the provisions of this law on supervisory powers of the NBS, on supervision tools (off-site and on-site), supervision measures and sanctions (including written warnings, ordering letters, institution of proceedings before a competent authority, withdrawing approval of appointment of a member of management of the management company, and revocation of the operating license of the management company), as specified by Articles 68-71 of the Law, technically are not applicable for the purposes of ensuring compliance with the national AML/CFT requirements.

830. Article 69 further determines that the NBS shall prescribe the manner of conducting supervision, the procedure for issuing orders and taking measures, and the time periods for the execution of orders and the duration of measures. However, the Decision on Pension Fund Supervision endorsed by the Governor of the National Bank with reference to the said Article 69 is also technically not applicable for supervising pension fund management companies for AML/CFT compliance.

831. Nevertheless, Section 2 of the Decision on Pension Fund Supervision establishes that supervision by the National Bank shall be conducted through off-site surveillance and on-site inspections. Section 4 obliges pension fund management companies to enable authorized persons to conduct supervision of the company's operations in its head office and in all organisation units, and to present them general documents, business books, statements from accounts and other documentation that authorized persons may require. Section 9 defines that in case of proven illegalities or irregularities, the National Bank shall take one or more of the following measures:

- Issue a written warning notice;
- Issue an order to remove irregularities;
- Institute proceedings before a competent authority;
- Withdraw the approval of appointment of a management member of the fund management company;
- Revoke the operating license of the fund management company.

832. Section 14 of the Decision on Pension Fund Supervision goes on defining that the approval of the appointment of a management member of the fund management company shall be repealed in cases prescribed by Article 17.1 of the Law on Pension Funds, which, again, provides for such withdrawal of the management member's approval of appointment only for his/her failure to violate the provisions of that Law, but not of other laws and regulations.

833. Hence, it is not clear how the Law on Pension Funds and the Decision on Pension Fund Supervision can be in legal terms utilized for ensuring compliance with the AML/CFT legislation[125]. In the example of supervisory action taken by the National Bank with respect to a

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[124] Article 67 reads: "The National Bank of Serbia shall conduct supervision of implementation of this law, enact, within its scope of competence, secondary legislation for the purpose of implementation of this law, and maintain a Register of Voluntary Pension Funds", whereas the law is absolutely silent on issues related to AML/CFT.

[125] There is, although, a link between these two documents, indirectly referring to the enforceability of some AML/CFT requirements; thus, Article 69, Paragraph 1, Indent 2 of the Law on Pension Funds defines that "If, in the course of supervision of the management company and the custody bank, it establishes any illegalities or irregularities, or non-compliance with the risk control rule, the National Bank shall... take one or more measures". Risk control rule, in turn, is defined by Indent 2, Paragraph 1 of the Decision on Risk Control Rules in Pension Funds as follows: "The fund management company shall be obliged to establish by its internal acts the system of management of all risks that arise from its operations which shall provide for their effective identification, measuring and control, as well as management of these risks (hereinafter: risk control), and especially: market risk, operational risk, liquidity risk and risk of harmonization of operations with regulations."

voluntary pension fund management company, the references made to the Law on Pension Funds in legal terms may be challenged for being insufficient to take any action related to AML/CFT, whereas the link of some other references to the subject matter of the applied supervisory measures is hard to trace (for example, the reference to Article 4, Paragraph 2, Indent 6 of the previous AML Law; to Indent 4, Paragraph 3 of the Decision on Risk Control Rules in Pension Funds). Such ambiguity might create legal problems, specifically in terms of appropriate enforcement of the AML/CFT framework.

❖ **Financial leasing companies**

834. Article 13(h) of the Law on Financial Leasing establishes that the National Bank shall conduct the supervision of lessor operations. Such supervision would include off-site surveillance of reports, other documents and data, and on-site inspection of business books and other documentation. In case of any irregularities or illegalities detected in the course of supervision, the NBS shall take the following measures:

- Send a written letter of warning;
- Send an ordering letter and, if necessary, pronouncing a fine;
- Issue orders for removing irregularities, with the possibility of pronouncing a fine to the lessor, as well as to the members of its management bodies, and/or persons with special authorities and responsibilities;
- Revoke the license to engage in financial leasing.

835. Sections 6, 12, and 13 of the Decision on Lessor Supervision define the details of taking supervisory measures in respect of both leasing companies and their management.

❖ **Insurance companies and intermediaries**

836. Article 18, 142, 148 and 180 of the Law on Insurance establish general competence of the National Bank for supervision over insurance business and the subjects of supervision as ”insurance companies, as well as …insurance brokerage companies, insurance agencies and/or agents, and agencies for providing other insurance services, companies and other legal entities which have a special department for providing other services in insurance, as well as to the legal entities which conduct brokerage and agency activities”.

837. Article 150 provides for the methods of supervision as off-site and on-site, whereas Articles 153 and 155 entitle supervisors to have (and oblige insurance companies to provide) access to all necessary documents and information.

838. Article 161 defines that, while performing supervision over an insurance company, the National Bank may:

- Order measures to remove illegalities and irregularities;
- Order measures due to violating the rules on risk management;
- Order the transfer of the insurance portfolio to another insurance company;
- Take over control of the insurance company;
- Withdraw the license to engage in certain or all licensed insurance activities;
- Order interim measures;
- Propose measures for the management members, members of the supervisory board, key functionaries and qualified stakeholders.

Paragraph 6 further defines the risk of harmonization of operations with regulations as “the possibility of the occurrence of negative effects on the position of the fund management company due to the failure to abide by regulations, particularly regulations that govern …the prevention of money laundering”. To put it simple, a fund management company can be sanctioned for the failure of not having established by its internal acts a system for the control and management of AML risks, but not for the failure to comply with the AML/CFT requirements.

839. The possibility of ordering measures to remove irregularities, withdrawing the license to engage in insurance activities, as well as proposing measures in respect of the management appear to be applicable, although with indirect reference[126] (and supposedly, with certain discretion deriving from it), in case of incompliance with the national AML/CFT requirements.

❖ **Broker-dealer companies**

840. Article 220 of the Law on Securities Market defines the competence of the Securities Commission to supervise business operation of all participants of the securities market, including broker-dealer companies, management companies, investment funds, authorized banks, and custody banks, in the part of operations they conduct on the securities market in compliance with the mentioned law and other laws regulating the subject matter. Article 221 further stipulates that the Commission shall conduct on-site supervision by the review of reports and documentation and other data, which the supervised are obliged to keep or submit to the Commission. The same Article requires that supervised entities provide the authorized persons of the Commission access to the business premises, to give for review the requested documents and papers, give statements, and provide other conditions for conducting supervision.

841. The Rules on Financial Market Supervision further elaborates on details of the modalities of supervision, those being off-site and on-site, on the powers of supervisors to obtain documents and information, and on supervision procedures.

842. Article 172 reiterates the entitlement of the Securities Commission for the supervision of broker-dealer companies (including that for on-site inspections), through inspection of official papers, business books, account statements and other documents, and empowerment to require information on particular matters important for business activity of the broker-dealer company. Article 173 defines supervisory measures, which can be taken against broker-dealer companies; particularly, when illegalities and/or irregularities are established in their operation, the Commission shall render a decision ordering to eliminate such illegalities and/or irregularities within a specified time limit, and can undertake other measures, such as to:

- Pronounce a public reprimand;
- Issue an order for temporary prohibition on performing all or particular activities specified in the working license, for the period of maximum 3 months;
- Issue an order for temporary prohibition on management of funds in the cash and securities accounts and management of other assets for the period of maximum 3 months;
- Make an order for temporary prohibition on payment to members of the management bodies and employees of the profit part and/or remuneration belonging to shareholders;
- Revoke the working license for performing the business activity[127];
- Undertake other measures in conformity with the Law on Securities Market and the act to be rendered by it.

843. However, neither the Law on Securities Market nor the Rules on Financial Market Supervision contain provisions on application of sanctions with respect of directors/senior

[126] None of the articles providing the grounds for the application of supervisory measures directly refers to incompliance with AML/CFT requirements; however, the wording of those articles such as “if …it does not meet other obligations prescribed by the law”, “if … insurance company fails to operate according to the prescribed measures of the National Bank of Serbia” seem to amount to a sufficient basis for the enforcement of the AML/CFT framework.

[127] Article 174 establishing the bases to revoke the license of a broker-dealer company does not provide for revocation due to incompliance with other laws/regulations (including the AML/CFT legislation).

management of broker-dealer companies for their failure to comply with the legislative requirements (including those related to the AML/CFT framework)[128].

❖ **Investment fund management companies**

844. Article 80 of the Law on Investment Funds provides for competence of the Securities Commission to supervise implementation of the Law, but not of other applicable laws (although the Commission's empowerment to supervise implementation of other laws by investment funds is provided by Article 220 of the Law on Securities Market). Article 81 defines the Commission's empowerment to conduct on-site supervision by means of inspecting business books, account statements, and other documents of an investment fund and requesting information on certain issues of importance for operation of the fund.

845. Pursuant to Article 82 of the Law on Investment Funds, when illegalities or irregularities are established in business operation of an investment fund, the Commission shall render a decision ordering removal of established irregularities within the specified period. If the supervised entity fails to act in compliance with the decision, the Commission shall undertake one or more of the following measures[129]:

- Issue a public reprimand;
- Initiate proceedings before the competent authority;
- Revoke the consent for appointment of management members, and/or general manager;
- Give order for prohibition of issuance of investment units in the duration of up to three months.

❖ **Persons involved in professional activities of intermediation in credit transactions and provision of loans, factoring and forfeiting, provision of guarantees, and money transfer services**

846. Apart from the provisions of Articles 82-84 of the AML/CFT Law, which stipulate for responsibility of various state bodies to supervise implementation of the Law, the assessment team was not provided any information on the legislative provisions establishing the powers of the Ministry of Finance (in the capacity of supervisor for persons dealing with postal communications [with respect to domestic payment operations] and for persons involved in professional activities of intermediation in credit transactions and provision of loans, factoring and forfeiting, provision of guarantees, and provision of money transfer services pursuant to Article 84.4 of the AML/CFT Law), the Ministry of Telecommunications and Information Society[130] (in the capacity of supervisor for persons dealing with postal communications [with respect to valuable mail operations] pursuant to Article 84.5 of the AML/CFT Law), and the Foreign Currency Inspectorate (in the capacity of supervisor for persons involved in professional activities of factoring and forfeiting, and provision of money transfer services [with respect to international payment transactions] pursuant to Article 84.11 of the AML/CFT Law) to monitor and ensure compliance of the respective obligors with AML/CFT requirements, conduct (on-site) inspections,

[128] The authorities refer to Article 128 of the Law on Securities Market, which defines that "the Commission shall revoke the license [which is a prerequisite for holding a management position - Assessors] from a broker, investment consultant and/or portfolio manager, if the person …has committed a serious violation of provisions of the present Law in Article 86, paragraph 1, sub-paragraph 2 of the present Law", whereas Article 86 refers to the violation of the "rules of safe and fair operation", which,, as defined by Article 161 of the same Law, have nothing to do with adhering to AML/CFT requirements.

[129] Article 83, which establishes the bases for revoking the license of an investment fund management company, does not provide for revocation due to incompliance with other laws/regulations (including the AML/CFT legislation).

[130] Authorities refer to Articles 87-93 of the Law on Postal Services and Articles 22-33 of the Law on Public Administration as the legislative provisions establishing relevant powers of the Ministry of Telecommunications and Information Society; however, the assessment team was not provided these laws for further reference.

obtain access to all records and information relevant to monitoring compliance, enforce and sanction both the institutions/businesses and their directors/senior management for incompliance with AML/CFT requirements.

Effectiveness and efficiency (R. 23 [c. 23.1, c. 23.2]; R. 29, and R. 30 (all supervisors))

847. Competence for supervision of compliance with AML/CFT requirements in Serbia lies with as many as eleven authorities designated by Articles 82-84 of the AML/CFT Law to exercise supervision over implementation of the Law in their respective areas of responsibility; among them, six bodies have a mandate for supervising activities of financial institutions. Supervisory mandate of those bodies is rather comprehensive and encompasses powers for general regulation and supervision, with instrumentalities such as off-site surveillance and on-site inspections, unhindered access to all records, documents, and information relevant to monitor compliance of supervised entities with applicable legislation, and enforcement and sanctioning tools.

848. Due to peculiarities of Serbian legislation, the main (or organic) laws defining powers of supervisory bodies in their respective areas of responsibility do not contain direct references to the authority to exercise supervision aimed at ensuring compliance with the national AML/CFT framework. This is done through various sectoral laws, which regulate activities of different types of financial institutions.

849. However, in some cases (for example, in case of legislation on voluntary pension funds and their management companies) due to the cross-referenced definition of supervisory powers in terms of AML/CFT, the legal ability of the supervisor to take certain supervisory measures can not be derived from the applicable legislation and, therefore, may be challenged. Moreover, there are missing elements of defined supervisory entitlement as to the power of applying sanctions with respect of directors/senior management of broker-dealer companies for their failure to comply with the legislative requirements.

850. Due to the lack of provided information, the assessment team was not able to assess the adequacy and relevance of the supervisory regime with regard to persons dealing with postal communications (with respect to domestic and international payment operations, and valuable mail), persons involved in professional activities of intermediation in credit transactions and provision of loans, factoring and forfeiting, provision of guarantees, and provision of money transfer services; particularly with regard to the ability of supervisory bodies to monitor and ensure compliance of the respective obligors with AML/CFT requirements, conduct (on-site) inspections, obtain access to all records and information relevant to monitoring compliance, enforce and sanction both the institutions/businesses and their directors/senior management for incompliance with AML/CFT requirements.

851. Those of the supervisory bodies interviewed during the assessment visit did not raise any problems with the possible inadequacy or irrelevance of their powers to monitor and control activities of the financial market participants. The representatives of the private sector, on the other hand, had a full recognition and understanding of the supervisory function exercised by various authorities entitled to do so and reported that the powers of those authorities are "more than enough" to ensure compliance with the applicable legislative framework.

Recommendation 17

Availability of Effective, Proportionate & Dissuasive Sanctions (c. 17.1); Range of Sanctions—Scope and Proportionality (c. 17.4)

852. As mentioned above, infringements of the AML/CFT law are either economic offences (article 88 and 89) or minor offences (article 90 and 91). Articles 88-91 of the AML/CFT Law provide for the sanctions to be imposed for the failure to comply with the requirements of the Law, definitely

establishing the cases of such failure articulated as specific actions (failure to act) of obligors. At that, the Law provides only for pecuniary sanctions for non-compliance, differentiating them as relatively "grave" violations committed by legal entities as provided for by Article 88, less "grave" violations committed by legal entities as stipulated by Article 89, minor offences committed by entrepreneurs[131] and natural persons[132] as prescribed by Article 90, and minor offences committed by lawyers as defined by Article 91.

853. It should be noted that due to case-by-case (or article-by-article, requirement-by-requirement) approach to determination of sanctions, there are no sanctions stipulated for the provisions of the Law defining certain obligations of (actions to be taken by) obligors. In particular, no sanctions are envisaged in case of violating provisions of Article 28.2 (obligors to perform enhanced CDD in case of estimated high level of ML/FT risks), Article 40 (obligors to ensure that the tasks of compliance officers and their deputies are carried out by persons meeting certain requirements) and Article 73 (employees of obligors prohibited from tipping off).

854. For each specific action (failure to act) constituting a breach of the provisions of the Law, there is an established range of fines exacted on the offender. That range is:

- From RSD 500.000 (approximately EUR 5.400) to RSD 3.000.000 (approximately EUR 32.400) – in case of economic offences committed by legal persons, as stipulated by Article 88 of the Law;
- From RSD 50.000 (approximately EUR 540) to RSD 1.500.000 (approximately EUR 16.200) – in case of economic offences committed by legal persons, as stipulated by Article 89 of the Law;
- From RSD 5.000 (approximately EUR 54) to RSD 500.000 (approximately EUR 5.400) – in case of minor offences committed by entrepreneurs and natural persons, as stipulated by Article 90 of the Law;
- From RSD 5.000 (approximately EUR 54) to RSD 500.000 (approximately EUR 5.400) – in case of minor offences committed for which a lawyer may be held liable, providing for sanctions in form of fines ranging.

855. In comparison with the per capita GDP equalling RSD 320.000 (approximately EUR 3.400) as of December 2007, and the average monthly wages amounting to RSD 45.300 (approximately EUR 490) as of April 2009[133], it seems that the fines are large enough to dissuade potential offenders to violate the legislation, and provide a sufficiently broad range for ensuring that the sanctions applied are proportionate to the severity of the situation.

856. Administrative sanctions are, although indirectly and not clearly in all cases, available under various sectoral laws governing activities of financial institutions and businesses; usually, they include supervisory measures such as:

- Send a written warning;
- Send an ordering letter;
- Declare orders and measures to remove irregularities;
- Issue an order for temporary prohibition on performing all or particular activities specified in the working license, for a certain period;
- Propose measures against management members, members of the supervisory board, key functionaries (in some cases, against qualified stakeholders);
- Institute proceedings before a competent authority;
- Introduce receivership;

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[131] When they commit any of the acts provided by Articles 88 and 89

[132] When they fail to (appropriately) declare to the competent customs body cross-border transportation of payment instruments provided by Article 67 (with further reference to Article 81.5 of the Law)

[133] Source: Official website of the Statistical Office of the Republic of Serbia (http://webrzs.statserb.sr.gov.yu).

- Revoke operating license of institution[134];
- Other measures.

857. In addition, some sectoral laws also provide for imposing pecuniary sanctions on obligors. For example, Article 113 of the Law on Banks establishes that, independently from administrative measures taken in respect of the bank, the National Bank may declare a fine to the bank, as well as to the members of its management. The authorities advised that the practice has been to impose a sum total of fines for all irregularities – including those related to AML/CFT – discovered due to inspections of banks. [135]

858. However, the legal and practical problem with the pecuniary sanctions under the AML/CFT Law and various sectoral laws is that the AML/CFT Law is very specific about the pecuniary sanctions imposed for the failure to adhere to the requirements of the Law. Articles 88-91 prescribe on a case-by-case (or Article-by-Article, requirement-by-requirement) basis the sanctions to be applied for the breach of the Law. That is, should a National Bank based on Article 113 of the Law on Banks, wish to impose a fine to a bank for the breach of a specific requirement of the AML/CFT Law, it will not be able to do so, because the bank has already been (or is expected to be) sanctioned by the court based on the penal provisions of the AML/CFT Law, and the institution objectively cannot be sanctioned twice for the same act (failure to act).

859. Hence, the availability of pecuniary sanctions both under the AML/CFT Law and under various sectoral laws is likely to compromise overall effectiveness of the sanctioning regime.

Designation of Authority to Impose Sanctions (c. 17.2)

860. Article 82 of the AML/CFT Law defines the as many as eleven bodies which are empowered to exercise supervision over implementation of the Law: among them, six bodies have a mandate for supervising activities of financial institutions. It establishes that, when such bodies in the course of conducting supervision establish irregularities or illegal acts in terms of implementation of the Law, they shall, in accordance with the respective law governing their supervisory powers, do the following[136]:
1) Demand that the irregularities and deficiencies be removed in the period set by such bodies;
2) Lodge a request to the competent body for the initiation of an adequate procedure
3) Take other measures and actions for which they are authorized by the law.

861. Both under the previous AML Law and the new AML/CFT Law, the enforcement mechanism works in a way that the sanctions stipulated by the AML/CFT Law can be imposed only by means of judicial proceedings, that is, after discovering any infringement of the Law, the supervisor is obliged to refer the case to law enforcement bodies for prosecution and initiation of court trial. In other words, supervisory bodies are not authorized and able to apply penal provisions of the AML/CFT Law, and should an obligor, for example, fail to take any of the CDD measures stipulated by the law or to provide for regular training of the staff involved in AML/CFT-related activities, the supervisor is obliged to make a complete, itemized list of the violations of the law and refer it to the prosecutor's office. This, in turn, would mean that over the past years of application of both the previous AML and the new AML/CFT Law, hundreds of referrals should

[134] It is worth of mentioning that at least in case of broker/dealer companies, and investment funds the legislation does not even indirectly provide for revoking the license of the institution for the failure to comply with the national AML/CFT requirements.

[135] The figures indicated in Annex IV on the amount of pecuniary sanctions imposed for AML/CFT incompliance also include those imposed for other irregularities, which does not provide a fair idea on how effectively the pecuniary sanctions stipulated under the different have been applied.

[136] For more details on the operation of the supervision/ sanctioning arrangements see the description under Criterion 23.1.

have been made to the law enforcement bodies resulting in an identical number of court decisions on sanctioning the obligors for a certain amount for each violation of the AML/CFT Law.

862. However, the assessment team was not provided adequate information on the number of violations of the AML/CFT Law having resulted in referrals to the respective law enforcement bodies, court decisions and amounts of pecuniary sanctions applied. The available statistics on the number of referrals to law enforcement bodies, court decisions, and imposed sanctions show that, within the period of September 2005 – November 2009:

a) The number of referrals to law enforcement bodies totalled 54;
b) Out of that number, 34 referrals or 63% are still pending, some dating back to 2005, 2006, and 2008;
c) The amount of imposed pecuniary sanctions by court decisions totaled RSD 830.000 (approximately EUR 9.000).

863. A somewhat similar picture can be seen also in case of minor offences. In the assessors' opinion, the above figures can by no means be considered as sufficient evidence of an effectively functioning enforcement system. These results lead the assessors to conclude that the sanctioning regime, as set out under the AML/CFT Law, is not effective and sufficiently dissuasive for the potential violators of the law from the failure to abide with the requirements established by the law.

864. In general, the distribution of sanctioning powers between supervisory bodies (NBS, Securities Commission, different ministries) – in respect of administrative and, in some cases, pecuniary sanctions available under various sectoral laws, and law enforcement bodies (prosecutors and courts) – in respect of pecuniary sanctions available under the AML/CFT Law, does not provide for an effective mechanism for a dissuasive application of the sanctions within AML/CFT context. This conclusion is supported by the factual indicators of the sanctions so far applied under both the previous AML Law and the new AML/CFT Law.

Ability to Sanction Directors and Senior Management of Financial Institutions (c. 17.3)

865. The AML/CFT Law does not provide for any sanctions with regard to directors/senior management of financial institutions and businesses for their failure to abide by national AML/CFT requirements. Particularly, Articles 88 and 89 of the AML/CFT Law provide for the sanctions to be imposed on obligor legal entities only, whereas Article 90 stipulates for sanctions imposed for minor offences on entrepreneurs and on natural persons[137], and Article 91 defines the minor offences for which a lawyer may be held liable.

866. Various pieces of legislation establishing enforcement and sanctioning powers of supervisory bodies contain provisions, which indirectly provide for sanctioning directors/senior management of institutions for non-adherence to the requirements of national AML/CFT legislation. Detailed references to those legislative provisions are presented under analysis of Criterion 29.4 (and respectively, the gaps identified under c. 29.4 are applicable for the purposes of c.17.3).

<u>Market entry</u>

Recommendation 23 (c. 23.3, c. 23.3.1, c. 23.5, c. 23.7, licensing/registration elements only)

Prevention of Criminals from Controlling Institutions, Fit and Proper Criteria (c. 23.3 & 23.3.1)

867. Applicable sectoral laws and regulations contain provisions regulating market entry by means of becoming the holder or beneficial owner of a significant or controlling interest, and of

[137] When such natural persons fail to declare to the competent customs body cross-border transportation of payment instruments amounting to or above EUR 10.000, and when the respective declaration does not contain all required data. That is, this provision can not be applied for sanctioning directors and senior management of financial institutions and businesses (as natural persons).

holding management functions in financial institutions, also providing for "fit and proper" tests of management members.

868. In general, Serbian legislation defines a licensing procedure for all to-be-established financial institutions and a prior consent/approval regime for legal and natural persons to obtain significant (qualified) or controlling interest in financial institutions. The "fitness and properness" of management members is tested against criteria such as appropriate educational and professional background, proven skills and expertise, clean criminal record, business reputation, and the potential for conflicts of interest.

869. For the ease of reference and in order to avoid double effort, this section provides licensing and "fit and proper" analysis for the financial institutions covered by the Core Principles[138], whereas the relevant analysis on other financial institutions is presented under Criteria 23.5 and 23.7.

- **Banks**

870. As established by the Law on Banks and the Decision on Licensing of Banks, the licensing procedure entails a preliminary approval for founding a bank, which is granted on basis of a defined and comprehensive set of documents and information to be provided by the interested persons; such documents and information include, *inter alia*, personal data on the founders, proposed structure of the bank capital, data on qualifications, experience, and business reputation of nominated members of the bank's board of directors and executive board, the proposed program of activities for the period of three years, and the draft business policy, as well as the draft procedures for risk management and internal control of the bank. Granting of the preliminary approval is followed by the issuance of an operating license based on the request of the interested parties.

871. Articles 15, 16, 72, 75, 94, and 96 of the Law on Banks reflect on the rules and procedures for the preliminary approval for establishment of bank, the refusal of request for establishment of bank, the appointment of members of the board of directors (including the requirement on having a clean criminal record), the composition and appointment of the executive board (including the requirement of having good business reputation and appropriate qualifications), the consent regarding acquisition of ownership, and the refusal of request for obtaining the consent (also in case of the applicant's failure to have a good business reputation). Sections 4, 5, 13, 28, 29, and 30 of the Decision on Licensing of Banks further define such rules and procedures for the NBS to obtain data on founders of bank (natural persons and legal entities), all stakeholders, nominated members of the board of directors and the executive board (including the requirement on having a clean criminal record and appropriate qualifications in respect of mentioned persons), and prior approval for acquisition of ownership.

- **Insurance Market**

872. The licensing procedure for insurance (reinsurance) companies is generally the same as that for banks, except that there is no preliminary approval stage. The Law on Insurance also stipulates for separate licensing procedures for all participants of the insurance market, such as insurance brokerage companies, insurance agency activities (carried out both by duly licensed and authorized insurance agencies and by individuals) and agencies providing other insurance services (such as determination and assessment of risks and damages, brokerage for the purpose of sale, selling of the remains of insured damaged objects etc).

[138] As defined by the FATF Assessment Methodology, the term "financial institutions covered by the Core Principles" broadly speaking refers to: (1) banking and other deposit-taking business, (2) insurers and insurance intermediaries, and (3) collective investment schemes and market intermediaries.

873. Articles 32, 34, 35, 39, 44, 48, 78, 93, and 103 of the Law on Insurance provide for the rules and procedures for the approval of acquisition of qualified stake, the application for such approval, the rejection of such application, the application for license (including the evidence on clean criminal record of shareholders [39.8(2)] and nominated managers [39.10(4)]), the rejection of application for license, the approval for carrying out managerial functions, the application for an insurance brokerage license (including the evidence on clean criminal record of shareholders [78.4] and nominated managers [78.6]), the application for an insurance agency license (including the evidence on clean criminal record of shareholders [93.4] and nominated managers [93.6]), and the application for license to provide other insurance services (including the evidence on clean criminal record of shareholders [103.5] and nominated managers [103.6]). Sections 9 and 11 of the Decision on Licensing of Insurance further define such rules and procedures for the NBS to obtain data on shareholders (natural and legal persons) and nominated members of management (including the requirement on having a clean criminal record and appropriate qualifications in respect of mentioned persons).

❖ **Voluntary Pension Funds**

874. The Law on Pension Funds establishes that, for obtaining an operating license, founders of a voluntary pension fund management company should submit an application accompanied with wide range of documents and information on both the founders and the company to be founded, very much alike the ones required for the establishment of a bank. Along with the application, they must also submit drafts of standardized documents (such as contracts of membership in the voluntary pension fund, prospectus of the fund, tariff code etc) regulating relations of the fund with stakeholders inside and outside the company.

875. Articles 10, 14, 15 and 16 of the Law on Pension Funds provide the rules and procedures for the application for license (including the requirement on clean criminal record of shareholders [10. 5(2)]), the approval of acquisition of qualified shares, and the eligible members of management (including the requirement on clean criminal record and appropriate qualifications of managers).

❖ **Securities Market**

876. Activities of the capital market participants are also subject to licensing as established by provisions of the Law on Securities Market. Among others, broker-dealer companies, stock exchanges, over-the-counter market operators, management companies, and investment funds should have a respective license granted by the Commission based on a request accompanied with a wide variety of documents and information, including the data on the founders, the structure, staff, and organisational capacities of the entity to be founded, data on the management etc. Authorized and custodian banks are also licensed – for the part of operations they conduct in the securities market – by the Securities Commission.

877. Article 77 of the Law on Securities Market defines the rules for acquisition of qualified shares of a stock exchange. Particularly, it establishes that the Securities Commission shall define detailed conditions for determining the criteria for suitability and reliability of entities that are acquiring qualifying holdings. Article 81 goes on articulating the conditions for the Securities Commission to issue a stock exchange working license. Article 86 defines the requirements in respect of members of management of stock exchange (including the requirement on having a clean criminal record and appropriate qualifications). Article 115 defines, that the provisions of the law on licensing of a stock exchange shall be applicable in respect of an over-the-counter market operator[139]. Then, Article 123 defines the rules for acquisition of qualified shares in a broker-dealer company (by referring to Article 77). Article 128 establishes the rules for the licensing of a broker, investment consultant, and portfolio manager (including the requirement on having a clean criminal record and appropriate qualifications), and Article 129 defines the rules

[139] As presented by the authorities, currently there are no over-the-counter market operators in Serbia.

for the licensing of a broker-dealer company. The requirements in respect of members of management of a broker-dealer company (including the requirement on having a clean criminal record and appropriate qualifications) are defined by Article 137.

878. Articles 9, 17 and 19 of the Rules on Conditions for Conducting Market Operator Activities and Article 8, 17 and 20 of the Rules on Requirements for Conducting Broker-Dealer Company Activities, and Article 23 of the Rules on Requirements for Conducting Management Company Activities provide for requirement to verify the clean criminal records of physical persons to become a founder or to acquire a qualified holding in the capital of a market operator, broker-dealer company and investment fund.

Licensing or Registration of Value Transfer/Exchange Services (c. 23.5)

879. In addition to banks, there are certain types of entities entitled to involve in the provision of money/currency exchange and/or money or value transfer services, each of them being regulated and supervised by one or several state bodies authorized to exercise supervision in respect of certain parts of activities of such entities.

❖ **Exchange dealers/exchange bureaus**

880. Licenses for performing exchange operations are granted by the National Bank. Particularly, the Decision on Exchange Operations defines that an economic entity (legal person or entrepreneur) may be issued a license to perform exchange operations based on a request accompanied with information and documents both on the founders/employees (including the proof of clean criminal record) and proposed business activities of the entity. Once the National Bank establishes that the economic entity meets all the requirements for performing exchange operations, it shall issue a license to the economic entity for each individual exchange bureau of the entity. Licensed dealers may enter into agreement with banks and with the National Bank enabling them to involve in exchange operations.

❖ **Persons involved in provision of money transfer services**

881. The assessors were not provided any information on the applicable legislation, which would establish licensing/registration requirements for persons involved in provision of money transfer services, although there is at least one company – PTT "Srbija" – directly and factually involved in the provision of such services.

Licensing of other Financial Institutions (c. 23.7)

882. There are several types of financial institutions other than those covered by the Core Principles (licensing requirements for these institutions being presented under Criterion 23.3) and the ones providing money or value transfer service, or a money or currency changing service (licensing requirements for these institutions being presented under Criteria 23.5); such financial institutions are:

- Financial leasing companies;
- Agents/third party transaction processors;
- Persons exercising professional activities of intermediation in credit transactions and provision of loans, factoring and forfeiting, and provision of guarantees.

❖ **Financial Leasing Companies**

883. Licensing of financial leasing companies, as established by the Amended Law on Financial Leasing and the Decision on Licensing of Leasing Companies, is done through a procedure very much similar to that of other financial institutions regulated and supervised by the National Bank,

in response to a request submitted by the founders of the leasing company accompanied with a wide range of documents and information on both the founders and the proposed management of the company. When deciding on the issuance of license to perform financial leasing operations, the National Bank shall assess the fulfilment of conditions required for the issuance of a license, as well as the business reputation of founders and nominated members of the management.

884. The Law on Financial Leasing does not contain any specific provisions on market entry requirements of owners and managers of leasing companies, whereas Section 2.3 of the Decision on Licensing of Leasing Companies stipulates for obtaining data on nominated members of administration bodies and/or persons with special authorizations and responsibilities, including the proof of clean criminal record and appropriate qualifications. The authorities refer to Section 10 of the Decision on Licensing of Leasing Companies stipulating for assessment of business reputation of the founders on basis of their biography, personal, professional, and moral integrity, professional qualification, and work experience, whereas moral integrity is interpreted as something to without failure reflect clean criminal record of the founders. However, the assessment team does not believe that this kind of interpretation is exhaustive and can be applied in a universal and unprejudiced manner to all possible cases. Therefore, the legislation should be amended to include a definite requirement for banning market entry – as owners and significant/controlling interest holders of leasing companies – of persons with criminal background.

- **Agents/third party transaction processors**

885. As provided by the authorities, the legislation does not establish licensing/registration requirements for agent/third party transaction processors[140]. Nevertheless, the activities legally stipulated for these types of entities, such as “payment transactions on behalf of a bank – as the place for receipt and distribution of payment orders sent or received by a bank, which is directly accessible to clients for the purpose of sending and receiving such orders”[141], correspond to the definition of activities provided by the FATF Recommendations (definition of financial institutions, Item 5, “…managing … money orders”).

- **Persons exercising professional activities of intermediation in credit transactions and provision of loans, factoring and forfeiting, and provision of guarantees**

886. The assessors were not provided any information on the applicable legislation, which would establish licensing/registration requirements for persons exercising professional activities of intermediation in credit transactions and provision of loans, factoring and forfeiting, and provision of guarantees.

On-going supervision and monitoring

Recommendation 23&32 (c. 23.4, c. 23.6, c. 23.7, supervision/oversight elements only & c. 32.2d)

Application of Prudential Regulations to AML/CFT (c. 23.4); Statistics on On-Site Examinations (c. 32.2(d))

887. Overall, Serbian legislation provides a rather comprehensive framework for regulatory and supervisory measures applied for prudential purposes in respect of financial institutions covered by the Core Principles. All financial institutions under the regulation and supervision of the

[140] For more detail, see the analysis under Criterion 23.7 (Supervision of Other Financial Institutions). The authorities advised that Article 43 of the Law on Payment Transactions defining that “the procedures of issuing an agent license initiated before and not completed as of the implementation date of the Law shall be carried out according to the regulations in force as of such date”, has been repealed.

[141] Section 2, Decision on Agent Operations and Requirements for Performing Such Operations

National Bank and the Securities Commission are subject to prudential supervision. As such, they are required to maintain adequate risk management systems and a structure ensuring effective internal control. All financial institutions licensed by the National Bank and almost all participants of the securities market licensed by the Securities Commission[142] are designated as obligors under the AML/CFT Law; hence, they are subject AML/CFT supervision by the mentioned state bodies pursuant to the provisions of Articles 82-84 of the Law. Various sectoral laws establish procedures envisaged for the licensing and prudential supervision of such institutions.

888. The Law on Banks defines a banking group as a group of companies, which consists exclusively of financial sector entities and includes at least one bank being the ultimate parent company or a subsidiary. By definition, a banking group is at the same time a financial group. Groups of financial sector entities that do not include at least one bank are not within the scope of the consolidated supervision conducted by the NBS. Articles 122-128 of the Law establish the rules for supervision of a banking group on consolidated basis, define subordinated companies of a bank and of a bank holding company, the requirement for preparing consolidated financial statements of a banking group and for risk management at group level, as well as the measures against the members of and the persons participating in banking groups. Then, the Decision on Implementing Provisions of the Law on Banks Related to Consolidated Supervision of Banking Group[143] describes in detail the scope of consolidated supervision conducted by the NBS, the contents of consolidated financial statements of the banking group and the frequency of their submission, risk management rules within the banking group etc. As of 31 December 2008, there were 10 banking groups in Serbia which were within the scope of the NBS' supervision.

889. For all financial institutions, available supervision tools include off-site surveillance – through distant examination of the reports, other documentation, and information submitted by supervised entities, and on-site inspections – through site visits at their premises. In exercising supervision, both the National Bank and the Securities Commission are entitled to inspect business books, account transcripts, correspondence, and other documents and data in place, as well as to request information on particular issues of importance for the activities of supervised entities.

890. Further assessment of the adequacy of regulatory and supervisory measures is done in consideration of availability of an appropriate supervision methodology, a supervision planning procedure, and factual results of supervision as defined by the Core Principles.

- **Banks**

891. ***Supervision methodology:*** Supervision of banks is carried out by the Bank Supervision Department of the NBS in accordance with the Law on Banks, the Decision on Bank Supervision, and the Memorandum for AML/CFT Supervision of Banks. These documents, and especially the Memorandum for AML/CFT Supervision of Banks, provide a detailed description of supervision processes and procedures, including those stipulated for examination of various aspects of bank activities dealing with AML/CFT, and for the assessment of their pertinent risks, processes and procedures to be carried out prior to, in the course, and as a result of on-site inspections in banks.

892. ***Planning of supervision:*** As provided by the authorities, there is a formal procedure for making annual supervisions plan for banks, which stipulates for analyzing business activities of banks, identifying the areas to be inspected, determining the type of inspection (full-scope or targeted), also based on the review of the results of inspections in banks (at least for the last two years). In procedural terms, the draft annual plan proposed by the respective division has to be approved by the Supervisory Review Committee – this is an expert body established by NBS Governor's decision and with the membership of the Vice Governor in charge for supervision

[142] Except for market operators (including stock exchanges and over-the-counter market operators), and the Central Registry, Depository, and Clearing of Securities (the Central Registry)
[143] "RS Official , No. 86/2007, 63/2008 and 112/2008.

matters, the General Manager of the Bank Supervision Department, the Deputy Manager and division managers from the Supervision Department. The Committee's works are regulated by a respective internal act.

893. Any changes to the approved annual plans have to be endorsed by the Supervisory Review Committee. Approved annual plans contain detailed information on the banks to be inspected, on the timing and type of inspection, with the relevant decisions being made on basis of factors such as assessment of the risks pertinent to various areas of operation of the bank, its size, development patterns (increase in the number of branches, employees, introduction of new banking products etc.), financial analysis performed by the portfolio manager responsible for monitoring business activities of the bank, AML&CFT Questionnaire analysis, etc. According to the information provided by the authorities, supervision plan for 2009 encompasses 2 full scope supervisions, 10 target AML/CFT supervisions, 11 other target controls without AML/CFT, and 32 target diagnostic controls, thus making a total of 55 supervision visits. The authorities advised that the number of planned full-scope inspections for 2009 was significantly lower than in earlier years because the original On-Site Supervisions Annual Plan for 2009 was changed twice. The first change was because of the financial crisis – some liquidity targeted inspections were planned instead of full scope inspections. The second change was introduced in compliance with IMF recommendation for bringing more diagnostic inspections (capital adequacy), which also were planned instead of full scope inspections.

894. At that, the National Bank has established the practice of off-site reviewing the banks' activities by means of requiring banks to fill out and submit Anti-Money Laundering Questionnaires. Each Questionnaire covers a six-month period, and banks are required to fill in their responses two times a year outside regular inspections. Evaluation of bank responses enables the NBS to pinpoint potential areas of risk and alert banks to undertake countermeasures in advance of the potential impacts. Another purpose of this survey is to gain background information on the approach and methodology that banks apply in this area and to provide case by case guidance through issues of particular significance. As advised by the authorities, such information is analysed for the whole banking sector, and the results of analysis are posted on the NBS website.

895. ***Results of supervision:*** Summarized statistics on on-site inspections of banks conducted by the Bank Supervision Department of the NBS are presented in Annex IV. The statistics on supervision for the last years show that out of 72 supervision actions taken in respect of banks over 2006-2008, only 8 involved and 17 were fully dedicated to examination of AML/CFT compliance. In other words, less than 35 percent of supervisory efforts have had to do with ensuring that financial institutions subject to AML/CFT regulation and supervision are effectively implementing the FATF Recommendations as integrated into and reflected in the national framework.

896. Moreover, the main irregularities identified by supervision include the banks' failure to (timely) provide the APML data on one or several interrelated cash transactions, provide the APML data on transactions or persons suspected to be in connection with money laundering, establish ultimate beneficial ownership of legal entity, obtain a written authorization when opening an account on the order of proxy, establish the reasons (purpose) for opening an account, and establish and carry out permanent training for employees in AML/CFT matters. As provided by the authorities, based on the results of supervision the NBS concludes upon the reasons underlying the established irregularities (such as inadequacy of internal procedures, inappropriate performance of relevant units/ functioners within the bank etc.) and takes a respective remedial action as provided by applicable legislation (issuance of written warnings, ordering letters etc). Orders issued by the NBS contain a deadline for the elimination of irregularities, and deadline within which the bank is required to submit to the NBS a report on removed irregularities, with appropriate evidence enclosed. The Governor of the NBS or the person authorized by the

Governor may authorize employees of the NBS by a special decree to check and monitor on a daily basis the execution of orders. As advised by the authorities, this practically means that the supervisory service of the National Bank supervises the execution of the orders and measures after the expiry of the deadline for their execution, or before the expiry of such deadline – if notified by the bank that the orders have been executed (follow up supervision).

❖ **Insurance Market**

897. ***Supervision methodology:*** Supervision of insurance activities is carried out by the Insurance Supervision Department of the NBS in accordance with the respective provisions of the Law on Insurance. As presented by the authorities, currently there is no methodology regulating and guiding both off-site and on-site supervision procedures [the authorities advised that a manual articulating relevant procedures such is being drafted]

898. ***Planning of supervision:*** The assessment team was advised that there is a plan of activities of the Insurance Supervision Department (dated 2007 and covering a period up until the end of 2009), envisaging for on-site inspection of the legality of business operations of insurance companies with elements of risk exposure estimates. In line with that program, a dynamics of realization was established as follows: for 2007 – 2 inspections, for 2008 – 7 inspections, and for 2009 – 7 inspections, a total of 16 inspections However, due to the lack of relevant information the assessors were not able to conclude on the adequacy of supervision plans as to the number of supervised entities, to the types and characteristics of their activities in realization of the risk-based supervision approach, etc.

899. ***Results of supervision:*** Summarized statistics on on-site inspections of insurance companies conducted by the Insurance Supervision Department of the NBS are presented in Annex IV. The statistics show that the Insurance Supervision Department has never identified AML/CFT-related irregularities and, respectively, has not taken any supervisory measures related to AML/CFT compliance.

900. As presented by the authorities in the Detailed Assessment Questionnaire (April 3, 2009) on-site supervision had not involved examination of compliance with the AML/CFT requirements. However, in the statistics received from the authorities after the assessment visit, there is an indication that in the second half of the 2008, on-site inspections included supervision of the duties of insurance companies in accordance with the previous AML Law. Particularly, out of 7 controls in 2008, two insurance companies that deal with life insurance have been controlled with respect of the implementation of the Law.

901. Nevertheless, such statement on having conducted inspections for checking compliance with AML/CFT requirements is not backed by any facts on the main irregularities identified due to inspections, on supervisory measures taken in respect of insurance companies and intermediaries for incompliance, and on the respective sanctions imposed on them. Moreover, taking into account that there are 24 insurance companies, 60 insurance brokerage or insurance agency companies, and 121 licensed insurance agents, all of them being obligors under the AML/CFT Law and subject to supervision by the Insurance Supervision Department, the number of inspections can by no means be considered satisfactory in terms of ensuring compliance of the mentioned obligors with the requirements of the applicable legislation.

902. And finally, the materials provided to the assessment team do not seem to contain an analysis on the underlying reasons for the existence of the deficiencies (if any) identified due to supervision (e.g. inappropriate internal control systems, inefficient management, lack of understanding and skills etc) and a subsequent series of actions for removing such reasons (e.g. follow up of remedial measures taken by the supervised entity). As provided by the authorities, such materials were not provided "because they did not refer to the AML/CFT Law framework".

❖ **Voluntary Pension Funds and Management Companies**

903. ***Supervision methodology:*** Supervision of activities of voluntary pension funds is carried out by the Pension Funds Supervision Department of the NBS in accordance with the Law on Pension Funds, and the Decision on Pension Fund Supervision, the latter mainly quoting from/reflecting on the relevant provisions of the Law without defining a comprehensive framework and minimal contents for guiding the supervision process so as to identify and assess various risks pertinent to the activities of supervised entities. As presented by the authorities, the creation of manuals for both off-site supervision and on-site inspection of pension funds management companies (including those concerning AML/CFT activities) is in process.

904. ***Planning of supervision:*** The assessors were not provided any information on whether there had been supervision plans for the period of 2005-2008. Hence, due to the lack of relevant information, the assessment team was not able to conclude on the adequacy of supervision plans as to the number of supervised entities, to the types and characteristics of their activities in realization of the risk-based supervision approach, etc. According to the annual program of on-site inspections for 2009 provided by the Pension Fund Supervision Department, 4 out of 7 inspections scheduled for 2009 are stated to incorporate AML/CFT elements.

905. ***Results of supervision:*** Summarized statistics on on-site inspections of voluntary pension fund management companies conducted by the Pension Fund Supervision Department of the NBS are presented in Annex IV. As advised by the authorities, there were no on-site inspections in 2006, since the first management company of voluntary pension fund started operating in November of that year. In 2007, the National Bank conducted 5 on-site inspections encompassing examinations of all the activities of pension companies, including compliance with the previous AML Law. The main irregularities established due to supervision were that pension companies did not have procedures for the recognition and prevention of money laundering, and they did not implement the previous AML Law. As stated by the authorities, supervisory measures were taken, and the established irregularities were removed[144].

906. In the first six months of 2009, the Pension Funds Supervision Department conducted 4 examinations (of 4 pension companies); all examination included AML/CFT issues. Two examinations resulted in issuing an order for elimination of irregularities related to AML/CFT (lack of training, irregularities in implementation of internal procedures related to AML and adoption of list of indicators). In two other examinations there were some irregularities observed related to AML, and the procedures are in the phase of adopting the decision (issuing measures).

907. However, as in the case of insurance market participants, the materials provided to the assessment team do not seem to contain an analysis on the underlying reasons for the existence of the deficiencies (if any) identified due to supervision (e.g. inappropriate internal control systems, inefficient management, lack of understanding and skills etc) and a subsequent series of actions for removing such reasons (e.g. follow up of remedial measures taken by the supervised entity).

❖ **Capital market participants**

908. ***Supervision methodology:*** Supervision over activities of capital market participants is carried out by the Supervision Department of the Securities Commission in accordance with the Law on Securities Market, and the Rules on Financial Market Supervision, the latter mainly defining the

[144] In 2008 no inspections were carried out in pension funds, since in 2007, the NBS supervised 5 out of the 7 pension funds in the country (thus providing for a 90% coverage of the total market). The other 2 pension companies, which were not supervised in the first supervisory cycle, were supervised in first half of 2009, and the last two newly established pension companies will be supervised in second half of 2009, thus providing for a 100% on-site coverage (all pension companies were at least once on-site supervised).

rights and responsibilities of, and interaction between supervisors and supervised entities prior to, in the course, and as a result of on-site inspections, describing certain technical steps (such as issuance of supervision orders, making verbal and written decisions by the person(s) authorized for inspection, deadlines for removing identified irregularities etc), without reflecting on specific measures to be taken by inspectors for appropriate examination of various aspects of activities of supervised entities, including those related to AML/CFT, for the assessment of their pertinent risks, and for taking relevant supervisory measures aimed at mitigating such risks. The authorities advised that, recognizing the complexity of the supervised sector and the need for introducing risk-based supervision techniques, the Commission has engaged an expert (with the support of the USAID), who is currently preparing a manual on conducting supervision.

909. ***Planning of supervision:*** The assessors were not provided a supervision plan or any other similar document, which would articulate scheduled actions of the Securities Commission aimed at ensuring compliance of supervised entities with applicable legislation, and enable assessment of the performance of supervision. As provided by the authorities, there is no formal supervision plan developed, approved, and implemented by the Commission. On the other hand, Articles 109 and 172 of the Law on Securities Market define that the Commission shall at least twice a year supervise the legal compliance of stock exchange and broker-dealer company operations, by means of on-site inspections at the premises of supervised entities. Then, Article 81 of the Law on Investment Funds establishes that on-site supervision of business operation of management companies and investment funds, as well as supervision of provision of custody services of custody bank, shall be carried out at the premises of such entities at least annually, or more often, if needed. That is, these provisions of the laws, although in absolute non-recognition of the risk-based supervision approach, provide for an established minimal frequency of inspections to be conducted by supervisors. Nevertheless, due to the lack of relevant information, the assessment team was not able to conclude on the adequacy of supervision plans, if any, as to the number of supervised entities, to the types and characteristics of their activities in realization of the risk-based supervision approach, etc.

910. ***Results of supervision:*** Summarized statistics on on-site inspections of capital market participants conducted by the Securities Commission are presented in Annex IV. The authorities advised that they do not keep references or maintain statistics on how many of the inspections were strictly related to AML/CFT issues. On the other hand, despite the huge number of the inspections (5.175 visits[145] over the period of 2005-2008), they have never identified irregularities or deficiencies related to the national AML/CFT requirements and taken relevant supervisory actions. Hence, in view of the practical impossibility that none of the supervised entities would ever have breached the requirements of either the previous AML Law or the current AML/CFT Law, one can conclude that the inspections conducted by the Securities Commission has never involved an AML/CFT component or been dedicated to examination of supervised entities' compliance with the national AML/CFT framework.

Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6)

911. In addition to banks, there are certain types of entities entitled to involve in the provision of money/currency exchange and/or money or value transfer services, each of them being regulated and supervised by one or several state bodies authorized to exercise supervision in respect of certain parts of activities of such entities.

- **Exchange dealers/exchange bureaus**

912. ***Supervision methodology:*** Supervision over activities of exchange bureaus and exchange dealers is carried out by the Division for Supervision of Payment and Exchange Operations of the

[145] As provided by the authorities, this figure also includes off-site inspections, "bearing in mind, that off-site inspections also mean analyses of the submitted monthly reports, for example, for all market participants".

Bank Supervision Department of the National Bank, as well as divisions in NBS branches (Novi Sad, Nis, Kragujevac and Uzice), in accordance with the Law on Foreign Exchange Operations, the Decision on Exchange Operations and the Guidelines for Implementing the Decision on Exchange Operations, the Decision on Supervision of Exchange Transactions articulating the specific areas and issues to be examined during on-site inspections of exchange bureaus, such as their compliance with customer identification and APML reporting requirements etc.

913. ***Planning of supervision:*** The authorities advised, that there are division-level monthly plans for supervision of exchange dealers/bureaus by the NBS Branches (Belgrade, Novi Sad, Niš, Kragujevac), and that each division has monthly and daily plans for inspections. The assessment team was also provided sample inspection plans, developed on monthly and daily basis, the first one articulating the principles for identifying the exchange office dealers/ bureaus to be inspected during the given month[146] (), and the second one naming the exchange dealers/ bureaus to be inspected during the given day, both documents subject to approval by the Director of the Bank Supervision Department. The authorities explain extremely the large number of on-site inspections of exchange dealers/exchange bureaus (some 12.177 on-site visits over the period of 2005-2008) by the necessity to have on one hand, and the significant exposure of around 2.000 exchange offices inspected 1-2 times yearly .

914. ***Results of supervision:*** Summarized statistics on on-site inspections of exchange dealers/exchange bureaus conducted by the National Bank are presented in Annex IV[147]. The authorities advised that the reasons for the low numbers of AML/CFT irregularities at exchange bureaus are: a) the reporting threshold lowered from EUR 15.000 to EUR 5.000 by the AML/CFT Law, whereas the previous threshold was an extremely large amount for exchange operations, b) the requirement that all employees of exchange dealers directly engaged in exchange operations have to obtain a training (also including AML/CFT matters) certificate issued by the NBS, and c) the NBS will revoke the licence if the same irregularities are detected several times in the course of two years, or if exchange office fails to eliminate irregularities found during on-site supervisions. Nonetheless, these results of supervision do not seem to be relevant, given the large number of exchange dealers/ bureaus and inspections on one hand, and the reported wide-spread incompliance of these type of obligors with the AML/CFT requirements (particularly, recognizing several inter-related cash transactions exceeding the reporting threshold etc). As provided by the authorities, all such inspections involve examination of AML/CFT-related matters. However, there were only 5 cases of identifying AML/CFT irregularities in 2006, 7 cases in 2007, and 33 cases in 2008. These results do not seem to be relevant, given the large number of inspections on one hand, and the reported wide-spread incompliance of exchange dealers/ bureaus with the AML/CFT requirements (particularly, recognizing several inter-related cash transactions exceeding the reporting threshold etc).

915. As presented by the authorities, according to the previous AML Law, the National Bank informed the APML about AML-related irregularities identified during on-site examinations of exchange bureaus, and the APML would subsequently bring charges against the exchange bureau to the relevant court. Under the current AML/CFT Law, the National Bank is directly responsible to bring charges against the exchange bureau in the relevant court. Other irregularities identified due to on-site inspections of exchange bureaus are reported to the Foreign Exchange Inspectorate of the Ministry of Finance, which is, within its scope of its competences, responsible to fine them.

916. Nevertheless, the assessors were not provided any information on the number and structure of sanctions imposed on exchange dealers/ bureaus for matters relevant to AML/CFT.

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[146] Based on criteria such as the time passed from the last inspection of and from issuing a decision with respect to the given exchange office, and the presence of written evidence or citizen denunciation about irregular activities of the exchange office,

[147] The figures presented in Annex IV exclude inspections in commercial banks for checking compliance of their currency exchange transactions with the applicable AML/CFT framework.

- **Persons involved in provision of money transfer services**

917. The authorities advised that money and value transfer services in Serbia can be provided only in and by means of banks. That is, the type of activities referred to in Article 4 of the AML/CFT Law and subject to supervision by the Ministry of Finance pursuant to Article 84.4 of the said Law is just from among the ones that banks are entitled to perform pursuant to Article 4 of the Law on Banks. As stated by the authorities, these obligors, as separate organisational-legal type of entities, still do not exist in the financial system of Serbia, but are listed there because they are expected to be introduced into the system in near future.

918. The assessment team was not provided any information on the legislative provisions establishing regulatory and supervisory powers of the Ministry of Finance in respect of the above-mentioned obligors, which means that, once that type of obligors are recognized by the authorities and start operating as such, the lack of relevant systems and mechanisms will not enable effectively ensuring their compliance with the national AML/CFT requirements.

919. Nevertheless, there is at least one company – the Public Enterprise of PTT Communications "Srbija" – which is directly and factually involved in the provision of money and value transfer services. Particularly, it operates postal and PosTneT money orders for both domestic and international payment operations, as well as for valuable mail transactions.

920. Moreover, according to the Law on Payment Transactions, PTT "Srbija" is authorized to perform certain functions entailing customer due diligence procedures. Thus, in accordance with Article 49 (c) of the said Law, PTT "Srbija" performs the following payment operations based on a respective agreement with Postal Savings Bank:

- Acceptance of in-payments from natural persons to bank accounts and making out-payments to these persons;
- Acceptance of in-payments of daily receipts for the account of bank clients; and
- Acceptance and honoring cheques in relation to citizens' current accounts.

921. All of the facts set forth above witness that PTT "Srbija" acts as a full-scale provider of money transfer services and, as such, should be subject to appropriate licensing/registration and supervision procedures for that part of its operations.

922. Supervision of money and value transfer activities of PTT "Srbija" is to be exercised by the Ministry of Finance (with respect to domestic payment operations pursuant to Article 84.4 of the AML/CFT Law), by the Foreign Currency Inspectorate (with respect to international payment transactions pursuant to Article 84.11 of the AML/CFT Law), and by the Ministry of Telecommunications and Information Society (with respect to valuable mail pursuant to Article 84.5 of the AML/CFT Law). None of these supervisory bodies has defined techniques, methods, and programs for supervision of money and value transfer activities of PTT "Srbija", nor are there any factual results of supervisory efforts aimed at ensuring compliance with the AML/CFT framework[148].

923. On the practical side, PTT "Srbija" seems to have introduced a system for ensuring AML/CFT compliance. As provided by the representatives of the company, designated postal workers in post offices enter data and make reports regarding suspicious transactions subject to reporting under the AML/CFT Law through an internal "Anti-Money Laundering" application, based on the Rules of Procedure Regarding Detection and Prevention of Money Laundering enacted within the company. As regards postal and PosTneT money orders, PTT "Srbija" has included the indicator

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[148] The Ministry of Telecommunications and Information Society advised that there is no record on valuable mail.

"a great number of out-payments to a natural person via postal and PosTneT money orders" in its list of indicators for suspicious transactions, on the basis of which designated postal workers, in case of doubt, report such persons and transactions, using the above-mentioned internal application. After the control of the submitted reports, necessary data are entered in the external application and electronically forwarded to the APML.

924. It is worth of mentioning that over the period 2005-2009 (as of April 1, 2009), PTT "Srbija" has filed as many as 83 STR-s to the APML, which could be taken as an evidence of the company's internal control system being functional.

Supervision of other Financial Institutions (c. 23.7)

925. There are several types of financial institutions other than those covered by the Core Principles (supervision over their activities being analyzed under Criterion 23.4) and the ones providing money or value transfer service, or a money or currency changing service (supervision over their activities being analyzed under Criteria 23.6), such financial institutions are:

- Financial leasing companies;
- Agents/third party transaction processors;
- Persons exercising professional activities of intermediation in credit transactions and provision of loans, factoring and forfeiting, and provision of guarantees.

❖ **Financial leasing companies**

926. ***Supervision methodology:*** Supervision over activities of financial leasing companies is carried out by the Division for Supervision of Lessor Operations of the National Bank, in accordance with the Amended Law on Financial Leasing and the Decision on Lessor Supervision, the latter mainly quoting from/reflecting on the relevant provisions of the Law without defining a comprehensive framework and minimal contents for guiding the supervision process to identify and assess various risks pertinent to the activities of supervised entities. The authorities advised that there are written procedures guiding implementation of off-site supervision and on-site inspections of lessor operations. However, the assessors were not provided any documentary evidence in support of this statement.

927. ***Planning of supervision:*** The assessment team was not provided a supervision plan or another similar document, which would articulate scheduled actions of the respective division of the National Bank aimed at ensuring compliance of supervised entities with applicable legislation, and enable assessment of the performance of supervision. The authorities refer to the Law on Financial Leasing, the Decision on Data Submitted by Lessors to the National Bank of Serbia and on the Manner and Deadlines for the Submission of These Data[149], and the Decision on the Obligation of Lessors to Maintain a Reserve Balance[150] as to points of reference dealing with the issue of supervisory action planning; however, the assessors believe that these document do not amount to a comprehensive articulation of the systematized actions to be taken by supervision for ensuring AML/CFT compliance.

928. ***Results of supervision:*** The assessment team was advised that, based on off-site supervision of all 17 financial leasing companies operating in the market, the supervisor came to the conclusion that "it is not required to take any further actions and measures to financial leasing companies regulated by Decision on Detailed Conditions and Manner of Conducting Supervision of Lessors' Operations". That is, the supervisory body decided to refrain from conducting on-site inspections in financial leasing companies, albeit the fact that the said decision requires

[149] RS Official Gazette No. 4/2006
[150] RS Official Gazette No. 109/2005, 30/2006, 99/2008 and 15/2009

conducting such inspections and that there is no well-grounded substantiation for the uselessness of on-site inspections.

- **Agents/third party transaction processors**

929. Article 16 of the Law on Payment Transactions establishes that banks may engage an agent or third party transaction processor to perform activities related to specified payment transactions, whereas the National Bank shall define such transactions, which the agent may perform on behalf of the bank, and shall prescribe the conditions to be fulfilled by the agent for performing such activities. The Decision on Agent Operations and Requirements for Performing Such Operations[151] defines that agents shall perform "payment transactions on behalf of a bank – as the place for receipt and distribution of payment orders sent or received by a bank, which is directly accessible to clients for the purpose of sending and receiving such orders". Both the Law and the Decision contain a provision establishing that banks are responsible for all actions and omissions on the part of the agent.

930. Agents defined above are registered in the Business Registers Agency and supervised by the Ministry of Finance pursuant to Article 49b of the Law on Payment Transactions. Supervisory powers of the NBS over agent activities provided by agents on behalf of the bank are stipulated by Article 102 of the Law on Banks[152].

931. The authorities advised that currently none of the banks has signed contracts for agent/ third party transaction processor activities. On the other hand, since the legally defined framework for the operations of such entities entails certain AML/CFT-related elements (e.g. the need for legislatively required CDD measures when receiving payment orders), the lack of regulation (relevant mechanisms and measures) aimed at ensuring compliance of agents/ third party transaction processors with the national AML/CFT framework may pose certain risk to the financial system of Serbia in terms of their possible usage for money laundering and terrorist financing purposes.

- **Persons exercising professional activities of intermediation in credit transactions and provision of loans, factoring and forfeiting, and provision of guarantees**

932. Pursuant to Article 84.4 of the AML/CFT Law, implementation of the Law by persons exercising professional activities of intermediation in credit transactions and provision of loans, factoring and forfeiting, and provision of guarantees is supervised by the Ministry of Finance. Then, according to Article 84.11 of the same Law, the Foreign Currency Inspectorate is also vested supervisory powers regarding persons involved in factoring and forfeiting operations – with respect to international payment transactions performed by them.

933. As presented by the authorities, these types of activities are just from among the ones that banks are entitled to perform pursuant to Article 4 of the Law on Banks. These obligors, as separate organisational-legal type of entities, still do not exist in the financial system of Serbia, but are listed there because they are expected to be introduced into the system in near future.

934. The assessment team was not provided any information on the legislative provisions establishing regulatory and supervisory powers of the Ministry of Finance and the Foreign Currency Inspectorate in respect of the above-mentioned obligors, which means that, once these types of obligors start operating in the country in near future, the lack of relevant systems and

[151] RS Official Gazette Nos. 57/2004 and 33/2005
[152] This article establishes that "in exercising supervision specified in this Article the National Bank of Serbia has the right to inspect business books and other documentation of legal entities which are related by proprietary, management and business relationships to the bank which is subject to supervision, and it may also request from these entities to submit other information".

mechanisms will not enable effectively ensuring their compliance with the national AML/CFT requirements.

Statistics on On-Site Examinations (c. 32.2(d), all supervisors)

935. From among eleven agencies empowered to supervise implementation of the AML/CFT Law by obligors and lawyers, only five have provided statistical data on results of supervision, including those pertaining to on-site inspections. Presumably, the state bodies who failed to provide relevant data either do not have/maintain such statistics at all, or do not have it readily available for submission. None of those bodies advised abut maintaining statistics by means of modern technologies, based on advanced automation tools and techniques.

936. The bodies having submitted statistical data on conducted on-site inspections, although with a significantly varying detail and comprehensiveness, are the National Bank (particularly, the Bank Supervision Department, the Insurance Supervision Department, and the Voluntary Pension Fund Supervision Department), the Securities Commission, the Ministry of Telecommunications and Information Society, the Ministry of Trade and Services, and the Administration for Games of Chance. However, except for the statistics provided by the NBS, relevant materials provided by other agencies do not contain any information on on-site inspections incorporating or dedicated to examination of AML/CFT compliance – presumably because of the absence of such inspections and relevant statistics. Even so, the statistics provided by the NBS fail to provide sufficient details on the measures taken for ensuring AML/CFT compliance of the respective obligors. For example, in relation to pecuniary sanctions imposed on financial institutions, the authorities assert that "pecuniary sanctions are always imposed total for all irregularities found during on-site inspection and there is no separate sum imposed just for AML/CFT related irregularities", whereas both the Previous AML Law and the AML/CFT Law are quite specific about pecuniary sanctions to be imposed on obligors for each type of AML/CFT-related irregularity; that is, should a sanction be imposed on an obligor, it has to be imposed for the violation of a specific requirement of the AML/CFT Law and pertinent regulation, which makes practically impossible imposing a pecuniary sanction total for all irregularities identified through on-site inspections.

Statistics on Formal Requests for Assistance (c. 32.2(d), all supervisors)

937. None of the supervisory bodies reported on having sent or received formal requests relating to AML/CFT.

Effectiveness and efficiency (market entry [c. 23.3, c. 23.3.1, c. 23.5, c. 23.7]; on-going supervision and monitoring [c. 23.4, c. 23.6, c. 23.7], c. 32.2d], sanctions [c. 17.1-17.3])

938. Serbian legislation defines a licensing procedure for all to-be-established financial institutions and a prior consent/approval regime for legal and natural persons to obtain significant (qualified) or controlling interest in financial institutions. For the institutions subject to the Core Principles, the "fitness and properness" of management members is tested against criteria such as appropriate educational and professional background, proven skills and expertise, clean criminal record, business reputation, and the potential for conflicts of interest.

939. However, at least for certain types of financial institutions the licensing/registration procedures are either non-existent, or non-functional. This refers to the persons involved in money transfer services (particularly, the PTT "Srbija"), agents/third party transaction processors, and persons exercising professional activities of intermediation in credit transactions and provision of loans, factoring and forfeiting, and provision of guarantees.

940. On-going supervision and monitoring of activities of financial institutions, as far as the institutions supervised by the National Bank and the Securities Commission are concerned, entails

the use of supervisory tools such as off-site surveillance and on-site inspections, with inspectors warranted access to the books and information maintained by the supervised entities.

941. When it comes to the supervision methodology, however, with the rather “advanced” position of the banking supervision in terms of supervisory methodology and manuals, all supervisors lack well-defined and appropriately tailored tools for the risk-based surveillance and examination of obligors both for prudential and for AML/CFT compliance. As a rule, the available examination guidance in the form of decisions/regulations on conducting on-site inspections appear to heavily quote from/reflect on the relevant provisions of sectoral laws without defining a comprehensive framework and minimal contents for guiding the supervision process; their scope is mainly limited to describing certain technical steps (such as issuance of supervision orders, making verbal and written decisions by the person(s) authorized for inspection, deadlines for removing identified irregularities etc), without reflecting on specific measures to be taken by inspectors for appropriate examination of various aspects of activities of supervised entities, including those related to AML/CFT, for the identification and assessment of their pertinent risks, and for taking relevant supervisory measures aimed at mitigating such risks.

942. Planning of supervision at the Bank Supervision Department National Bank seems to be a rather regular and regulated exercise, entailing certain elements of the risk-based approach; however, the assessors were not provided sufficient information in order to conclude on the adequacy of supervision plans of other supervisory departments within the NBS as to the number of supervised entities, to the types and characteristics of their activities in realization of the risk-based supervision approach, etc. More likely, the planning procedure lacks an adequate consideration of the risk profile of various institutions and, subsequently, deciding on the frequency and depth of inspecting each institution. The Securities Commission seems to be simply guided by the legal provisions defining a minimal frequency of inspections of capital market participants, which naturally lacks any consideration of the risk-based approach at all.

943. Supervision results vary throughout supervisory bodies and among types of financial institutions; in some cases they seem to be frequent enough – for example, in the case of exchange bureaus and capital market participants, whereas in the other cases the frequency of inspections varies over years without any visible logical/professional reasoning. In any case, the available statistics on inspections for controlling compliance with the requirements of combating ML/FT reveals that over the last four years of implementation of the AML/CFT legislation (that is the previous AML Law in force before March 2009 and the current AML/CFT Law, and the pertinent regulations) the whole system initiated as many as 30 AML/CFT-related inspections[153], which resulted in less than 30 supervisory measures such as written warnings, ordering letters, and resolutions on orders and measures, and in an unknown amount of pecuniary sanctions[154].

944. In addition to the low level of supervisory effort aimed at ensuring AML/CFT compliance, this means that the sanctions prescribed by both the previous AML Law and the current AML/CFT Law are not effectively applied, which is a self-explanatory indicator of the efficiency of the supervision, as well as of the efficiency of the AML/CFT system as such.

945. The range of administrative sanctions indirectly available for AML/CFT incompliance does not encompass the full range of such sanctions available for prudential purposes; for example, licenses of broker/dealer companies, and investment funds can not be revoked, if an institution fails to abide by the requirements of the national AML/CFT framework. The assessors can not judge on the effectiveness of application of powers to sanction directors/senior management of

[153] Excluding AML/CFT-related inspections in exchange bureaus, which are stated by the authorities to incorporate an AML/CFT element in all cases.

[154] The fact whether pecuniary sanctions specifically for AML/CFT incompliance have ever been imposed on banks can not be verified, since the authorities did not provide relevant statistics (by the reasoning that such sanctions when applied are imposed total for all irregularities found during on-site inspections).

financial institutions and businesses for their incompliance with the national AML/CFT requirements, due to the absence of practice of applying such sanctions.

946. As relates to other financial institutions supervised by the Ministry of Finance, the Ministry of Telecommunications, and the Foreign Exchange Inspectorate, the assessment team was not provided sufficient information on the legislative provisions establishing regulatory and supervisory powers of these bodies in respect of the obligors to be supervised by them, as well as on the available supervision tools, techniques, supervisory planning, and results, which is interpreted by the assessors as a possible lack of such provisions, tools, and techniques, and as a factual absence of relevant systems and mechanisms enabling to effectively ensure compliance of the respective obligors with the national AML/CFT requirements.

947. Based on the facts set forth above, the assessors hold the opinion that no effective and sufficient measures have been taken to ensure compliance of financial institutions with the national AML/CFT requirements.

Guidelines

Recommendation 25 (c. 25.1 – guidance for financial institutions other than feedback on STR-s)

948. Criterion 25.1 requires that competent authorities establish guidelines that would assist financial institutions to implement and comply with their respective AML/CFT requirements. At a minimum, such guidelines should provide: a) a description of ML/FT techniques and methods, and b) any additional measures that financial institutions could take to ensure that their AML/CFT measures are effective.

949. As to the respective activities of the APML, the only type of guidance communicated to the obligor community that might meet the definition of guidelines for the purposes of Criterion 25.1 are the lists of indicators for identifying suspicious transactions developed separately for: a) banks, b) exchange bureaus, c) insurance companies[155], d) stock market exchange[156], e) leasing companies, and f) wire transfers. These lists are posted on the official website of the APML. A detailed analysis of the contents and applicability of these lists, which are legally and essentially interrelated with the obligors' STR reporting requirement, is presented under the description of Criterion 13.1.

950. Among the supervisors of the financial sector, the National Bank in the person of its different supervision departments and the Securities Commission have also provided some guidance for the obligors. Particularly:

a) The Guidelines for Assessing the Risk of Money Laundering and Financing Terrorism for banks, voluntary pension fund management companies, financial leasing providers, and insurance market participants (which entered into force after the visit in June 2009)[157], setting some minimal standards for the actions to be taken by financial institutions under the NBS supervision in the establishment and enhancement of an AML/CFT system, particularly with respect to the drafting and implementation of procedures based on risk analysis and assessment.
b) The Decision on KYC Procedure for banks, voluntary pension fund management companies, financial leasing providers, and insurance market participants (which entered into force after the visit in June 2009)[158], thus replacing the previous decision on the same

[155] But, presumably, not for insurance intermediaries
[156] If this term refers to the stock exchange market as defined by Article 10 of the Law on Securities Market, then these indicators do not refer to the participants of the over-the-counter market and some professional investors, such as pension and investment funds and their management companies.
[157] RS Official Gazette No. 46/2009 (in force 27 June 2009).
[158] RS Official Gazette No. 46/2009 (in force 27 June 2009).

matter dating back June 2006, provides some basic understandings of risk factors, unusual and suspicious transactions, as well as acceptability of clients, their identification, supervision of client's accounts and transactions, risk management etc generally in line with the Basel CDD Paper.

c) Clarification Note of the Bank Supervision Department dated April 2009 and addressed to all licensed exchange dealers, interpreting their obligations under the recently adopted AML/CFT Law and the implementation of the compliance function.

d) The Decision on Internal Controls in Insurance endorsed by the Governor of the National Bank and dating back January 2007 contains a section on how insurance companies should set up efficient procedures for recognition and prevention of money laundering and terrorist financing;

e) The Guidance Paper No. 5 on AML/CFT for the insurance sector endorsed by the Governor of the National Bank of 4 May 2007 provides, again in general terms, for the concepts of customer due diligence, suspicious transaction reporting, risk management, record keeping, etc.

f) The Decision on Risk Control in Pension Funds endorsed by the Governor of the National Bank and dating back March 2006 provides the definitions of the various types of risks pertinent to activities of the respective obligors, stipulates for their obligation to develop risk control procedures so as to enable an effective internal control system, with a brief one-Paragraph reference to the procedures recognition and prevention of money laundering.

g) Guidelines on KYC Procedure for Securities Market endorsed by the President of the Securities Commission and dating back November 2006 establishes risk factors for classifying clients and very briefly reflects on principles for developing procedures to determine acceptability of clients, their identification, the obligors' responsibility for defining and implementing a staff training program on an ongoing basis, etc.

951. Overall, the above-mentioned guidance papers provided by supervisors and characterized by varying levels of comprehensiveness, coverage, and detail, need to be revised and updated within the context of the current AML/CFT Law[159] providing for a more standardized and detailed AML/CFT framework, and in compliance with the applicable international best practice, as well as be harmonized with each other so as to provide a level "playing field" for all obligors supervised by the National Bank.

952. This notwithstanding, none of the above documents provides description of ML/FT techniques and methods, which would assist financial institutions to better understand the potential risks pertaining to ML/FT and to strive for establishing appropriate mechanisms in order to deal with those risks.

953. The National AML/CFT Strategy, which in some sense could be viewed as a general guidance paper for all stakeholders in the field of AML/CFT, was adopted on September, 25, 2008. However, as of the date of the assessment visit, the Strategy was not either realized or given due attention by the authorities met; in fact, the first meeting of the stakeholders for discussing the steps to be taken for the implementation of the Strategy had been held approximately one month before the visit, and the in general there was no clear understanding of how, when, and by what specific ways such actions were to be taken.

[159] Naturally, except for the newly adopted ones.

3.10.2 Recommendations and comments

Recommendation 23

- Amend the legislation to include a definite requirement for banning market entry – as owners and significant/controlling interest holders of leasing companies – of persons with criminal background.

- Recognize the PTT "Srbija" as a money transfer business (and as such, a financial institution subject to all pertinent requirements).

- Establish licensing/registration procedures for persons involved in money transfer services160, agents/third party transaction processors, and persons exercising professional activities of intermediation in credit transactions and provision of loans, factoring and forfeiting, and provision of guarantees; supervision mechanisms and tools for ensuring their compliance to AML/CFT requirements.

- Define legislative provisions establishing the powers of the National Bank to regulate and supervise for AML/CFT purposes activities of voluntary pension fund management companies.

- Define legislative provisions establishing the powers of the Ministry of Finance to regulate and supervise for AML/CFT purposes activities of persons dealing with postal communications [with respect to domestic payment operations] and of persons involved in professional activities of intermediation in credit transactions and provision of loans, factoring and forfeiting, provision of guarantees, and provision of money transfer services.

- Define legislative provisions establishing the powers of the Ministry of Telecommunications and Information Society to regulate and supervise for AML/CFT purposes activities of persons dealing with postal communications [with respect to valuable mail operations].

- Define legislative provisions establishing the powers of Foreign Currency Inspectorate to regulate and supervise for AML/CFT purposes activities of persons involved in professional activities of factoring and forfeiting, and provision of money transfer services [with respect to international payment transactions]

- For all financial institutions (except for banks), develop supervision methodologies based on consideration of risk profile of institutions and enabling identification of inherent risks in financial activities, determination of risk mitigants, assessment of exposure of AML/CFT risk to various aspects of financial activities, assessment of internal control and risk management systems, corporate governance oversight, and integration of results of off-site monitoring and surveillance.

- Establish mechanisms and tools for effective, consistent, risk-based planning of the supervision process – both off-site and on-site; introduce systems for continuous monitoring and follow-up of supervision results.

- Ensure consistency among and harmonization of supervision methodologies and planning procedures throughout the bodies involved in supervision of financial institutions.

- Ensure sufficient coverage of inspections incorporating elements or dedicated to the examination of AML/CFT compliance, stemming from an adequate planning of supervision and resulting in

[160] Particularly, for the PTT "Srbija"

regular and in-depth analysis (disclosure of underlying reasons for incompliance) and assessment of compliance, with relevant follow-up procedures provided for.

Recommendation 17

- Ensure coverage of all requirements of the AML/CFT Law under the sanctioning provisions (at least Articles 28.2, 40 and 73).

- Eliminate the grounds for uncertainty about applicability of pecuniary sanctions under the AML/CFT Law and respective various sectoral laws.

- Provide for a full-scale applicability of administrative sanctions available for prudential purposes in case of AML/CFT incompliance (for example, revocation of license of pension funds, broker/dealer companies, investment funds, etc).

- Provide the missing elements of legislatively defined supervisory power for application of sanctions with respect to voluntary pension funds management companies, as well as of the directors/senior management of voluntary pension funds management companies and broker-dealer companies for AML/CFT incompliance.

- Provide for effective functioning of the AML/CFT enforcement mechanism enabling application of proportionate and dissuasive sanctions under the AML/CFT Law and respective sectoral laws.

Recommendation 25 (c. 25.1 [financial institutions])

- Provide guidance describing ML/FT techniques and methods so as to assist financial institutions to better understand the potential risks pertaining to ML/FT and to strive for establishing appropriate mechanisms in order to deal with those risks.

- Revise and update the existing guidance papers provided by supervisors of financial institutions within the context of the current AML/CFT Law providing for a more standardized and detailed AML/CFT framework, in compliance with the applicable international best practice; harmonize such papers so as to provide a level "playing field" for all obligors in the financial market.

Recommendation 29

- Define legislative provisions establishing the powers of the National Bank to take the following measures while supervising for AML/CFT purposes activities of voluntary pension fund management companies – conduct (on-site) inspections, obtain access to all records and information relevant to monitoring compliance, enforce and sanction both the institutions/businesses and their directors/senior management for incompliance with AML/CFT requirements.

- Provide for application of sanctions with respect of directors/senior management of broker-dealer companies for their failure to comply with the legislative requirements (including those related to the AML/CFT framework).

- Establish an adequate and relevant supervisory regime with regard to persons dealing with postal communications (with respect to domestic and international payment operations, and valuable mail), persons involved in professional activities of intermediation in credit transactions and provision of loans, factoring and forfeiting, provision of guarantees, and provision of money transfer services; particularly provide for the ability of the respective supervisory bodies to monitor and ensure compliance of the respective obligors with AML/CFT requirements, conduct

(on-site) inspections, obtain access to all records and information relevant to monitoring compliance, enforce and sanction both the institutions/businesses and their directors/senior management for incompliance with AML/CFT requirements.

Recommendation 30 (all supervisory authorities)

- Establish requirements providing for professional standards (including confidentiality and integrity requirements), and expertise/skills of the staff of supervisory bodies involved in the supervision of the AML/CFT Law (for the Securities Commission[161], the Bar Association, the Chamber of Certified Auditors).

- Ensure adequate, relevant, and regular training for combating ML and FT throughout all supervisory bodies involved in the supervision of the AML/CFT Law.

Recommendation 32

- Ensure maintenance of accurate, differentiated (by types and number of obligors, types and number of irregularities, types and number of applied supervisory measures [including pecuniary sanctions] etc), consistent statistics on on-site inspections conducted by supervisors relating to or including AML/CFT issues, throughout all supervisory bodies involved in the supervision of the AML/CFT Law.

- Ensure maintenance of accurate, differentiated (by types and number of requestors and requested counterparties, number of refused and satisfied requests, records on bases for refusals etc), consistent statistics on formal requests for assistance, throughout all supervisory bodies involved in the supervision of the AML/CFT Law.

3.10.3 Compliance with Recommendations 23, 29, 17 & 25

	Rating	Summary of factors relevant to s.3.10. underlying overall rating
R.17	**PC**	• Incomplete coverage of the requirements of the AML/CFT Law under the sanctioning provisions. • Uncertainty about applicability of pecuniary sanctions under the AML/CFT Law and respective sectoral laws.No full-scale applicability of administrative sanctions available for prudential purposes in case of AML/CFT incompliance (particularly, revocation of licenses). • Missing elements of legislatively defined supervisory power for imposing sanctions with respect to voluntary pension funds management companies, as well as of the directors/senior management of voluntary pension funds management companies and broker-dealer companies for AML/CFT incompliance. • Lack of effective functioning of the AML/CFT enforcement mechanism enabling application of proportionate and dissuasive sanctions under the AML/CFT Law and respective sectoral laws.
R.23	**PC**	• Lack of licensing/registration procedures for persons involved in money transfer services, agents/third party transaction processors, and persons exercising professional activities of intermediation in

[161] The Securities Commission has provided some information on the requirements to professional standards, expertise/ skills of the staff and confidentiality requirements, but not on those to integrity.

		credit transactions and provision of loans, factoring and forfeiting, and provision of guarantees; absence of supervision mechanisms and tools for ensuring their compliance to AML/CFT requirements. • Lack of definite requirement for banning market entry – as owners and significant/controlling interest holders of leasing companies – of persons with criminal background. • Lack of clearly defined legislative empowerment of the National Bank to regulate and supervise for AML/CFT purposes activities of voluntary pension fund management companies. • Lack of clearly defined legislative empowerment of the respective bodies to regulate and supervise for AML/CFT purposes activities of persons dealing with postal communications, persons involved in professional activities of intermediation in credit transactions and provision of loans, factoring and forfeiting, provision of guarantees, and provision of money transfer services. • With regard to all financial institutions (except for banks), lack of risk-based supervision methodologies; mechanisms and tools for effective, consistent, risk-based planning of the supervision process, of systems for continuous monitoring and follow-up of supervision results; no consistency and harmonization of supervision methodologies and planning procedures throughout supervisory bodies. • Insufficient coverage of inspections incorporating elements or dedicated to examination of AML/CFT compliance.
R.25	**PC**	• Lack of guidance to financial institutions describing ML/FT techniques and methods. • Lack of revised, updated, and harmonized guidance papers provided by supervisors of financial institutions within the context of the current AML/CFT Law
R.29	**LC**	• Lack of legislatively defined supervisory, enforcement, and sanctioning powers of the National Bank with respect to voluntary pension fund management companies for AML/CFT purposes. • Lack of legislatively defined powers of the Securities Commission for application of sanctions with respect of directors/senior management of broker-dealer companies (including that for AML/CFT incompliance). • Lack of an adequate and relevant supervisory regime with regard to persons dealing with postal communications (with respect to domestic and international payment operations, and valuable mail), persons involved in professional activities of intermediation in credit transactions and provision of loans, factoring and forfeiting, provision of guarantees, and provision of money transfer services.

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and analysis

954. The Law on Payment Transactions stipulates that all payment transaction activities must be conducted through banks. Companies for money and value transfer, such as Western Union must conduct payment transfers through banks.

955. The Serbian Post Office is also authorized to conduct some payment transfer activities through the Postal Savings Bank. Western Union maintains a contract with the Post Office to conduct money and value transfer within Serbia, however, customers can only receive incoming funds.

Designation of registration or licensing authority (c.VI.1)

956. Banks in Serbia, including those which provide an international remittance service, are licensed by the NBS and required to meet AML/CFT obligations under the AML/CFT Law and prior to that, the previous AML Law and other laws, decrees and regulations. They are subject to monitoring, supervision and sanctions as described previously in this report.

957. Under the Law on Payment Transactions, a legal entity shall be fined 300,000 to 3,000,000 Dinars for failing to open the current account with the Bank for payments in Dinars, or maintain the funds thereon, or effect payments through it pursuant to this Law and the Agreement on opening and maintaining of such account concluded with the Bank (Article 3 Paragraph 1).

Application of FATF 40+9 Recommendations (c.VI.2),

958. Of all the financial sectors in Serbia, the banking sector has the best implementation of the FATF Recommendations. Recommendation 4 (bank secrecy) has been fully implemented, including in regards to money or value transfer services. Recommendations 6 (PEP-s) and 8 (non-face-to-face business) have been substantially implemented in the banking sector. There has only been partial implementation of Recommendations 7 (correspondent banking), 10 (record keeping), 11 (monitoring of accounts and relationships), 13 (STR reporting), 14 (tipping off), 15 (internal controls), 21 (countries that don't apply FATF controls), 22 (foreign branches and subsidiaries), 23 (supervision), and SR VII. Given the newness of the AML/CFT Law, it is impossible to judge the banking sector's compliance with Recommendation 9 (third party introducers) and parts of Recommendation 5. All of these requirements and the corresponding deficiencies are described earlier in Section 3 of this report.

Monitoring MVT service operators (c.VI.3)

959. Under the previous AML Law, only banks were supervised in terms of money value transfer. The Post Office has not been subject to AML/CFT supervision. Under the AML/CFT, the Ministry of Telecommunications and Information Society has become the competent supervisor authority, but have indicated that they have not yet begun to conduct AML/CFT supervision.

Lists of agents (c.VI.4)

960. There appears to be no specific requirement for MVT service operators to maintain a current list of its agents which must be made available to the designated competent authority.

Sanctions (c.VI.5)

961. The AML/CFT Law provides for sanctions, which are required under the obligations of Recommendation 17 and cover major and minor offences. Comments made above in the sanctioning regime of banks are also valid for MVT Services.

Additional elements – applying Best Practices Paper for SR.VI (c. VI.6)

962. No information was provided indicating that the measures set out in the Best practices Paper for SR.VI have been implemented.

Effectiveness and efficiency

963. Serbian authorities have indicated that there are no informal remittance operators, such as Hawala operating in Serbia. Financial institutions have corroborated this statement, indicating that they do not know of the existence of such operators.

3.11.2 Recommendations and comments

- As it is only banks, and in some cases the Post Office, in Serbia that may conduct international remittances, Serbia's compliance with this Recommendation is inextricably linked to its compliance with other Recommendations which apply to financial institutions. The evaluation team's recommendations, elsewhere in this report, particularly with respect to Recommendations 4-11, 13-15, 17, 21-23, and Special Recommendation VII, are also relevant here.

- Serbian authorities should take quick action to ensure that Post Office branches be subject to AML/CFT supervision.

- Requirements should be introduced for MVT service operators to maintain a current list of agents and to make it available to the designated competent authority.

- Serbian authorities made no indication that they were actively attempting to uncover illegal remittance activity and there is little if any attention being paid to this by relevant ministries and the supervisory authorities. It is recommended that supervisory authorities when inspecting businesses for other matters also be alert to the possibility that illegal remittance activity may be occurring. In addition, Serbian authorities could focus more broadly at looking for signs of underground banking as well as alternative remittance.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**PC**	• The limitations identified under Recommendations 5-7, 9-11, 13-15, 21-23, and Special Recommendation VII also affect compliance with Special Recommendation VI. • Post Office branches are not subject to AML/CFT supervision • No specific requirement for money transfer services to maintain a current list of agents, which must be made available to the designated competent authority.

4 PREVENTIVE MEASURES – DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS

<u>General</u>

964. Until late March 2009, the following categories of DNFBP-s were covered under the previous AML Law:

1) organizers of classical and special games of chance (casinos, slot-machine clubs, betting places), as well as of other games of chance;
2) pawnshops.
3) other legal entities, entrepreneurs, and individuals doing business related to:
    a. real estate business;
    b. trade in artworks, antiques and other valuable objects;
    c. trade in automobiles, vessels and other valuable objects;
    d. treatment and trade in precious metals and stones;
    e. organisation of travels;
    f. organizing auctions.
4) Under some circumstances, lawyers and law firms are also subject to some AML/CFT controls.

965. The AML/CFT Law covers the following categories of DNFBP-s:

10) organisers of special games of chance in casinos;
11) organisers of games of chance operated on the Internet, by telephone, or in any other manner using telecommunication networks;
12) auditing companies;
13) licensed auditors;
14) entrepreneurs and legal persons exercising the following professional activities:
    a. intermediation in real-estate transactions;
    b. provision of accounting services;
    c. tax advising;
15) lawyers and lawyer partnerships.

4.1 Customer due diligence and record-keeping (R.12)

(Applying R.5 to R.10)

4.1.1 <u>Description and analysis</u>

966. Not all designated non-financial businesses and professions (DNFBP-s) in Serbia are subject to the requirements of the AML/CFT Law.

967. Trusts and company service providers are not considered obligors under either the previous AML Law or the AML/CFT Law as domestic trusts cannot be established in Serbia. . However Article 3, Paragraph 1, Item 7 provides an exact definition of a trust and company service provider. Serbian authorities explained that in theory foreign trusts could carry out business operations pursuant to the Law on Business Companies (Article 3) which enables foreign companies to establish a branch and register it according to the law on registration of business entities. Branches are not endowed with legal entity status, but may conclude and execute contracts. As far as opening a bank account, trusts – theoretically – can open a bank account. Serbian authorities indicated that to their knowledge, there are no foreign trusts operating in Serbia nor have they received any

request for the establishment of such activities. Trusts will be excluded from the discussion below as they do not exist in Serbia and are not subject to AML/CFT controls.

968. Dealers in high value goods such as metals or stones were subject to the controls set out in the previous AML Law; however they were excluded as obligors from the AML/CFT Law because they are forbidden from engaging in cash transactions that exceed the amount of 15,000 Euros.

Applying Recommendation 5

969. Criteria 5.1-5.18 are the same for DNFBP-s as it is for financial institutions and is described in detail in Section 3.2. Where requirements differ per specific DNFBP-s, it will be noted below.

Casinos

970. There is one licensed casino operating in Serbia, the Grand Casino doo Beograd, with one additional casino, Hit International doo Beograd, set to begin operations in December 2010.

971. Article 5 of the previous AML Law required casinos to identify their customers when paying to or withdrawing money from the organizers of classical games of chance and other games of chance in the sum amounting to or exceeding EUR 1.000 in Dinar counter value. Organisers of special games of chance shall be bound to establish the identity of the customer immediately upon entering the gaming place.

972. There is no requirement under the AML/CFT Law requiring casinos to perform CDD measures when their customers engage in financial transactions equal to or above a USD/€ 3,000, as set out in the FATF Interpretive Notes for Recommendations 5, 12, and 16.

973. Article 19 of the AML/CFT Law provides for further requirements in special cases. It requires that whenever a customer enters a casino or whenever a customer or his legal representative or empowered representative has access to a safe-deposit box, the organizer of a special game of chance in a casino, or an obligor that provides safe deposit box services, shall establish and verify the identity of the customer and obtain, from the customer or its legal representative or empowered representative, the data referred to in Article 81, Paragraph 1, Items 5 and 7 of this Law, that is:

a) name and surname, date and place of birth, and place of permanent or temporary residence of a natural person entering a casino or accessing a safe-deposit box
b) date of establishing of a business relationship, i.e. date and time of entrance into a casino or access to a safe-deposit box.

974. While the casino does not meet all CDD requirements set out in Recommendation 5, all customers that enter the casino are required to identify themselves using a valid identification. The casino appeared to have a sound method for matching casino membership cards with customers as there is a photograph tied to each card that is checked upon a customer's entrance, eliminating the chance that someone could use another person's membership card.

Real Estate Agents

975. Most transactions involving real estate sales and purchases are conducted through Serbian banks. However, it is possible to initiate a purchasing contract and carry out a transaction without a bank if the value transferred in cash is less than €15.000.

Dealers in precious metals and dealers in precious stones

976. Dealers in precious metals and stones are no longer subject to the CDD requirements of the AML/CFT Law as they are not included as obligors.

977. Article 36 of the AML/CFT Law states (1) A person selling goods or rendering a service in the Republic of Serbia may not accept cash payments from a customer or third party in the amount greater than EUR 15,000 in its RSD equivalent; and (2) The restriction laid down in Paragraph 1 shall also apply if the payment of goods or a service is carried out in more than one connected cash transactions which in total exceed the RSD equivalent of EUR 15,000.

978. The prohibition established by Article 36 does not fully meet the requirement of Recommendation 12 as it only covers transactions greater than EUR 15,000 and not those that are "equal to" EUR 15,000.

Lawyers, notaries and other independent legal professionals and accountants

979. Notaries are unknown to the Serbian legal system.

980. Article 5 of the AML/CFT Law indicates that measures for the prevention and detection of money laundering and terrorism financing laid down in this Law shall also be implemented by lawyers and lawyer partnerships. While lawyers are not specifically named as obligors, they would be included as obligors for providing the services listed in Article 4, Paragraph 2, Items 1-3.

981. Article 46 of the AML/CFT Law requires that lawyers shall apply actions and measures for the prevention and detection of money laundering and terrorism financing in the following cases:

1) when assisting in planning or execution of transactions for a customer concerning:
- buying or selling of real estate or a company,
- managing of customer assets;
- opening or disposing of an account with a bank (bank, savings or securities accounts);
- collection of contributions necessary for the creation, operation or management of companies;
- creation, operation or management of a person under foreign law.

2) when carrying out, on behalf of or for a customer, any financial or real estate transaction.

982. Per Article 47 of the AML/CFT Law, lawyers are subject to identify and verify the identity of a customer or its representative, procura holder or empowered representative and obtain the data referred to in Article 81, Paragraph 3, Items 1 to 2 of this Law by inspecting a personal identity document of such persons in their presence, or the original or certified copy of the documentation from an official public register, which shall be issued no earlier than three months before its submission to the lawyer, or by directly accessing an official public register.

983. The lawyer shall identify and verify the identity of a beneficial owner of a customer that is a legal person or person under foreign law, or any other legal arrangement, by obtaining the data referred to in Article 81, Paragraph 3, Item 3 of this Law, by means of inspecting the original or certified copy of the documentation from an official public register which shall be issued no earlier than three months before its submission to the lawyer. If it is not possible to obtain the required data from such sources, the data shall be obtained by inspecting the original or certified copy of a document or other business documentation submitted by a representative, procura holder or empowered representative of the legal person.

984. Article 47 requires lawyers to obtain other data referred to in Article 81, Paragraph 3 of this Law by inspecting the original or certified copy of an identity document or other business documentation and obtain a written statement from the customer concerning any missing data, other than the data referred to in Article 81, Paragraph 3, Items 11 to 13.

985. Under the previous AML Law, Article 28 stated: when establishing business cooperation with a client, and also in the event of suspicion of money laundering, the legal entities and individuals referred to in Article 27 of the Law shall be bound to perform identification of the customer in accordance with Articles 6 and 7 of this Law, to keep records, and to store the records at least five years after the termination of business cooperation or after the day the transaction is effected. Article 29 of the previous AML Law also provided exceptions for CDD measures: legal entities and individuals referred to in Article 27 of this Law shall not be bound to provide the Administration with information obtained from the client or about the client, when ascertaining a client's legal status or representing the client in court proceedings or with regard to court proceedings, which includes advising on initiating or avoiding court proceedings, regardless of whether the information was obtained prior to, during or after the proceedings. Legal entities and individuals referred to in Article 27 of this Law shall not be bound to provide at the request of the Administration the data, information and documentation on a transaction or individual/entity suspected to be involved in money laundering in cases referred to in Paragraph 1 of this Article. In the event of the case referred to in Paragraph 2 of this Article legal entities and individuals referred to in Article 27 of this Law shall be bound to notify the Administration in writing of reasons for which they did not comply with the Paragraph 3, Article 28 of the Law, within the time frame of 8 days following the reception of request.

986. Many of the deficiencies in the compliance of Recommendation 5 for financial institutions, also apply to lawyers. These deficiencies include: no requirement for obligors, including lawyers, to file an STR if they have refused to establish a business relationship, carry out a transaction, or terminate an existing business relationship.

Applying Recommendations 6, 8, 9 and 11

987. The compliance with the criteria set out in Recommendations 6, 8, 9, and 11 is the same for obligors -DNFBP-s as it is for financial institutions and is described in detail in Sections 3.2 (R. 6, 8), 3.3 (R. 9), and 3.6 (R. 11). The same deficiencies that are described in the previous sections also apply to DNFBP-s.

Applying Recommendation 10

988. The criteria set out in Recommendations 10 is the same for DNFBP-s as it is for financial institutions and is described in detail in Section 3.5. Where requirements differ per specific DNFBP-s, it will be noted below.

Lawyers

989. Records of data on customers, business relationships, and transactions maintained by lawyers under requirements set out in Article 9 (application of due diligence) shall contain all of the items listed under Article 81, Paragraph 3.

990. The record keeping period requirements are identical for obligors and lawyers.

991. Lawyers are required by law to sent to the APML upon request:

a) the data, information and documentation required for detecting and proving ML and FT in relation to certain transactions or persons, and

b) data or information concerning persons that have participated or cooperated in transactions or business activities of a person with respect to whom there are reasons for suspicion of ML or FT.

992. Such data can only be requested by the APML when the latter assesses that 'there are suspicions of ML or FT' (Article 54). The lawyer is required to provide such data without delay and no later than 8 days from the date of the request (or a shorter or longer deadline as indicated by the APML), under conditions set out in Article 53 Paragraphs 4 and 5.

4.1.2 Recommendations and comments

993. Overall, the DNFBP sector demonstrated little awareness and understanding of obligations under the AML/CFT Law or of the previous AML Law.

994. While the casino applied CDD measures, it was not apparent to the evaluation team that other operators of games of chance or any other DNFBP-s applied any CDD measures.

995. The new requirement in the AML/CFT Law prohibiting any economic entity, including dealers in high value goods from conducting cash transaction in excess of EUR 15,000 should be amended to extend the prohibition to transactions that are "equal to' EUR 15,000.

996. This new provision is deemed by the Serbian authorities to remove the need for these dealers to be included as obligors. While recognizing that an effectively implemented prohibition of cash transactions equal to or above the said threshold would be sufficient for meeting the respective requirements of R 12 and R 16, the evaluation team has serious concerns about the system and efficiency of supervision to ensure that the requirement of Article 36 of the AML/CFT Law is met by economic entities. In this regard, it may turn out that, due to the lack of an appropriate supervision regime, dealers in precious metals and stones are completely left out of the AML/CFT framework.

Recommendation 5

- Serbia should introduce into law or regulation the requirement for obligors to consider filing an STR if they have refused to establish a business relationship, carry out a transaction, or terminate an existing business relationship.

- Serbian authorities should establish a list of indicators for the various DNFBP-s in order to help them identify unusual or suspicious transactions. Authorities should also provide AML/CFT training to create awareness and provide DNFBP-s with the knowledge to be able to file STR-s.

- Issue guidelines on instructions for the manner of identifying their clients in accordance with the obligations under the AML/CFT Law.

- As stated above, because of the newness of the AML/CFT Law, DNFBP-s have not yet applied the risk-based approach to clients. Serbian authorities should issue DNFBP-specific guidance and should work with DNFBP-s and their regulators to ensure they understand how to effectively implement in practice.

Recommendation 6

- Serbian authorities should assist DNFBP-s on how to identify foreign officials and apply enhanced due diligence, per the new requirements of the AML/CFT Law. This could include additional training seminars and additional instruction on assessing risk.

Recommendation 8

- Serbian authorities should adopt explicit requirements for DNFBP-s to develop policies and procedures to mitigate the use of technological developments for the purposes of ML and FT when conducting risk assessments.

Recommendation 9

- Until Serbian authorities have determined in which countries financial institutions are permitted to rely on third parties, there can be no implementation of this provision. Serbian authorities should work to issue the sub-law in preparation and the list mentioned in Article 24.

Recommendation 10

- During discussions with various DNFBPs, many indicated that they were not aware of any requirements to maintain records about their clients and in fact, did not keep such records. Serbian authorities should ensure that DNFBPs fully understand and comply with their record keeping obligations.

Recommendation 11

- As the AML/CFT Law only requires obligors to pay special attention to all complex, unusual large transactions or unusual patters of transactions that have no apparent or visible economic or lawful purpose when developing a list of indicators and Serbian authorities have not provided a list of indicators for DNFBP-s, the evaluation team has concerns about the sector's ability to implement the requirements of Recommendation 11.

- While the evaluation team finds the list of indicators to be insufficient to meet the requirements of Recommendation 11, the Decision on KYC Procedure does meet the requirements of Recommendation 11 in regards to paying special attention to unusual transactions and examining the background and purpose of transactions and setting forth those finding in writing, however it is not applicable to all financial institutions. Serbian authorities should ensure that the provisions of the Decision on KYC Procedure also apply to DNFBP-s.

- Serbian authorities should ensure that DNFBP-s are capable of adequately identifying unusual transactions, particularly through additional training and developing better lists of indicators that match the market activities of the financial institution.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	**NC**	• The prohibition for economic entities conducting cash transactions established by Article 36 only covers transactions greater than EUR 15,000 and not those that are "equal to" EUR 15,000. *Recommendation 5* • The casino is the only DNFBP to apply some of CDD measures in Recommendation 5. No demonstration that any other DNFBP has implemented provisions of R.5. • No implementation of the risk-based approach or guidance provided by DNFBP supervisors.

		• No explicit requirement for obligors to consider filing an STR if they have refused to establish a business relationship, carry out a transaction, or terminate an existing business relationship. *Recommendation 6* • No demonstrated implementation of Recommendation 6. *Recommendations 8 and 9* • No requirement in law, regulation or other enforceable means for DNFBP-s to have policies and procedures in place to prevent misuse of technological developments in ML or FT schemes. • No demonstrated implementation of Recommendation 8. • No demonstrated implementation of Recommendation 9. *Recommendation 10* • No demonstrated implementation of Recommendation 10. *Recommendation 11* • No demonstrated implementation of Recommendation 11. • Requirements of the Decision on KYC Procedure to pay special attention to all complex, unusual large transactions and examine the background of the unusual transaction and set forth the finding in writing, are not applicable to all financial institutions. • No list of indicators issued for DNFBP-s.

4.2 Suspicious transaction reporting (R. 16)

(Applying R.13 to 15 and 21)

4.2.1 Description and analysis

997. Under Recommendation 16, the description of the suspicious transaction reporting system for DNFBP-s and lawyers (applying R. 13-14), as well as the internal control requirements (applying R. 15) and the treatment of transactions and persons from countries, and of the countries, which do not apply or insufficiently apply the FATF Recommendations (applying R. 21) is presented in as much as it differs from that articulated for financial institutions under the respective recommendations. Unless specified otherwise, all deficiencies and shortcomings identified in respect of financial institutions are equally and identically attributable to obligor DNFBP-s and lawyers, as well.

Requirement to Make STR-s on ML/FT to FIU (c. 16.1; applying c. 13.1 & c.13.2 to DNFBP)

998. Suspicious transaction reporting regime for DNFBP-s, as established by the AML/CFT Law, is identical for all obligors under this category – casinos, auditing companies, licensed auditors, persons involved in intermediation in real estate transactions, provision of accounting services, and tax advising. All of these businesses and professions are defined as obligors by Article 4 of the AML/CFT Law and subject to the STR reporting requirements. The rule established by Article 37.2 of the AML/CFT Law is that obligors should make STR-s "whenever there are reasons for suspicion of money laundering or terrorism financing with respect to a transaction or customer, before the transaction, and shall indicate, in the report, the time when the transaction is to be carried out. In a case of urgency, such report may be delivered also by telephone, in which case it shall consequently be sent to the APML in writing, but no later than the next business day".

- **Auditing companies, licensed auditors, and legal or natural persons providing accounting or tax service**

999. There is one specific provision concerning the reporting regime for auditing companies, licensed auditors, and legal or natural persons providing accounting or tax services; namely, as established by Article 37.4 of the AML/CFT Law, whenever a customer seeks advice concerning money laundering or terrorism financing, these obligors shall inform the APML promptly, and no later than three days following the day when the customer requested such advice.

- **Lawyers**

1000. For lawyers, who are defined as a separate, stand-alone type of obliged persons, the application of the AML/CFT regime in general, and that of the reporting requirement in particular is somewhat different. Thus, Article 46 of the AML/CFT Law defines that lawyers shall apply actions and measures for the prevention and detection of money laundering and terrorism financing (that is, any requirements of the Law applicable to them) in the following cases:
    1) When assisting in planning or execution of transactions for a customer concerning:
        - Buying or selling of real estate or a company,
        - Managing of customer assets;
        - Opening or disposing of an account with a bank (bank, savings or securities accounts);
        - Collection of contributions necessary for the creation, operation or management of companies;
        - Creation, operation or management of a person under foreign law;
    2) When carrying out, on behalf of or for a customer, any financial or real estate transaction.

1001. Article 48 goes on establishing the reporting regime for lawyers, which – having regard to the difference defined by Article 46 – is virtually the same as that established for all other obligors; that is, they should make STR-s whenever there are reasons for suspicion of money laundering or terrorism financing with respect to a transaction or customer. The specific provision on reporting in cases when a customer seeks advice concerning money laundering or terrorism financing applies to lawyers, as well.

- **Dealers in precious metals and dealers in precious stones**

1002. Under the AML/CFT Law, dealers in precious metals and dealers in precious stones are no more considered as obligors[162]. Authorities assert that, since Article 36 of the AML/CFT Law prohibits persons selling goods or rendering a service in the Republic of Serbia to accept cash payments from a customer or third party in the amount greater than EUR 15.000[163], the reporting requirement for dealers in precious metals and dealers in precious stones is no longer necessary. On the other hand, Article 96 of the Law defines that "the provision of Article 36 of this Law shall not apply to the Law on a Temporary Execution of Certain Payment Operations in the Federal Republic of Yugoslavia". As presented by the authorities, related to Article 96 of the Law, it is considered that the law "provides for receiving foreign currency in trading of goods and services over EUR 15.000 from the buyers from Montenegro and Kosovo, provided that the obligor sells this foreign currency to the bank authorized for performing international operations".

- **Trust and company service providers**

1003. Trust and company service providers are not recognised as legal forms of legal persons or arrangements in Serbia, hence they are not defined as obligors under the AML/CFT Law.

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[162] Whereas the previous AML/CFT Law defined them as obligors

[163] Supervision of implementation of this requirement of the Law is entrusted to the Tax Administration and the Ministry of Trade and Services pursuant to Article 84.10 of the Law.

Legal Privilege

1004. From among entitled professions and businesses, legal privilege is reserved only for lawyers under Article 49 of the Law, which states that lawyers shall not be required to meet the reporting requirement in relation to any data, which they obtain from or about a customer, when ascertaining its legal position, or when representing it in court proceedings, or in relation to court proceedings, including any advice provided concerning the initiation or evasion of such proceedings, irrespective of whether such data has been obtained before, during, or after the court proceedings. Persons involved in professional activities of “provision of accounting services” are required to report under general conditions (that is, in line all other obligors).

No Reporting Threshold for STR-s (c. 16.1; applying c. 13.3 to DNFBP)

1005. Neither Article 37 of the AML/CFT Law establishing the reporting regime for all obligors, nor Article 48 establishing that for lawyers specify any threshold for reporting suspicious transaction reports to the APML. Moreover, Articles 37 Paragraph 3 and 48 Paragraph 2 define, respectively, for obligors and lawyers that the reporting obligation shall also apply to an attempted (planned) transaction, irrespective of whether or not it has been carried out.

Making of ML/FT STR-s Regardless of Possible Involvement of Tax Matters (c. 16.1; applying c. 13.4 to DNFBP)

1006. Serbian legislation employs the “all-crime” approach. That is, suspicious transaction reports are to be filed by obligor DNFBP-s and lawyers regardless of whether they are thought, among other things, to involve tax matters, whereas tax evasion is defined as a criminal offence by Article 229 of the Criminal Code.

Reporting through Self-Regulatory Organisations (c.16.2)

1007. The AML/CFT Law does not allow for obligor DNFBP-s and lawyers to send their STR-s through an SRO.

Legal Protection and No Tipping-Off (c. 16.3; applying c. 14.1 to DNFBP) Prohibition against Tipping-Off (c. 16.3; applying c. 14.2 to DNFBP)

1008. The same provisions apply to DNFPB-s obligors and lawyers as for financial institutions. Thus, the scope of the tipping off prohibition suffers from the same limitations as highlighted in Section 3.

1009. There is a specific limitation to the principle for certain categories, as the prohibition does not apply in cases where the lawyer, auditing company, licensed auditor, legal or natural person offering accounting services or the services of tax advise attempt to dissuade a customer from illegal activities. Nevertheless, this appears to be in line with the concept of the respective Interpretative Note.

1010. The infringement of the disclosure prohibition by a lawyer is a minor offence under the AML/CFT law (Article 91 Paragraph 1(7)) and punishment is a fine ranging from RSD 5.000 to RSD 500.000. For other DNFBP-s, it is an economic offence under the AML/CFT law (Article 88(36)) and legal persons shall be punished with a fine between RSD 500.000 to RSD 3.000.000.

1011. Otherwise, the evaluators note that the concerns expressed under the analysis of Recommendation 14 for the financial sector in Section 3 of this report would likewise apply to DNFBPs.

Establish and Maintain Internal Controls to Prevent ML/FT (c. 16.3; applying c. 15.1, 15.1.1 & 15.1.2 to DNFBP)

1012. Criteria 15.1, 15.1.1 and 15.1.2 are the same for DNFBP-s as it is for financial institutions and is described in detail in Section 3.8.

1013. Article 39 of the AML/CFT Law requires that an obligor shall appoint a compliance officer (CO) and his deputy to carry out certain actions and measures for the prevention and detection of ML and FT. In the event that an obligor has less than four employees, it shall not be obliged to appoint a compliance officer and perform the internal control under this Law. Hence, where a DNFBP has less than four employees, they are not required to designate an AML/CFT compliance officer.

Independent Audit of Internal Controls to Prevent ML/FT (c. 16.3; applying c. 15.2 to DNFBP)

1014. Criterion 15.2 is the same for DNFBP-s as it is for financial institutions and is described in detail in Section 3.8.

Ongoing Employee Training on AML/CFT Matters (c. 16.3; applying c. 15.3 to DNFBP)

1015. Criterion 15.3 is the same for DNFBP-s as it is for financial institutions and is described in detail in Section 3.8.

1016. This requirement does not extend to lawyers and lawyer partnerships.

Employee Screening Procedures (c. 16.3; applying c. 15.4 to DNFBP)

1017. Criterion 15.4 is the same for DNFBP-s as it is for financial institutions and is described in detail in Section 3.8. Where requirements differ per specific DNFBP-s, it will be noted below.

1018. There is no bylaw or regulation that requires DNFBP-s to screen employees to ensure a high quality of staff.

Additional Element—Independence of Compliance Officer (c. 16.3; applying c. 15.5 to DNFBP)

1019. Criterion 15.5 is the same for DNFBP-s as it is for financial institutions and is described in detail in Section 3.8.

Special Attention to Persons from Countries Not Sufficiently Applying FATF Recommendations (c. 16.3; applying c. 21.1 & 21.1.1 to DNFBP)

1020. Criterion 21.1 and 21.1.1 are the same for DNFBP-s as it is for financial institutions and is described in detail in Section 3.8.

Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 16.3; applying c. 21.2 to DNFBP)

1021. Criterion 21.2 is the same for DNFBP-s as it is for financial institutions and is described in detail in Section 3.8.

Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 16.3; applying c. 21.3 to DNFBP)

1022. Criterion 21.3 is the same for DNFBP-s as it is for financial institutions and is described in detail in Section 3.8.

Additional Elements – Reporting Requirement Extended to Auditors (c. 16.5)

1023. Auditing companies, licensed auditors, as well as persons involved in professional activities of provision of accounting services are defined as obligors under Article 4 of the AML/CFT Law.

Additional Elements – Reporting of All Criminal Acts (c. 16.6)

1024. Serbian legislation applies the "all-crime" approach. That is, suspicious transaction reports are filed in respect of any suspected criminal acts, as defined by Article 229 of the Criminal Code.

Effectiveness and efficiency

Applying Recommendation 13

1025. Overall, the deficiencies of the reporting regime, as expounded under Criteria 13.1-13.4 under Recommendation 13 impact on obligor DNFBP-s and lawyers. There are no lists of indicators developed by the APML and to be taken as basis by obligor DNFBP-s and lawyers for developing their own lists of indicators, which in Serbian legislation are an important element underlying the effectiveness of the suspicious transaction reporting obligation. The issue of the APML's lists being insufficiently identifiable and referable equally applies to these obligors and lawyers, too. And finally, meetings with the private sector showed that none of DNFBP-s and lawyers have ever developed their own lists of indicators, or have been supervised for controlling compliance with the respective requirements of the Law. Hence, the assessors hold the opinion that the reporting system for obligor DNFBP-s and lawyers in Serbia is non-functional. This is proven by the fact that casinos, accountants/auditors, and lawyers have not filed a single STR either related to money laundering or terrorist financing over the whole period of implementation of the AML legislation since 2002.

Applying Recommendation 15

1026. Although the legislation requires obligor DNFBP-s to provide for a regular internal control of execution of AML/CFT tasks, there is no specified procedure for executing such tasks. DNFBP-s having less than four employees are not required to appoint a compliance officer.

1027. The requirement defined by the AML Book of Rules and the Decision KYC Procedure for obligors to provide and organize an internal audit, to introduce a respective internal act, and to make an annual report on the audit performed and the measures undertaken does not extend to lawyers and lawyer partnerships, and does not appear to be implemented by any of the obligor DNFBP-s.

1028. It is quite unlikely that obligor DNFBP-s and lawyers provide for appropriate screening and regular professional training for employees in regards to AML/CFT.

1029. Representatives of obligor DNFBP-s and lawyers were not knowledgeable about their obligations established by the AML/CFT Law with respect to internal control systems and functions, employee screening procedures and training practices etc.

Applying Recommendation 21

1030. Because of the newness of the law, the assessment team was unable to assess the effectiveness of Article 38 on DNFBP-s. Serbian authorities should ensure that DNFBP-s apply the highest level of control, whether Serbian law or the host government to branches and subsidiaries overseas.

1031. Representatives of obligor DNFBP-s and lawyers were not knowledgeable about their obligations established by the AML/CFT Law with respect to business relations and transactions

with persons from or in countries not applying or insufficiently applying the FATF Recommendations.

4.2.2 Recommendations and comments

Applying Recommendation 13

- Provide specific guidance on the legal definition of the reporting obligation, so as to prevent its possible restrictive interpretation, as well as to take further measures to ensure that obligor DNFBP-s and lawyers understand it in the broadest meaning of the AML/CFT Law and pertinent regulations/ guidelines.

- Provide for appropriate implementation of the reporting requirement by obligor DNFBP-s and lawyers, by means of ensuring that they have their own lists of indicators for recognizing ML/FT-related suspicious transactions

- Ensure that for all obligor DNFBP-s and lawyers the APML has developed lists of indicators to guide obligors in recognizing ML/FT-related suspicious transactions; make such lists clearly identifiable (by means of an official, publicly accessible reference number, or publication in an official source).

- Continue efforts aimed at developing and introducing a well-structured, coordinated outreach program (for example, by means of series of seminars, regular training sessions for compliance officers, etc) for obligor DNFBP-s and lawyers to fully understand their reporting requirements, in particular the new FT reporting requirement.

Applying Recommendation 14

- It is recommended to the Serbian authorities to make the necessary legal amendments to ensure that:

  (a) DNFBPs are protected from criminal liability for breach of any restriction on disclosure of information if they report their suspicions in good faith to the APML;
  (b) expand the tipping-off provisions to include not only those cases where a STR or related information has been reported but also when it is in the process of being reported to the APML.

- Serbian authorities should ensure that these provisions are appropriately implemented, through issuing adequate guidance to obligors concerning tipping off, so that DNFBPs and their employees fully understand the scope of the safe harbour and tipping off requirements and are aware of and sensitive to these issues when conducting CDD.

Applying Recommendation 15

- Specify the procedure for executing internal policies and controls aimed at prevention of ML/FT, as defined by Articles 45 of the AML/CFT Law; provide guidance and training for all obligor DNFBP-s and lawyers to assist them in developing adequate internal controls to prevent ML/ FT.

- Amend the AML/CFT Law to require obligors having less than four employees to appoint a compliance officer.

- Provide for adequate implementation of the requirement to conduct an internal audit of AML/CFT compliance.

- Provide for adequate implementation of the requirement to provide regular professional training for employees carrying out tasks of prevention and detection of ML/FT.

- Provide for screening procedures to ensure high standards when hiring employees.

Applying Recommendation 21

- Revise and update the list of the countries which do not apply or insufficiently apply the FATF Recommendations; establish enforceable procedures for that list to be recognized and duly applied by obligor DNFBP-s and lawyers.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**NC**	***Applying Recommendation 13*** • No lists of indicators developed by obligor DNFBP-s and lawyers for recognizing ML/FT-related suspicious transactions; no lists of indicators developed y the APML to guide them in recognizing such transactions. • Serious lack of proper understanding of the reporting requirements among obligor DNFBP-s and lawyers; no STR-s; effectiveness of the reporting regime is not provided for. ***Applying Recommendation 14*** • Protection from criminal liability not extended to obliged entities; • Issues with the scope of the tipping-off provision as it does not include cases where an STR and related information is in the process of being reported to the APML. • The AML/CFT Law does not provide for any sanctions when the no tipping off rule is breached by employees of obligors, including the members of the governing, supervisory and other managing bodies. ***Applying Recommendation 15*** • Lack of defined procedure for executing internal policies and controls aimed at prevention of ML/FT. • Lack of a legislative requirement to appoint compliance officers for those having less than four employees. • Lack of adequate implementation of the requirement to conduct an internal audit of AML/CFT compliance. • Lack of adequate implementation of the requirement to provide regular professional training for employees carrying out tasks of prevention and detection of ML/FT. ***Applying Recommendation 21*** • Outdated list of the countries which do not apply or insufficiently apply the FATF Recommendations; lack of enforceable procedures for that list to be recognized and duly applied by obligor DNFBP-s and lawyers.

4.3 Regulation, supervision and monitoring (R. 24-25)

4.3.1 Description and analysis

Recommendation 24

Designated Authority for Regulation and Supervision of Casinos (c. 24.1, c.24.1.1; applying R.17 to casinos)

1032. According to Article 84.3 of the AML/CFT Law, the Administration for Games of Chance within the Ministry of Finance is the state body vested powers for supervising implementation of the national AML/CFT requirements in respect of: a) organizers of special games of chance in casinos, and b) organizers of games of chance operated on the Internet, by telephone, or in any other manner using telecommunication networks.

1033. The Law on Games of Chance, in turn, sets up the Administration for Games of Chance as an administrative body with the responsibility to administer the games of chance area, particularly supervise the implementation of the provisions of the Law on Games of Chance pursuant to Article 93 of the Law, as well as prepare and propose bylaws (e.g., rulebooks), to be issued by the Minister of Finance. It further defines that organizers of the games of chance shall enable direct and indirect supervision by an authorized official of all material and financial operations, on a daily basis. Game organizers shall enable the authorized official to inspect the premises and supervise activities directly or indirectly connected with the organisation of games of chance, business books, reports, records, software and other documents or information that can be used for establishing the actual state of affairs. As presented by the authorities, there is a monthly plan of controls covering all games of chance throughout the country. Supervision is conducted on basis of the Methodology for Inspectors to Conduct Supervision and Control of Organisers of the Games of Chance, which does not cover AML/CFT matters.

1034. Article 24 of the same Law establishes the obligation of game of chance organizers to take all measures required under the relevant anti-money laundering regulations, and keep records of their affairs as instructed by anti-money laundering authorities, and Article 12 further articulates the competence of the Ministry of Finance to see that the provisions of the Law on Games of Chance and of the law regulating anti-money laundering procedures are complied with.

1035. Among sanctions provided by Articles 88 and 89 of the AML/CFT in respect of all obligor DNFBP-s (including casinos), Article 88.1(14) of the AML/CFT Law stipulates for sanctioning casinos for the failure to identify and verify the identity of a customer at the entrance into a casino, and the failure to obtain the required data or to obtain it in the required manner. Then, Article 88.1(38) provides for imposing sanctions for the failure to keep the data and documentation obtained in accordance with the law at least 10 years from the date of entrance into a casino, whereas failure to keep record of the data in accordance with the law is sanctioned pursuant to Article 89.1(13). As already mentioned, Article 88 provides for a fine ranging from RSD 500.000 (approximately EUR 5.400) to RSD 3.000.000 (approximately EUR 32.400), and Article 89 provides for a fine ranging from RSD 50.000 (approximately EUR 540) to RSD 1.500.000 (approximately EUR 16.200).

1036. Article 98 of the Law on Games of Chance further establishes that the Serbian State Lottery or any corporate entity shall be fined by an amount from RSD 10.000 to RSD 1.000.000 for the failure to meet the requirements of Article 24 of the same Law, that is to take the measures required by the relevant law on anti-money laundering, or to keep records as required by the anti-money laundering authorities. Article 47 defines that the license of a casino may be revoked if “a

game organizer prevented of otherwise obstructed or did not allow supervision to be carried out prescribed by this law".

1037. Except of the ones stated above, no administrative sanctions are available in case of casinos' incompliance with the national AML/CFT requirements, including sanctions such as written warnings, orders to comply with specific instructions, barring individuals from employment within the sector, replacing or restricting powers of managers, directors, or controlling owners, or withdrawal of license for AML/CFT incompliance.

Licensing of casinos (c. 24.1.2)

1038. In Serbia, the right to organize special games of chance in gaming facilities (casinos) may be granted through a license issued by the government, whereas the right to organize special games of chance on gaming devices and the right to organize sports betting and other events is granted on the basis of consent of the Games of Chance Board formed within the Ministry of Finance to perform administrative activities of the state concerning games of chance.

1039. The Law on Games of Chance provides that the Government can issue a maximum of ten licenses for the organisation of special games of chance in casinos, and the license is issued for a period of ten years. Licenses for organizing special games of chance in gaming facilities shall be given through a tender announced in daily papers, based on procedures laid down by the government.

1040. Special games of chance on gaming devices and those involving betting may be organised by corporate entities registered in the territory of the Republic of Serbia for performing gambling and betting activities, based on an approval issued by the Administration for the Games of Chance.

1041. Organizing games of chance on the internet, by telephone, or by any other manner using telecommunication networks is the exclusive right of the Serbia State Lottery, the founder of which is the Republic of Serbia pursuant to Article 22 of the Law on Games of Chance. Serbia State Lottery can hire certain legal entities – operators for the purposes of organizing such games, with the prior consent of the Government. Terms and conditions for hiring operators are prescribed by the Regulation on Conditions and Manner for Hiring Operators for the Purposes of Organizing Classical Games of Chance and for Hiring Agents for Selling Raffles[164]. As provided by the authorities, Serbia State Lottery currently organizes a game of chance through short message services (SMS). However, the assessment team was not provided information on how many operators were hired for organizing games of chance via telecommunication means, on the planning and results of supervision of their activities. However, as of the date of assessment, Serbia State Lottery had not hired any operator in terms of the said regulation.

1042. As of the time of the assessment, there was only one casino – "Grand Casino doo Beograd" from Belgrade – operating on basis of such license. There is another one – "Hit international doo Beograd" from Belgrade – which has been awarded a license and will operating until 31 December 2010.

Prevention of Criminals from Controlling Institutions (c. 24.1.3)

1043. Articles 40, 62, and 75 of the Law on Games of Chance establish that, along with the bid for participating in the license granting tender (in case of organizing special games of chance in gaming facilities, that is in casino) or the application to for obtaining an approval (in case of organizing special games of chance on gaming devices, or of organizing sports betting and other events), applicants shall submit a certificate of clean criminal record of the founders and members of the corporate entity for the last five-year period preceding the application. As advised by the

[164] RS Official Gazette No. 129/04

authorities, if the applicant had a criminal record more than five years before applying for the approval to organize special games of chance using gaming machines, the Administration for the Games of Chance is bound to grant its approval. Nevertheless, the legislation in force does not provide for banning individuals with criminal background from acquiring or becoming the beneficial owner of a significant or controlling interest, holding a management function in, or being/becoming an operator of a casino.

1044. The authorities advised that a draft Law on Amendments to the Law on Games of Chance was under way[165], and it would, among other things, prescribe requirement to produce a clean criminal record certificate when acquiring a significant or controlling interest. The draft law would also stipulate that the Minister of Finance should introduce an act on granting approval for acquiring a share, and/or increasing a share or stock in the capital of organizers of special games of chance in gaming places (casinos).

Monitoring and Enforcement Systems for Other DNFBP-s (c. 24.2 & 24.2.1)

1045. Article 4 of the AML/CFT Law defines the following DNFBP-s, other than casinos, as obligors:

- Auditing companies
- Licensed auditors
- Lawyers and lawyer partnerships
- Persons exercising professional activities of intermediation in real estate transactions, accounting, and tax advising

❖ **Auditing companies**

1046. Pursuant to Article 84.4 of the AML/CFT Law, the Ministry of Finance is responsible for supervising implementation of the Law by auditing companies. The authorities refer to Article 63 of the Accounting and Auditing Law as a basis for the Ministry to monitor auditing companies for AML/CFT compliance and to sanction them in case of incompliance. However, the said Article 63 defines that "the Ministry shall exercise inspective supervision over enforcement of the present Law, through duly authorized persons"; that is, the Accounting and Auditing Law does not establish adequate monitoring and sanctioning powers for the Ministry of Finance in terms of AML/CFT compliance. Furthermore, the section on penal provisions of the Law does not stipulate for any sanctions applicable to auditing companies for their failure to comply with the AML/CFT requirements.

1047. Article 41 of the Law on Accountancy and Audit prescribes that the license for engaging in auditing activities, based on which an auditing company is incorporated and registered, shall be issued by the Ministry of Finance. The Ministry keeps the Auditing Companies Register. As of 2006, there were 29 auditing companies licensed by the Ministry. Then, in 2007 the Ministry issued licenses to 6 auditing companies, in 2008 2 licenses were issued and another 2 licenses were revoked, whereas in the first nine months of 2009 5 new licenses were issued.

1048. Within the Sector for Financial System, there is a Department of Accountancy and Audit, in which there is a Group for Inspectional Supervision of Auditing Companies. This Group has three positions envisaged by job classification, one of which is a group leader, and the other two are for conducting the supervision. The group does normative work on developing and monitoring regulations related to audit, undertakes activities of harmonization with EU directives, supervises auditing companies and the Chamber of Certified Auditors, prepares legal documents for the

[165] As of September 2009, the authorities advised that Draft Law on Amendments to the Law on the Games of Chance had been sent to competent ministries and bodies to receive their official opinions.

inspection, studies and analyses the matter. The group leader's monthly salary is prescribed by regulations on civil servant salaries.

1049. The Rulebook on Internal Structure and Job Classification in the Ministry of Finance envisages the applicants for recruitment to have a university degree in Economics or Law, work experience of at least five years, to have passed the Professional Exam, and to have knowledge of the English language.

1050. Nevertheless, the assessment team was not provided any information on the results of supervision carried out by the Department of Accountancy and Audit, particularly whether it incorporated controls of compliance with the national AML/CFT requirements, on the disclosures due to supervision, and on the undertaken measures.

❖ **Licensed auditors**

1051. Pursuant to Article 84.9 of the AML/CFT Law, the Chamber of Certified Auditors is responsible for supervising implementation of the Law by licensed auditors. The authorities refer to Article 4 of the Accounting and Auditing Law as a basis for the Chamber to monitor licensed auditors for AML/CFT compliance and to sanction them in case of incompliance. However, neither the said Article 4, which defines the concepts of a certified auditor and a certified internal (staff) auditor, nor Article 51, which gives an exhaustive list of the activities of the Chamber, stipulate for any supervisory functions to be carried out by it. Hence, the assessment team was not provided any information on the legislative provisions establishing regulatory and supervisory powers of the Chamber of Certified Auditors in respect of licensed auditors for monitoring and ensuring their compliance with AML/CFT requirements, as well as for applying sanctions in case of incompliance. No information was provided on technical and other resources available for the Chamber of Licensed Accountants to appropriately perform its functions.

1052. Article 4 of the Accounting and Auditing Law establishes the positions of a certified auditor and a certified internal (staff) auditor, as well as the body authorized to certify them and keep the register of the persons who undergo certification, that being the Chamber of Certified Auditors. According to the information available to the Chamber as of August 2009, 149 persons are certified as auditors, out of whom 130 persons are licensed to perform audits of financial reports, and 22 persons are certified as internal auditors.

1053. As presented by the authorities, the Ministry of Finance also conducts supervision of the Chamber of Certified Auditors' work in the scope of conferred activities of state administration, in line with the law regulating state administration. The Chamber of Certified Auditors' is currently working on a document which will lay down the procedure for the implementation of AML/CFT law, pursuant to Article 84.9 of the Law.

❖ **Lawyers and lawyer partnerships**

1054. Pursuant to Article 84.8 of the AML/CFT Law, the Bar Association is responsible for supervising implementation of the Law by lawyers and lawyer partnerships. The assessment team was not provided any information on the legislative provisions establishing regulatory and supervisory powers of the Bar Association in respect of lawyers and lawyer partnerships for monitoring and ensuring their compliance with AML/CFT requirements, as well as for applying sanctions in case of incompliance. No information was provided on technical and other resources available for the Bar Association to appropriately perform its functions.

❖ **Intermediation in real estate transactions**

1055. The Ministry of Trade and Services is responsible for supervising implementation of the Law by intermediaries in real estate transactions pursuant to Article 84.6 of the AML/CFT Law. The assessment team was not provided any information on the legislative provisions establishing regulatory and supervisory powers of the Ministry of Trade and Services in respect of the persons involved in professional activities of intermediation in real estate transactions, for monitoring and ensuring their compliance with AML/CFT requirements, as well as for applying sanctions in case of incompliance.

1056. Nevertheless, the authorities advised that only with the AML/CFT Law enacted from March 2009 the Ministry of Trade and Services was vested the competence of controlling enforcement of the Law by economic operators dealing with real estate transactions. According to the official data of the Republic Statistics Office, this activity was performed by 385 economic operators in 2005, 461 – in 2006, 790 – in 2007, and 1074 – in 2008.

1057. Then, pursuant to Article 84.10 of the AML/CFT Law, the Ministry of Trade and Services is also responsible for supervising implementation of Article 36 of the Law, which prohibits persons selling goods or rendering a service in the Republic of Serbia to accept cash payments from a customer or third party in the amount greater than EUR 15.000. Actually, this prohibition is meant to, *inter alia*, eliminate the need for involving dealers in precious metals and dealers in precious stones as obligors, since the FATF Recommendations 12 and 16 establish for them a requirement to perform CDD and to make STR-s only when they engage in cash transaction with a customer equal to or above EUR 15.000.

1058. With regard to this, the authorities advised that the Market Inspection Division within the Ministry of Trade and Services has planned the control of 30% of obligors (300 economic operators dealing with real estate transactions) in the period 1 July – 31 December 2009 in 10 cities in Serbia, to be performed by 13 inspectors, with average effective duration of control in the field, at obligors', of 4 working days. Selection of the obligors to be controlled is done according to the several criteria: detected irregularities in controls to date, contents of the filed complaints of users of these services, information and relevant facts received from other state authorities, and other operative data. This plan encompasses the activities related to the implementation of Article 36 of the Law and to the obligors-economic operators dealing with real estate transactions.

1059. The obligors under Article 36 are practically all economic operators dealing with transactions in trading of goods and services, which are in regular surveillance procedures controlled by the market inspection within their scope of operation. The plan of these controls comes down to additional request to the market inspectors, in the procedure of field control, to perform also control of cash payments for goods and services in terms of the amount stipulated by Article 36. This practically means that the report will contain a mandatory element – ascertaining whether there have been such payments or not.

❖ **Provision of accounting services and tax advising**

1060. Pursuant to Article 84.7 of the AML/CFT Law, the Tax Administration is responsible for supervising implementation of the Law by providers of accounting services and tax advisors. The assessment team was not provided any information on the legislative provisions establishing regulatory and supervisory powers of the Tax Administration in respect of the persons involved in professional activities of accounting services and tax advising, for monitoring and ensuring their compliance with AML/CFT requirements, as well as for applying sanctions in case of incompliance. No information was provided on technical and other resources available for the Tax Administration to appropriately perform its functions.

Recommendation 25 (c. 25.1 – guidance for DNFBP-s other than feedback on STR-s)

1061. Criterion 25.1 requires that competent authorities establish guidelines that would assist DNFBP-s to implement and comply with their respective AML/CFT requirements. At a minimum, such guidelines should provide: a) a description of ML/FT techniques and methods, and b) any additional measures that DNFBP-s could take to ensure that their AML/CFT measures are effective.

1062. Neither the APML nor self regulatory organisations (SRO) have ever provided guidelines to DNFBP-s, which would give obligor DNFBP-s and lawyers assistance on issues covered under relevant FATF recommendations.

1063. Competent authorities entrusted with supervisory functions over compliance of DNFBP-s with the AML/CFT Law and, presumably, with the task of guiding the obligors so as to ensure such compliance, are the Ministry of Finance (supervising activities of audit companies), the Tax Administration (supervising persons involved in provision of accounting services and tax advising), the Administration for Games of Chance (supervising casinos and organizers of games of chance operated via telecommunication networks), the Ministry of Trade and Services (supervising persons involved in real estate transactions), the Bar Association (supervising activities of lawyers), and the Chamber of Certified Auditors (supervising activities of licensed auditors). None of these authorities have provided any guidance or guidelines to their supervised entities on the matters relating to ML/FT and the effective implementation of the national (and international) framework.

1064. The National AML/CFT Strategy, which in some sense could be viewed as a general guidance paper for all stakeholders in the field of AML/CFT, was adopted on September, 25, 2008. However, as of the date of the assessment visit, the Strategy was not either realized or given due attention by the authorities met; in fact, the first meeting of the stakeholders for discussing the steps to be taken for the implementation of the Strategy had been held approximately one month before the visit, and the in general there was no clear understanding of how, when, and by what specific ways such actions were to be taken.

Effectiveness and efficiency (R. 24-25, c. 25.1 [DNFBP])

1065. The Law on Games of Chance provides the general framework for regulation and supervision of casinos (special games of chance in gaming facilities), as well as of other types of games of chance (on gaming devises and those related to betting) in Serbia, including those organised via modern telecommunication means (on the internet, by telephone, etc). At that, the latter is organised by the Serbian State Lottery, which can hire agents operate the business. All of them are supervised by the Administration for Games of Chance within the Ministry of Finance.

1066. As presented by the authorities, by the end of 2008 there were 118 organizers of games of chance supervised by the Administration for Games of Chance, and some 302 inspections were conducted during that year. However, as of the time of the assessment both the only licensed casino – “Grand Casino doo Beograd” from Belgrade – and other games of chance had never been supervised for checking compliance with the national AML/CFT requirements.

1067. The sanctions available for application in case of casinos’ incompliance include pecuniary fines defined both by the AML/CFT Law and by the Law on Games of Chance. However, as in the case of financial institutions, the availability of pecuniary sanctions under two laws is very likely to compromise overall effectiveness of the sanctioning regime due to uncertainty among both supervisors and those being supervised. Moreover, no administrative sanctions are available in case of casinos’ incompliance with the national AML/CFT requirements, including sanctions such as written warnings, orders to comply with specific instructions, barring individuals from

employment within the sector, replacing or restricting powers of managers, directors, or controlling owners, or withdrawal of license.

1068. The legislation in force does not define measures aimed preventing individuals with criminal background from acquiring or becoming the beneficial owner of a significant or controlling interest, holding a management function in, or being/becoming an operator of a casino.

1069. The assessment team was not provided sufficient information (or, in case of the Chamber of Certified Auditors, the Bar Association, and the Ministry of Trade and Services, and the Tax Administration – any information) on the legislative provisions establishing regulatory, supervisory, and sanctioning powers of the bodies designated for supervising monitoring and ensuring compliance with AML/CFT requirements, as well as on the powers for applying sanctions in case of incompliance of auditing companies, licensed auditors, lawyers and lawyer partnerships, persons exercising professional activities of intermediation in real estate transactions, accounting, and tax advising, and of incompliance with the requirements of Article 36 of the AML/CFT Law (which is supposed to ensure compliance of dealers in precious metals and dealers in precious stones).

1070. Likewise, very limited or no information is available on technical and other resources of these supervisory bodies, which does not enable assessing adequacy of such resources. Results of supervision aimed at ensuring AML/CFT compliance are none.

1071. None of the competent authorities have ever provided guidelines to DNFBP-s, which would give them assistance on issues covered under relevant FATF recommendations.

1072. Based on the facts set forth above, the assessors hold the opinion that no effective measures have been taken to ensure compliance of auditing companies, licensed auditors, lawyers and lawyer partnerships, dealers in precious metals and dealers in precious stones, persons exercising professional activities of intermediation in real estate transactions, accounting, and tax advising, with the national AML/CFT requirements.

4.3.2 Recommendations and comments

Recommendation 24

- Eliminate the grounds for uncertainty about applicability of pecuniary sanctions under the AML/CFT Law and the Law on Games of Chance.

- Provide for administrative sanctions in case of casinos' incompliance with the national AML/CFT requirements (such as written warnings, orders to comply with specific instructions, barring individuals from employment within the sector, replacing or restricting powers of managers, directors, or controlling owners, or withdrawal of license).

- Take legal or regulatory measures to prevent individuals with criminal background from acquiring or becoming the beneficial owner of a significant or controlling interest, holding a management function, in or being/becoming an operator of a casino.

- Establish an adequate and relevant supervisory regime with regard to auditing companies, licensed auditors, lawyers and lawyer partnerships, dealers in precious metals and dealers in precious stones persons exercising professional activities of intermediation in real estate transactions, accounting, and tax advising, with the national AML/CFT requirements; particularly provide for the ability of the respective supervisory bodies to monitor and ensure compliance of the respective obligors with AML/CFT requirements, conduct (on-site) inspections, obtain access to all records and information relevant to monitoring compliance,

enforce and sanction both the institutions/businesses and their directors/senior management for incompliance with AML/CFT requirements.

Recommendation 25 (c. 25.1 [DNFBP])

- Establish guidelines that would assist obligor DNFBP-s and lawyers to implement and comply with their respective AML/CFT requirements. Such guidelines would provide assistance on issues covered under the relevant FATF Recommendations, including: (i) a description of ML and FT techniques and methods; and (ii) any additional measures that obligor DNFBP-s and lawyers could take to ensure that their AML/CFT measures are effective.

4.3.3 Compliance with Recommendations 24 and 25 (criterion 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	**NC**	• Uncertainty about applicability of pecuniary sanctions under the AML/CFT Law and the Law on Games of Chance. • Inadequate range of sanctions in case of casinos' incompliance with the national AML/CFT requirements. • No legal or regulatory measures to prevent individuals with criminal background from acquiring or becoming the beneficial owner of a significant or controlling interest, holding a management function, in or being/becoming an operator of a casino. • Lack of an adequate and relevant supervisory regime with regard to auditing companies, licensed auditors, lawyers and lawyer partnerships, dealers in precious metals and dealers in precious stones persons exercising professional activities of intermediation in real estate transactions, accounting, and tax advising, with the national AML/CFT requirements.
R.25	**NC**	• No guidance to obligor DNFBP-s and lawyers describing ML/FT techniques and methods and/or providing any other measures ensuring effectiveness.

4.4 Other non-financial businesses and professions/ Modern secure transaction techniques (R.20)

4.4.1 Description and analysis

Other Vulnerable Non-Financial Businesses (Other than DNFBP) (c. 20.1; applying R. 5, 6, 8-11, 13-15, 17 &21)

1073. The Serbian authorities indicated to the assessment team that, when drafting the AML/CFT Law, they studied how other countries approached this problem. As a result of that, they decided to reduce the number of obligors and determined to exclude from the scope of the AML/CFT law some of the additional non- financial businesses and professions which had been covered under the previous AML Law, that is pawnshops; dealers in high value goods such as precious metals and stones, artwork and antiques, and automobiles, vessels, and other valuable objects; and entrepreneurs, legal entities and individuals doing business related to organisation of travel. It is important to note that the exclusion of these non financial businesses and professions has not been decided on the basis of a specific risk analysis in Serbia.

1074. Consequently, none of the businesses and professions stipulated by the FATF Recommendations as those which might be at risk, that is dealers in high value and luxury goods, pawnshops, auction houses, and investment advisers are covered by the national AML/CFT requirements. Therefore, the FATF Recommendations 5, 6, 8-11, 13-15, 17 &21 are not applicable to them.

1075. Authorities asserted that, since Article 36 of the AML/CFT Law prohibits persons selling goods or rendering a service in the Republic of Serbia to accept cash payments from a customer or third party in the amount greater than EUR 15.000, the reporting requirement for dealers in high value and luxury goods is no longer necessary. However, given the lack of an adequate and relevant supervisory regime with regard to these persons, the assessors hold the opinion that they may pose certain risk in terms of ML/FT.

1076. As presented by the authorities, pawnshops in Serbia are operating as legal entities, and they are registered in the Serbian Business Registers Agency; yet as of the time of the assessment pawnshops were not included into the list of obligors under the AML/CFT Law. It is worth of mentioning that under the previous AML Law pawnshops were involved as obligors supervised by the Ministry of Finance.

1077. Since pawnshops are not in any way covered by the national AML/CFT framework, the assessment team believes that their existence and operations may pose certain risk in terms of their possible usage for money laundering and terrorist financing purposes.

Modernization of Conduct of Financial Transactions (c. 20.2)

1078. Article 36 of the AML/CFT Law prohibiting persons selling goods or rendering a service in the Republic of Serbia to accept cash payments from a customer or third party in the amount greater than EUR 15.000 is believed to reduce reliance on cash. However, since there is no track record of sufficient and successful supervision in this area, the assessors can not conclude on how effective will be the implementation of this requirement will be, also in terms of mitigating the risks in terms of ML/FT.

1079. Banknote denominations: The National Bank of Serbia has put into circulation banknotes in the denominations of 10 (approximately 0,1 Euro), 20 (approximately 0,21 Euro), 50 (approximately 0,53 Euro), 100 (approximately 1,07 Euro), 200 (approximately 2,15 Euro), 500 (approximately 5,3 Euro), 1000 (approximately 10,7 Euro) and 5000 (approximately 53,7 Euro) Dinars. The National Bank of Serbia Treasury Department monitors cash flow, identifies the factors that determine the quantity, quality and denominations of banknotes in circulation, and takes appropriate measures to improve the quality of banknotes and ensure appropriate denominations. On the basis of these considerations, the Treasury Department sets an annual plan (by the quantity and denominations) for producing banknotes to ensure needs in cash flow, to replace unfit banknotes from circulation and to ensure adequate resources remain in the vaults till the next cycle of producing banknotes.

1080. In 2008, 91.6% of all cash payment transactions were effected in banknotes in denomination of 500, 1,000 and 5,000 Dinars. The share of 1,000 Dinar banknotes (65.2%) was dominant. Additional quantities of banknotes in denomination of 100, 200, and 1,000 Dinars with unchanged features were issued to meet the needs of cash payment transactions.

1081. Secured automated transfer systems: Serbian authorities have indicated they are reducing their population's reliance on cash by expanding opportunities to use debit and credit cards throughout the country and by making available secure automated transfer systems for commercial transactions. By the end of 2008, the total number of issued payment cards was 5.7 million and

they were accepted at around 58,000 POS terminals and around 2,500 ATMs. In 2008, the number of card transactions equalled 97 million, of which cards issued by domestic banks accounted for 93 million of the transactions. The total turnover within the acceptance network amounted to RSD 344 billion, of which cards issued in Serbia accounted for 313 billion, up by 33% from 2007.

1082. Serbian authorities have indicated that this increase was caused by the introduction of new services and products offered by commercial banks. Commercial banks focused development on activities aimed at higher frequency of payment card usage, as well as the activation of cards never used before. Furthermore, banks also increased the issuance of specialised products, such as prepaid gift cards or payment cards for agricultural producers.

4.4.2 Recommendations and comments

- The Serbian authorities should conduct sector-specific assessments of MT and FT risk posed by other non-financial businesses and professions, and based on those results, consider extending the requirements of the AML/CFT law to additional obligors, such as on dealers in high value and luxury goods, pawnshops, auction houses, and investment advisers.

- Serbian authorities should also consider taking measures to issue smaller denominations of banknotes and develop and utilize modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	**LC**	• No evidence of adequate consideration of applying Recommendations 5, 6, 8-11, 15, 17 and 21 to non-financial businesses and professions (other than DNFBP-s) that are at risk of being misused for money laundering or terrorist financing. • No track record of successful supervision of prohibition of cash transactions above 15.000.

5 LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANISATIONS

5.1 Legal persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and analysis

Legal framework

1083. The legal framework for legal entities, including their registration, is set out in the Constitution (article 55), the 2004 Law on Business Companies[166] (and the 2004 Law on Registration of Business Entities[167].

1084. As regards non profit legal entities, the legal framework is set out in the 1982 Law on social organisations and civil associations, the 1990 Law on association of citizens into associations, social organisations and political organisations established in the territory of the SFRY, the Law

[166] Official Gazette of RS No. 55/2004 and 61/2005 in force as of 30 November 2004
[167] Official Gazette of RS No. 55 of 21 May 2004 and No. 61 of 18 July 2005.

on registration of public organisations and civil associations, the 1989 Law on legacies, foundations and funds of the Socialist Republic of Serbia, and the Regulation on registration of public organisations and civil associations. The evaluation team was not provided with all the relevant provisions under these legal acts and thus was unable to establish whether these meet all the requirements under R. 33.

Measures to prevent unlawful use of legal persons (c.33.1)

1085. The Serbian authorities have put in place a system of central registration for business entities. The Register of business entities is "a unique, central, public electronic database about business entities, established for the territory of the Republic of Serbia, in which data is entered and kept, in accordance with the law" (Article 2.1 of Law on Registration of Business Entities). The Register is managed by the Serbian Business Registers Agency (SBRA), through its Belgrade Head office and 12 branch offices throughout Serbia. It became operational as of 1 January 2005.

1086. The following entities are registered in the Register: 1) Entrepreneurs; 2) Partnerships; 3) Limited Partnerships; 4) Limited Liability Companies; 5) Joint Stock Companies; 6) Cooperatives and Cooperative Unions; 7) Representative Offices of foreign legal entities; 8) Other entities the registration of which is regulated by a separate law.

1087. The Register shall register the founding, merging and termination of a business entity, any changes in status and legal form, reorganisation of a particular business entity, data on the business entity which are relevant for legal transactions, data related to liquidation proceedings, bankruptcy proceedings and other data determined by law.

1088. The Register contains the following data about business entities (article 6):

1) – 9) Name, address of head office, date and time of foundation, date and time of changes, number of registration, tax identification number, form of organisation, code and description of principal activity, numbers of accounts in the bank

10) Registered name, legal form, registered office and registration number of the founder if the founder is a legal entity, or alternatively the name and personal number of the founder if the founder is a natural person for business entities

11) Name and personal number of the Director and/or members of the Board of Directors, depending on the legal form of organisation

12) name and personal number of the legal representative and limits of his authority

13) subscribed, paid and invested of the business entity.

1089. Applications for the foundation of business entities include inter alia proof of identity of the founders (ID or passport photocopy of a natural person or extract from the register where the legal entity is registered), act of foundation with certified signatures of the founders, decisions on nomination of a representative if he/she. is not appointed in the foundation act and its certified signature (Chapter IV – Registration applications – of the Law on the Registration of Business Entities).

1090. The Register also contains changes of registered data (Article 6.6 of Law on Registration of Business Entities). Entities are requires to report changes – including changes of representative, accession/withdrawal of founder for partnerships, limited partnership and limited liability company), capital changes – within 15 days from the day of the occurrence of the change. Failure by the legal entity to timely register changes is punishable for economic misdemeanour (up to 200.000 RSD) and the responsible person is punished with a fine of 70,000 RSD (Article 79 of the law on the registration of business entities).

1091. Along with the application for the registration of change of the registered office of the company (limited liability company and joint stock company), a decision of the competent

company body on change of registered office is to be submitted. The Register registers changes in the membership of a limited liability company. Along with the application for registration of a change in the membership, the contract on transfer of the share must be submitted with the certified signatures of the transferor and acquirer of the share and if there is a new member is acceding to the company, then proof of identity for the new member (copy of ID or passport for a natural person and/or certificate of registration for foreign legal entities).

1092. The identity of the transferor and acquirer of the agreement on the transfer of share, and the authority for signing and certification of the agreement are determined by the authorities in charge of signature certification, which are the courts or municipalities, in accordance with the procedures and requirements prescribed by the Law on Certification of Signatures, Scripts and Copies (Official Gazette of RS 39/93).

1093. The Register does not register founders or changes in shareholders in a joint stock company. The provision contained in Article 207.1 of Law on Business Companies prescribes that a shareholder, in relation to a joint stock company and third parties, is a person who is registered as such in the Central Registry of Securities, in accordance with the law regulating the securities market. By virtue of Article 2.15 of Law on Securities Market the Central Registry of Securities – among other things – conducts activities related to the unique records on the lawful holders of securities and other financial instruments and on the rights related to these securities or instruments, and on rights of third parties related to the securities.

1094. A limited liability company may have a Director or a Board of Directors (Article 153. of Law on Business Companies). A joint stock company must have a Board of Directors (Article 307.2 of Law on Business Companies). The Register of Business Entities registers changes in the Director or Board of Directors of limited liability companies, or in the Board of Directors of joint stock companies.

1095. Along with the application for registration, the decision of the competent company body must be submitted concerning the discharge of the current director/chairman and members of the Board of Directors and on the appointment of a new director/chairman and members of the Board of Directors and the certified signature of the company representatives.

1096. The evaluation team has not received any information on measures taken to ensure that the data is accurately kept in the Register nor on sanctions applied so far. Furthermore, the evaluators were advised that fictitious companies existing in Serbia are an issue for the country's AML/CFT efforts. This raises particular concerns on the relative ease of establishment of fictitious companies and legal/practical deficiencies of prevention of such a practice.

1097. As regards non profit legal entities, there is no central system for registration and these are registered either in the Register of associations, social organisations and political organisations; in the Register of associations and social organisations; in the Register of foreign associations or in the Register of Legacies, Foundations and Funds, depending on the legal basis according to which they operate. Aspects regarding registration requirements of these entities are further discussed in section 5.3 of this report, however it is understood that the laws and mechanisms in place do not require adequate transparency concerning the beneficial ownership and control of non profit legal entities beneficial ownership as defined in the FATF Recommendations is not registered.

Timely access to adequate, accurate and current information on beneficial owners of legal persons (c.33.2)

1098. The registration of business companies is based, among other principles, also on the principle of publicity according to which data contained in the Register shall be available to interested parties without any proof of legal interest, and the principle of accessibility, according to which

access to the Register is provided online and in other prescribed ways, for the purpose of registration, access to data contained in the Register and issuance of extracts from the Register (Article 3.1 Items 1 and 5 of the Law on Registration of Business Entities).

1099. The Registrar does not verify the accuracy of data or the authenticity of the documents submitted together with the application for registration (Article 22.2 of Law on Registration of Business Entities).

1100. The Registrar is required to issue the decree to approve the registration request within 5 days from the receipt of the registration application and to insert the registration without delay in the register (Article 25). The registered data is published on the website of the Agency on the same day of issuance of the decree which grants the request from the registration application (article 31).

1101. Also, upon request of an interested person and payment of the corresponding fee, the Registrar issues within 2 days from a request, an extract of the registered data with copies of the document on the basis of which registration was effected (article 12).

1102. As regards non profit legal entities, the information available to the evaluation team did not enable to demonstrate that the mechanism in place ensure that information registered is adequate, accurate and up to date nor that competent authorities are able to obtain in a timely fashion such information on the beneficial ownership and control of these entities.

Prevention of misuse of bearer shares (c.33.3)

1103. Companies cannot issue bearer shares (Article 204 of the Law on Business companies).

Additional element – access to information on beneficial owners of legal persons by financial institutions (c.33.4)

1104. Financial institutions have access to information available on-line or upon request (article 12 of the Law on the Registration of Business entities).

5.1.2 Recommendations and comments

1105. The Serbian authorities should:

- review the existing registration mechanisms in place and take legislative and other measures to ensure that registered information includes accurate and up to date details on beneficial ownership and control, as defined under the FATF Recommendations, for all legal persons and that such information is available to competent authorities in a timely fashion;

- strengthen preventative measures for deterring from the practice of setting up fictitious companies.

5.1.3 Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R.33	**PC**	• The existing system does not achieve adequate transparency regarding the beneficial ownership and control of all legal persons • Relative ease with which fictitious companies can be established hinders the authorities' AML/CFT efforts

		• It is not demonstrated that competent authorities are able to obtain adequate, accurate and current information on the beneficial ownership and control of non profit legal entities

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 <u>Description and analysis</u>

1106. Domestic trusts cannot be established in Serbia.

1107. Serbia has not signed the Convention on the Law Applicable to Trusts and on Their Recognition (1 July 1995, the Hague). The authorities explained that in theory foreign trusts could carry out business operations pursuant to the Law on Business Companies (Article 3) which enables foreign companies to establish a branch and register it according to the law on registration of business entities. Branches are not endowed with legal entity status, but may conclude and execute contracts. To their knowledge, there are no foreign trusts operating in Serbia nor have they received any request for the establishment of such activities.

1108. As far as opening a bank account, in the view of interlocutors, trusts – theoretically – can open a bank account. According to the legal provisions, foreign investment funds, international institutions (such as the World Bank, IMF and European Agency for Reconstruction and Development) are legal entities which may not be established in the Republic of Serbia, but have the right to own bank accounts and perform financial transactions. Examiners presume that legal arrangements such as trusts and company service providers do not belong to the category of such 'foreign investment funds'.

1109. The Recommendation 34 is therefore not applicable in the context of Serbia.

5.2.2 <u>Recommendations and comments</u>

1110. Recommendation 34 does not appear to be applicable as trusts cannot be established in Serbia. Nevertheless, given the uncertainty of foreign trusts operating in Serbia, the Serbian authorities should consider satisfying themselves that foreign trusts do not operate in the country having registered themselves as branches of foreign institutions.

5.2.3 <u>Compliance with Recommendation 34</u>

	Rating	**Summary of factors underlying rating**
R.34	**N/A**	Recommendation 34 is not applicable

5.3 Non-profit organisations (SR.VIII)

Legal framework

1111. The AML/CFT Law defines 'Non-profit organisations' as 'associations, institutions, institutes and religious communities founded in accordance with law and primarily engaged in non-profit activities'.

1112. The applicable laws and regulations constituting the legal framework governing the formation, registration, operation and dissolution of various types of non profit organisations in Serbia are the following:
- Constitution of Serbia,
- Law on social organisations and civil associations (1982)[168]
- Law on association of citizens in associations, social organisations and political organisations established for the Territory of the Socialist federal Republic of Yugoslavia (1990)[169]
- Law on registration of public organisations and civil associations
- Law on Legacies, Foundations and Funds of the Republic of Serbia (1989)
- Regulation on registration of public organisations and civil associations[170]
- Rulebook on the manner of maintaining the register of associations, social organizations and political organizations established for the territory of the Socialist Federative Republic of Yugoslavia and the form in which the register is to be maintained[171]
- Law on Movement and Sojourn of Foreigners[172]

1113. The evaluators were not provided with all relevant provisions, but were informed that as such the authorities considered that the current legal framework was out of date and that requirements under the above-mentioned laws were not harmonised.

5.3.1 Description and analysis

Review of adequacy of laws and regulations (c.VIII.1)

1114. Serbia has not reviewed the adequacy of domestic laws and regulations that relate to non profit organisations aimed at identifying the features and types of NPO-s that are at risk of being misused for terrorist financing by virtue of their activities or characteristics nor has conducted periods reassessments by reviewing new information on the sector's potential vulnerabilities to terrorist activities.

Outreach to the NPO Sector to protect it from Terrorist Financing Abuse (c.VIII.2)

1115. Serbia has not taken any outreach measures to raise awareness in the NPO sector about the risks of terrorist abuse and to promote transparency, accountability, integrity and public confidence in the administration and management of all NPO-s.

Supervision or monitoring of NPO-s that account for significant share of the sector's resources or international activities (c.VIII.3)

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[168] Official Gazette of the Socialist Republic of Serbia, no. 24 /82, 39/83 - correction, 17/84, 50/84, 45/85, 12/89 and Official Gazette of the Republic of Serbia, no.53/93, 67/93, 48/94, 101/2005 – and 51/2009

[169] Official Gazette of the SFRY no. 42/90 and Official Gazette of FRY no. 16/93, 31/93, 41/93, 50/93, 24/94, 28

[170] RS Official Gazette no.57/2009

[171] Official Gazette of the SFRY no.45/90 and RS Official Gazette no.51/2009.

[172] Official Gazette of SFRY, no.56/80, 53/85, 30/89, 26/90 and 53/91, Official Gazette of FRY, no.24/94, 28/96, 68/02 and the Official Gazette of RS no. 101/05

Information maintained by NPO-s and availability to the public thereof (c.VIII.3.1)

1116. The evaluators have not seen any provisions which would require NPO-s to maintain information on the purpose and objective of their stated activities and on the identity of persons who own, control or direct their activities, including senior officers, board members and trustees, nor which ensure that such information is publicly available.

1117. Given the limited information received, it is not demonstrated that the authorities have taken adequate measures to supervise or monitor NPO-s which account for a significant portion of the financial resources under control of the sector and a substantial share of the sector's international activities.

Measures in place to sanction violations of oversight rules by NPO-s (c.VIII.3.2)

1118. Pursuant to the Constitution, secret and paramilitary associations are prohibited, and the Constitutional Court may prohibit the work of an association's activities which aim at violent overturn of the constitutional order, violation of guaranteed human and minority rights or fomenting racial, national or religious hatred.

1119. Sanctions can be imposed under the 1990 Law on associations for instance if an organisation begins functioning before its registration or if it has not informed the register of changes subject to registration requirements or under the Law on registration of public organisations and civil associations for non compliance with registration requirements (Section VII, Penal provision). Regretfully, the evaluation team was not provided with sufficient information demonstrating that Serbia has appropriate measures in place to sanction violations of oversight measures or rules by NPO-s or persons acting on behalf of NPO-s, or that such measures have been effectively applied in practice.

Licensing or Registration of NPO-s and availability of this information (c.VIII.3.3)

1120. Pursuant to Article 55 of the Constitution of the Republic of Serbia, associations are established without prior consent required, by being entered into the register kept by a state authority according to the law. The following registers are in place in Serbia:

- The Register of associations, social organisations and political organisations (established pursuant to the 1990 Law on Association of Citizens to Form Associations, Social Organisations and Political Organisations Established in the Territory of the SFRY) is kept by the Ministry of Public Administration and Local Self-Government

- The Register of associations and social organisations (established pursuant to the 1982 Law on Social Organisations and Civil Associations) is kept by the Ministry of Interior since 2006

- The Register of foreign associations (established pursuant to the Law on Registration of public organisations and civil associations): The Ministry of Foreign Affairs issues certificates required for establishing foreign associations in the Republic of Serbia, keeps the records and submits them to the Ministry of Interior.

- The Register of Legacies, Foundations and Funds (established pursuant to the 1989 Law on Legacies, foundations and funds).

1121. The Register of associations, social organisations and political organisations kept by the Ministry of Public Administration and Local Self-Government records over 14.000 civil associations and social organisations. As for foreign associations, the evaluation team was told

that more than 14,000 foreign NGOs representatives had been recorded by the Ministry of Foreign Affairs as of May 2009.

1122. The Law on registration of public organisations and civil associations sets out that registration of social organisation, citizens' associations and federations is compulsory (article 23).

1123. Article 3 of 1990 Law on Association sets forth the obligation of an organisation to abide by the Constitution and laws in its work; the work of an organisation is public and only in extraordinary cases can the public be excluded from its work, as regulated by the organisation's Article of association. In addition, pursuant to the provisions of the same Article, the organisation is bound to allow inspection of the activities it undertakes to achieve its objectives and pursue its tasks by the competent authority, as well as inspection of acquiring and utilizing the funds it has, within the limits prescribed by the Constitution and laws.

1124. Pursuant to Article 11 of the 1990 Law on Associations, associations are bound to submit the application to the Register within 30 days of their incorporation and have no right to act before they are entered into the Register. The Ministry of Public Administration and Local Self-Government is the authority responsible for supervising the implementation of the requirements.

1125. The Register contains an organisation's name, registered seat, objectives and forms of internal organisation, membership in an international organisation and its name. In case the organisation does not have a business address, it includes the addresses of the persons representing the organisation. Should there be a change, the organisation is bound to notify the Register within 30 days (Article 16 of Law on Association).The data entered into the Register is public.

1126. With regard to acquiring and utilizing funds available to civil associations and social organisations, including the funds received from another country at whatever basis, the authorities advised that the same regulations apply as for any other legal entity in the Republic of Serbia and that supervision of the implementation of these regulations is within the scope of the Ministry of Finance (Article 6 of the Law on Ministries).

1127. The Ministry of Foreign Affairs only records foreign non-government organisations (NGOs), and has no possibility to monitor, supervise and control their work and activities. Concerning the rules of recording foreign NGOs, authorities informed the examiners that currently a non-enforceable document 'governs' the procedure. Due to the fact that the new Law on Associations still has not been adopted, the Ministry of Foreign Affairs issues the certificates of the records for the purposes of regulating the status of NGOs and the stay of their representatives in the Republic of Serbia.

Maintenance of records by NPO-s, and availability to appropriate authorities (c.VIII.3.4)

1128. The limited information received does not demonstrate that there are clear requirements in place for NPO-s to maintain, for a period of at least five years, and make available to appropriate authorities, records of domestic and international transactions that are sufficiently detailed to verify that funds have been spent in a manner consistent with the purpose and objectives of the organisation.

Measures to ensure effective investigation and gathering of information (c.VIII.4)

Domestic co-operation, coordination and information sharing on NPO-s (c.VIII.4.1); Access to information on administration and management of NPO-s during investigations (c.VIII.4.2); Sharing of information, preventative actions and investigative expertise and capability, with respect to NPO-s suspected of being exploited for terrorist financing purposes (c.VIII.4.3)

1129. The evaluation team was not provided with information demonstrating that Serbia has implemented measures to ensure that they can effectively investigate and gather information on NPO-s.

Responding to international requests regarding NPO-s – points of contacts and procedures (c.VIII.5)

1130. The evaluation team was not provided with information demonstrating that Serbia has identified appropriate points of contact and procedures to respond to international requests for information regarding particular NPO-s that are suspected of terrorist financing or other forms of terrorist support.

5.3.2 Recommendations and comments

1131. The evaluation team could not explore the complex regime of NPO-s in Serbia in the absence of sufficient information. The lack of transparency apparently features the threefold system. The necessity of reviewing and re-regulating the regime has been recognised by the authorities and was pointed out during the on-site visit by various interlocutors.

1132. The evaluation team was advised by authorities that the Government of the Republic of Serbia approved a draft Law on Associations prepared by the Ministry for State Administration and Local Self-Government on 28 May 2009, and submitted it for adoption to Parliament.

1133. Authorities should:

- conduct a review of the adequacy of domestic laws and regulations that relate to NPO-s for the purpose of identifying the features and types of NPO-s that are at risk of being misuses for FT and conduct periodic reassessments by reviewing new information on the' sector's potential vulnerabilities to terrorist activities

- reach out to the NPO sector with a view to protecting the sector from terrorist financing abuse. This outreach should include: i) raising awareness in the NPO sector about the risks of terrorist abuse and the available measures to protect against such abuse; and ii) promoting transparency, accountability, integrity, and public confidence in the administration and management of all NPO-s.

- take measures to promote effective supervision or monitoring of NPO-s which account for a significant portion of financial resources under control of the sector and a substantial share of the sector's international activities

- review the legal framework to ensure that:
  a) NPO-s maintain information on purpose and objective of their stated activities and on the identity of the persons who own, control or direct their activities, including senior officers, board members and trustees and that such information is publicly available
  b) all NPO-s are adequately registered and that information is available to competent authorities

c) record keeping requirements for NPO-s include records of domestic and international transactions sufficiently detailed to verify that funds have been spent consistently with the purpose and objectives of the organisation and keep such data for a period of at least 5 years
d) there are measures in place to sanction violations of oversight measures or rules by NPO-s or persons acting on behalf of NPO-s

- implement measures to ensure that competent authorities can effectively investigate and gather information on NPO-s as listed in criterion VIII.4

- identify appropriate points of contacts and procedures to respond to international requests for information regarding particular NPO-s that are suspected of terrorist financing or other forms of terrorist support.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**NC**	• No review of adequacy of laws and regulations • No outreach to the NPO sector • No measures to promote effective supervision or monitoring of NPO-s which account for a significant portion of financial resources under control of the sector and a substantial share of the sector's international activities • NPO-s are not required to maintain information on the identity of persons who own, control or direct their activities • Lack of appropriate measures in place to sanction violations of oversight measures or rules by NPO-s or persons acting on their behalf • No requirements to record necessary information on domestic and international transactions • No implementation of measures to ensure that authorities can effectively investigate and gather information on NPO-s • Contact points and procedures to respond to international requests for information regarding particular NPO-s have not been identified

6 NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and co-ordination (R. 31 & R.32)

6.1.1 Description and analysis

Legal Framework

1134. Relevant acts in this context include: the AML/CFT Law, the National Strategy against Money Laundering and Terrorism Financing on 25 September 2008[173], the decision of the Government to establish a Standing Co-ordination Group for Monitoring the Implementation of the National Strategy against Money Laundering and Terrorism Financing (9 April 2009) [174], the Memorandum of Understanding between the National Bank of Serbia and the Administration for the Prevention of Money Laundering.

Recommendation 31

Effective mechanisms in place to co-operate, and where appropriate, co-ordinate domestically concerning the development and implementation of policies and activities to combat money laundering and terrorist financing (c.31.1)

1135. Following the adoption of the first mutual evaluation report, the Government of Serbia had formed on 18 August 2005 a Permanent Coordinating Group bringing together representatives of the FIU, Tax Administration, Customs Administration, Foreign Currency Inspectorate, Ministry of Interior, Ministry of Justice, Supreme Court of Serbia, District Prosecutor's Office, State Prosecutor's Office, National Bank, Securities Commission. The task of this Group was to develop an action plan for implementing the recommendations from the previous mutual evaluation report and to monitor activities and propose necessary AML/CFT measures to relevant state authorities. The Group participated/ assisted in the drafting of a number of laws (e.g. Criminal Procedure Code, Criminal Code, Law on Investment Funds, Law on Banks, AML/CFT Law, etc).

1136. At of the time of the visit, policy level co-ordination and co-operation and co-ordination between all the agencies involved in the AML/CFT efforts was undertaken through the Standing Co-ordination Group for Monitoring the Implementation of the National Strategy against Money Laundering and Terrorism Financing which had been established by a Government decision of 9 April 2009.

1137. The Government decision provides that the tasks of the Standing Group are:
a) to monitor the implementation of the National Strategy against Money Laundering and Terrorism Financing;
b) to propose measures to the competent authorities for enhancing the system for combat against money laundering and terrorism financing and to improve cooperation and information exchange among the authorities;
c) to present opinions and qualified technical explanations to the competent state authorities and
d) to streamline positions and facilitate the participation of the Republic of Serbia delegations in international organizations and international fora involved in the prevention of money laundering and terrorism financing.

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[173] RS Official Gazette No 89/08.
[174] An Action Plan was adopted on 16 October 2009 and covers the period 2009-2013.

1138. This Standing Group is a consultative –advisory body composed of 21 officials of relevant state institutions competent for AML/CFT matters (National Bank, the Securities Commission, the APML, the Customs Administration, the Tax Administration, the Foreign Exchange Inspectorate, the Ministry of Justice, Ministry of Interior, the Security Information Agency, Military Security Agency and the Military Intelligence Agency) as well as of judges of the Supreme Court of Serbia and deputy public prosecutors. The Standing Group is chaired by the State Secretary of the Ministry of Finance and its Secretariat is ensured by the APML staff. It has three vice-chairmen: the State Secretary of the Ministry of Justice, the State Secretary of the Ministry of Interior and the Director of the APML.

1139. Representatives of other competent authorities and organisations – e.g. obligor associations – as well as experts in various fields who may be tasked with delivering expert opinions in relation to specific issues may also take part in the work of this group.

1140. The decision does not provide further details on the regularity of meetings of the Standing Group nor any obligations in that respect. The Standing Coordination Group is required to report on its work to the Government every 90 days as a minimum.

1141. It was noted that this body was established 7 months after the adoption of the Strategy and held its first meeting shortly before the on-site visit of the evaluation team, which focused primarily on the evaluation process' aspects.

1142. The establishment of the current mechanism at policy level is a positive step forward, however at the time of the visit, it was too early to note any direct results (policy and legal proposals) stemming from the activity of this Group. Furthermore, the decision of the Government does not include any details regarding the regularity of its meetings. Thus the effective functioning of the Group and the implementation and improvements emanating from the work undertaken by this group will need to be measured.

1143. The AML/CFT law also includes a number of provisions requiring relevant States bodies and agencies to cooperate and provide specific data to the APML and information deriving from their supervisory functions, if they establish or identify, while executing tasks within their competence, facts that are or may be linked to ML or FT.

1144. Agreements on co-operation have been signed by the Administration for Prevention of Money Laundering with the National Bank of Serbia and with the Customs Administration. The evaluation team has not received these documents, however meetings on site confirmed that co-operation on the basis of these agreements was very satisfactory.

1145. The authorities indicated that in certain cases, at the initiative of the Administration or other state authorities (Ministry of Interior, Prosecutor's office, Tax Administration, National Bank) task forces are formed in order to process a case in a more efficient and comprehensive manner.

1146. As regards operational co-operation, all interlocutors met by the evaluation team indicated that there was definitely room for improvement, though they acknowledged that in certain cases the situation had seriously improved in the past year, with a number of successes in handling specific cases. In particular, it is worth mentioning that all operational bodies, supervisory authorities and the APML have formally appointed liaison officers in order to facilitate such co-operation and depending on the body concerned, such officers are at the level of heads of service or department. The evaluation team remained under the impression that in certain cases such co-operation was successful particularly due to personal contacts situations rather than to the existing formal mechanisms and procedures in place. This is also reflected in the number of recommendations formulated in the National Strategy regarding operational co-operation. The authorities should thus ensure that these recommendations are speedily implemented.

Additional elements – Mechanisms for consultation between competent authorities and the financial sector and other sectors (including DNFBP)

1147. Consultations between the authorities and the financial sector representatives may take place through the Standing Group as representatives of professional organisations may be invited to take part in the work of this Group. The evaluation team understood that dialogue with the Bank's association was taking place. The authorities should nevertheless consider ensuring that this mechanism – or others – provide for an adequate platform for consultation with the financial sector and DNFBP-s.

Review of the effectiveness of the AML/CFT systems on a regular basis (Recommendation 32.1)

1148. The authorities indicated that they have reviewed the effectiveness of the system for combating and money laundering in the context of the preparation of the National Strategy against Money Laundering and Terrorism Financing which was drafted in the course of 2007 and adopted on 25 September 2008. Further reviews would be undertaken under the scope of activities of the Standing Co-ordination Group, responsible for monitoring the implementation of the strategy.

1149. The Strategy provides that the recommendations it formulates shall be further developed in an Action Plan which will provide for the responsibilities of all bodies referred to in the strategy as well as the relevant deadlines, however at the time of the on-site visit, this action plan had not been adopted. The Strategy further provides that the recommendations will be implemented within five years from the date of its adoption. Considering this long time frame, the evaluation team recommends nevertheless that the authorities should conduct an on-going analysis of the risks of ML/FT to be able streamline the AML/CFT strategy and efforts as necessary.

Recommendation 30 (Policy makers – Resources, professional standards and training)

1150. Beyond general data received, the Serbian authorities have not provided any details on the allocation of other resources used to set up and maintain the AML/CFT system on the policy level. No information was available on training of policy makers. Professional standard requirements are set out in the law on civil servants and other relevant internal normative acts and codes on professional standards. Thus it was not demonstrated that requirements under Recommendation 30 for policy makers of competent authorities are met.

6.1.2 Recommendations and Comments

Recommendation 31

- The effective functioning of the Standing Monitoring Group should be ensured and the implementation and improvements emanating from the work undertaken by this group should be measured.

- The Serbian authorities should speedily implement the recommendations under the National Strategy aimed at improving the operational co-operation between competent state bodies and agencies.

- The authorities should give more emphasis to consultations and feedback to the financial sector and consider establishing formal mechanisms to ensure an adequate consultation also with DNFBP-s.

Review of the effectiveness of the AML/CFT systems on a regular basis (Recommendation 32.1)

1151. The Serbian authorities should:

- undertake an on-going analysis of the risks of ML/FT (vulnerabilities, sectors at risk, trends, etc) to streamline its AML/CFT strategy and efforts as necessary;
- pursue current efforts and develop the strategic and collective review of the performance of the AML/CFT system as a whole.

Recommendation 30 (Policy makers – Resources, professional standards and training)

- The Serbian authorities should satisfy themselves that there are adequate resources allocated to set up and maintain the AML/CFT system on the policy level and that policy makers are appropriately skilled and provided with relevant training.

6.1.3 Compliance with Recommendations 31 and 32 (criterion 32.1 only)

	Rating	Summary of factors underlying rating
R.31	**LC**	• The existing operational co- operation mechanisms need improving • The effectiveness of the policy co-operation under the Standing Coordination Group could not be assessed given its recent establishment

6.2 The Conventions and United Nations Special Resolutions (R. 35 and SR.I)

6.2.1 Description and analysis

Ratification of AML Related UN Conventions (c. R.35.1 and of CFT Related UN Conventions (c. SR I.1)

1152. The Republic of Serbia has signed and ratified the Vienna Convention[175], the Palermo Convention and its additional protocols[176] and the Terrorist Financing Convention[177]. The MEQ contained no information on the implementation of the relevant conventions and UN special resolutions in respect of R. 35 and SR.I.

Implementation of Vienna Convention (Articles 3-11, 15, 17 & 19, c. R. 35.1)

1153. Serbian legislation has implemented most provisions of the Palermo Convention. The level of implementation of the above-mentioned provisions remains subject to findings and limitations as set out in section 2 and 6 and its effectiveness is, in certain cases, hampered by the fact that the legislation has only recently entered into force.

Implementation of Palermo Convention (Articles 5-7, 10-16, 18-20, 24-27, 29-31 & 34, c. R 35.1)

1154. Serbian legislation has implemented most provisions of the Palermo Convention. The level of implementation of the above-mentioned provisions remains subject to findings and limitations as set out in section 2 and 6 and its effectiveness is, in certain cases, hampered by the fact that the

[175] Official Gazette of SFRJ, International Contracts, 14/90
[176] Official Gazette of SRJ, International Contracts, No.6/2001 dated 27 June 2001
[177] Law on confirming the international conventions on combating terrorism financing, SFRY Official Gazette - International Contracts, 7/2002

legislation has only recently entered into force. Additional measures are required in order to implement article 31.

Implementation of the Terrorist Financing Convention (Articles 2-18, c. R 35.1 & c. SR. I.1)

1155. Serbian legislation has implemented most provisions of the FT Convention. The level of implementation of the above-mentioned provisions remains subject to findings and limitations as set out in section 2 and 6 and its effectiveness is, in certain cases, hampered by the fact that the legislation has only recently entered into force.

Implementation of UNSCRs relating to Prevention and Suppression (c. SR.I.2)

1156. As outlined under the analysis of compliance with SR.III, Serbia's implementation of the United Nations resolutions relating to prevention and suppression of FT is inadequate. There are no specific laws, regulations or other measures in place which cover comprehensively the requirements contained in S/RES 1267 (1999) and its successor resolutions and 1373 (2001).

Additional element – Ratification or Implementation of other relevant international conventions

1157. Serbia has ratified in 2004 the Council of Europe 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg Convention) and in 2009 the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Warsaw Convention). Other international conventions ratified include: Convention on Cybercrime (Official Gazette of RS – international treaties No. 19/09); the Additional Protocol to the Convention on Cyber Crime Concerning the Criminalisation of Acts of a Racist and Xenophobic Nature Committed through Computer Systems (Official Gazette of RS – international treaties No. 19/09), the Council of Europe Convention on the Prevention of Terrorism (Official Gazette of RS – international treaties No. 19/09), the Protocol on Amendments to the European Convention on the Suppression of Terrorism (Official Gazette of RS – international treaties No. 19/09), the Council of Europe Convention on Action against Trafficking in Human Beings (Official Gazette of RS – international treaties No. 19/09), the Council of Europe Criminal and Civil Law conventions on corruption and the UN Convention against Corruption (Merida Convention).

6.2.2 Recommendations and comments

Recommendation 35

- The Serbian authorities should take additional measures to address the deficiencies identified in sections 2 and 6 which are also relevant in the context of implementation of specific articles of the Conventions as well as to ensure the effective implementation of the newly adopted legislation. Additional measures are required in order to implement article 31 of the Palermo Convention.

Special Recommendation I

1158. The same recommendations on criminalisation of FT offence as well as on further improvement of freezing and confiscation mechanisms are reiterated in this context. In particular, Serbia should:

- Define the FT offense in line with the definition of the offense in the FT Convention;

- Put in place adequate measures to fully address the requirements under S/RES 1267 (1999) and successor resolutions and S/RES 1373 (2001)

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**LC**	• Insufficiencies in the effective implementation of the Conventions due to certain deficiencies (e.g. application of confiscation and provisional measures, training, preventive measures) and recent entry into force of a number of legal acts
SR.I	**PC**	• FT not defined in line with the definition of the offence contained in the FT Convention • Serbia's implementation of S/RES/1267(1999) and successor resolutions and S/RES/1373(2001) is inadequate

6.3 Mutual legal assistance (R. 36-38, SR.V)

6.3.1 Description and analysis

Legal framework

1159. According to article 16 of the Constitution of the Republic of Serbia, generally accepted rules of international law and ratified international treaties are an integral part of the legal system in the Republic of Serbia and are applied directly. Ratified international treaties must be in accordance with the Constitution and laws and other general acts must not conflict with ratified international treaties and generally accepted rules of international law.

1160. In addition to the Vienna, Palermo and Strasbourg Conventions, Serbia has also ratified a number of conventions governing mutual legal assistance in criminal matters and extradition, among which: the Council of Europe Convention on Mutual Assistance in Criminal Matters (ETS No. 030) and its two additional protocols, the European Convention on Extradition (ETS No. 024) and its two additional protocols, the European Convention on Transfer of Sentenced Persons and the 1997 additional protocol, the European Convention on the International Validity of Criminal Judgments, the European Convention on the Transfer of Proceedings in Criminal Matters.

1161. Furthermore, Serbia concluded 35 bilateral treaties with 29 countries related to mutual legal assistance in criminal matters, some of which cover all forms of MLA while others cover specifically certain aspects of legal assistance or extradition or the enforcement of foreign criminal judgments.

1162. In the absence of an international treaty or where certain aspects are not regulated by treaty, mutual legal assistance is extended in conformity with the provisions of the following acts:
- Law on Mutual Legal Assistance in Criminal Matters (in force from 28 March 2009) [178]
- Criminal Procedure Code (which provides for the direct application of the Strasbourg Convention (CETS No. 141) and of the Vienna Convention in relation to criminal offences with elements of organised crime). [179]

[178] Official Gazette of RS No. 19/09. At its entry into force, this law abrogated the provisions of the Criminal Procedure Code related to mutual legal assistance and extradition, that is Chapter XXXII - Procedure for international legal assistance and enforcement of international treaties in criminal matters (articles 530-538) and Chapter XXXIII – Proceedings for extradition of defendants and convicted persons (articles 539-555).

- Law on Seizure and Confiscation of the Proceeds from Crime (in force from 4 November 2008) [180] in relation to specific criminal offences, among which money laundering (Article 231(2) CC when the amount of money or property exceeds 1500 000 RSD) and the financing of terrorism (Article 393 - if the material gain acquired from crime, that is the value of objects acquired from crime exceeds 1500 000 RSD).

Recommendation 36

Widest possible range of mutual assistance (c.36.1)

1163. Serbia is able to provide a broad range of mutual legal assistance both on the basis of the provisions of internationally ratified treaties and also in the absence of such treaties, based on the provisions set out in the national legislation. In particular, the following forms of mutual legal assistance may be provided.

1164. As defined in articles 2 of the MLA Act, mutual legal assistance forms include: extradition of defendants or convicted persons, execution and transfer of criminal proceedings, execution of foreign criminal judgments as well as other forms of mutual assistance, which are listed in article 83 as follows:

a) Conduct of procedural activities such as issuing of summonses and delivery of writs, interrogation of accused persons, examination of witnesses and experts, crime scene investigation, search of premises and persons, temporary seizure of objects,
b) Implementation of measures such as surveillance and tapping of telephone and other conversations or communications as well as photographing or videotaping of persons, controlled deliveries, provision of simulated business services, conclusion of simulated legal business, engagement of undercover investigator, automatic data processing,
c) Exchange of information and delivery of writs and cases related to criminal proceedings pending at the requesting party, delivery of data without the letter rogatory, use of audio and video-conference calls, forming of joint investigative teams;
d) Temporary surrender of a person in custody for the purpose of examination by the requesting party’s competent body.

1165. National judicial authorities can also transmit without letter rogatory information relating to known criminal offences and perpetrators to foreign competent authorities if it is considered of use to criminal proceedings conducted abroad (article 98 MLA Law).

1166. Under the CPC’s special provisions governing proceedings of organised crime criminal offences, the Public Prosecutor may request the competent state authority, bank or another financial institution to conduct the audit of management of certain persons and to deliver to him the documentation and data that may be used as evidence about a criminal offence or property acquired through the commission of a criminal offence, as well as the information on suspicious financial transactions with regard to the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (article 504 k). Controlled deliveries may also be conducted, in accordance with article 11 of the Vienna Convention, in agreement with interested countries and in accordance with the principle of reciprocity (article 504 o).

1167. In addition, in the absence of an international agreement, the provisions set out in Chapter V of the Law on Seizure and Confiscation of the Proceeds from Crime enable to extend assistance to trace proceeds from crime, to ban their disposal, and to temporarily and permanently seize the

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[179] Official Gazette of SRJ No. 70/2001 and 68/2002 and Official Gazette of RS No. 58/2004, 85/2005, 115/2005 – other law and 49/2007

[180] Official Gazette of RS No. 97/2008

proceeds (article 51) derived from criminal offences covered by this act, including the specific forms of offence of money laundering and terrorism financing.[181]

1168. It has to be pointed out however that Serbia has made a reservation to article 21(2) of the Strasbourg Convention according to which the service of judicial documents by post channels or through the consular authorities shall only be allowed in Serbia if envisaged under another bilateral or multilateral agreement. Service by post is also excluded through a reservation to article 33 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.

Provision of assistance in timely, constructive and effective manner (c. 36.1.1)

1169. The national legislation does not provide explicitly for clear timeframes in which MLA requests have to be handled, and the information received does not appear to indicate that this issue is covered by other bylaws or guidelines covering the timing of responding to MLA requests, or for instance in which cases the response for MLA should be particularly prompt.

1170. According to the authorities, upon receipt of the letter rogatory and having regard to its nature and significance, the competent authority will extend the assistance without delay.

1171. A court may postpone the extension of other forms of mutual legal assistance listed in article 82 of the MLA Law if it is required to enable criminal proceedings already in progress before a national judicial authority to run unhindered and in such cases, the judicial authority is obliged to notify the requesting state about the reasons of deferral (article 97 of the MLA Law).

1172. On the basis of the information received, the authorities have not demonstrated that assistance is provided in a timely, constructive and effective manner.

No unreasonable or unduly restrictive conditions on mutual assistance (c. 36.2)

1173. In the absence of international applicable treaties, according to the MLA Law, mutual legal assistance may be granted with respect to all criminal offences on the basis of the rule of reciprocity. The Ministry of Justice is the authority responsible for providing a notification on the existence of reciprocity upon request of the national judicial authority. In the absence of information on reciprocity, the rule is presumed to exist.

1174. The MLA Law (article 7) sets out the preconditions for the execution of foreign MLA requests which include:
1) the criminal offence, constitutes an offence under the legislation of the Republic of Serbia;
2) the proceedings on the same offence have not been fully completed before the national court, that is a criminal sanction has not been fully executed;
3) the criminal prosecution, that is the execution of a criminal sanction, is not excluded due to the statute of limitation, amnesty or an ordinary pardon;
4) the request for legal assistance does not refer to a military or political offence;
5) the execution of the request would not infringe the sovereignty, security, public order or other interests of essential significance for the Republic of Serbia.

1175. The decision as to whether or not a request should be denied based on these grounds rests with the judicial authority (for 1 – 3), whereas the Minister of Justice shall decide or provide an opinion on whether or not the preconditions under paragraphs 4 and 5 are fulfilled.

[181] See article 2 of the Law.

1176. In addition to these conditions, specific additional preconditions apply for extradition requests (article 16), for assumption and transfer of criminal proceedings (article 43), for execution of foreign criminal judgements (article 58) and for other forms of mutual assistance (article 84).

1177. The authorities indicated that legal assistance would not be refused on the basis that judicial proceedings were not instituted in the requesting country nor would they require a conviction before providing assistance.

1178. The evaluation team has not received statistics on requests relating to ML or FT.

1179. Overall, these conditions do not seem to unduly or unreasonably restrict the provision of mutual legal assistance.

Clear and efficient processes (c. 36.3)

1180. The Ministry of Justice is the designated central authority under the Strasbourg Convention. In respect of the European Convention on Mutual Assistance in Criminal Matters and the second additional protocol, the authorities declared that regular courts and the State Prosecutors' Offices are to be considered as judicial organs. Additional authorities are competent for specific measures: the Republic Office of the Prosecutor (article 17 – cross border observations, article 18 – controlled deliveries, article 19 – covert investigations), and the Ministry of Interior (article 17 – cross border observations, article 19 – covert investigations).

1181. In the absence of an international treaty, according to the MLA Act, the competent authorities for mutual legal assistance are national courts and public prosecutor's offices while certain actions are performed by the Ministry of Justice, Ministry of Foreign Affairs and the Ministry of Interior. Letters rogatory are transmitted to judicial authorities through the Ministry of Justice. Subject to reciprocity, letters rogatory for legal assistance may be transmitted directly to judicial authorities and in case of urgency, they may be transmitted through the NCB Interpol, in such cases the judicial authority shall submit a copy of the letter to the Ministry of Justice.

1182. Furthermore, for requests relating to seizure and confiscation of the proceeds from criminal offences under the scope of the Law on Seizure and Confiscation of the Proceeds from Crime, foreign letters rogatory are transmitted to the domestic public prosecutor's office and/or court via the Ministry of Justice. In urgent cases, and subject to reciprocity, the rogatory letter - only for tracing, banning disposal and/or temporary seizure of assets – may be transmitted through the Unit of the Ministry of Internal Affairs responsible for detecting the proceeds. If the letter rogatory does not contain all required elements, the foreign authority shall be requested to provide a complete letter rogatory within one month period (article 55). Courts decide on granting or refusal of such requests and this decision can be appealed (within three days for a ruling on a letter rogatory for temporary seizure and within eight days for permanent seizure). Based on article 60, if criminal proceedings in the requesting state are not concluded within a period of 2 years from the date of the decision on temporary seizure of assets, the court shall revoke the decision ex officio. The foreign authority shall be notified six month before the expiry of the period and if it provides the required evidence, the court may pass a decision extending the temporary seizure for another two years.

1183. The content of letters rogatory is detailed in the MLA Law (article 5) together with the list of supporting documents (article 15 for extradition, article 42 for assumption and transfer of criminal proceedings, articles 57, 67 and 71 for execution of judgments, article 86 for other forms of assistance) as well as in article 54 of the Law on Seizure and Confiscation of the Proceeds from Crime. Both laws regulate in detail the procedures applicable in such cases.

1184. The evaluators have not seen any additional implementing procedures detailing further the application of mutual legal assistance, in particular as regards formal timeframes for the execution of MLA requests in a timely way and without undue delay. At the time of the on-site visit, the provisions of these two laws had not been applied yet.

Provision of assistance regardless of possible involvement of fiscal matters (c. 36.4)

1185. Serbia has ratified the additional protocol to the European Convention on Mutual Assistance in Criminal Matters (CETS No. 99). A request for assistance shall not be refused solely on the ground that the offence involves fiscal matters.

Provision of assistance regardless of existence of secrecy and confidentiality laws (c. 36.5)

1186. Data obtained during the execution of requests for mutual legal assistance may be used solely in criminal or administrative proceedings in respect of which letters rogatory have been submitted. A request for mutual legal assistance will not be refused on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions or DNFBP, except in cases specified under the Criminal Procedure Code addressing the legal professional privilege and the legal professional secret. To that effect, persons who would breach the obligation of keeping a state, military or official secret cannot be heard as witnesses until they are released from such obligation by the competent authority. The same applies to lawyers acting as defenders of an accused person and to persons who are obliged to keep a professional secret, except if they are released from such obligation by a special regulation or a statement of the person to whom such legal privilege or confidentiality belongs.

Availability of powers of competent authorities (applying R.28, c. 36.6)

1187. All powers granted to the relevant authorities in the Criminal Code and laws which regulate the organisation and jurisdiction of courts and public prosecutors will be applied, unless the MLA stipulates otherwise (article 12 of the MLA Law) and may be made available for use in response to requests for mutual legal assistance.

Avoiding conflicts of jurisdiction (c. 36.7)

1188. In the context whether Serbia has considered devising and applying any specific mechanism for determining the best venue for prosecution in cases that are subject to prosecution in more than one country, the authorities referred to the provisions of the MLA Law regarding the transfer and assumption of criminal proceedings.

Additional element – Availability of powers of competent authorities required under R. 28 (c. 36.8)

1189. See above.

International Co-operation under SR.V (applying 36.1 – 36.6 in R.36, c.V.1)

1190. The provisions outlined under Recommendation 36 apply to any category of crime, including offences of terrorism financing.

Additional element under SR V (applying c. 36.7 & 36.8 in R. 36, c.V.6)

1191. The provisions outlined under Recommendation 36 apply to any category of crime, including offences of terrorism financing.

Recommendation 37 & International Co-operation under SR.V (applying 37.1 – 37.2 in R.37, c.V.2)

1192. In the absence of international applicable treaties, according to the MLA Law, one of the preconditions for the execution of requests for mutual assistance is that the criminal offence in respect of which legal assistance is requested constitutes an offence under the legislation of the Republic of Serbia (article 5). The authorities indicated that these principles are not interpreted too strictly. As regards the criminal offence, they indicated that it does not need to correspond to the legal title of the criminal offence in the Republic of Serbia and it is sufficient that it is a factual punishable act under Serbian criminal law.

1193. According to article 13 paragraph 1 of the MLA Law, extradition of accused or convicted persons to a foreign state is allowed by reason of criminal proceedings for a criminal offence that is punishable by imprisonment for maximum of more than one year under the law of the Republic of Serbia and the law of the requesting country and should the request relate to several criminal offences, some of which do not meet the conditions set forth in this paragraph, extradition may be granted for these criminal offences as well.

1194. Under the Law on Seizure and Confiscation of the Proceeds from Crime, prerequisites for extending mutual legal assistance for requests related to proceeds derived from the specific forms of money laundering and terrorism financing do not appear to require dual criminality. The authorities indicated that the intention of the legislator was specifically to provide for a wider approach of application.

1195. The authorities indicated that there has been no case in practice where a request was refused on the basis of the dual criminality principle.

Recommendation 38

Effective and timely response to requests related to the identification, freezing, seizure or confiscation (c.38.1); Property corresponding value (c.38.2)

1196. The MLA Law provides for the possibility to provide assistance for temporary seizure of objects (article 83) under the pre-condition that the requirements of the CPC are met and if there are no criminal proceedings pending against the same person before national courts for the criminal offence being the subject of the requested mutual assistance.

1197. In addition, a broader scope of assistance can be provided on the basis of the Law on Seizure and Confiscation of the Proceeds from Crime for requests related to proceeds derived from the specific forms of money laundering and terrorism financing.

1198. Based on the application of dual criminality, the shortcomings identified with respect to the FT offence may limit Serbia's ability to provide assistance, for example where a request relates to an act of terrorism financing not covered by the Serbian FT provision. Also, previously identified shortcomings of the domestic confiscation regime can represent impediments in effective provision of MLA in this area, in particular as regards the possibility of value based confiscation.

1199. No requests were sent/received on the basis of the MLA Law and Law on Seizure and Confiscation of the Proceeds from Crime, as they have only recently entered into force.

Coordination of seizure and confiscation actions (c.38.3)

1200. The PPO of Serbia has 13 bilateral agreements with foreign PPOs[182] in the area of MLA which include co-operation on seizure and confiscation. However there are no specific arrangements for co-ordinating seizure and confiscation actions nor has there been any action undertaken in practice. .

Asset forfeiture fund (c. 38.4)

1201. Serbia has considered establishing an asset forfeiture fund. Under the Law on Seizure and Confiscation of the Proceeds from Crime (article 48), assets and pecuniary funds obtained from the sale of permanently seized assets are the property of the Republic of Serbia. Permanently seized objects of historical, artistic and scientific value are assigned to the institutions competent for safekeeping such goods based on a decision of the Ministry of Science and/or Culture. Furthermore, according to article 49, following deduction of managing costs in respect of seized assets and the payment of damages to injured third parties, pecuniary funds obtained through the sale of permanently seized assets shall be paid into the country's budget and allocated in the amount of 20% each to finance operations of courts, public prosecutor's offices, of the specialised unit within the Ministry of Internal Affairs responsible for detecting the proceeds from crime and of the Directorate for Management of Seized and Confiscated Assets within the Ministry of Justice. Remaining funds shall be used for financing social, health, educational and other institutions.

Sharing of confiscated assets (c. 38.5)

1202. The Serbian authorities indicated that they have considered the possibility of sharing confiscated assets and this would be possible in application of the Law on Seizure and Confiscation of the Proceeds from Crime (article 61), which provides that permanently seized assets shall be administered in accordance with the provisions of this law or otherwise determined by an international agreement.

Additional element – Recognition of foreign non criminal confiscation orders (c. 38.6)

1203. The evaluation team has not identified any provisions that would allow for the recognition and enforcement of foreign non-criminal confiscation orders in Serbia.

International Co-operation under SR.V (applying 38.1 – 38.5 in R.38, c.V.3)

1204. The provisions outlined under Recommendation 38 apply to any category of crime, including offences of terrorism financing.

Recommendation 30 (Resources – Central authority for sending/receiving mutual legal assistance/extradition requests)

1205. The authorities competent for extending legal assistance include:

a) Ministry of Justice (Department for Mutual Legal Assistance within the Sector for Legal Affairs and International Co-operation) as the designated central authority
b) courts and State prosecutor's offices as judicial authorities,
c) the Republic Office of the Prosecutor
d) the Ministry of Interior.

[182] MoUs have been signed with PPO's from Italy, Slovak Republic, United States of America, Spain, Portugal, Bulgaria, Ukraine, "the former Yugoslav Republic of Macedonia", Bosnia and Herzegovina, Croatia, Montenegro, Hungary, and a regional Western Balkans MoU on organised crime co-operation.

1206. The evaluation team has not received sufficient information enabling it to form a view as to the adequacy of the structure, funding, staffing and of technical resources of the Department for Mutual Legal Assistance of the Ministry of Justice.

1207. According to the Law on Seizure and Confiscation of the Proceeds from Crime, the Ministry of Interior's specialised organisational unit responsible for detecting the proceeds from criminal offences may also handle urgent requests to trace assets, ban disposal and/or to temporarily seize relevant assets (article 53). At the time of the on-site visit, this channel was not available, given that the Ministry of Interior had not issued the relevant act on the internal organisation and job classification of the Unit nor had it appointed the Head of this Unit. Furthermore, the Directorate for Management of Seized and Confiscated Assets is competent to participate in extending mutual assistance (Article 9 Paragraph 5). At the time of the on-site visit, only the Director and deputy had been appointed and it was indicated that recruitment procedures were on-going.

1208. Information gathered through meetings with competent authorities indicated that additional technical resources would be required by courts and state prosecutor's offices to enable them to fully and effectively perform their functions.

1209. The persons met during the visit indicated that they did have sufficient operational independence and autonomy to carry out their functions.

1210. Staff of the Ministry of Justice and Ministry of Interior are civil servants and are required to maintain high professional standards, including standards concerning confidentiality.

1211. The authorities indicated that training on aspects related to international co-operation in criminal matters is organised by the Judicial Center for Professional Capacity Building and Training of Judges and Prosecutors. Staff of the Ministry of Justice attended various trainings organised by various international organisations, however the specifics of such trainings were not provided. The National Strategy against ML and FT acknowledges that there is a need for Ministry of Justice staff to specialise in international legal assistance tasks in the area of ML, FT and confiscation of proceeds. The information received does not enable to form an assessment regarding the scope of training available in Serbia for all authorities responsible for international cooperation in criminal matters, whether initial and continuous training is available, whether it covers comprehensively the relevant aspects related to the implementation of the international conventions. Considering the recent entry into force of the new legislation, it is unlikely that training on the implementation of these acts had been carried out or that it was already introduced in the training curricula.

Recommendation 32 (Statistics – c. 32.2)

1212. Records of incoming MLA requests received by both foreign and national competent authorities are kept within the Ministry of Justice (Department for mutual legal assistance). The authorities indicated that the largest part of requests relate to legal assistance in a narrow sense, followed by transfer and assumption of criminal proceedings, extradition and enforcement of foreign criminal judgements.

1213. The authorities were unable to provide detailed statistics. They indicated that most of the request were received from European countries and assistance was provided based on relevant European conventions or bilateral treaties.

1214. The effectiveness and efficiency of the system could not be assessed based on the statistics provided above. Furthermore, it has to be pointed out that both the MLA Law and the Law on Seizure and Confiscation of the Proceeds from Crime had only recently entered into force, and

there has been no practice in the implementation of their provisions as at the time of the on-site visit.

6.3.2 Recommendations and comments

Recommendation 36

- The Serbian authorities should put in place a system enabling them to monitor the quality and speed of executing requests.

- Serbia should clarify whether the application of dual criminality may limit its ability to provide assistance in certain situations, particularly in the context of identified deficiencies with respect to the FT offence as outlined under Special Recommendation II.

Recommendation 37

- Serbia should consider lifting the dual criminality requirement for less intrusive and non compulsory measures.

Recommendation 38

- The shortcomings identified with respect to provisional and confiscation measures should be remedied as they may limit Serbia's ability to take such measures based on foreign requests in certain cases.

- Serbia should have arrangements in place for coordinating seizure and confiscation actions with other countries.

Special Recommendation V

- Serbian authorities should explicitly set out formal timeframes to enable that requests for MLA relating to FT are dealt with by competent authorities in a timely manner.

Recommendation 30

- Serbian authorities should ensure that the competent authorities for sending/receiving mutual legal assistance/extradition requests are adequately structured, funded, staffed to fully and effectively perform their functions.

- Serbian authorities should review existing technical resources available and take appropriate measures to ensure that proper technical means and equipment (e.g. ICT equipment, equipment for video/telephone conference, technical means required for special investigative measures) are available for competent authorities enabling them to adequately respond to mutual legal assistance requests.

- Initial and continuous training should be organised for all staff of competent authorities responsible for sending/receiving mutual legal assistance/extradition requests on a regular basis to ensure that they have an adequate understanding of the relevant conventions related to international cooperation in criminal matters as well as the application of the new provisions and procedures for mutual assistance and extradition set out in the MLA Law and the Law on Seizure and Confiscation of the Proceeds from Crime. Also, in order to enable direct communication between judicial authorities, the Serbian authorities should consider promoting trainings in foreign languages for relevant professionals.

- The authorities should also develop general reference materials, models forms and circulars or practical guidelines which cover practical aspects of mutual legal assistance in criminal matters and commentaries of the existing legal provisions.

Recommendation 32

- The Serbian authorities should maintain comprehensive annual statistics on all mutual legal assistance and extradition requests - including requests relating to freezing, seizing and confiscation - that are made or received, relating to ML, the predicate offences and FT, including the nature of the request, whether it was granted or refused and the time required to respond.

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3. underlying overall rating
R.36	**PC**	• The shortcomings identified with respect to provisional and confiscation measures available under Serbian Law may also limit Serbia's ability to conduct such measures based on foreign requests • No formal timeframes which would enable to determine whether requests are being dealt with timely, constructively and effectively • The application of dual criminality may limit Serbia's ability to provide assistance due to shortcomings identified in respect to the scope of the FT offence • Effectiveness cannot be demonstrated (recent entry into force of the legislation, absence of statistics on MLA requests relating to ML, predicate offences and FT on the basis of the previous applicable CPC provisions)
R.37	**LC**	• In practice, all forms of MLA, including for less intrusive and non compulsory measures, – with the exception of assistance on the basis of the Law on Seizure and Confiscation of the Proceeds from Crime - may be rendered only under dual criminality
R.38	**PC**	• The shortcomings identified with respect to the provisional and confiscation measures available under Serbian legislation may also limit Serbia's ability to conduct such measures based on foreign requests • No formal timeframes which would enable to determine whether requests are being dealt with timely, constructively and effectively • No arrangements for coordinating seizure and confiscation actions with other countries • Effectiveness cannot be demonstrated (absence of statistics on MLA requests relating to freezing, seizing and confiscation that are made relating to ML, the predicate offences and FT rendered on the basis of the previous applicable CPC provisions)
SR.V	**LC**	• No formal timeframes which would enable to determine whether requests for MLA relating to FT would be dealt with timely, constructively and effectively • In practice, all forms of MLA, including for less intrusive and non

		compulsory measures, – with the exception of assistance on the basis of the Law on Seizure and Confiscation of the Proceeds from Crime - may be rendered only under dual criminality

6.4 Extradition (R. 37, 39, SR.V)

6.4.1 Description and analysis

Legal framework

1215. Serbian legislation provides for extradition based on multilateral or bilateral agreements, and in the absence of an applicable treaty or when the treaty does not regulate certain aspects, extradition is conducted, as of March 2009, in accordance with the provisions of chapter II of the Law on Mutual Assistance in Criminal Matters – Extradition of defendants or convicts183.

1216. Serbia ratified the European Convention on Extradition (ETS No. 24) together with both additional Protocols (ETS No. 86 and 98), and these conventions are in force in Serbia since the 29th of December 2002 for ETS No. 24 and respectively the 21st of September 2003 for ETS No. 86 and 98. Furthermore, Serbia has signed a number of bilateral treaties which include extradition provisions with the following countries: Albania, Algeria, Austria, Belgium, Bulgaria, Czech Republic, France, Greece, Germany, Netherlands, Irak, Hungary, Mongolia, Poland, Romania, Russian Federation, United States of America, Slovakia, Spain, Turkey, “the former Yugoslav Republic of Macedonia” and United Kingdom.

Dual criminality and extradition (c.37.1 & 37.2)

1217. According to the MLA Law, one of the preconditions for the execution of requests for mutual assistance is that the criminal offence in respect of which legal assistance is requested constitutes an offence under the legislation of the Republic of Serbia (article 7). The authorities indicated that this principle is not interpreted too strictly. As regards the criminal offence, they indicated that it does not need to correspond to the legal title of the criminal offence in the Republic of Serbia and it is sufficient that it is a factual punishable act under Serbian criminal law.

Money Laundering and Terrorist Financing as extraditable offences (c.39.1 & SR.V.4)

1218. ML as set out in article 231 of the Criminal Code and terrorist financing as set out in article 393 of the Criminal Code are extraditable offences. However, as mentioned under Special Recommendation II, there are several shortcomings with respect to the scope of the FT offence (as described above under Section 2.2, in particular regarding the coverage of the financing of terrorist organisations and of individual terrorists) which may pose obstacles to executing extradition requests related to such offences.

1219. Furthermore, the MLA law (article 13) sets out the general rule for the provision of extradition which applies to all types of criminal proceedings, including those dealing with ML or FT. It provides that extradition of defendants or convicts to a foreign state may be granted:

a) by reason of criminal proceedings for a criminal offence that is punishable by imprisonment for a maximum of more than one year under the Law of the Republic of Serbia and the law of the requesting state

[183] Prior to this date, in the absence of an international treaty or if the treaty did not regulate certain aspects, the provisions applicable were set out in Chapter XXXIII – Proceedings for extradition of defendants and sentenced persons (articles 539-555).

b) by reason of the execution of a punishment of minimum duration of four months imposed by a court of the requesting party for the criminal offence of paragraph 1 above

Should the extradition request relate to several criminal offences, some of which do not meet the conditions set forth in paragraph 1 , extradition may be granted for these criminal offences as well.

1220. MLA Law provides for a number of preconditions for extradition, in addition to those related to the execution of requests for mutual assistance set out in article 7 (pre-conditions for the execution of requests for mutual assistance). Article 7 of the MLA Law provides for 5 pre-conditions grounds upon which extradition may be rejected:

1) the criminal offence, in respect of which legal assistance is requested, constitutes the offence under the legislation of the Republic of Serbia;
2) the proceedings on the same offence have not been fully completed before the national court, that is, a criminal sanction has not been fully executed;
3) the criminal prosecution, that is, the execution of a criminal sanction is not excluded due to the state of limitations, amnesty or an ordinary pardon;
4) the request for legal assistance does not refer to a political offence or an offence relating to a political offence, that is, a criminal offence comprising solely violation of military duties;
5) the execution of requests for mutual assistance would not infringe sovereignty, security, public order or other interests of essential significance for the Republic of Serbia.

1221. The pre-conditions under Article 16 are as follows:

1) the person in respect whom extradition is requested, is not a national of the Republic of Serbia;
the offence, in respect of which extradition is requested, was not committed in the territory of the Republic of Serbia, and not committed against it or against its citizen;
2) the same person is not prosecuted in the Republic of Serbia for the offence in respect of which extradition is requested;
3) in accordance with national legislation conditions exist for reopening the criminal case for the criminal offence in respect of which the extradition is requested;
4) proper identity of the person in respect of whom extradition is requested is established;
5) there is sufficient evidence to support the reasonable doubt or there is an enforceable court decision in place demonstrating that the person in respect of whom extradition is requested has committed the offence in respect of which extradition is requested;
6)the requesting party guarantees that in case of conviction in absentia the proceeding will be repeated in presence of the extradited person;
7)the requesting party guarantees that the capital offence provided for the criminal offence in respect of which extradition is requested will not be imposed, that is, executed.

1222. It is understood by the evaluation team that, in application of article 1 of the MLA Law, these preconditions shall only be looked up in the context of an extradition request where there is no applicable international or bilateral treaty between Serbia and the requesting State. If there is an applicable treaty setting out the aspects related to mandatory (or optional) grounds for refusal, the Serbian authorities would not apply the above-mentioned grounds in addition to the ones set out in the applicable treaty.

1223. The evaluation team considers that the approach chosen by the Serbian authorities in setting out the above-mentioned pre-conditions may be seen to a certain extent limiting the scope of co-operation in the area of extradition with countries which are not Parties to key international or European conventions covering extradition matters. For instance, the pre-condition under article 7 paragraph 5 (i.e. the execution of the request would infringe the sovereignty, security, public order or other interests of essential significance for the Republic of Serbia) is not a common ground for refusal of an extradition request in any of the key international conventions. Furthermore, it is to note that the assessment of the grounds for refusal under article 7(4) and 7(5) are within the competence of the Minister of Justice in Serbia, while common practice, particularly in European

countries, leaves this matter within the competence of the courts, in particular as regards the examination of the fact whether the offence for which extradition is requested is not a political offence or an offence of a political nature.

1224. Rogatory letters shall include the required information set out in Article 5 of the MLA Law, together with the additional supporting documents set out in article 15 for extradition requests, that is:

1. means to establish proper identity of an accused or a convicted person (an accurate description, a photograph, finger prints, etc.);
2. a certificate or other data on the citizenship of an accused or a convicted person;
3. a decision on the instigation of criminal proceedings, the indictment, the decision on detention or the judgement;
4. evidence presented on the existence of the reasonable doubt.

1225. The procedures applicable to extradition requests are detailed in the MLA law.

1226. For incoming requests, the Ministry of Justice shall send the letter rogatory to the court in the territory of which the person resides or is located. If the requirements of article 5 (Letters rogatory) and 15 (Supporting documents) of the law are fulfilled, the judge shall issue an order for bringing the person whose extradition is requested, which is executed by the police. The Pre-trial Chamber of the court will decide upon:

- refusing the extradition request if the preconditions under article 7 (Preconditions to the execution of requests for mutual assistance)[184] and 16 (Preconditions to extradition) of the Law are not fulfilled. In this case, the decision refusing extradition shall be transmitted to the next higher instance court without delay, and following hearings of the public prosecutor and the defence attorney of the person, the higher court shall confirm, revoke or revise the decision of the pre-trial chamber.
- the fulfilment of the pre-conditions for granting extradition.
- An enforceable decision on refusing detention will be transmitted to the Ministry of Justice which shall notify the requesting state.

1227. The decision on the fulfilment of preconditions to extradition is transmitted to the Minister of Justice who shall decide on granting or refusing extradition, together with any related conditions[185.] The Minister may also defer the enforcement of the decision until the criminal proceedings for other offences conducted against the person sought are finally completed in Serbia or until the person sought has served the prison sentence. The Ministry will communicate the decision to the competent court, the person sought for extradition, the Ministry of Internal Affairs and the requesting party. The Ministry of Internal Affairs enforced the extradition decision and the surrender is due to be effected within 30 days from the Minister's decision.

1228. Outgoing requests are transmitted to foreign authorities through the Ministry of Justice. Subject to reciprocity they may be transmitted directly to a foreign judicial authority with a copy to the Ministry of Justice. Article 38 sets out the preconditions for extradition to Serbia. If criminal proceedings are conducted before the national court against a person resident in a foreign state or if a national court has issued an enforceable decision, the Ministry of Justice may submit the letter rogatory upon request of the competent court. If extradition is granted by the foreign country, the person may face criminal proceedings or the execution of the criminal sanction only for the offence in respect of which extradition was granted.

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[184] As regards article 7 paragraphs 1 to 3 only (national citizens, on-going proceedings on the same offence before national court, criminal prosecution not excluded due to statute of limitations, amnesty or ordinary pardon).

[185] The Minister of Justice is competent to decide on whether or not the preconditions under article 7 paragraphs 4 and 5 (political offence or infringements to sovereignty, public order, of other interests of essential significance for Serbia) are fulfilled.

Extradition of nationals (c.39.2 & c.V.4) & Co-operation for prosecution of nationals (applying c.39.2 (b), c.39.3)

1229. Serbia has entered a reservation to article 6 paragraph 1(a) of the European Convention on Extradition according to which it shall refuse extradition and transit of its nationals. Also, article 16 of the MLA law prohibits extradition of Serbian citizens to foreign countries.

1230. Where extradition for ML or FT is denied on the sole ground of nationality, the Serbian courts are competent to prosecute the person domestically under article 8 (applicability of criminal legislation of Serbia to Serbian citizens committing criminal offences abroad) and the requirements set out in article 10 (special requirements for criminal prosecution for offences committed abroad) of the Criminal Code. Serbian citizens are subject to domestic prosecution for the crimes committed abroad provided that they are found on the territory of Serbia or if they are extradited to Serbia. Prosecution may be undertaken in Serbia with the authorisation of the Republic Public Prosecutor.

1231. Should there have been criminal proceedings initiated by the foreign authority against this person, the transfer of proceedings is possible under the conditions set out in Chapter III of the MLA Law and shall be implemented in compliance with the Serbian legislation.

1232. Anecdotal evidence indicates that the issue of dual citizenship is problematic in Serbia, particularly in cases of defendants and accused who are also nationals of neighbouring countries (eg. Bosnia and Herzegovina, Croatia). Negotiations are underway with neighbouring countries to sign extradition agreements relating to nationals, which would cover organised crimes and war crimes cases.

1233. The evaluation team has not received any additional supporting information demonstrating that in cases of non extradition of own nationals, internal criminal proceedings are instituted efficiently and in a timely manner.

Efficiency of extradition process (c.39.4)

1234. The MLA law provides that incoming letters rogatory which were not submitted in line with the provisions of the law are returned to the sending institution, with a deadline which cannot be longer than 2 months (article 5). If the requesting State has not provided the guarantees required under article 16 (7) and (8), the judge shall request from it to do so within a timeline that can exceed 30 days.

1235. The Ministry of Internal Affairs is competent to enforce the decision granting extradition. It shall agree with the competent authority of the requesting state the place, time and manner of surrender of the person, and the surrender shall be effected within 30 days from the day of passing the decision.

1236. The authorities indicated that the nature and significance of extradition related actions, time limits specified under the national legislation and international treaties require that extradition cases be dealt with urgently, that is, be proceeded upon without delay. At the time of the on-site visit, the provisions of the law had not been applied yet.

Additional elements (R.39) – Existence of simplified procedures relating to extradition (c.39.5), Additional elements under SR.V (applying c.39.5 in R.39, c.V.8)

1237. Domestic legislation envisages the possibility of a simplified extradition procedure under article 30 of the MLA law when a person consents to the extradition. The consent is recorded in

the minutes before a competent court and is irrevocable. The decision on extradition is taken by the pre-trial chamber and shall be transmitted to the Minister of Justice to reach a final decision. In the absence of any contradictory provisions, the simplified procedure may also apply when the crime for which a person is extradited is ML or FT.

Statistics

1238. The authorities provided after the visit the following data concerning statistics on extradition. There is no statistical information as to whether any of these cases related to money laundering. The evaluation team was advised that no extradition requests had ever been refused simply on the grounds of dual criminality and that the average time of executing extradition requests was between 4 to 5 months.

Table 26. Statistics on extradition requests

Extradition								
	Requests sent				**Requests received**			
	2006	**2007**	**2008**	**2009**	**2006**	**2007**	**2008**	**2009**
In total	51	69	90	98	35	52	71	76
Executed	38	50	65	36	26	40	56	33
Refused	6	8	3	2	3	7	6	5
Pending	2	7	15	55	1	3	7	35
Suspended	5	4	7	5	5	2	2	3

6.4.2 Recommendations and comments

1239. Money laundering and the financing of terrorism are extraditable offences. Compared with the previous applicable legislation, the newly adopted MLA Law sets out in a comprehensive manner additional provisions and clarifies the applicable procedures in the context of extradition.

1240. There remain certain legal uncertainties which might interfere with the extradition possibilities, as regardless of the wide interpretation of dual criminality, the deficiencies in the criminalisation of terrorist financing as described under Section 2.2 might constitute an obstacle to executing extradition requests related to such offences. This would require clarifications to avoid any interpretation problems. Also, the lack of detailed statistical information makes it difficult to ascertain how the system works, whether or not in an AML/CFT context.

1241. Thus the Serbian authorities should:

- Clarify whether the application of dual criminality may limit its ability to provide assistance in certain situations, particularly in the context of identified deficiencies with respect to the FT offence as outlined under Special Recommendation II.

- Eliminate the ground for refusal of an extradition request set out in article 7(5) of the MLA Law

- In cases of non-extradition of own citizens, the Serbian authorities should ensure that internal criminal proceedings are instituted efficiently and in a timely manner.

- Take steps to improve the overall effectiveness of the extradition framework and develop general reference materials, models forms and circulars or practical guidelines which cover practical aspects of extradition and commentaries of the existing legal provisions.

6.4.3 Compliance with Recommendation 37 & 39 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.39	**LC**	• Recently enacted legislation and information provided did not enable to assess fully the effectiveness of the extradition procedures (absence of comprehensive statistics on extradition requests that are received or sent relating to ML, the predicate offences and FT and information to determine whether in case of non extradition of own nationals, internal criminal proceedings are instituted efficiently and in a timely manner)
R.37	**LC**	• The application of dual criminality may limit Serbia's ability to provide assistance due to shortcomings identified in respect to the scope of the FT offence
SR.V	**PC**	• The shortcomings identified with respect to criminalisation of FT may impact on Serbia's ability to execute extradition requests related to such offences in certain situations.

6.5 Other Forms of International Co-operation (R. 40 and SR.V)

6.5.1 Description and analysis

Legal framework

1242. The legal framework for cooperation is set out in the AML/CFT Law, the Law on Police, the Law on the Security Information Agency, the Law on the National Bank of Serbia, the Law on Banks, and the Law on the market of securities and other financial instruments.

Recommendation 40

Wide range of international co-operation (c.40.1); Provision of assistance in timely, constructive and effective manner (c.40.1.1); Clear and effective gateways for exchange of information (c.40.2), Spontaneous exchange of information (c. 40.3)

APML

1243. APML is a member of Egmont Group. It has signed 12 MoUs with the FIUs of Albania, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, "the former Yugoslav Republic of Macedonia", Montenegro, Poland, Romania, Slovenia and Ukraine. In addition, it has signed a Regional Protocol on combating Money Laundering and Terrorism Financing in 2008 with the FIUs of Slovenia, Croatia, Bosnia and Herzegovina, Montenegro and Albania.

1244. International co-operation by the APML is conducted pursuant to Section 5.3 of the AML/CFT Law which sets out the applicable framework for handling requests from foreign countries (article 61), disseminating data to the competent State bodies of foreign countries (article 62), suspending transactions (articles 63-64). Accordingly, the APML can cooperate with foreign state bodies competent for the prevention and detection of ML and FT upon receiving a written and grounded request from them or out of its own initiative, under the condition of reciprocity.

1245. The APML is empowered to make requests to foreign competent bodies (article 61 paragraph 1 of the AML/CFT Law) and send data, information and documentation regarding

transactions or persons with respect to whom there are reasons for suspicion of ML or FT both spontaneously and upon request (article 62 paragraph 1 of the AML/CFT law). It has exchanged information spontaneously in 2 cases as indicated in the statistics below.

1246. Feedback received from other countries indicates that the quality of requests was satisfactory and that the APML's response was usually provided within a reasonable timeframe (between 4- 8 weeks). The APML indicated that it has mechanisms in place to ensure that a response is provided usually within one month. The only issue which was highlighted in this context by foreign FIUs was related to cases where data on possible committed criminal offences had been requested, as the time period for responding was longer than 1 month, due to the necessity for the APML to make a written request to the competent authorities, in the absence of a direct access to the Police databases. Some countries noted an improvement in the quality of responses and timeframe.

Supervisory authorities

1247. Article 11 of the Law on the National Bank establishes that the NBS may be a member of an international financial organisation and institutions and may represent Serbia in international financial organisations and institutions and other forms of international cooperation with the consent of the Government. Article 65 provides that the NBS shall cooperate with foreign institutions responsible for banking supervision and domestic bodies and institutions responsible for supervision in the field of financial transactions, with an aim of promoting the supervisory function of the NBS. The NSB may exchange data gathered in performance of the supervisory function with foreign and domestic bodies and institutions.

1248. Similarly, article 8 of the Law on Banks provides that the NBS shall cooperate with foreign regulatory authorities, with a view to performing and improving its supervisory function, as well as performing other activities established by the law and that it may share data obtained under its supervisory functions with foreign regulatory authorities.

1249. The National Bank of Serbia has signed MoUs in the field of supervision with the supervisory authorities from the following countries: Cyprus (2001, 2006), Greece (2002), "the former Yugoslav Republic of Macedonia" (2002), Montenegro (2003), Slovenia (2004), Bosnia and Herzegovina (2004), Italy (2007), Hungary (2008), Russia (2008), Belgium (2008), Austria (2009). They all cover banking matters, except for the MoUs with Hungary, Belgium and Austria which also cover insurance supervision aspects. Furthermore, two multilateral agreements were signed in 2007 (Albania, Greece, "the former Yugoslav Republic of Macedonia", Romania, Bulgaria, Cyprus) and in 2008 (Albania, Bosnia and Herzegovina, Greece, "the former Yugoslav Republic of Macedonia", Romania, Montenegro, Cyprus) covering banking supervision.

1250. Article 220 paragraph 15 of the Law on the market of securities and other financial instruments provides that the Securities Commission can co-operate and conclude agreements with international organisations, foreign regulators and other local and or foreign bodies and organisations in order to provide legal assistance, exchange of information and in other cases as needed, in compliance with the law. The Securities Commission has bilateral agreements or MoUs with counterpart authorities of the Russian Federation (2001), Bosnia and Herzegovina (2001, 2004, 2008), Romania (2004), Croatia (2005), Montenegro (2005), Greece (2005, 2007), Bulgaria (2007), "the former Yugoslav Republic of Macedonia" (2008).

1251. The evaluation team has not been provided with any information on the legal basis upon which other financial sector and non financial sector supervisory authorities can cooperate internationally and provide assistance and practical cooperation. Hence, they were not able to assess that these are able to provide the widest range of international cooperation to their foreign counterparts in rapid, constructive and effective manner.

1252. The evaluation team expresses reservations as to the adequacy of the legal provisions regulating the international cooperation and exchange of information for the financial sector and non financial sector supervisory authorities. The mechanisms above appear to be applicable only for prudential and supervisory purposes. Thus it remains uncertain whether the exchange of information would be possible in relation to information related to both ML and the underlying predicate offence. The evaluation team has not seen any provisions which would enable supervisory authorities to exchange information spontaneously.

Law enforcement authorities

1253. International police co-operation is regulated under the Law on Police in article 19 as follows:

International co-operation and engagement

1) *The Ministry cooperates internationally through its Ministers and appointed representatives, and organises such co-operation for the needs of the police.*
2) *The police co-operates at the operational level with foreign and international law enforcement in accordance with international agreements and the principle of reciprocity.*
3) *In co-operating pursuant to paragraph 2 of this article, the police may exchange data and information, take joint measures against terrorism, organised crime, illegal migration and other forms of international crime and border violations, and perform certain police functions abroad in co-operation with law enforcement agencies of other nations, as established by the law.*
4) *At the request of international organisations, or in accordance with international treaties of which the Republic of Serbia is a member or signatory, the police may take part in law enforcement activities or other peacetime tasks abroad.*
5) *The use of police to perform tasks pursuant to paragraph 4 of this article shall be decided by the Government of the Republic of Serbia on recommendation of the Minister.*

1254. Police and customs international co-operation is provided under the umbrella of other international and regional organisations and initiatives to which Serbia is a member, such as Interpol, the World Customs Organisation, the SECI Center (Southeast European Co-operative Initiative Regional Center for Combating Trans-border Crime[186], the Police Cooperation Convention for South-east Europe[187], the Black Sea Economic Cooperation (under the agreement on co-operation in the fight against organised crime)[188]. The Ministry of Interior police and customs liaison officers based in the SECI Center (Romania). There are also up to 30 foreign police liaison officers based in Belgrade.

[186] SECI Center is an operational regional organisation established in 1999 bringing together police and customs authorities from 13 member countries in Southeast Europe (Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Greece, Hungary, Moldova, Montenegro, Romania, Serbia, Slovenia, "the former Yugoslav Republic of Macedonia, Turkey).

[187] On 5 May 2006 the Ministers of Interior from Albania, Bosnia and Herzegovina, , Moldova, Montenegro, Romania, Serbia and "the former Yugoslav Republic of Macedonia", signed the Police Cooperation Convention for Southeast Europe. After ratification by all seven signatory states, the Convention entered into force on 10 October 2007. In addition, Bulgaria acceded to the Convention on 25 September 2008. The provisions of the Convention provide a legal framework for comprehensive police cooperation among the Contracting Parties, including operational cooperation.

[188] Black Sea Economic Cooperation (BSEC) was established by the signature in Istanbul on 25 June 1992 of the Summit Declaration and the Bosphorus Statement by the Heads of State and Government of eleven countries: Albania, Armenia, Azerbaijan, Bulgaria, Georgia, Greece, Moldova, Romania, Russia, Turkey and Ukraine.

1255. Serbia has signed on 18 September 2008 the Agreement on Strategic Cooperation with Europol, which aims to enhance cooperation to fight serious forms of international crime including among others, drug trafficking, money laundering and illegal immigration. The agreement between the two parties makes it possible to exchange strategic and technical information and provides the legal basis for an exchange of liaison officers. The agreement shall enter into force on the date on which the Republic of Serbia notifies Europol in writing through diplomatic channels that it has ratified this agreement. Serbia also commenced preparations for signing the Agreement on Operational Co-operation with Europol.

1256. The Ministry of Interior of Serbia has concluded a treaty with Slovenia, a trilateral agreement with Romania and Bulgaria, and has also signed memorandum of understanding with Austria, Romania, Bulgaria, Greece, Slovakia, "the former Yugoslav Republic of Macedonia".

1257. The Ministry of Interior indicated that according to the provisions of the MoUs and agreements signed, they can exchange information both spontaneously or upon request.

1258. Customs officers are authorised to exchange of information on importation, exportation and transit of goods with foreign customs administration for the purpose of enforcing this law and other regulations (Customs Law, article 259).

1259. The Customs Administration indicated that it started increasing its international co-operation relations particularly in the past 2 years. Agreements on customs cooperation have been concluded with the following countries: "the former Yugoslav Republic of Macedonia (1997), Bulgaria (1998), Romania (2001), Czech Republic (2001), Hungary (1999), Slovak Republic (2001), Bosnia and Herzegovina (2004), Turkey (2003), Italy (1965, 2003 agreement not yet in force), Montenegro (2003), Iran (2006, not yet in force), Poland (1967, 1997 agreement in force), Slovenia (2007, not yet in force), France (1971), Austria (1979), Greece (1986), China (1989), Germany (1975), United States (1990), Hungary and Croatia (2005). Agreements are a prerequisite for cooperation, but if they are not ratified, cooperation can be carried out via the Ministry of Foreign Affairs. The Customs service also cooperates with other countries through the liaison officers from SECI Centre. Within the Customs administration, the Enforcement Division is responsible for cooperation with other Customs' Enforcement Divisions. Cooperation between customs administrations is based on the sent requests for administrative assistance, and often the queries of foreign administrations refer to suspicious financial transactions that followed the clearance of goods.

1260. The Law on the Security Information Agency in article 4 provides that the agency shall cooperate with organisations and services from other countries and international organisations, in compliance with the directives of the Government of the Republic of Serbia and the security intelligence policy of the Republic of Serbia.

Making inquiries on behalf of foreign counterparts (c.40.4), FIU authorised to make inquiries on behalf of foreign counterparts (c. 40.4.1), Conducting of investigation on behalf of foreign counterparts (c. 40.5)

APML

1261. The APML is authorised to make the relevant inquiries on behalf of foreign counterparts as provided under c. 40.4.1.

Supervisory authorities

1262. The evaluation team has not been made aware of any basis upon which supervisory authorities could conduct inquiries on behalf of supervisors from foreign countries.

Law enforcement authorities

1263. The Criminal Procedure Code does not include limitations concerning the competence of domestic authorities to conduct inquiries on behalf of the foreign counterparts. The Ministry of Interior is authorised to search its own and other databases, including public databases, upon request of foreign counterparts. This information can be exchanged without restrictions with foreign counterparts who are equally obliged to keep the confidentiality on the basis of reciprocity. The exchange of information with countries who do not have equivalent standards is possible with the permission of the supervisory authority.

1264. Law enforcement authorities can conduct investigations on behalf of foreign counterparts upon their request, based on reciprocity.

1265. Customs officers can also conduct inquiries on behalf of other customs administration upon request in cases where the requesting authority has either initiated a criminal investigation or it has established a fact related to a customs offence (article 259 Customs Law).

No unreasonable or unduly restrictive conditions on exchange of information (c.40.6)

APML

1266. According to article 62, the APML may refuse to respond to a request in two cases:
1) if it assesses, based on the facts and circumstances specified in the request, that there are no reasons for suspicion of ML or FT
2) if the sending of such data would jeopardize the course of criminal proceedings in the Republic of Serbia.

1267. The APML will inform in writing the foreign authority of the refusal and the reasons on which this is based.

1268. It was explained to the evaluators that there should be a substantiated explanation in the request that there is a clear suspicion for ML. As regards requests for suspension of transactions, the level of suspicion is higher than for other requests, equivalent to 'reasonable grounds' under the CC requirements.

Law enforcement authorities & supervisory authorities

1269. The evaluation team has received a copy of the 2008 MoU between the NBS and the Central Bank of the Russian Federation which covers explicitly AML/CFT co-operation and the exchange of information on the following aspects:
- "the requirements in national legislation in the field of banking supervision and countering the legalisation of criminally obtained incomes and FT, which fall within the competence of the banking supervisory authorities and any changes made to them;
- violations of AML/CFT legislation committed by parent credit institutions and their cross-border establishments and sanctions taken against them;
- the observance by credit institutions of AML/CFT legislation
- best practice procedures for identifying and studying customers and beneficiaries and detecting operations connected with the legalization of criminally obtained incomes and FT
- typical schemes and methods used in legalising criminally obtained incomes and FT".

1270. The MoU provides that a request for assistance may be denied wholly or partially if the requested banking supervisory authority believes that the execution of the requests will run counter to its national legislation or that it may harm national interests, or on grounds of public

interest or when disclosure would interfere with an on-going supervision. Notification of the refusal and the reasons is to be made in writing and within a reasonable time period.

1271. It remained unclear whether all the other MoUs signed by the NBS contain similar provisions. Based on the information received, the evaluation team could not assess whether exchanges of information by all supervisory and law enforcement authorities are made subject to disproportionate or unduly restrictive conditions.

Provision of assistance regardless of possible involvement of fiscal matters (c.40.7)

1272. Requests for co-operation cannot be refused on the sole ground that they involve fiscal matters.

Provision of assistance regardless of existence of secrecy and confidentiality laws (c.40.8)

1273. As regards dissemination of data, information and documentation by the APML to competent foreign State bodies shall not be considered infringement of official secrecy, in accordance with the AML/CFT Law (article 74(2)).

1274. Due to limited information received, it remained unclear whether secrecy and confidentiality requirements on financial institutions and DNFBPs may prevent the provision of international co-operation by law enforcement and supervisory authorities.

Safeguards in use of exchanged information (c.40.9)

1275. The AML/CFT Law includes provisions aimed at establishing safeguards to ensure that the information received by competent authorities is used only in an authorised manner. The APML cannot disseminate the data, information and documentation to other state bodies without the consent of the State body of the foreign country that is competent for the prevention and detection of ML and FT which has sent this data to the APML (article 61(3)). Furthermore, the APML may not use the data, information and documentation in contravention to the conditions and restrictions imposed by the State body of the foreign country that has sent such data to the APML (article 61(4)).

1276. The APML can also set conditions and restrictions under which a body of a foreign country can use the data, information and documentation received from the APML (article 61(4)).

1277. The MoU provided by the NBS includes several clauses providing that "to the extent permitted by its national legislation, each banking supervisory authority shall ensure the confidentiality of information and documents received from other banking supervisory authority, if they are classified as restricted or if the banking supervisory authority that grants the information consider its disclosure undesirable. Confidentiality of supervisory information and documents is determined by the banking supervisory authority that provides the information". Such information may only be used for the purpose of banking supervision established by law and for the purpose it was requested and provided for. If the law does not enable disclosure of the information, the information cannot be provided to third parties without preliminary consultations and written consent by the banking supervisory authority that provided the information.

Additional elements – Exchange of information with non counterparts (c.40.10 and c.40.40.1); Exchange of information to FIU by other competent authorities pursuant to request from foreign FIU (c.40.11)

1278. There are certain mechanisms in place enabling exchanges of information with non counterparts. The APML provides its foreign counterparts with information as to what other state authority has initiated the case and in what way the received information will be used.

1279. The evaluators were not made aware of any mechanisms in place to permit a prompt and constructive exchange of information with non-counterparts by supervisory authorities.

International co-operation under SR.V (applying 40.1-40.9 in R.40, c.V.5)

1280. FT related co-operation is conducted by the APML on the basis of the above-mentioned provisions. As far as the Security Information Agency is concerned, information was unavailable due to the confidential nature of the agency's work.

1281. Based on the information received, the evaluation team remains reserved on compliance with the criteria in the context of international co-operation under SR.V by law enforcement and supervisory authorities.

Additional element under SR.V – (applying 40.10-40.11 in R.40, c.V.9)

Recommendation 32

APML

1282. The table below presents the statistics on formal requests – both granted and refused – made or received by the APML relating to AML/CFT:

Table 27. Statistics on Formal Requests for Assistance

Year	Sent requests, including		Received requests, including		Total, including	
	Refused	*Spontaneous referrals*	*Refused*	*Spontaneous referrals*	*Refused*	*Spontaneous referrals*
2003-2004	**22**		**31**		**53**	
	-	-	-	-	-	-
2005	**59**		**58**		**117**	
	9	-	-	-	9	-
2006	**78**		**53**		**131**	
	9	1	2	0	11	1
2007	**62**		**69**		**131**	
	6	-	1	-	7	-
2008	**65**		**73**		**138**	
	8	1	9	-	17	1
2009 (up to 1 April)	**7**		**25**		**32**	
	-	-	-	-	-	-
TOTAL	**293**		**309**		**602**	

1283. The authorities explained that the requests refused were in majority not related to Serbia, or in one case as the APML needed more substantiated information to ground the suspicion.

Law enforcement authorities

1284. The following data was provided by the Ministry of Interior on information exchanged through the Interpol channels (24/7).

Table 28. Information exchanged through Interpol channels

Year	Financial Crimes (number of cases)	ML (number of cases)
2005	214	66
2006	249	111
2007	312	55
2008	314	59
2009	187	35

1285. Other law enforcement authorities and supervisory authorities have not provided additional data related to international co-operation and information exchange.

Effectiveness

1286. The FIU and law enforcement authorities appear to be able to provide a wide range of international cooperation to their foreign counterparts. Only limited information was made available to the evaluation team in relation to international co-operation provided by supervisory authorities and certain law enforcement authorities, and there are general concerns about the effectiveness of the cooperation on the basis of the existing provisions.

6.5.2 Recommendation and comments

1287. In the light of the above:

- The authorities should undertake a thorough review of the legal framework which governs international co-operation and information exchange and amend the existing laws governing the scope of action of all competent financial sector and non financial sector supervisory authorities to ensure that they allow the widest range of co-operation and that these bodies can exchange information both spontaneously and upon request in line with the FATF standards under Recommendation 40;

- The authorities should ensure that exchanges of information by supervisory and law enforcement authorities are not made subject to disproportionate or unduly restrictive conditions;

- The supervisory authorities should keep comprehensive statistical information on the exchange of information with foreign counterparts, including on whether the requests were granted or refused.

6.5.3 Compliance with Recommendation 40 and SR.V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	**PC**	• Gaps in the framework enabling supervisory bodies to exchange information and co-operate with foreign counterparts, spontaneously or upon request; • Information did not enable to assess whether exchanges of information by supervisory and law enforcement authorities are made

		subject to disproportionate or unduly restrictive conditions. • Effectiveness of international co-operation could not be assessed for all law enforcement authorities and for supervisory authorities
SR.V	**LC**	• There is no information to suggest that co-operation between law enforcement and supervisory authorities in AML/CFT matters is effective and provided in line with the FATF standards (in relation with R. 40)

7 OTHER ISSUES

7.1 Resources and Statistics

1288. The text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of the report i.e. all of section 2, parts of sections 3 and 4, and in section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections. Section 7.1 of the report contains only the box showing the ratings and the factors underlying the rating.

	Rating	Summary of factors underlying rating
R.30	**PC** (composite rating)	*The APML* • Additional resources (staff, premises, training) would be required. *The prosecution authorities* • There remain concerns regarding the operational independence and autonomy of the prosecution service, as well as the requirements related to professional standards, including high integrity, and required skills • Heavy workload, insufficient human and technical resources. • Existing trainings are not adequate. *Law enforcement authorities* • There remain concerns regarding the operational independence and autonomy of the prosecution service, as well as the requirements related to professional standards, including high integrity, and required skills. • Financial Investigation Unit established within the Ministry of Interior pursuant to the Law on Seizure and Confiscation of the Proceeds from Crime was not operational, and it was not possible to assess whether the plans underway would enable to adequately structure, fund and staff this new unit. • Heavy workload, insufficient human and technical resources. • Training available is insufficiently tailored to existing needs , not all law enforcement authorities have received adequate and relevant training. *Customs* • It was not possible to determine whether Customs authorities have the necessary technical and resources, nor that they have sufficient operational independence and autonomy. *Supervisory authorities* • Lack of requirements providing for professional standards

		(including confidentiality and integrity requirements), and expertise/skills of the staff of supervisory bodies involved in the supervision of the AML/CFT Law (for the Securities Commission, the Bar Association, the Chamber of Certified Auditors). • Lack of adequate, relevant, and regular training for combating ML and FT throughout all supervisory bodies involved in the supervision of the AML/CFT Law. *Policy makers* • Information was not available to assess the allocation of other resources used to set up and maintain the AML/CFT system on the policy level and adequacy of training of policy makers. *Competent authorities – MLA/Extradition* • No demonstration that central authority for sending/receiving MLA/extradition requests is adequately structured, funded, and provided with sufficient technical and other resources to fully and effectively perform its functions and as regards the newly established organisational units (within the Ministry of interior and the MOJ Directorate for Management of Seized and Confiscated Assets), they were not fully operational. • Technical resources of competent authorities extending mutual legal assistance appear to be insufficient. Training programmes on the new procedures and legislation covering MLA/ extradition not yet available.
R.32	**PC** (composite rating)	• Insufficient risk assessment of the various sectors in relation to ML and FT risks. • There are no comprehensive and precise statistics on the number of cases and the amounts of property frozen, seized and confiscated relating to ML, FT and criminal proceeds • No demonstration that authorities keep comprehensive annual statistics on mutual legal assistance and extradition requests (including requests relating to freezing, seizing and confiscation) that are made or received, including the nature of the request, whether it was granted or refused and the time required to respond. • No statistics are available on exchange of information between supervisory authorities

7.2 Other Relevant AML/CFT Measures or Issues

N/A

7.3 General Framework for AML/CFT System (see also section 1.1)

N/A

IV. TABLES

8 TABLE 1. RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (NA).

Forty Recommendations	Rating	Summary of factors underlying rating
Legal systems		
1. ML offence	**LC**	• Lack of clarity as to the scope of property[189] • The list of predicate offences does not cover 2 out of 20 designated categories of offences (insider trading, market manipulation) • Low number of convictions and indictments for ML compared to the number of ML criminal investigations and investigations for serious offences that generate proceeds indicates an issue of effectiveness
2. ML offence – mental element and corporate liability	**LC**	• The effectiveness of the new sanctions regime could not be fully assessed as provisions on criminal liability of legal persons have not yet been applied and the sanctions under the new ML offence remained untested in practice
3. Confiscation and provisional measures	**PC**	• Confiscation of instrumentalities is in most cases only discretionary • Value confiscation is not possible for instrumentalities used in and intended for use in the commission of ML, FT or other predicate offences • Due to the complexity of the system, provisional measures and confiscation seem to be rarely applied, absence of statistics to demonstrate effective results • No authority to take steps to prevent or void actions where the persons involved knew or should have known that as a result, the authorities would be prejudiced in their ability to recover property subject to confiscation • Effectiveness concerns (new provisions only recently entered into force, information

[189] The scope of property was clarified through amendments to the definition of property which were adopted after the visit.

		available does not enable to demonstrate the effectiveness of application of the provisional measures and confiscation provisions)
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**LC**	• Financial institutions are unable to share information with foreign financial institutions where required by R.7 and R.9 without violating secrecy laws • Inconsistency in law enforcement bodies obtaining confidential data not specifically related to accounts.
5. Customer due diligence	**PC**	• No guidance on the risk-based approach has been provided for financial institutions regulated by the Securities Commission. • No explicit requirement for obligors to consider making a suspicious transaction report when they have refused to establish a business relationship, carry out a transaction, or terminate an existing business relationship. • No adequate demonstration that all financial institutions have implemented the standards of Recommendation 5, including the risk based approach.
6. Politically exposed persons	**LC**	• Scope issues: the definition of PEP-s does not include senior politicians, and important political party officials, nor persons who have not held in the past year a public office and enhanced CDD applies only in cases where the public official presents high risks • Effectiveness not established (uneven implementation across all financial institutions, absence of guidelines issued by supervisors on internal procedures for determining whether a customer/beneficial owner of a customer is a foreign official)
7. Correspondent banking	**PC**	• Financial institutions are not required to document AML/CFT responsibilities between correspondents. • Lack of implementation of controls by all financial institutions, with the exception of the banking sector, which has implemented some controls.
8. New technologies & non face-to-face business	**LC**	• Requirements to consider new technologies do not apply to all financial institutions. • Requirements have recently been introduced and need further guidance and monitoring before being assessed as fully implemented
9. Third parties and introducers	**LC**	• The authorities have not yet determined in which countries the third party that meets the

		conditions can be based.
10. Record keeping	**LC**	• Lack of sectoral laws/regulations enabling effective implementation of the recordkeeping requirements by persons involved in intermediation in credit transactions and provision of loans, factoring and forfeiting, and provision of guarantees – should they start operating in the Serbian financial sector. • Lack of effective implementation of the record-keeping requirements by financial institutions (including PTT Srbija currently not recognised as a financial institution).
11. Unusual transactions	**PC**	• Requirements of the Decision on KYC Procedure to pay special attention to all complex, unusual large transactions and examine the background of the unusual transaction and set for the finding in writing, are not applicable to all financial institutions. • Uneven use of the list of indicators across financial institutions, with some financial institutions failing to use the list altogether.
12. DNFBP – R.5, 6, 8-11	**NC**	• The prohibition for economic entitirs conducting cash transazctions establiushed by Article 36 only covers transactions greater than EUR 15,000 and not those that are “equal” to EUR 15,000. *Recommendation 5* • The casino is the only DNFBP to apply some of CDD measures in Recommendation 5. No demonstration that any other DNFBP has implemented provisions of R.5. • No implementation of the risk-based approach or guidance provided by DNFBP supervisors. • No requirement for obligors to consider filing an STR if they have refused to establish a business relationship, carry out a transaction, or terminate an existing business relationship. *Recommendation 6* • No demonstrated implementation of Recommendation 6. *Recommendations 8 and 9* • No requirement in law, regulation or other enforceable means for DNFBP-s to have policies and procedures in place to prevent misuse of technological developments in ML or FT schemes. • No demonstrated implementation of Recommendation 8. • No demonstrated implementation of

		Recommendation 9. *Recommendation 10* • No demonstrated implementation of Recommendation 10. *Recommendation 11* • No demonstrated implementation of Recommendation 11. • Requirements of the Decision on KYC Procedure to pay special attention to all complex, unusual large transactions and examine the background of the unusual transaction and set forth the finding in writing, are not applicable to all financial institutions. • No list of indicators issued for DNFBP-s.
13. Suspicious transaction reporting	**LC**	• Not all financial institutions have lists of indicators for recognising ML related suspicious transactions. • The lists of indicators developed by financial institutions are copied from those of the APML and, in some cases, contain contradictions with applicable legislation. • The lists of indicators developed by the APML are not complete, clearly identifiable, need revision in terms of contents. • Serious lack of understanding of the reporting requirements among financial institutions, resulting in insufficient effectiveness of the reporting system; low level of STR reporting by non-bank financial institutions.
14. Protection & no tipping-off	**PC**	• Protection from criminal liability not extended to financial institutions; • Issues with the scope of the tipping-off provision as it does not include cases where an STR and related information is in the process of being reported to the APML. • The AML/CFT Law does not provide for any sanctions when the no tipping off rule is breached by employees of obligors, including the members of the governing, supervisory and other managing bodies.
15. Internal controls, compliance & audit	**PC**	• Not all financial institutions have internal procedures, policies, and controls to prevent ML and FT. • Some financial institutions' training programs lack components on CFT, new developments and current ML and FT techniques, methods, and trends. • Law exempts financial institutions below 4 employees to designate a compliance officer.

		• Not all financial institutions conduct audits that at least include an AML/CFT component. • No requirement for financial institutions to put in place screening procedures to ensure high standards when hiring employees.
16. DNFBP – R.13-15 & 21	**NC**	*Applying Recommendation 13* • No lists of indicators developed by obligor DNFBP-s and lawyers for recognizing ML/FT-related suspicious transactions; no lists of indicators developed y the APML to guide them in recognizing such transactions. • Serious lack of proper understanding of the reporting requirements among obligor DNFBP-s and lawyers; no STR-s; effectiveness of the reporting regime is not provided for. *Applying Recommendation 14* • Protection from criminal liability not extended to obliged entities; • Issues with the scope of the tipping-off provision as it may open up situations where information can be disclosed without breach of the legislation and does not include cases where an STR and related information is in the process of being reported to the APML. • The AML/CFT Law does not provide for any sanctions when the no tipping off rule is breached by employees of obligors, including the members of the governing, supervisory and other managing bodies. *Applying Recommendation 15* • Lack of defined procedure for executing internal policies and controls aimed at prevention of ML/FT. • Lack of a legislative requirement to appoint compliance officers for those having less than four employees. • Lack of adequate implementation of the requirement to conduct an internal audit of AML/CFT compliance. • Lack of adequate implementation of the requirement to provide regular professional training for employees carrying out tasks of prevention and detection of ML/FT. *Applying Recommendation 21* • Outdated list of the countries which do not apply or insufficiently apply the FATF Recommendations; lack of enforceable procedures for that list to be recognized and duly applied by obligor DNFBP-s and lawyers.

17. Sanctions	**PC**	• Incomplete coverage of the requirements of the AML/CFT Law under the sanctioning provisions. • Uncertainty about applicability of pecuniary sanctions under the AML/CFT Law and under various sectoral laws. • No full-scale applicability of administrative sanctions available for prudential purposes in case of AML/CFT incompliance (particularly, revocation of licenses). • Missing elements of legislatively defined supervisory power for imposing sanctions with respect to voluntary pension funds management companies, as well as of the directors/senior management of voluntary pension funds management companies and broker-dealer companies for AML/CFT incompliance. • Lack of effective functioning of the AML/CFT enforcement mechanism enabling application of proportionate and dissuasive sanctions under the AML/CFT laws and respective sectoral laws.
18. Shell banks	**C**	
19. Other forms of reporting	**LC**	• Uneven implementation of the over-threshold reporting requirement by obligors, lack of proper understanding of the CTR reporting obligation. • Lack of CTR reporting forms and instructions for certain types of obligors (e.g. money transfer services, casinos etc). •
20. Other DNFBP & secure transaction techniques	**LC**	• No evidence of adequate consideration of applying Recommendations 5, 6, 8-11, 15, 17 and 21 to non-financial businesses and professions (other than DNFBP-s) that are at risk of being misused for money laundering or terrorist financing. • No track record of successful supervision of prohibition of cash transactions above 15.000.
21. Special attention for higher risk countries	**LC**	• Requirements for financial institutions to examine as far as possible the background and purpose of transactions which have no apparent economic or lawful purpose, and make written findings available for authorities are not applicable to all financial institutions. • No demonstration of adequate implementation of new requirements of the AML/CFT Law.
22. Foreign branches & subsidiaries	**LC**	• No demonstration that financial institutions require branches and subsidiaries overseas to observe AML/CFT measures consistent with the home branch.
23. Regulation, supervision and	**PC**	• Lack of licensing/registration procedures for

monitoring		persons involved in money transfer services, agents/third party transaction processors, and persons exercising professional activities of intermediation in credit transactions and provision of loans, factoring and forfeiting, and provision of guarantees; absence of supervision mechanisms and tools for ensuring their compliance to AML/CFT requirements. • Lack of definite requirement for banning market entry – as owners and significant/controlling interest holders of leasing companies – of persons with criminal background. • Lack of clearly defined legislative empowerment of the National Bank to regulate and supervise for AML/CFT purposes activities of voluntary pension fund management companies. • Lack of clearly defined legislative empowerment of the respective bodies to regulate and supervise for AML/CFT purposes activities of persons dealing with postal communications, persons involved in professional activities of intermediation in credit transactions and provision of loans, factoring and forfeiting, provision of guarantees, and provision of money transfer services. • With regard to all financial institutions (except for banks), lack of risk-based supervision methodologies; mechanisms and tools for effective, consistent, risk-based planning of the supervision process, of systems for continuous monitoring and follow-up of supervision results; no consistency and harmonization of supervision methodologies and planning procedures throughout supervisory bodies. • Insufficient coverage of inspections incorporating elements or dedicated to examination of AML/CFT compliance.
24. DNFBP - regulation, supervision and monitoring	**NC**	• Uncertainty about applicability of pecuniary sanctions under the AML/CFT Law and the Law on Games of Chance. • Inadequate range of sanctions in case of casinos' incompliance with the national AML/CFT requirements. • No legal or regulatory measures to prevent individuals with criminal background from acquiring or becoming the beneficial owner of a significant or controlling interest, holding a management function, in or being/becoming an operator of a casino. • Lack of an adequate and relevant supervisory regime with regard to auditing companies, licensed auditors, lawyers and lawyer partnerships, dealers in precious metals and

		dealers in precious stones persons exercising professional activities of intermediation in real estate transactions, accounting, and tax advising, with the national AML/CFT requirements.
25. Guidelines & Feedback	**PC** (composite rating)	• Lack of provision of adequate general feedback (in terms of information on ML/FT techniques and trends (typologies) as well as sanitized cases); available general feedback is not proactively disseminated. • No participatory approach to the provision of feedback (involvement of other competent state authorities besides the APML) • Lack of feedback is seen as a major hindrance for effective implementation of the AML/CFT requirements in general, and of the reporting obligation in particular. • Lack of guidance to financial institutions describing ML/FT techniques and methods. • Lack of revised, updated, and harmonized guidance papers provided by supervisors of financial institutions within the context of the current AML/CFT Law. • No guidance to obligor DNFBP-s and lawyers describing ML/FT techniques and methods and/or providing any other measures ensuring effectiveness.
Institutional and other measures		
26. The FIU	**LC**	• Guidance for financial institutions and other reporting parties regarding the manner of reporting is based on previous legal requirements, specification of reporting forms and procedures do not cover all reporting entities (only banks, insurance, securities). • Reports prepared by the FIU do not include typologies and trends and they are released only upon specific request. • Effectiveness concerns (CFT requirement remains untested as it has only been introduced in March 2009, additional efforts required to improve quality of reports disseminated).
27. Law enforcement authorities	**PC**	• The legal framework designating law enforcement authorities' competences and powers raises a number of issues which impact on the proper investigation of ML/FT offences. • Corruption impacts on the proper investigation of ML/FT offences. • Effectiveness concerns (law enforcement results, cooperation problems, new structure not operational).
28. Powers of competent authorities	**LC**	• Limited effectiveness (insufficiency of resources impact on capacity to implement investigative powers, insufficient attention paid

		to ML aspects and financial investigations, concerns as regards the obtaining of necessary information for use in ML/FT investigations).
29. Supervisors	**LC**	• Lack of legislatively defined supervisory, enforcement, and sanctioning powers of the National Bank with respect to voluntary pension fund management companies for AML/CFT purposes. • Lack of legislatively defined powers of the Securities Commission for application of sanctions with respect of directors/senior management of broker-dealer companies (including that for AML/CFT incompliance). • Lack of an adequate and relevant supervisory regime with regard to persons dealing with postal communications (with respect to domestic and international payment operations, and valuable mail), persons involved in professional activities of intermediation in credit transactions and provision of loans, factoring and forfeiting, provision of guarantees, and provision of money transfer services.
30. Resources, integrity and training	**PC** (composite rating)	*The APML* • Additional resources (staff, premises, training) would be required. *The prosecution authorities* • There remain concerns regarding the operational independence and autonomy of the prosecution service, as well as the requirements related to professional standards, including high integrity, and required skills • Heavy workload, insufficient human and technical resources. • Existing trainings are not adequate. *Law enforcement authorities* • There remain concerns regarding the operational independence and autonomy of the prosecution service, as well as the requirements related to professional standards, including high integrity, and required skills. • Financial Investigation Unit established within the Ministry of Interior pursuant to the Law on Seizure and Confiscation of the Proceeds from Crime was not operational, and it was not possible to assess whether the plans underway would enable to adequately structure, fund and staff this new unit. • Heavy workload, insufficient human and technical resources. • Training available is insufficiently tailored to existing needs, not all law enforcement authorities have received adequate and relevant training.

<table>
<tr><td></td><td></td><td>Customs
It was not possible to determine whether Customs authorities have the necessary technical and resources, nor that they have sufficient operational independence and autonomy.
Supervisory authorities
Lack of requirements providing for professional standards (including confidentiality and integrity requirements), and expertise/skills of the staff of supervisory bodies involved in the supervision of the AML/CFT Law (for the Securities Commission, the Bar Association, the Chamber of Certified Auditors).
Lack of adequate, relevant, and regular training for combating ML and FT throughout all supervisory bodies involved in the supervision of the AML/CFT Law.
Policy makers
Information was not available to assess the allocation of other resources used to set up and maintain the AML/CFT system on the policy level and adequacy of training of policy makers.
Competent authorities – MLA/Extradition
No demonstration that central authority for sending/receiving MLA/extradition requests is adequately structured, funded, and provided with sufficient technical and other resources to fully and effectively perform its functions and as regards the newly established organisational units (within the Ministry of interior and the MOJ Directorate for Management of Seized and Confiscated Assets), they were not fully operational.
Technical resources of competent authorities extending mutual legal assistance appear to be insufficient.
Training programmes on the new procedures and legislation covering MLA/ extradition not yet available.</td></tr>
<tr><td>31. National co-operation</td><td>LC</td><td>The existing operational co- operation mechanisms need improving.
The effectiveness of the policy co-operation under the Standing Coordination Group could not be assessed given its recent establishment.</td></tr>
<tr><td>32. Statistics</td><td>PC
(composite rating)</td><td>Insufficient risk assessment of the various sectors in relation to ML and FT risks.
There are no comprehensive and precise statistics on the number of cases and the amounts of property frozen, seized and confiscated relating to ML, FT and criminal proceeds.
No demonstration that authorities keep comprehensive annual statistics on mutual legal</td></tr>
</table>

		assistance and extradition requests (including requests relating to freezing, seizing and confiscation) that are made or received, including the nature of the request, whether it was granted or refused and the time required to respond. • No statistics are available on exchange of information between supervisory authorities
33. Legal persons – beneficial owners	**PC**	• The existing system does not achieve adequate transparency regarding the beneficial ownership and control of all legal persons. • Relative ease with which fictitious companies can be established hinders the authorities' AML/CFT efforts. • It is not demonstrated that competent authorities are able to obtain adequate, accurate and current information on the beneficial ownership and control of non profit legal entities.
34. Legal arrangements – beneficial owners	**N/A**	Recommendation 34 is not applicable
International Co-operation		
35. Conventions	**LC**	• Insufficiencies in the effective implementation of the Conventions due to certain deficiencies (e.g. application of confiscation and provisional measures, training, preventive measures) and recent entry into force of a number of legal acts.
36. Mutual legal assistance (MLA)	**PC**	• The shortcomings identified with respect to provisional and confiscation measures available under Serbian Law may also limit Serbia's ability to conduct such measures based on foreign requests. • No formal timeframes which would enable to determine whether requests are being dealt with timely, constructively and effectively. • The application of dual criminality may limit Serbia's ability to provide assistance due to shortcomings identified in respect to the scope of the FT offence. • Effectiveness cannot be demonstrated (recent entry into force of the legislation, absence of statistics on MLA requests relating to ML, predicate offences and FT on the basis of the previous applicable CPC provisions).
37. Dual criminality	**LC** (composite rating)	• In practice, all forms of MLA, including for less intrusive and non compulsory measures, – with the exception of assistance on the basis of the Law on Seizure and Confiscation of the Proceeds from Crime - may be rendered only under dual criminality. • The application of dual criminality may limit Serbia's ability to provide assistance due to shortcomings identified in respect to the scope of the FT offence.

38. MLA on confiscation and freezing	**PC**	• The shortcomings identified with respect to the provisional and confiscation measures available under Serbian legislation may also limit Serbia's ability to conduct such measures based on foreign requests. • No formal timeframes which would enable to determine whether requests are being dealt with timely, constructively and effectively. • No arrangements for coordinating seizure and confiscation actions with other countries. • Effectiveness cannot be demonstrated (absence of statistics on MLA requests relating to freezing, seizing and confiscation that are made relating to ML, the predicate offences and FT rendered on the basis of the previous applicable CPC provisions).
39. Extradition	**LC**	• Recently enacted legislation and information provided did not enable to assess fully the effectiveness of the extradition procedures (absence of comprehensive statistics on extradition requests that are received or sent relating to ML, the predicate offences and FT and information to determine in case of non extradition of own nationals internal criminal proceedings are instituted efficiently and in a timely manner)
40. Other forms of co-operation	**PC**	• Gaps in the framework enabling supervisory bodies to exchange information and co-operate with foreign counterparts, spontaneously or upon request; • Information did not enable to assess whether exchanges of information by supervisory and law enforcement authorities are made subject to disproportionate or unduly restrictive conditions. • Effectiveness of international cooperation could not be assessed for all law enforcement authorities and for supervisory authorities
Nine Special Recommendations	**Rating**	**Summary of factors underlying rating**
SR.I. Implement UN instruments	**PC**	• FT not defined in line with the definition of the offence contained in the FT Convention. • Serbia's implementation of S/RES/1267(1999) and successor resolutions and S/RES/1373(2001) is inadequate.
SR.II. Criminalise terrorist financing	**PC**	• Article 393 does not criminalize the financing of a terrorist organisation or of an individual terrorist. • The offence does not cover the whole range of activities envisaged by Article 2(1) (a) and (b) of the FT Convention (thus not all of them being predicate offences to ML). • In the absence of a definition of funds, it is unclear that the offence encompasses the notion

		of funds as defined in the FT Convention. • The FT offence requires that funds are linked to a specific terrorist act.
SR.III. Freeze and confiscate terrorist assets	**NC**	• No effective laws and procedures in place for freezing of terrorist funds or other assets of designated persons and entities in accordance with S/RES/1267 and 1373 or under procedures initiated by third countries and to ensure that freezing actions extend to funds or assets controlled by designated persons. • No designation authority in place for S/RES/1373. • No effective systems for communicating actions under the freezing mechanisms to the financial sector immediately upon taking such action. • No practical guidance to financial institutions and DNFBP-s. • Lack of effective and publicly known procedures for considering de-listing requests and for unfreezing funds or other assets of delisted persons or entities and persons or entities inadvertently affected by a freezing mechanism. • No procedure for authorising access to funds or other assets frozen pursuant to S/RES/1267 in accordance with S/RES/1452. • No procedures to challenge frozen measures taken pursuant to the implementation of S/RES/1267 and 1373. • Shortcomings in the legal framework related to freezing, seizing and confiscating of terrorist related funds or other assets. • No measures which would enable to monitor effectively the compliance with implementation of obligations under SR.III and to impose sanctions.
SR.IV. Suspicious transaction reporting	**LC**	• Financial institutions do not have lists of indicators for recognising FT related suspicious transactions. • The APML has not developed lists of indicators for recognising FT related suspicious transactions. • Serious lack of understanding of the reporting requirements among financial institutions, resulting in insufficient effectiveness of the reporting regime.
SR.V. International co-operation	**LC** (composite rating)	• No formal timeframes which would enable to determine whether requests for MLA relating to FT would be dealt with timely, constructively and effectively. • In practice, all forms of MLA, including for less intrusive and non compulsory measures, – with the exception of assistance on the basis of the

		Law on Seizure and Confiscation of the Proceeds from Crime - may be rendered only under dual criminality. • The shortcomings identified with respect to criminalisation of FT may impact on Serbia's ability to execute extradition requests related to such offences in certain situations.
SR VI. AML requirements for money/value transfer services	**PC**	• The limitations identified under Recommendations 5-7, 9-11, 13-15, 21-23, and Special Recommendation VII also affect compliance with Special Recommendation VI. • Post Office branches are not subject to AML/CFT supervision. • No specific requirement for money transfer services to maintain a current list of agents, which must be made available to the designated competent authority.
SR VII. Wire transfer rules	**PC**	• No requirement for financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers not accompanied by complete originator information. • Full originator information not obtained in the case domestic payment transactions and is not included in the message or payment order accompanying the transfer. • No requirement to verify the identity of the originator in accordance with Recommendation 5, at least for all wire transfers of EUR 1.000 and more. • Lack of legislatively provided sanctions applicable to money transfer businesses for their failure to meet the requirements of SR VII. • Lack of effective mechanisms available for ensuring compliance of money transfer businesses (particularly, PTT "Srbija") with the requirements of SR VII.
SR.VIII Non-profit organisations	**NC**	• No review of adequacy of laws and regulations. • No outreach to the NPO sector. • No measures to promote effective supervision or monitoring of NPO-s which account for a significant portion of financial resources under control of the sector and a substantial share of the sector's international activities. • NPO-s are not required to maintain information on the identity of persons who own, control or direct their activities. • Lack of appropriate measures in place to sanction violations of oversight measures or rules by NPO-s or persons acting on their behalf. • No requirements to record necessary information on domestic and international

		transactions. • No implementation of measures to ensure that authorities can effectively investigate and gather information on NPO-s. • Contact points and procedures to respond to international requests for information regarding particular NPO-s have not been identified.
SR.IX Cross Border Declaration & Disclosure	**PC**	• Current declaration system does not ensure that all persons making a physical transportation of currency and bearer negotiable instruments of a value exceeding the prescribed threshold are required to submit a declaration to the Customs authorities. • The freezing requirements envisaged by SR.III and UNSCR resolutions are not available in the case of persons who are carrying out a physical cross-border transportation of currency or bearer negotiable instrument that are related to FT. • Statutory sanctions are low and it is not demonstrated that they are effective, proportionate or dissuasive. • Issues of effectiveness.

9 TABLE 2. RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

AML/CFT System	Recommended Action (listed in order of priority)
1. General	**No text required**
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1 & 2)	*Recommendation 1* • Clarify that the offence of ML extends to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime. • Criminalise insider trading and market manipulation. • Develop comprehensive training materials and strengthen training programmes in order to enhance the capacity of investigative judges and prosecutors to investigate and prosecute ML cases and of judges to effectively apply the new ML offence as well as undertake appropriate initiatives to raise their awareness on the importance of integrating financial investigations into investigations of proceeds generating offences. *Recommendation 2* • Monitor in time the application of the exonerating ground under article 19 of the Law on Liability of Legal Entities for Criminal Offences with a view to taking any corrective action, should it be demonstrated that it impacted negatively on the effective application of the criminal liability provisions. • Raise awareness on the statutory requirements of the newly adopted Law on Liability of Legal Entities for Criminal Offences through adequate training of competent authorities.
2.2 Criminalisation of Terrorist Financing (SR.II)	• Extend the criminalisation of FT in all instances envisaged in SR.II with reference to the financing of terrorist organisations and the individual terrorists. • Extend the criminalisation to the whole range of activities envisaged by Article 2(1) (a) and (b) of the FT convention. • Define "funds" so as to cover "assets of every kind, whether tangible or intangible, movable or immovable, however, acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit". • Amend the FT offence as it should not require that funds are linked to a specific terrorist act.
2.3 Confiscation, freezing and seizing	• To review the current regime and satisfy themselves

of proceeds of crime (R.3)	that the competent authorities have necessary tools to clarify the application of the relevant provisions and regimes and ensure that they can make full use of the existing legal framework. • To amend the legislation as necessary to: • Clarify the scope of property subject to confiscation; • Ensure that value based confiscation can be applied in the case of instrumentalities used in and intended for use in the commission of ML, FT or other predicate offences; • Ensure that the legislation provides for the confiscation of instrumentalities when it is held by a third party (legal entity or natural person); • Remove the limitation to offences punishable by at least 4 years imprisonment under article 234. • Speed up the implementing measures required in relation to the Law on Seizure and confiscation of the proceeds from crime (appointment of relevant persons, adoption of internal acts, etc) and ensure that competent authorities are adequately trained in the application of these new provisions.
2.4 Freezing of funds used for terrorist financing (SR.III)	• The evaluators strongly recommend that the authorities adopt a comprehensive set of rules (judicial or administrative) which would enable them to adequately implement the targeted financial sanctions contained in the United Nations Security Council Resolutions (UNSCRs) relating to the prevention and suppression of the financing of terrorist acts – UNSCR 1267 and its successor resolutions and UNSCR 1373 and any successor resolutions related to the freezing, or, if appropriate, seizure of terrorist assets and address all requirements under the 13 criteria of SR.III. • The authorities could also consider implementing the measures set out in the Best Practices Paper for SR.III.
2.5 The Financial Intelligence Unit and its functions (R.26)	• The authorities should: – Provide financial institutions and other reporting entities with comprehensive and adequate written guidance, based on the new legislation, is introduced in order to further support obligors in understanding better the reporting procedures and requirements and undertake outreach measures to under-reporting sectors. – Develop reporting forms and procedures for all obligors and lawyers. – Clarify through relevant amendments, article 102 of the Criminal Code. • The APML should also publicly release periodic reports which include in an adequate manner statistics, typologies and trends and information on its activities.
2.6 Law enforcement, prosecution and	*Recommendation 27* • Analyse the current legal framework and take

other competent authorities (R.27 & 28)	legislative or other measures in order to establish an effective and functional cooperation, communication and coordination mechanisms between competent law enforcement and prosecution services responsible for investigating and prosecuting ML, FT and underlying predicate offences. • Review the current situation in the light of the specific concerns raised in respect of practical implementation problems related to potential jurisdictional issues, to the gathering of evidence in ML/FT investigations and take necessary measures to address these concerns and prevent risks of unnecessary duplication of efforts. • Take measures to increase the numbers and effectiveness of ML investigations, such as establishing through inter-agency meetings of enforcement authorities a concerted programme for increasing the focus on ML investigations, placing an emphasis on a more systematic recourse to financial investigations, providing guidance particularly on procedures and requirements set out under the newly adopted legislation. • Pursue and sustain current efforts to eliminate corruption within the police and judiciary to ensure that they do not impede law enforcement authorities' action. • Consideration should be given to amend the existing provisions so as to provide competent authorities with the legal basis to use a wide range of special investigative techniques when conducting ML or FT and underlying predicate offences. • Consideration should be given to use mechanisms such as permanent or temporary groups specialised in investigating the proceeds of crime. • Consider conducting joint reviews of ML and FT methods, techniques and trends with law enforcement bodies, the APML and other competent authorities on a regular inter-agency basis and disseminating the results of such reviews. *Recommendation 28* • Investigation and prosecution bodies should be sensitised to the importance of the financial aspects of ML, TF and proceed-generating cases and to the full use of their powers in the context of such investigations with a view to obtaining the necessary financial documents and information.
2.7 Cross Border Declaration & Disclosure	• Ensure that the new requirements introduced in the AML/CFT law are speedily implemented, that the form and content of the new declaration procedure are prescribed and that they are well disseminated at the border checkpoints. • Introduce freezing requirements envisaged by SR.III and the UNSCR in the vase of persons who are carrying out a physical cross-border transportation of

	currency or bearer negotiable instruments that are related to FT. • Introduce requirements and procedures to ensure that in cases when the Customs discover an unusual cross-border movement of gold, precious metals or precious stones they should consider notifying, as appropriate, the foreign competent authorities from which these items originated and/or to which they are destined, and to enable cooperation in such cases; • Enhance domestic law enforcement co-operation between the customs, immigration and other competent authorities to respond to detections and to analyse the information collected under the legal requirements implementing SR.IX to develop AML/CFT intelligence. • Increase the level of sanctions to ensure that they are dissuasive. • Strengthen the effectiveness of the sanctions to encourage declarations. • Consider maintaining the reports in a computerised database, available to competent authorities for AML/CFT purposes and establish strict safeguards to ensure proper use of the information and data which is reported and recorded. • Take measures as necessary to increase the technical resources of the Customs authorities and provide for further additional training on the newly introduced requirements as well as to provide additional specialised training on AML/CFT issues for Customs officials, including on detection and recognition of serious criminal activities and movements of funds possibly related to ML/FT. • Poursue and strengthen efforts to prevent and eliminate corruption within the Customs administration in order to ensure that they do not impede Custom's efficiency
3. Preventive Measures – Financial Institutions	
3.1 Risk of money laundering or terrorist financing	
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	*Recommendation 5* • Serbian authorities should establish a direct requirement in law, regulation or enforceable means for obligors to consider filing an STR if they have refused to establish a business relationship, carry out a transaction, or terminate an existing business relationship. • In the case of filing an STR where obligors have refused to establish a business relationship, carry out a transaction, or terminate an existing business relationship, the indicators of suspicious transactions are strong enough to precipitate a financial

	institution filing an STR, however, there remains the possibility that a situation might not match the list and a financial institution will not file an STR with the APML. • Issue guidelines on instructions for the manner of identifying their clients in accordance with the obligations under the AML/CFT Law. • As stated above, because of the newness of the AML/CFT Law, financial institutions have not yet applied the risk-based approach to clients. Serbian should work with financial institutions to ensure they understand how to effectively implement in practice. *Recommendation 6* • Serbian authorities should issue additional regulations and guidelines to ensure that Serbian financial institutions clearly understand and uniformly apply their obligations under Article 30 of the AML/CFT Law to monitor with special care ("*posebna paznja*") transactions and other business activities of a foreign official. • Serbian authorities should assist financial institutions outside of the banking sector on how to identify foreign officials and apply enhanced due diligence, per the new requirements of the AML/CFT Law. This could include additional training seminars and additional guidance on risk assessment for investment fund management companies, licensed bureaux de change, persons dealing with postal communications, and broker-dealer companies. *Recommendation 7* • Serbian authorities should require financial institutions to document respective AML/CFT responsibilities for each party in the correspondent relationship so that there is no confusion between the financial institution and respondent bank about which one will carry out AML/CFT requirements. • While use of payable-through accounts appears not to be common in Serbia, this practice should either be prohibited by law or should have obligations attached to it to ensure that appropriate CDD is conducted and institutions share relevant information should the practice become established in the future. *Recommendation 8* • Serbian authorities should adopt requirements for licensed bureaux de change, investment fund management companies, persons dealing with postal communications, and broker-dealer companies to develop policies and procedures to consider technological developments in ML and FT when conducting risk assessments. • The evaluation team was unable to assess the effectiveness of the new measures on technological

	developments, given the newness of the regulations.
3.3 Third parties and introduced business (R.9)	• Until Serbian authorities have determined in which countries financial institutions are permitted to rely on third parties, there can be no implementation of this provision. Serbian authorities should work to issue the sub-law in preparation and the list mentioned in Article 24.
3.4 Financial institution secrecy or confidentiality (R.4)	• While Serbian financial institutions are able to share information with foreign financial institutions per obligations under requirements of SR.VII, Serbian authorities should amend the AML/CFT Law to ensure that financial institutions are able to share information with other foreign financial institutions, where it is required by R.7 and R.9. • Provisions of obtaining financial information by LEA and investigative judge appear to be inconsistent and uncertain regarding the range of information that can be obtained from financial obligors.
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	*Recommendation 10* • Provide for sectoral laws/regulations enabling effective implementation of the record-keeping requirements by persons involved in intermediation in credit transactions and provision of loans, factoring and forfeiting, and provision of guarantees, should they start operating in the Serbian financial sector. *Special Recommendation VII* • Provide in legislation for obtaining full originator information in the case domestic payment transactions, and for including such information in the message or payment order accompanying the transfer. • Provide in legislation for verifying the identity of the originator in accordance with Recommendation 5, at least for all wire transfers of EUR 1.000 and more. • Define a requirement for financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers not accompanied by complete originator information. • Legislatively provide for sanctions applicable to money transfer businesses for their failure to meet the requirements of SR VII. • Provide effective mechanisms for ensuring compliance of money transfer businesses (particularly, PTT “Srbija”) with the requirements of SR VII.
3.6 Monitoring of transactions and relationships (R.11 & 21)	*Recommendation 11* • Serbian authorities should ensure that capital market participants, bureaux de change, persons dealing with postal communications, money remitters, and foreign exchange operators are required to pay special attention to unusual transactions, examine the background and purpose of transactions and set forth

	those findings in writing. • Serbian authorities should ensure that financial institutions, particularly those outside of the banking sector, are capable of adequately identifying unusual transactions, particularly through additional training and developing better lists of indicators that match the market activities of the financial institution. *Recommendation 21* • Serbian authorities should extend the Decision on KYC Procedure requirements to examine the background and purpose of unusual transactions and set forth those finding in writing to capital market participants, bureaux de change, persons dealing with postal communications, money remitters, and foreign exchange operators. • Serbian authorities should ensure that the lists of countries that do not sufficiently apply AML/CFT international standards are kept up to date and that financial institutions are aware of when changes are made. Serbian authorities should also issue the "white list" described above, as financial institutions may have difficulties implementing provisions of the AML/CFT Law without it.
3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	*Recommendation 13 and Special Recommendation IV* • Provide specific guidance on the legal definition of the reporting obligation, so as to prevent its possible restrictive interpretation, as well as to take further measures to ensure that obligors understand it in the broadest meaning of the AML/CFT Law and pertinent regulations/ guidelines. • Provide for appropriate implementation of the reporting requirement throughout the obligor community, by means of ensuring that all financial institutions have developed their own lists of indicators for recognising ML/FT related suspicious transactions. • Revise the existing lists of the indicators developed by the APML to guide obligors in recognising ML/FT related suspicious transactions; develop such lists for all financial institutions and make such lists clearly identifiable (by means of an official, publicly accessible reference number, or publication in an official source). • Continue efforts aimed at developing and introducing a well-structured coordinated outreach programme (for example by means of series of seminars, regular training sessions for compliance officers, etc) for the financial institutions to fully understand their reporting requirements, in particular the new FT reporting requirement. *Recommendation 14* • It is recommended to the Serbian authorities to make the necessary legal amendments to ensure that: (a) financial institutions are protected from

	criminal liability for breach of any restriction on disclosure of information if they report their suspicions in good faith to the APML; (b) expand the tipping-off provisions to include not only those cases where a STR or related information has been reported but also when it is in the process of being reported to the APML. • Serbian authorities should ensure that these provisions are appropriately implemented, through issuing adequate guidance to obligors concerning tipping off so that financial institutions and their employees fully understand the scope of the safe harbour and tipping off requirements and are aware of and sensitive to these issues when conducting CDD. *Recommendation 25 (c. 25.2 [financial institutions and DNFBP-s])* • Ensure implementation of the requirements of the AML/CFT Law concerning provision of general feedback, i.e. information on ML/FT techniques and trends (typologies), as well as sanitized cases from the practice of the APML and other competent state bodies; share information with financial institutions either within the annual reporting framework, or through other communication. • Proactively seek to make the APML's annual reports available to the widest scope of stakeholders. • Consider providing specific feedback (other than the acknowledgment of the receipt of report) to enable financial institutions to get an idea of the quality of their reporting, and statistics on received STR-s cross-referenced with the respective results so as to identify the areas, where ML/FT is being successfully detected. • Ensure participatory approach to the provision of feedback, by involving other competent state authorities, for example, law enforcement agencies to regularly provide and disseminate (possibly through the APML) data on investigated cases, convictions, confiscations, etc; participate in the development of typologies and sanitized cases. *Recommendation 19* • Establish mechanisms for assessing: a) usefulness of the CTR database, and b) efficiency of the use of the CTR database by the APML.
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	*Recommendation 15* • Article 39 of the AML/CFT Law exempts obligors with less than four employees from designating an AML/CFT compliance officer, imposing different obligations on small and large obligors. Serbian authorities should amend the law to remove this exemption.

	• While there is no blanket requirement for financial institutions to utilize a set procedure for screening employees to ensure a high standard, sectoral laws have set specific requirements for hiring employees within the sector. Serbian authorities should require a set procedure for all financial institutions to screen employees to ensure a high standard across all institutions. *Recommendation 22* • Serbian authorities should issue detailed procedures for financial institutions to follow after reporting to the APML that a foreign jurisdiction does not permit implementation of AML/CFT controls, including measures to eliminate the risk of ML or FT.
3.9 Shell banks (R.18)	
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	*Recommendation 23* • Amend the legislation to include a definite requirement for banning market entry – as owners and significant/controlling interest holders of leasing companies – of persons with criminal background. • Recognize the PTT "Srbija" as a money transfer business (and as such, a financial institution subject to all pertinent requirements). • Establish licensing/registration procedures for persons involved in money transfer services190, agents/third party transaction processors, and persons exercising professional activities of intermediation in credit transactions and provision of loans, factoring and forfeiting, and provision of guarantees; supervision mechanisms and tools for ensuring their compliance to AML/CFT requirements. • Define legislative provisions establishing the powers of the National Bank to regulate and supervise for AML/CFT purposes activities of voluntary pension fund management companies. • Define legislative provisions establishing the powers of the Ministry of Finance to regulate and supervise for AML/CFT purposes activities of persons dealing with postal communications [with respect to domestic payment operations] and of persons involved in professional activities of intermediation in credit transactions and provision of loans, factoring and forfeiting, provision of guarantees, and provision of money transfer services. • Define legislative provisions establishing the powers of the Ministry of Telecommunications and Information Society to regulate and supervise for AML/CFT purposes activities of persons dealing with postal communications [with respect to valuable mail operations].

[190] Particularly, for the PTT "Srbija"

	• Define legislative provisions establishing the powers of Foreign Currency Inspectorate to regulate and supervise for AML/CFT purposes activities of persons involved in professional activities of factoring and forfeiting, and provision of money transfer services [with respect to international payment transactions] • Develop supervision methodologies based on consideration of risk profile of institutions and enabling identification of inherent risks in financial activities, determination of risk mitigants, assessment of exposure of AML/CFT risk to various aspects of financial activities, assessment of internal control and risk management systems, corporate governance oversight, and integration of results of off-site monitoring and surveillance. • Establish mechanisms and tools for effective, consistent, risk-based planning of the supervision process – both off-site and on-site; introduce systems for continuous monitoring and follow-up of supervision results. • Ensure consistency among and harmonization of supervision methodologies and planning procedures throughout the bodies involved in supervision of financial institutions. • Ensure sufficient coverage of inspections incorporating elements or dedicated to the examination of AML/CFT compliance, stemming from an adequate planning of supervision and resulting in regular and in-depth analysis (disclosure of underlying reasons for incompliance) and assessment of compliance, with relevant follow-up procedures provided for. *Recommendation 17* • Ensure coverage of all requirements of the AML/CFT Law under the sanctioning provisions (at least Articles 28.2, 40 and 73). • Eliminate the grounds for uncertainty and confusion about applicability of pecuniary sanctions under the AML/CFT Law and administrative sanctions under various sectoral laws. • Provide for a full-scale applicability of administrative sanctions available for prudential purposes in case of AML/CFT incompliance (for example, revocation of license of banks, pension funds, broker/dealer companies, investment funds). • Provide the missing elements of legislatively defined supervisory power for application of sanctions with respect to voluntary pension funds management companies, as well as of the directors/senior management of voluntary pension funds management companies and broker-dealer companies for AML/CFT incompliance. • Provide for effective functioning of the AML/CFT

	enforcement mechanism enabling application of proportionate and dissuasive sanctions under the AML/CFT Law and respective sectoral laws. *Recommendation 25 (c. 25.1 [financial institutions])* • Provide guidance describing ML/FT techniques and methods so as to assist financial institutions to better understand the potential risks pertaining to ML/FT and to strive for establishing appropriate mechanisms in order to deal with those risks. • Revise and update the existing guidance papers provided by supervisors of financial institutions within the context of the current AML/CFT Law providing for a more standardized and detailed AML/CFT framework, in compliance with the applicable international best practice; harmonize such papers so as to provide a level "playing field" for all obligors in the financial market. *Recommendation 29* • Define legislative provisions establishing the powers of the National Bank to take the following measures while supervising for AML/CFT purposes activities of voluntary pension fund management companies – conduct (on-site) inspections, obtain access to all records and information relevant to monitoring compliance, enforce and sanction both the institutions/businesses and their directors/senior management for incompliance with AML/CFT requirements. • Provide for application of sanctions with respect of directors/senior management of broker-dealer companies for their failure to comply with the legislative requirements (including those related to the AML/CFT framework). • Establish an adequate and relevant supervisory regime with regard to persons dealing with postal communications (with respect to domestic and international payment operations, and valuable mail), persons involved in professional activities of intermediation in credit transactions and provision of loans, factoring and forfeiting, provision of guarantees, and provision of money transfer services; particularly provide for the ability of the respective supervisory bodies to monitor and ensure compliance of the respective obligors with AML/CFT requirements, conduct (on-site) inspections, obtain access to all records and information relevant to monitoring compliance, enforce and sanction both the institutions/businesses and their directors/senior management for incompliance with AML/CFT requirements.
3.11 Money value transfer services (SR.VI)	• As it is only banks, and in some cases the Post Office, in Serbia that may conduct international remittances, Serbia's compliance with this Recommendation is inextricably linked to its

	compliance with other Recommendations which apply to financial institutions. The evaluation team's recommendations, elsewhere in this report, particularly with respect to Recommendations 4-11, 13-15, 17, 21-23, and Special Recommendation VII, are also relevant here. • Serbian authorities should take quick action to ensure that Post Office branches be subject to AML/CFT supervision. • Requirements should be introduced for MVT service operators to maintain a current list of agents and to make it available to the designated competent authority. • Serbian authorities made no indication that they were actively attempting to uncover illegal remittance activity and there is little if any attention being paid to this by relevant ministries and the supervisory authorities. It is recommended that supervisory authorities when inspecting businesses for other matters also be alert to the possibility that illegal remittance activity may be occurring. In addition, Serbian authorities could focus more broadly at looking for signs of underground banking as well as alternative remittance.
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	*Recommendation 5* • The new requirement in the AML/CFT Law prohibiting any economic entity, including dealers in high value goods from conducting cash transactions in excess of EUr 15,000 should be amended to extent the prohibition to transactions that are equal to EUR 15,000. • Serbia should introduce into law or regulationthe requirement for obligors to consider filing an STR if they have refused to establish a business relationship, carry out a transaction, or terminate an existing business relationship. • Serbian authorities should establish a list of indicators for the various DNFBP-s in order to help them identify unusual or suspicious transactions. Authorities should also provide AML/CFT training to create awareness and provide DNFBP-s with the knowledge to be able to file STR-s. • Issue guidelines on instructions for the manner of identifying their clients in accordance with the obligations under the AML/CFT Law. • As stated above, because of the newness of the AML/CFT Law, DNFBP-s have not yet applied the risk-based approach to clients. Serbian authorities should issue DNFBP-specific guidance and should work with DNFBP-s and their regulators to ensure

	they understand how to effectively implement in practice. *Recommendation 6* • Serbian authorities should assist DNFBP-s on how to identify foreign officials and apply enhanced due diligence, per the new requirements of the AML/CFT Law. This could include additional training seminars and additional instruction on assessing risk. *Recommendation 8* • Serbian authorities should adopt explicit requirements for DNFBP-s to develop policies and procedures to mitigate the use of technological developments for the purposes of ML and FT when conducting risk assessments. *Recommendation 9* • Until Serbian authorities have determined in which countries financial institutions are permitted to rely on third parties, there can be no implementation of this provision. Serbian authorities should work to issue the sub-law in preparation and the list mentioned in Article 24. *Recommendation 10* • As many DNFBPs indicated that they were not aware of any requirements to maintain records about their clients and in fact, did not keep such records, the Serbian authorities should ensure that DNFBPs fully understand and comply with their record keeping obligations. *Recommendation 11* • As the AML/CFT Law only requires obligors to pay special attention to all complex, unusual large transactions or unusual patters of transactions that have no apparent or visible economic or lawful purpose when developing a list of indicators and Serbian authorities have not provided a list of indicators for DNFBP-s, the evaluation team has concerns about the sector's ability to implement the requirements of Recommendation 11. • While the evaluation team finds the list of indicators to be insufficient to meet the requirements of Recommendation 11, the Decision on KYC Procedure does meet the requirements of Recommendation 11 in regards to paying special attention to unusual transactions and examining the background and purpose of transactions and setting forth those finding in writing, however it is not applicable to all financial institutions. Serbian authorities should ensure that the provisions of the Decision on KYC Procedure also apply to DNFBP-s. • Serbian authorities should ensure that DNFBP-s are capable of adequately identifying unusual transactions, particularly through additional training

	and developing better lists of indicators that match the market activities of the financial institution.
4.2 Suspicious transaction reporting (R.16)	*Recommendation 13* • Provide specific guidance on the legal definition of the reporting obligation, so as to prevent its possible restrictive interpretation, as well as to take further measures to ensure that obligor DNFBP-s and lawyers understand it in the broadest meaning of the AML/CFT Law and pertinent regulations/ guidelines. • Provide for appropriate implementation of the reporting requirement by obligor DNFBP-s and lawyers, by means of ensuring that they have their own lists of indicators for recognizing ML/FT-related suspicious transactions • Ensure that for all obligor DNFBP-s and lawyers the APML has developed lists of indicators to guide obligors in recognizing ML/FT-related suspicious transactions; make such lists clearly identifiable (by means of an official, publicly accessible reference number, or publication in an official source). • Continue efforts aimed at developing and introducing a well-structured, coordinated outreach program (for example, by means of series of seminars, regular training sessions for compliance officers, etc) for obligor DNFBP-s and lawyers to fully understand their reporting requirements, in particular the new FT reporting requirement. *Recommendation 14* • It is recommended to the Serbian authorities to make the necessary legal amendments to ensure that: (a) DNFBPs are protected from criminal liability for breach of any restriction on disclosure of information if they report their suspicions in good faith to the APML; (b) Expand the tipping-off provisions to include not only those cases where a STR or related information has been reported but also when it is in the process of being reported to the APML. • Serbian authorities should ensure that these provisions are appropriately implemented, through issuing adequate guidance to obligors concerning tipping off, so that DNFBPs and their employees fully understand the scope of the safe harbour and tipping off requirements and are aware of and sensitive to these issues when conducting CDD. *Recommendation 15* • Specify the procedure for executing internal policies and controls aimed at prevention of ML/FT, as defined by Articles 45 of the AML/CFT Law; provide guidance and training for all obligor DNFBP-s and lawyers to assist them in developing adequate internal controls to prevent ML/ FT. • Amend the AML/CFT Law to require obligors

	having less than four employees to appoint a compliance officer. • Provide for adequate implementation of the requirement to conduct an internal audit of AML/CFT compliance. • Provide for adequate implementation of the requirement to provide regular professional training for employees carrying out tasks of prevention and detection of ML/FT. • Provide for screening procedures to ensure high standards when hiring employees. *Recommendation 21* • Revise and update the list of the countries which do not apply or insufficiently apply the FATF Recommendations; establish enforceable procedures for that list to be recognized and duly applied by obligor DNFBP-s and lawyers.
4.3 Regulation, supervision and monitoring (R.24-25)	*Recommendation 24* • Eliminate the grounds for uncertainty about applicability of pecuniary sanctions under the AML/CFT Law and the Law on Games of Chance. • Provide for administrative sanctions in case of casinos' incompliance with the national AML/CFT requirements (such as written warnings, orders to comply with specific instructions, barring individuals from employment within the sector, replacing or restricting powers of managers, directors, or controlling owners, or withdrawal of license). • Take legal or regulatory measures to prevent individuals with criminal background from acquiring or becoming the beneficial owner of a significant or controlling interest, holding a management function, in or being/becoming an operator of a casino. • Establish an adequate and relevant supervisory regime with regard to auditing companies, licensed auditors, lawyers and lawyer partnerships, dealers in precious metals and dealers in precious stones persons exercising professional activities of intermediation in real estate transactions, accounting, and tax advising, with the national AML/CFT requirements; particularly provide for the ability of the respective supervisory bodies to monitor and ensure compliance of the respective obligors with AML/CFT requirements, conduct (on-site) inspections, obtain access to all records and information relevant to monitoring compliance, enforce and sanction both the institutions/businesses and their directors/senior management for incompliance with AML/CFT requirements. *Recommendation 25 (c. 25.1 [DNFBP])* • Establish guidelines that would assist obligor DNFBP-s and lawyers to implement and comply with their respective AML/CFT requirements. Such

	guidelines would provide assistance on issues covered under the relevant FATF Recommendations, including: (i) a description of ML and FT techniques and methods; and (ii) any additional measures that obligor DNFBP-s and lawyers could take to ensure that their AML/CFT measures are effective.
4.4 Other non-financial businesses and professions (R.20)	• The Serbian authorities should conduct sector-specific assessments of MT and FT risk posed by other non-financial businesses and professions, and based on those results, consider extending the requirements of the AML/CFT law to additional obligors, such as on dealers in high value and luxury goods, pawnshops, auction houses, and investment advisers. • Serbian authorities should also consider taking measures to issue smaller denominations of banknotes and develop and utilize modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering.
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal Persons – Access to beneficial ownership and control information (R.33)	• Review the existing registration mechanisms in place and take legislative and other measures to ensure that registered information includes accurate and up to date details on beneficial ownership and control, as defined under the FATF Recommendations, for all legal persons and that such information is available to competent authorities in a timely fashion. • Strengthen preventative measures for deterring from the practice of setting up fictitious companies.
5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)	• Recommendation 34 does not appear to be applicable as trusts cannot be established in Serbia. Nevertheless, given the uncertainty of foreign trusts operating in Serbia, the Serbian authorities should consider satisfying themselves that foreign trusts do not operate in the country having registered themselves as branches of foreign institutions.
5.3 Non-profit organisations (SR.VIII)	• Conduct a review of the adequacy of domestic laws and regulations that relate to NPO-s for the purpose of identifying the features and types of NPO-s that are at risk of being misuses for FT and conduct periodic reassessments by reviewing new information on the' sector's potential vulnerabilities to terrorist activities. • Reach out to the NPO sector with a view to protecting the sector from terrorist financing abuse. This outreach should include: i) raising awareness in the NPO sector about the risks of terrorist abuse and the available measures to protect against such abuse; and ii) promoting transparency, accountability, integrity, and public confidence in the administration

	and management of all NPO-s. • Take measures to promote effective supervision or monitoring of NPO-s which account for a significant portion of financial resources under control of the sector and a substantial share of the sector's international activities. • Review the legal framework to ensure that: a) NPO-s maintain information on purpose and objective of their stated activities and on the identity of the persons who own, control or direct their activities, including senior officers, board members and trustees and that such information is publicly available; b) all NPO-s are adequately registered and that information is available to competent authorities; c) record keeping requirements for NPO-s include records of domestic and international transactions sufficiently detailed to verify that funds have been spent consistently with the purpose and objectives of the organisation and keep such data for a period of at least 5 years; d) there are measures in place to sanction violations of oversight measures or rules by NPO-s or persons acting on behalf of NPO-s. • Implement measures to ensure that competent authorities can effectively investigate and gather information on NPO-s as listed in criterion VIII.4. • Identify appropriate points of contacts and procedures to respond to international requests for information regarding particular NPO-s that are suspected of terrorist financing or other forms of terrorist support.
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	*Recommendation 31* • The effective functioning of the Standing Monitoring Group should be ensured and the implementation and improvements emanating from the work undertaken by this group should be measured. • The Serbian authorities should speedily implement the recommendations under the National Strategy aimed at improving the operational co-operation between competent state bodies and agencies. • The authorities should give more emphasis to consultations and feedback to the financial sector and consider establishing formal mechanisms to ensure an adequate consultation also with DNFBP-s.
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	*Recommendation 35* • The Serbian authorities should take additional measures to address the deficiencies identified in sections 2 and 6 which are also relevant in the

	context of implementation of specific articles of the Conventions as well as to ensure the effective implementation of the newly adopted legislation. Additional measures are required in order to implement article 31 of the Palermo Convention. *Special Recommendation I* • The same recommendations on criminalisation of FT offence as well as on further improvement of freezing and confiscation mechanisms are reiterated in this context. In particular, Serbia should: – Define the FT offense in line with the definition of the offense in the FT Convention; – Put in place adequate measures to fully address the requirements under S/RES 1267 (1999) and successor resolutions and S/RES 1373 (2001)
6.3 Mutual Legal Assistance (R.36-38 & SR.V)	*Recommendation 36* • The Serbian authorities should put in place a system enabling them to monitor the quality and speed of executing requests. • Serbia should clarify whether the application of dual criminality may limit its ability to provide assistance in certain situations, particularly in the context of identified deficiencies with respect to the FT offence as outlined under Special Recommendation II. *Recommendation 37* • Serbia should consider lifting the dual criminality requirement for less intrusive and non compulsory measures. *Recommendation 38* • The shortcomings identified with respect to provisional and confiscation measures should be remedied as they may limit Serbia's ability to take such measures based on foreign requests in certain cases. • Serbia should have arrangements in place for coordinating seizure and confiscation actions with other countries. *Special Recommendation V* • Serbian authorities should explicitly set out formal timeframes to enable that requests for MLA relating to FT are dealt with by competent authorities in a timely manner.
6.4 Extradition (R.39, 37 & SR.V)	• Clarify whether the application of dual criminality may limit its ability to provide assistance in certain situations, particularly in the context of identified deficiencies with respect to the FT offence as outlined under Special Recommendation II. • Eliminate the ground for refusal of an extradition request set out in article 7(5) of the MLA Law • In cases of non-extradition of own citizens, the Serbian authorities should ensure that internal criminal proceedings are instituted efficiently and in

	a timely manner. • Take steps to improve the overall effectiveness of the extradition framework and develop general reference materials, models forms and circulars or practical guidelines which cover practical aspects of extradition and commentaries of the existing legal provisions.
6.5 Other Forms of Co-operation (R.40 & SR.V)	• The authorities should undertake a thorough review of the legal framework which governs international co-operation and information exchange and amend the existing laws governing the scope of action of all competent financial sector and non financial sector supervisory authorities to ensure that they allow the widest range of co-operation and that these bodies can exchange information both spontaneously and upon request in line with the FATF standards under Recommendation 40; • The authorities should ensure that exchanges of information by supervisory and law enforcement authorities are not made subject to disproportionate or unduly restrictive conditions; • The supervisory authorities should keep comprehensive statistical information on the exchange of information with foreign counterparts, including on whether the requests were granted or refused
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	*Recommendation 30* *FIU* • Additional measures should be taken by the authorities to adequately staff the APML as well as provide to them with adequate offices, technical resources and equipment. • Internal training programs would need to be tailored, to ensure that APML staff, including newly recruited staff, receives specialised and on-going training suited to their responsibilities. Such training could include in particular analyst training, training on specialised products, trend and typologies, IT and software training. *Law enforcement and prosecution authorities* • Review the existing legal framework and amend it, in the light of the issues of concern highlighted in the report, to ensure that adequate requirements are set out clearly for law enforcement and prosecution services, including specialised services, enabling them to maintain high professional standards, including high integrity and that the staff are appropriately skilled. • Review the Tax Police's structure and adequacy of financial, human and technical resources, as well as the requirements regarding professional standards, integrity and skills; • Take all necessary legislative and other measures to

	ensure that the Financial Investigation Unit within the Ministry of Interior is adequately structured, funded and staffed in order to become operational as soon as possible; • Additional resources (human, premises, equipment, etc) should be allocated to the over-worked public prosecutor and police services so that they can fully and effectively performs their functions; • Consistent with a more proactive approach to the detection and exposure of the various forms of ML, take measures to ensure a greater specialisation of police officers, prosecutors and judges in financial crime and ML cases and improve prosecutorial AML/CFT expertise. The recommendations formulated in the National Strategy regarding training should be implemented speedily. _All supervisory authorities_ • Establish requirements providing for professional standards (including confidentiality and integrity requirements), and expertise/skills of the staff of supervisory bodies involved in the supervision of the AML/CFT Law (for the Securities Commission191, the Bar Association, the Chamber of Certified Auditors). • Ensure adequate, relevant, and regular training for combating ML and FT throughout all supervisory bodies involved in the supervision of the AML/CFT Law. _Policy makers_ • The Serbian authorities should satisfy themselves that there are adequate resources allocated to set up and maintain the AML/CFT system on the policy level and that policy makers are appropriately skilled and provided with relevant training. _MLA/extradition competent authorities_ • Serbian authorities should ensure that the competent authorities for sending/receiving mutual legal assistance/extradition requests are adequately structured, funded, staffed to fully and effectively perform their functions. • Serbian authorities should review existing technical resources available and take appropriate measures to ensure that proper technical means and equipment (e.g. ICT equipment, equipment for video/telephone conference, technical means required for special investigative measures) are available for competent authorities enabling them to adequately respond to mutual legal assistance requests. • Initial and continuous training should be organised for all staff of competent authorities responsible for sending/receiving mutual legal assistance/extradition

[191] The Securities Commission has provided some information on the requirements to professional standards and expertise/ skills of the staff, but not on those to confidentiality and integrity.

	requests on a regular basis to ensure that they have an adequate understanding of the relevant conventions related to international cooperation in criminal matters as well as the application of the new provisions and procedures for mutual assistance and extradition set out in the MLA Law and the Law on Seizure and Confiscation of the Proceeds from Crime. Also, in order to enable direct communication between judicial authorities, the Serbian authorities should consider promoting trainings in foreign languages for relevant professionals. • The authorities should also develop general reference materials, models forms and circulars or practical guidelines which cover practical aspects of mutual legal assistance in criminal matters and commentaries of the existing legal provisions. *Recommendation 32* • Considering the various statistics presented to the evaluation team before the visit and afterwards, the evaluation team recommends the authorities to consider designating one single institution responsible for keeping integrated statistics related to AML/CFT. • Also, the authorities may consider keeping records on the underlying predicate offences, on cases where there was an autonomous money laundering prosecution, cases which were tried in the same indictment as the predicate offence, cases which are self laundering and sanctions applied, as this would enable them to monitor the effectiveness of implementation of the ML provision. • Though there are no statistics due to the absence of relevant proceedings, Serbia should ensure that there is a requirement for competent authorities to maintain comprehensive annual statistics on FT investigations, prosecutions and convictions, should there be such cases. • The authorities should maintain comprehensive and precise annual statistics on the number of cases and the amounts of property frozen, seized and confiscated relating to ML, FT and criminal proceeds. • Ensure maintenance of accurate, differentiated (by types and number of obligors, types and number of irregularities, types and number of applied supervisory measures [including pecuniary sanctions] etc), consistent statistics on on-site inspections conducted by supervisors relating to or including AML/CFT issues, throughout all supervisory bodies involved in the supervision of the AML/CFT Law. • Ensure maintenance of accurate, differentiated (by

	types and number of requestors and requested counterparties, number of refused and satisfied requests, records on bases for refusals etc), consistent statistics on formal requests for assistance, throughout all supervisory bodies involved in the supervision of the AML/CFT Law. • Undertake an on-going analysis of the risks of ML/FT (vulnerabilities, sectors at risk, trends, etc) to streamline its AML/CFT strategy and efforts as necessary; • Pursue current efforts and develop the strategic and collective review of the performance of the AML/CFT system as a whole. • The Serbian authorities should maintain comprehensive annual statistics on all mutual legal assistance and extradition requests - including requests relating to freezing, seizing and confiscation - that are made or received, relating to ML, the predicate offences and FT, including the nature of the request, whether it was granted or refused and the time required to respond.
7.2 Other relevant AML/CFT measures or issues	NA
7.3 General framework – structural issues	NA

10 TABLE 3: AUTHORITIES' RESPONSE TO THE EVALUATION (IF NECESSARY)

RELEVANT SECTIONS AND PARAGRAPHS	COUNTRY COMMENTS

V. COMPLIANCE WITH THE 3RD EU AML/CFT DIRECTIVE

Serbia is not a member country of the European Union. It is not directly obliged to implement **Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing** (hereinafter: "the Directive") and the **Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis**.

The following sections describe the major differences between the Directive and the relevant FATF 40 Recommendations plus 9 Special Recommendations. For relevant legal texts from the EU legal standards see Appendix I.

1.	Corporate Liability
Art. 39 of the Directive	Member States shall ensure that natural and legal persons covered by the Directive can be held liable for infringements of the national provisions adopted pursuant to this Directive.
FATF R. 2 and 17	Criminal liability for money laundering should extend to legal persons. Where that is not possible (i.e. due to fundamental principles of domestic law), civil or administrative liability should apply.
Key elements	The Directive provides no exception for corporate liability and extends it beyond the ML offence even to infringements which are based on national provisions adopted pursuant to the Directive. What is the position in your jurisdiction?
Description and Analysis	Natural persons can be held liable for ML and penalties set out in the legislation appear to be proportionate and dissuasive. Pursuant to the Law on Liability of Legal Entities for Criminal Offences. legal persons can be held liable for criminal offences, including ML, which have been committed for the benefit of the legal person by a responsible person or when a lack of supervision or control by the responsible person allowed the commission of crime for the benefit of that legal person by a natural person operating under the supervision and control of the responsible person Parallel criminal and civil and administrative procedures are possible in all cases when damage has been inflicted upon a legal or natural person through the commission of a criminal offence, regardless of whether the perpetrator is a natural or legal person. As regards liability of natural and legal persons for infringements of the national AML/CFT provisions, these are set out in articles 88-91 of the AML/CFT Law. The sanctions available (fines) appear to be proportionate and dissuasive. However, as detailed in the mutual evaluation report, there are no sanctions stipulated for certain provisions of the law. The range of administrative sanctions indirectly available for AML/CFT incompliance is not adequate and there are a number of grounds for uncertainty and confusion about the applicability of pecuniary sanctions under the AML/CFT law and administrative sanctions under various sectoral laws.
Conclusion	Corporate liability is extended beyond the ML offence to

	infringements which are based on national AML/CFT provisions. However, a number of deficiencies are to be noted in this context.
Recommendations and Comments	Serbia should review its legislation to ensure that there are proportionate and dissuasive sanctions applicable for legal entities' infringements of all requirements under the AML/CFT Law and should also take measures to ensure that such sanctions are effectively applied in practice by competent authorities.

2.	**Anonymous accounts**
Art. 6 of the Directive	Member States shall prohibit their credit and financial institutions from keeping anonymous accounts or anonymous passbooks.
FATF R. 5	Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names.
Key elements	Both prohibit anonymous accounts but allow numbered accounts. The Directive allows accounts or passbooks on fictitious names but always subject to full CDD measures. What is the position in your jurisdiction regarding passbooks or accounts on fictitious names?
Description and Analysis	Article 34 of the AML/CFT Law prohibits obligors from opening or maintaining anonymous accounts for customers, issuing coded or bearer savings bonds, or providing any other services that directly or indirectly allow for concealing the customer identity. Prior to the adoption of the AML/CFT Law, only banks were expressly prohibited from opening or maintaining accounts for anonymous clients. While not covered in the previous AML Law, Section 9 of the NBS Decision on KYC Procedure for Banks expressly prohibited banks from opening or keeping accounts for anonymous clients. Financial institutions indicated that they did not maintain anonymous accounts or maintain accounts for anonymous clients. The NBS also indicated that they found no evidence of the existence of anonymous accounts during on-site inspections of banks.
Conclusion	The AML/CFT Law meets the requirements set by Article 6 of the Directive in regards to anonymous accounts or anonymous passbooks.
Recommendations and Comments	N/A

3.	**Threshold (CDD)**
Art. 7 b) of the Directive	The institutions and persons covered by the Directive shall apply CDD measures when carrying out occasional transactions amounting to EUR 15 000 or more.
FATF R. 5	Financial institutions should undertake CDD measures when carrying out occasional transactions above the applicable designated threshold.
Key elements	Are transactions and linked transactions of EUR 15 000 covered?
Description and Analysis	Article 9, Paragraph 1, Item 2 of the AML/CFT Law requires obligors to conduct CDD when carrying out a transaction amounting to the RSD equivalent of EUR 15,000 or more, calculated by the National Bank of Serbia median rate on the date of execution of the transaction (hereinafter referred to as: RSD equivalent), irrespective of whether the transaction is carried out in one or more than one connected operations. If the transaction amounting to the RSD equivalent of EUR 15,000 is carried out based on a previously established business relationship, Article 9.2 requires the obligor to collect the missing CDD data. Article 9 of the AML/CFT Law applies to all transactions, therefore

	would also cover occasional transactions.
Conclusion	The AML/CFT Law meets the requirements set by Article 7 (b) of the Directive on CDD threshold.
Recommendations and Comments	-

4.	**Beneficial Owner**
Art. 3(6) of the Directive (see Annex)	The definition of 'Beneficial Owner' establishes minimum criteria (percentage shareholding) where a natural person is to be considered as beneficial owner both in the case of legal persons and in the case of legal arrangements
FATF R. 5 (Glossary)	'Beneficial Owner' refers to the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or legal arrangement.
Key elements	Which approach does your country follow in its definition of "beneficial owner"? Please specify whether the criteria in the EU definition of "beneficial owner" are covered in your legislation.
Description and Analysis	Article 3, Section 1, Items 11 and 12 of the AML/CFT Law defines a beneficial owner as a natural person who owns or controls a customer. The definition of a beneficial owner of a company or any other legal person includes: • natural person who owns, directly or indirectly, 25% or more of the business share, shares, voting right or other rights, based on which they participate in the management of the legal person, or who participates in the capital of the legal person with 25% or more of the share, or has a dominant position in managing the assets of the legal person; • natural person who has provided or provides funds to a company in an indirect manner, which entitles him to influence significantly the decisions made by the managing bodies of the company concerning its financing and business operations. Article 3 Item 13 of the AML/CFT Law defines the beneficial owner of a person under foreign law, which receives, manages, or allocates assets for a specific purpose as: • a natural person using, indirectly or directly, more than 25% of the assets that are the subject matter of management, provided that the future users have been designated; • a natural person or group of persons for the furtherance of whose interests a person under foreign law is established or operates, provided that such natural person or group of persons are identifiable; • a natural person who, indirectly or directly, unrestrictedly manages more than 25% of the property of the person under foreign law.
Conclusion	The definition of beneficial owner in the AML/CFT Law is consistent with the definition in Article 3(6) of the Directive.
Recommendations and Comments	

5.	Financial activity on occasional or very limited basis
Art. 2 (2) of the Directive	Member States may decide that legal and natural persons who engage in a financial activity on an occasional or very limited basis and where there is little risk of money laundering or financing of terrorism occurring do not fall within the scope of Art. 3(1) or (2) of the Directive. Art. 4 of Commission Directive 2006/70/EC further defines this provision.
FATF R. concerning financial institutions	When a financial activity is carried out by a person or entity on an occasional or very limited basis (having regard to quantitative and absolute criteria) such that there is little risk of money laundering activity occurring, a country may decide that the application of anti-money laundering measures is not necessary, either fully or partially (2004 AML/CFT Methodology para 23; Glossary to the FATF 40 plus 9 Special Recs.).
Key elements	Does your country implement Art. 4 of Commission Directive 2006/70/EC?
Description and Analysis	Article 4, Paragraphs 3 and 4 of the AML/CFT Law provides the following exemptions from Serbia's AML/CFT controls: (3) legal or natural persons referred to in Paragraphs 1 and 2 of this Article, which perform a business activity only occasionally or to a limited extent and which represent low-risk with respect to money laundering or terrorism financing, shall not be required to carry out the actions and measures laid down in this Law, if they meet specially stipulated requirements. (4) The minister competent for finance (hereinafter referred to as: the Minister), based on the proposal of the APML, may specify the conditions referred to in para.3 of this Article in compliance with technical criteria specified by the recognized international standards and in the opinion of the body referred to in Article 82 of this Law, which is competent to supervise the implementation of this Law by such a legal or natural person. The previous AML Law did not contain this type of exclusion.
Conclusion	Activities described in the AML/CFT Law are consistent with the requirements set in Article 2 (2) of the Directive.
Recommendations and Comments	At the time of the evaluation, Serbian authorities had yet to implement exemptions from the AML/CFT Law, however Serbian authorities have indicated that the Minister will prescribe such criteria described in Article 4(4) of the AML/CFT Law.

6.	Simplified Customer Due Diligence (CDD)
Art. 11 of the Directive	By way of derogation from the relevant Article the Directive establishes instances where institutions and persons may not apply CDD measures. However the obligation to gather sufficient CDD information remains.
FATF R. 5	Although the general rule is that customers should be subject to the full range of CDD measures, there are instances where reduced or simplified measures can be applied.
Key elements	Is there any implementation and application of Art. 3 of Commission Directive 2006/70/EC which goes beyond the AML/CFT Methodology 2004 criterion 5.9?
Description and Analysis	In the previous AML Law, there were no reduced or simplified CDD measures; financial institutions were required to apply CDD controls

	evenly for all customers. Under Article 32 of the AML/CFT Law, obligors may apply simplified customer due diligence measures, except where there are reasons for suspicion of ML or TF with respect to a customer or transaction, if a customer is: 1) the obligor referred to in Article 4, Paragraph 1, Items 1 to 8 of this Law (banks; licensed bureaux de change; companies for the management of investment funds; companies for the management of voluntary pension funds; financial leasing providers; insurance companies, insurance brokerage companies, insurance agency companies and insurance agents with a licence to perform life insurance business; persons dealing with postal communications; broker-dealer companies), except for insurance brokers and insurance agents; 2) person from Article 4, Paragraph 1, Items 1 to 8 of this Law, except for insurance brokers and agents, from a foreign country listed as non complying with international standards against money laundering and terrorism financing at the European Union level or higher; 3) a State body, body of an autonomous province or body of a local self-government unit, a public agency, public service, public fund, public institute or chamber; 4) a company whose issued securities are included in an organized securities market located in the Republic of Serbia or in the state where the international standards applied regarding the submission of reports and delivery of data to the competent regulatory body are at the European Union level or higher. 5) a person representing a low risk of money laundering or terrorism financing as established in a regulation adopted on the basis of Article 7, Paragraph 3 of this Law. Article 32 of the AML/CFT Law also allows an auditing company or licensed auditor, when establishing a business relationship of regarding obligatory auditing of the annual financial statements of a legal person, may apply simplified customer due diligence, unless there are reasons for suspicion of money laundering or terrorism financing with respect to a customer or the auditing circumstances. Under Article 12, Section 1, Item 1 of the AML/CFT Law, insurance providers are exempt from conducting CDD when concluding life insurance contracts where an individual premium instalment or the total of more than one premium instalments, that are to be paid in one calendar year, do not exceed the RSD equivalent of EUR 1,000 or if the single premium does not exceed the RSD equivalent of EUR 2,500. The insurance sector indicated that it did not conduct life insurance business with foreign countries. Article 12, Section 1, Item 2 of the AML/CFT Law states that VPF management companies are exempt from conducting CDD when concluding contracts on the membership in voluntary pension funds or contracts on pension plans under the condition that assignment of the rights contained under the contracts to a third party, or the use of such rights as a collateral for credits or loans, are not permitted. The Law on

	Pension Funds prohibits the transfer of the balance in a member's individual account in favor of a third party (with the exception in the case of a death of a fund member) under Article 44, thus Serbian authorities claim that VPFs are in a lower risk category.
Conclusion	Requirements for simplified due diligence described in the AML/CFT Law are consistent with Article 11 of the Directive.
Recommendations and Comments	As the ability of financial institutions to conduct CDD on the basis of risk is relatively new, the assessment team was unable to determine how obligors would apply simplified due diligence in practice. The NBS issued draft guidance for certain financial institutions to apply the risk-based approach on its website and indicated that it intended to issue further guidance and trainings for financial institutions to be able to apply these new regulations. Serbian authorities should issue specific guidance to assist institutions and persons in identifying instances where it is permissible to apply simplified due diligence.

7.	**Politically Exposed Persons (PEPs)**
Art. 3 (8), 13 (4) of the Directive (see Annex)	The Directive defines PEPs broadly in line with FATF 40 (Art. 3(8)). It applies enhanced CDD to PEPs residing in another Member State or third country (Art. 13(4)). Directive 2006/70/EC provides a wider definition of PEPs (Art. 2) and removal of PEPs after one year of the PEP ceasing to be entrusted with prominent public functions (Art. 2(4)).
FATF R. 6 and Glossary	Definition similar to Directive but applies to individuals entrusted with prominent public functions in a foreign country.
Key elements	Does your country implement Art. 2 of Commission Directive 2006/70/EC, in particular Art. 2(4), and does it apply Art. 13(4) of the Directive?
Description and Analysis	There were no requirements under the previous AML Law for financial institutions to determine whether a client is a PEP and apply enhanced measures. The Decision on KYC Procedure for Banks lists as part of risk factors: client discharging a public function and client who is a public figure in Section 2, Paragraph 3. Per this decision, banks were required to classify clients based on risk, determine the acceptability of a client based on that risk, and identify the client accordingly. Section 8, Paragraph 6 also required that when banks enter into a contractual obligation with a new client, that it is previously approved by at least one manager. Furthermore, Section 14 obliged banks to supervise transactions conducted by risky clients through their accounts on an ongoing bases. The AML/CFT law introduced new requirements. Its Article 3 defines a foreign official as: a natural person who holds or who held in the past year a public office in a foreign country or international organisation, which includes the office of: • head of State and/or head of government, member of government and their deputies or assistants; • elected representative of legislative bodies; • judge of the supreme and the constitutional courts or of other high-level judicial bodies whose judgments are not subject to further regular or extraordinary legal remedies, save in exceptional cases; • member of courts of auditors or of the boards of central banks;

	• ambassador, chargés d'affaires and high-ranking officer in the armed forces; • member of the managing or supervisory bodies of legal entities whose majority owner is the State; Article 3 also defines close family members of a foreign official and refers to them as a foreign official. It also defines close associates of a foreign official, however there is an omission in the law and set requirements do not appear to be applicable to them. Article 30 of the AML/CFT Law requires obligors to establish a procedure for determining whether a customer or beneficial owner of a customer is a foreign official and that the procedure should be laid down in an internal document of the obligor, which should be in line with the guidelines issued by supervisors. At the time of the on-site visit, no guidelines had been issued by supervisors on this issue. The AML/CFT law refers to a one year timeframe: a person who, by the date of entry into a transaction, has not held a public office in a foreign country or foreign organisation in the past year is not considered a politically exposed person. Article 30 requires the employee in the obligor who carries out the procedure for establishing a business relationship with a foreign official shall, before establishing such relationship, obtain a written consent of the responsible person. If the obligor establishes that a customer or a beneficial owner of a customer became a foreign official during the business relationship, the continuation of a the business relationship with such person is subject to the a written consent of the responsible person. Financial institutions are thus required to obtain the approval of a 'responsible person' for establishing a business relationship with a PEP or to continue such a relationship. The authorities advised that the 'responsible person' in such cases is to be interpreted as a member of the executive board or other competent body or person (at senior management level). However the evaluation team considers that the requirement does not appear to be specific enough that the responsible person should be at the senior management level. Financial institutions are also required to obtain data on the origin of property which is or which will be the subject matter of the business relationship or transaction from the documents and other documentation which shall be submitted by the customer. If it is not possible to obtain such data as described, the obligor shall obtain a written statement on its origin directly from the customer (Article 30 of the AML/CFT Law). Financial institutions are also required to monitor with due care transactions and other business activities of a foreign official for the period of duration of the business relationship (Article 30 Paragraph 2, Item 3), including in cases where a person has become a PEP in the course of a business relationship. This obligation was explained by the authorities as additional efforts which should be made by obligors in monitoring business activities and transactions of the PEP, compared with other customers considered less risky than PEP-s. However, this interpretation was not supported by any applicable regulation or guidance

	and thus could be interpreted by obligors at their own discretion. Overall, the evaluators had doubts that Article 30 Paragraph 2, Item 3 would amount to an 'enhanced on-going monitoring' on business relationship with PEP-s.
Conclusion	The definition of a PEP in the AML/CFT Law does not meet the requirement set out in Articles 3 (8) and 13 (4) of the Directive as it lacks the explicit inclusion of a provision for close associates of a foreign official, despite including close associates in the definition in Article 3, Item 26.
Recommendations and Comments	The evaluation team was satisfied that the banking sector adequately determined whether a potential customer was a PEP, had internal procedures for screening clients, and screened all of their clients using commercial databases and other public data to help determine if a client is a PEP. Banks did not, however, seem to take any measures to establish the source of wealth or funds for customers identified with PEP-s. Other financial institutions, while not required to identify or apply enhanced measures to PEP-s under the previous AML Law, indicated that they did identify PEP-s, which they considered to be risky clients. Due to the nature of their business, however, they indicated that enhanced measures were not necessary. Serbian authorities should issue guidance for financial institutions on how to identify foreign officials and apply enhanced due diligence, per the new requirements of the AML/CFT Law.

8.	**Correspondent banking**
Art. 13 (3) of the Directive	For correspondent banking, Art. 13(3) limits the application of Enhanced Customer Due Diligence (ECDD) to correspondent banking relationships with institutions from non-EU member countries.
FATF R. 7	Recommendation 7 includes all jurisdictions.
Key elements	Does your country apply Art. 13(3) of the Directive?
Description and Analysis	The previous AML Law had no express requirements for all financial institutions to understand fully the nature of a respondent institution's business or to determine the reputation of the institution and quality of supervision, including whether it has been subject to a ML or TF investigation or regulatory action. The insurance sector is not permitted to provide life insurance, which is the insurance product that has been identified as having the highest ML risk, to foreign entities. Prior to the AML/CFT Law, only banks were obliged to consider the AML/CFT regime of correspondents. When establishing correspondent relations with other banks, especially foreign banks, the banking sector was required, through Section 18 of the Decision on KYC for Banks, to cooperate exclusively with correspondent banks which implement regulations governing the prevention of money laundering and financing of terrorism, as well as the Procedure, as strictly as the bank. Article 29, Paragraph 1 of the AML/CFT Law added new requirements for all financial institutions, stating that when establishing a LORO correspondent relationship (defined in Article 3 as a relationship between a domestic bank and a foreign bank or any other similar institution, which commences by the opening of an account by a foreign bank or another similar institution with a domestic bank in order to carry out international payment operations) with a bank or any other similar institution having its seat in a foreign country which is not listed as complying with the

	international standards against money laundering and terrorism financing at the European Union level or higher, the obligor shall also obtain, apart from the actions and measures laid down in Article 8, Paragraph 1 of this Law (CDD Measures), a number of additional data, information and or documentation. Article 12 of the Decision on KYC Procedure further requires that if an obligor is a bank, it shall specify in its Procedure the activities it shall take when establishing correspondent relations with other banks, in particular the foreign ones, and/or when refusing to establish these relations with banks which do not comply with the international standards or to at least the EU standards, regarding prevention of money laundering and financing of terrorism. Serbian officials informed the evaluation team that according to the current legal framework and practice, correspondent relationships do not involve the maintenance of "payable through accounts". While there are currently no payable-through accounts in Serbia, the evaluation team has concerns that because they are not expressly prohibited, the fact that it has not happened in practice does not mean that it cannot happen in the future.
Conclusion	Serbia does not limit the application of enhanced due diligence to correspondent banking relationships with institutions from non-EU countries.
Recommendations and Comments	Serbia does not apply the limitation of article 13(3) of the Directive and makes no exception for EU member countries. The obligation under the EU directive is only applicable to Member States.

9.	**Enhanced Customer Due Diligence (ECDD) and anonymity**
Art. 13 (6) of the Directive	The Directive requires ECDD in case of ML or TF threats that may arise from <u>products</u> or <u>transactions</u> that might favour anonymity.
FATF R. 8	Financial institutions should pay special attention to any money laundering threats that may arise from new or developing <u>technologies</u> that might favour anonymity [...].
Key elements	The scope of Art. 13(6) of the Directive is broader than that of FATF R. 8, because the Directive focuses on products or transactions regardless of the use of technology. How are these issues covered in your legislation?
Description and Analysis	In the previous AML Law, there were no requirements for enhanced due diligence; obligors were required to apply the same measures in all situations. Under Article 7, Paragraph 7 of the previous AML Law, financial institutions were only allowed to maintain non face-to-face customers if they were non-residents, a state authority or organization with public authorities, or a fellow obligor defined in Article 4 of the Law. Article 7 established that when opening an account or establishing a business cooperation, the obligor could perform the identification of a non face-to-face customer but when doing so, it had to establish beyond doubt the identity of the customer by establishing all the data pursuant to this Law and the regulation passed on the basis of Article 13, Paragraph 2 of this Law. The NBS Decision on KYC Procedure for Banks further stipulates that: in performing transactions of a client who has already been identified, and by using technologies that do not include direct contact (e-banking), the banks shall adopt and apply procedures enabling prior authenticity and accuracy check up of the transaction orders and identity of the person that submitted them.

	Article 28 of the AML/CFT Law requires that enhanced customer due diligence actions and measures shall be applied in the following circumstances: 1) when establishing a LORO correspondent relationship with a bank or a similar institution having its seat in a foreign country which is not listed as complying with the international standards against money laundering and terrorism financing that are at the level of European Union standards or higher. This list shall be established by the Minister, at the proposal of the APML and based on the data held by international organisations; 2) when establishing a business relationship or carrying out a transaction referred to in Article 9, Paragraph 1, Item 2 of this Law with a customer who is a foreign official; 3) when the customer is not physically present at the identification and verification of the identity. The AML/CFT Law, in Article 31, requires obligors to apply one or more of the following additional measures, apart from the normal CDD measures, when a customer is not physically present in the course of identification and verification of identity: 1) obtaining additional documents, data, or information based on which it shall identify a customer; 2) conducting additional inspection of submitted identity documents or additional verification of customer data obtained from the obligor referred to in Article 4, Paragraph 1, Items 1 to 4, as well as 6 and 8 and Article 4, Paragraph 2, Items 5 to 7 and 9 of this Law; 3) ensuring that, before the execution of other customer transactions in the obligor, the first payment shall be carried out from an account opened by the customer in its own name or which the customer holds with a bank or a similar institution in accordance with Article 13, Paragraphs 1 and 2 of this Law; 4) other measures laid down by the body referred to in Article 82 (regulatory authorities) of this Law. Regulatory authorities have not yet issued additional implementing measures on this issue. Article 34 of the AML/CFT Law also prohibits obligors from opening or maintaining anonymous accounts for customers, issuing coded or bearer savings bonds, or providing any other services that directly or indirectly allow for concealing the customer identity.
Conclusion	The AML/CFT Law meets the requirements set out in Article 13 (6) of the Directive.
Recommendations and Comments	-

10.	**Third Party Reliance**
Art. 15 of the Directive	The Directive permits reliance on professional, qualified third parties from EU Member States or third countries for the performance of CDD, under certain conditions.
FATF R. 9	Allows reliance for CDD performance by third parties but does not specify particular obliged entities and professions which can qualify

	as third parties.
Key elements	What are the rules and procedures for reliance on third parties? Are there special conditions or categories of persons who can qualify as third parties?
Description and Analysis	The previous AML Law had no provisions on relying on a third party to perform some elements of the CDD process or to introduce business. The legal basis allowing financial institutions to rely on third parties to perform CDD was introduced in Article 23 of the AML/CFT Law. Under the law, a third party is defined as: 1) the obligor referred to in Article 4, Paragraph 1, Items 1, 3, 4 and 8 of this Law (that is: banks, companies for the management of investment funds, companies for the management of VPFs, and broker-dealer companies); 2) insurance companies licensed to perform life insurance business; 3) the person referred to in Article 4, Paragraph 1, Items 1, 3, 4 and 8 of this Law and the insurance company licensed to perform business of life insurance in a foreign country if it is subject to a statutory requirement to register its business, if it applies customer due diligence, keeps records in an equal or similar manner as specified in this Law, and if it is supervised in the execution of its business in an adequate manner. In relying on such a third party, obligors shall not be exempt from the responsibility for a proper application of CDD. Article 23 further stipulates that the obligor may not rely on a third party to perform certain customer due diligence actions and measures if such person has identified and verified the identity of a customer without the customer's presence. The third party is responsible for meeting the requirements laid down in this Law, including the keeping of data and documentation. The AML/CFT Law does not specifically require that the financial institution must immediately obtain CDD information from a third party. Nevertheless, Article 25 of the AML/CFT Law requires a third party to submit to the obligor the data held about the customer that the obligor requires for establishing a business relationship under this Law. At the request of the obligor, the third party should deliver without delay copies of identity papers and other documentation based on which it applied the customer due diligence actions and measures and obtained the requested data about a customer (Article 25). The obtained copies of the identity papers and documentation shall be kept by the obligor in accordance with this Law. If the obligor doubts the credibility of the applied customer due diligence or of the identification documentation, or the veracity of data obtained about a customer, it shall request from the third party to submit a written statement on the credibility of the applied customer due diligence action or measure and the veracity of the data held about a customer. Obligors may rely on third parties – banks, companies for the management of investment funds, companies for the management of

	VPFs, and broker-dealer companies and the insurance company licensed to perform business of life insurance in a foreign country - if they are subject to business registry requirements, CDD and record keeping requirements equal or similar as stated in the AML/CFT Law and if they are supervised in the execution of their business in an adequate manner and if they are supervised in the execution of their business in an adequate manner. Obligors are required to ensure beforehand that the third party meets all the conditions laid down in the law (Article 23 (3)). Article 24 of the AML/CFT Law sets out stipulations that prohibit an obligor from relying on a third party to perform certain CDD measures and reads as follows: 1) the obligor shall not rely on a third party to perform certain customer due diligence measures if the customer is an off-shore legal person or an anonymous company; 2) The obligor may not rely on a third party to perform certain customer due diligence measures if the third party is from a country which is listed as not complying with the standards against money laundering and terrorism financing. This list shall be developed by the Minister, at the proposal of the APML and based on the data held by international organisations; and 3) Under no circumstances shall the third party be an off-shore legal person or a shell bank. The Minister has not yet developed the list referred to under Article 24 Paragraph 2. The AML/CFT Law set out monetary fines to ensure that financial institutions are ultimately held responsible for customer identification and verification and not the third party. Article 89 of the AML/CFT Law requires that a legal person shall be punished for an economic offence with a fine amounting from RSD 50,000 to RSD 1,500,000, if it…rel[ies] on a third party to perform customer due diligence without having checked whether such third person meets the requirements laid down in this Law or if such third person established and verified the identity of a customer without its presence or if the customer is an off-shore legal person or anonymous company.
Conclusion	The AML/CFT Law meets the requirement set out in Article 15 of the Directive.
Recommendations and Comments	As noted in other sections of the report, the evaluation team was unable to assess the effectiveness of Serbia's implementation of Recommendation 9 because of the newness of the AML/CFT Law. At the time of the evaluation, Serbian authorities had not issued guidance to financial institutions on how to implement these new provisions as under the previous AML Law, financial institutions were not permitted to rely on a third party. Serbian authorities should issue guidance to financial institutions to aid them in effectively implementing the new measures set out in the AML/CFT Law on relying on third parties for some elements of CDD.

11.	Auditors, accountants and tax advisors
Art. 2 (1)(3)(a) of the Directive	CDD and record keeping obligations are applicable to auditors, external accountants and tax advisors acting in the exercise of their professional activities.
FATF R. 12	CDD and record keeping obligations 1. do not apply to auditors and tax advisors; 2. apply to accountants when they prepare for or carry out transactions for their client concerning the following activities: • buying and selling of real estate; • managing of client money, securities or other assets; • management of bank, savings or securities accounts; • organisation of contributions for the creation, operation or management of companies; • creation, operation or management of legal persons or arrangements, and buying and selling of business entities (2004 AML/CFT Methodology criterion 12.1(d)).
Key elements	The scope of the Directive is wider than that of the FATF standards but does not necessarily cover all the activities of accountants as described by criterion 12.1(d). Please explain the extent of the scope of CDD and reporting obligations for auditors, external accountants and tax advisors.
Description and Analysis	Auditors, external accountants, and tax advisors were not included as obligors under the previous AML Law. Article 4 of the AML/CFT Law lists as obligors: 1. (11) auditing companies; 2. entrepreneurs and legal persons exercising the following professional activities: (2) provision of accounting services (3) tax advising Legal and natural persons which perform a business activity only occasionally or to a limited extent and which represents low risk with respect to ML or TF shall not be required to carry out the actions and measures laid down in the law if they meet the requirements. Please see Sections 3.2 and 3.5 for a detailed description of the CDD and record keeping requirements and identified deficiencies.
Conclusion	While the AML/CFT Law meets the scope of Article 2 (1)(3)(a) of the Directive for auditors, external accountants, and tax advisors as obligors, the CDD requirements for these entities have the same deficiencies identified for financial institutions.
Recommendations and Comments	Overall, the DNFBP sector demonstrated little awareness and understanding of obligations under the AML/CFT Law. Serbian authorities should work with DNFBP-s to ensure that they are both aware of AML/CFT obligations and are adequately applying controls. Serbian authorities should issue guidance and provide training so that each sector has the tools to comply.

12.	High Value Dealers
Art. 2(1)(3)e) of the Directive	The Directive applies to natural and legal persons trading in goods where payments are made in cash in an amount of EUR 15 000 or more.

FATF R. 12	The application is limited to those dealing in precious metals and precious stones.
Key elements	The scope of the Directive is broader. Is the broader approach adopted in your jurisdiction?
Description and Analysis	Dealers in high value goods such as metals or stones were subject to the controls set out in the previous AML Law, however, they were excluded as obligors from the AML/CFT Law and are thus no longer subject to CDD requirements. Article 36 of the AML/CFT Law provides that (1) A person selling goods or rendering a service in the Republic of Serbia may not accept cash payments from a customer or third party in the amount greater than EUR 15,000 in its RSD equivalent; and (2) The restriction laid down in Paragraph 1 shall also apply if the payment of goods or a service is carried out in more than one connected cash transactions which in total exceed the RSD equivalent of EUR 15,000. Serbian authorities indicated that since high value dealers in goods were no longer permitted to receive cash for goods worth more than EUR 15,000, they should not be subject to AML/CFT controls.
Conclusion	The requirements set out in the AML/CFT Law are consistent with Article 2 (1) (3) (e) of the Directive.
Recommendations and Comments	The evaluation team recognises that the new requirement in the AML/CFT Law preventing dealers in high value goods from conducting cash transaction in excess of EUR 15000 does reduce the risk of ML and TF. However, these DNFBP-s should remain subject to the other AML/CFT controls laid out in the AML/CFT Law, particularly requirements to undertake CDD when there is a suspicion of ML or TF, to determine if a customer is a PEP, and to maintain records on transactions.

13.	**Casinos**
Art. 10 of the Directive	Member States shall require that all casino customers be identified and their identity verified if they purchase or exchange gambling chips with a value of EUR 2 000 or more. This is not required if they are identified at entry.
FATF R. 16	The identity of a customer has to be established and verified when he or she engages in financial transactions equal to or above EUR 3 000.
Key elements	In what situations do customers of casinos have to be identified? What is the applicable transaction threshold in your jurisdiction for identification of financial transactions by casino customers?
Description and Analysis	Article 5 of the previous AML Law required casinos to identify their customers when paying to or withdrawing money from the organizers of classical games of chance and other games of chance in the sum amounting to or exceeding EUR 1.000 in Dinar counter value. Organizers of special games of chance were bound to establish the identity of the customer immediately upon entering the gaming place. Under the current AML/CFT Law, while there is no requirement for casinos to perform CDD measures when their customers engage in financial transactions equal to or above a EUR 2.000, Article 19 of the AML/CFT Law provides for further requirements in special cases. It requires that whenever a customer enters a casino or whenever a customer or his legal representative or empowered representative has access to a safe-deposit

	box, the organizer of a special game of chance in a casino, or an obligor that provides safe deposit box services, shall establish and verify the identity of the customer and obtain, from the customer or its legal representative or empowered representative, the data referred to in Article 81, Paragraph 1, Items 5 and 7 of the Law, that is: a) name and surname, date and place of birth, and place of permanent or temporary residence of a natural person entering a casino or accessing a safe-deposit box b) date of establishing of a business relationship, ie. date and time of entrance into a casino or access to a safe-deposit box. All customers that enter the casino are required to identify themselves using a valid identification. There is one licensed casino operating in Serbia. All customers are required to identify themselves using a valid identification document and the casino appeared to have a sound method for matching casino membership cards with customers as there was a photograph tied to each card that is checked upon a customer's entrance.
Conclusion	The provisions of the AML/CFT Law meet the requirement set by Article 10 of the Directive.
Recommendations and Comments	-

14.	**Reporting by accountants, auditors, tax advisors, notaries and other independent legal professionals via a self-regulatory body to the FIU**
Art. 23 (1) of the Directive	This article provides an option for accountants, auditors and tax advisors, and for notaries and other independent legal professionals to report through a self-regulatory body, which shall forward STRs to the FIU promptly and unfiltered.
FATF Recommendations	The FATF Recommendations do not provide for such an option.
Key elements	Does the country make use of the option as provided for by Art. 23 (1) of the Directive?
Description and Analysis	Serbia did not opt for a reporting regime through a self-regulatory body for this particular category of reporting entities.
Conclusion	No remarks.
Recommendations and Comments	

15.	**Reporting obligations**
Arts. 22 and 24 of the Directive	The Directive requires reporting where an institution knows, suspects, or has reasonable grounds to suspect money laundering or terrorist financing (Art. 22). Obliged persons should refrain from carrying out a transaction knowing or suspecting it to be related to money laundering or terrorist financing and to report it to the FIU, which can stop the transaction. If to refrain is impossible or could frustrate an investigation, obliged persons are required to report to the FIU immediately afterwards (Art. 24).
FATF R. 13	Imposes a reporting obligation where there is suspicion that funds are the proceeds of a criminal activity or related to terrorist financing.
Key elements	What triggers a reporting obligation? Does the legal framework address *ex ante* reporting (Art. 24 of the Directive)?
Description and Analysis	Pursuant to the AML/CFT Law, the reporting obligation is triggered "whenever there are reasons for suspicion of money laundering or terrorism financing with respect to a transaction or customer" (Articles

	37.2, 48.1) and "shall also apply to a planned (attempted) transaction, irrespective of whether or not it has been carried out" (Articles 37.3, 48.2). In all cases, reporting should take place "before the transaction, and shall indicate, in the report, the time when the transaction is to be carried out. In a case of urgency, such report may be delivered also by telephone, in which case it shall consequently be sent to the APML in writing, but no later than the next business day". In cases when the reporting requirement is not met because the obligor or the lawyer is unable to act "either due to the nature of a transaction, or because a transaction has not been carried out, or for any other justified reasons, it shall send the data to the APML as soon as possible but no later than immediately after he has learned of the reasons for suspicion of money laundering or terrorism financing" (Articles 37 paragraph 5, 48 paragraph 3). Article 56 paragraph 1 provides that the APML may issue a written order to the obligor for a temporary suspension of a transaction for a maximum of 72 hours if it assesses that there are reasonable grounds for suspicion of ML/TF with respect to a transaction or person carrying out the transaction. Pursuant to paragraph 8 of Article 56, obligors <u>may</u>, at their own initiative, temporarily suspend a transaction for a maximum of 72 hours if they have reasonable grounds to suspect ML/TF in a transaction or person which carries out the transaction or for which the transaction is being carried out, and if that is required for a timely execution of obligations laid down in the law. However, the Article does not provide for either the obligation of lawyers to suspend execution of transactions, when they are ordered by the APML to do so, or for the lawyers right to suspend execution of a transactions, when they wish to do so.
Conclusion	The AML/CFT Law meets the requirement of Article 24 of the Directive to refrain from carrying out transactions, which they know or suspect to be related to ML/TF until they have promptly informed the FIU.
Recommendations and Comments	

16.	**Tipping off (1)**
Art. 27 of the Directive	Art. 27 provides for an obligation for Member States to protect employees of reporting institutions from being exposed to threats or hostile actions.
FATF R. 14	No corresponding requirement (directors, officers and employees shall be protected by legal provisions from criminal and civil liability for "tipping off", which is reflected in Art. 26 of the Directive)
Key elements	Is Art. 27 of the Directive implemented in your jurisdiction?
Description and Analysis	Serbian legislation does not provide for any specific measures to be taken in order to protect employees of the institutions or persons covered by the Directive and reporting STR-s either internally or to the FIU from being exposed to threats or hostile actions. There are certain general provisions in the Criminal Code which would apply, however this requires that the threats or hostile actions meet the requirements of the specific criminal

	offence, which would as such be regarded as insufficient to meet the obligation under Article 27.
Conclusion	The obligation foreseen under Article 27 of the Directive do not appear to be implemented in Serbia.
Recommendations and Comments	Serbia should introduce appropriate requirements in legislation or other enforceable means in order to protect employees of the reporting entities Directive who report suspicions of money laundering or terrorist financing either internally or to the FIU from being exposed to threats or hostile action.

17.	**Tipping off (2)**
Art. 28 of the Directive	The prohibition on tipping off is extended to where a money laundering or terrorist financing investigation is being or may be carried out. The Directive lays down instances where the prohibition is lifted.
FATF R. 14	The obligation under R. 14 covers the fact that an STR or related information is reported or provided to the FIU.
Key elements	Under what circumstances are the tipping off obligations applied? Are there exceptions?
Description and Analysis	Article 73.1 of the AML/CFT Law defines that the obligor, lawyer, and their employees, including the members of the governing, supervisory or other managing bodies, or any other person having access to customer and transaction data shall not disclose to the customer or any other person the following: 1) That the APML was sent data, information and documentation on a customer or transaction with respect to which there is suspicion of money laundering or terrorism financing; 2) That the APML has issued, based on Articles 56 and 63 of this Law, an order for a temporary suspension of transaction; 3) That the APML has issued, based on Article 57 of this Law, an order to monitor financial operations of the customer; 4) That proceedings against a customer or a third party have been initiated or may be initiated in relation to money laundering or terrorism financing. Paragraph 2 of the same article defines that the prohibition stated above is lifted in cases where: a. the data, information and documentation obtained and maintained by the obligor are required to establish facts in criminal proceedings, and if such data is required by the competent court; b. if the data is requested by the supervisory body in the context of supervision of the implementation of the provisions of the law; c. if the lawyer, auditing company, licensed auditor, legal or natural person offering accounting services or tax services attempt to dissuade the customer from illegal activities. The coverage is extended in cases where proceedings have been or may be initiated, however the Directive requires more as it refers only to ML or TF investigations.
Conclusion	The requirements of art 28. 1 of the Directive is not fully complied with, as the tipping off prohibition does not extend to the fact that ML or TF investigations are being carried out or may be carried out.
Recommendations and Comments	The Law should extend the tipping off prohibition to bring it fully in line with Article 28.1 of the Directive and include cases where a money laundering or terrorist financing investigation is being or may be carried out.

18.	Branches and subsidiaries (1)
Art. 34 (2) of the Directive	The Directive requires credit and financial institutions to communicate the relevant internal policies and procedures where applicable on CDD, reporting, record keeping, internal control, risk assessment, risk management, compliance management and communication to branches and majority owned subsidiaries in third (non EU) countries.
FATF R. 15 and 22	The obligations under the FATF 40 require a broader and higher standard but do not provide for the obligations contemplated by Art. 34 (2) of the EU Directive.
Key elements	Is there an obligation as provided for by Art. 34 (2) of the Directive?
Description and Analysis	The previous AML Law did not include provisions for financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT Controls consistent with Serbian controls. Section 18, Item 2 of the Decision on KYC Procedure for Banks, however, required banks to ensure that the persons to which the bank is a parent company should apply the Procedure as strictly as the bank, unless the regulations of such persons' home countries does not allow it, and check whether such persons apply the Procedure. Article 38 of the AML/CFT Law requires obligors to ensure that actions and measures for the prevention of ML and TF be applied to the same extent in its branches and majority-owned subsidiaries in foreign country, unless this is explicitly contrary to the regulations of such country. The obligor is also required to send its branches or majority-owned subsidiaries in a foreign country updated information on the procedures concerning the prevention and detection of ML and TF, and particularly concerning CDD, reporting to the APML, record keeping, internal control, and other circumstances related to the prevention and detection of ML or TF.
Conclusion	The provisions of the AML/CFT Law meet the requirements set by Article 34 (2) of the Directive.
Recommendations and Comments	Because of the newness of the law, the assessment team was unable to assess the effectiveness of Article 38 on financial institutions. Serbian authorities should issue guidance to financial institutions requiring that branches and subsidiaries overseas should apply the highest level of control, whether Serbian law or the host government and detail procedures financial institutions should follow after reporting to the APML that a foreign jurisdiction does not permit implementation of AML/CFT controls, including measures to eliminate the risk of ML or TF.

19.	Branches and subsidiaries (2)
Art. 31(3) of the Directive	The Directive requires that where legislation of a third country does not permit the application of equivalent AML/CFT measures, credit and financial institutions should take additional measures to effectively handle the risk of money laundering and terrorist financing.
FATF R. 22 and 21	Requires financial institutions to inform their competent authorities in such circumstances.
Key elements	What, if any, additional measures are your financial institutions obliged to take in circumstances where the legislation of a third country does not permit the application of equivalent AML/CFT measures by foreign branches of your financial institutions?
Description and	Article 38 of the AML/CFT Law states that if the regulations of a foreign

Analysis	country do not permit the application of AML/CFT controls laid down in the AML/CFT Law, the obligor shall immediately inform the APML thereof, and adopt appropriate measures to eliminate the risk of ML or TF. There is no specific consideration in the law that requires financial institutions to pay particular attention to branches or subsidiaries in countries that have insufficient AML/CFT controls. Serbian authorities, however, indicated that they would not approve the establishment of branches or subsidiaries in such jurisdictions.
Conclusion	The AML/CFT is consistent with the requirements set out by Article 31 (3) of the Directive.
Recommendations and Comments	The AML/CFT Law does not specify which additional measures financial institutions should take to handle the risk of ML or TF.

20.	**Supervisory Bodies**
Art. 25 (1) of the Directive	The Directive imposes an obligation on supervisory bodies to inform the FIU where, in the course of their work, they encounter facts that could contribute evidence of money laundering or terrorist financing.
FATF R.	No corresponding obligation.
Key elements	Is Art. 25(1) of the Directive implemented in your jurisdiction?
Description and Analysis	Article 82 of the AML/CFT Law defines that supervision of the implementation of the Law shall be conducted by the following bodies, within their respective competences: 1) APML; 2) National Bank of Serbia; 3) Securities Commission; 4) Tax Administration; 5) Ministry of Trade and Services; 6) Foreign Currency Inspectorate; 7) Administration for Games of Chance; 8) Ministry of Finance; 9) Ministry of Telecommunications and Information Society; 10) Bar Association; and 11) Chamber of Certified Auditors. Article 86 establishes that all supervisory bodies under the Law shall inform the APML in writing where they establish or identify, while executing tasks within their competence, facts that are or may be linked to money laundering or terrorism financing. Article 70[192] further defines that the competent customs body shall send data to the APML regarding declared or non-declared cross-border transportation of physically transferable payment instruments, within three days from the date of such transfer, and where there are reasons for suspicion of money laundering or terrorism financing it shall also state the reasons thereof. And finally, pursuant to Article 71.1, the organizer of the market, pursuant to the law governing the securities market and the securities Central Register, securities depository and clearing shall inform the APML in writing where they establish or identify any facts, when performing tasks within their remit, that are or may be linked to money laundering or terrorism financing.
Conclusion	Serbia meets the requirements of Article 25 of the Directive.
Recommendations and Comments	

21.	**Systems to respond to competent authorities**
Art. 32 of the Directive	The Directive requires credit and financial institutions to have systems in place that enable them to respond fully and promptly to enquires from the FIU or other authorities as to whether they maintain, or whether during

[192] This Article enters into force in late September, 2009.

	the previous five years they have maintained, a business relationship with a specified natural or legal person.
FATF R.	There is no explicit corresponding requirement but such a requirement can be broadly inferred from Recommendations 23 and 26 to 32.
Key elements	Are credit and financial institutions required to have such systems in place and effectively applied?
Description and Analysis	According to Article 53 of the AML/CFT Law, the power of the APML to request data is limited to those persons (and their associates) that are suspected to be laundering money or financing terrorism. On the other hand, various sectoral laws entitle supervisors of financial institutions to compel production of records, documents or information relevant to monitoring compliance with applicable legislation. This includes all documents or information related to accounts or other business relationships, or transactions (for a detailed analysis of powers of supervisory bodies see the text under Criterion 29.4). Article 77 Paragraph 1 of the AML/CFT Law establishes that obligors, and financial institutions among them, should keep the data and documentation that are obtained under the law concerning a customer, established business relationships with a customer and executed transactions, for a period of 10 years from the date of the termination of the business relationship or executed transaction. Hence, the requirement the Directive that data on established business relationships are maintained for at least five years is met.
Conclusion	Serbian legislation meets the requirements of Article 32 of the Directive.
Recommendations and Comments	

22.	**Extension to other professions and undertakings**
Art. 4 of the Directive	The Directive imposes a *mandatory* obligation on Member States to extend its provisions to other professionals and categories of undertakings other than those referred to in A.2(1) of the Directive, which engage in activities which are particularly likely to be used for money laundering or terrorist financing purposes.
FATF R. 20	Requires countries only to consider such extensions.
Key elements	Has your country implemented the mandatory requirement in Art. 4 of the Directive to extend AML/CFT obligations to other professionals and categories of undertaking which are likely to be used for money laundering or terrorist financing purposes? Has a risk assessment been undertaken in this regard?
Description and Analysis	Under the previous AML Law, additional non financial businesses and professions were covered such as pawnshops, dealers in high value goods as well as entrepreneurs, legal entities and individuals doing business related to organisation of travel. This exclusion was not based on a specific risk analysis in Serbia.
Conclusion	Without conducting a thorough risk assessment to establish which other professionals and undertakings could likely be used for ML and TF, it is impossible to conclude that the requirement under article 4 of the Directive has been adequately implemented.
Recommendations and Comments	Serbia should conduct a risk assessment establishing which other professionals and undertakings could likely be used for money laundering or terrorist financing, and based on that, amend as relevant its AML/CFT Law.

23.	Specific provisions concerning equivalent third countries?
Art. 11, 16(1)(b), 28(4),(5) of the Directive	The Directive provides specific provisions concerning countries which impose requirements equivalent to those laid down in the Directive (e.g. simplified CDD).
FATF R.	There is no explicit corresponding provision in the FATF 40 plus 9 Recommendations.
Key elements	How, if at all, does your country address the issue of equivalent third countries?
Description and Analysis	The previous AML Law did not allow for any reduced or simplified CDD measures; financial institutions were required to apply CDD measures evenly for all customers, such requirements were introduced only as of March 2009. Under Article 32 of the AML/CFT Law, obligors may apply simplified customer due diligence measures when establishing a business relationship with a customer or when carrying out a transaction equal or above EUR 15.000, except where there are reasons for suspicion of ML or TF with respect to a customer or transaction, if a customer is: 1) the obligor referred to in Article 4, Paragraph 1, Items 1 to 8 of this Law (banks; licensed bureaux de change; companies for the management of investment funds; companies for the management of voluntary pension funds; financial leasing providers; insurance companies, insurance brokerage companies, insurance agency companies and insurance agents with a licence to perform life insurance business; persons dealing with postal communications; broker-dealer companies), except for insurance brokers and insurance agents; 2) a person from Article 4, Paragraph 1, Items 1 to 8 of this Law (see list above), except for insurance brokers and agents, from a foreign country listed as non complying with international standards against money laundering and terrorism financing at the European Union level or higher; 3) a State body, body of an autonomous province or body of a local self-government unit, a public agency, public service, public fund, public institute or chamber; 4) a company whose issued securities are included in an organized securities market located in the Republic of Serbia or in the state where the international standards applied regarding the submission of reports and delivery of data to the competent regulatory body are at the European Union level or higher. 5) a person representing a low risk of money laundering or terrorism financing as established in a regulation adopted on the basis of Article 7, Paragraph 3 of the law by the Minister of Finance (upon proposal of the APML). Article 32 of the AML/CFT Law also allows an auditing company or licensed auditor, when establishing a business relationship of regarding obligatory auditing of the annual financial statements of a legal person, to apply simplified customer due diligence, unless there are reasons for suspicion of money laundering or terrorism financing with respect to a customer or the auditing circumstances.

	Under Article 12, Paragraph 1, Item 1 of the AML/CFT Law, insurance providers are exempt from conducting CDD when concluding life insurance contracts where an individual premium instalment or the total of more than one premium instalments, that are to be paid in one calendar year, do not exceed the RSD equivalent of EUR 1,000 or if the single premium does not exceed the RSD equivalent of EUR 2,500. The insurance sector indicated that it did not conduct life insurance business with foreign countries. Article 12, Paragraph 1, Item 2 of the AML/CFT Law states that VPF management companies are exempt from conducting CDD when concluding contracts on the membership in voluntary pension funds or contracts on pension plans under the condition that assignment of the rights contained under the contracts to a third party, or the use of such rights as a collateral for credits or loans, are not permitted. The Law on Pension Funds prohibits the transfer of the balance in a member's individual account in favour of a third party (with the exception in the case of a death of a fund member) under Article 44, thus Serbian authorities claim that VPF-s are in a lower risk category. The AML/CFT Law or implementing acts do not define equivalent third countries.
Conclusion	The reduced CDD measures of the AML/CFT Law are not completely consistent with the requirements set out by Articles 11, 16(1)(b), 28(4),(5) of the Directive. Exemptions listed in Article 11 are not accounted for in the AML/CFT Law.
Recommendations and Comments	As the ability of financial institutions to conduct CDD on the basis of risk is relatively new, the assessment team was unable to determine how this would work in practice. The NBS issued guidance June 2009 and has plans to issue further guidance and trainings for financial institutions to be able to apply these new regulations.

APPENDIX I – Relevant EU texts

Excerpt from Directive 2005/60/EC of the European Parliament and of the Council, formally adopted 20 September 2005, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

Article 3 (6) of EU AML/CFT Directive 2005/60/EC (3rd Directive):

(6) "beneficial owner" means the natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted. The beneficial owner shall at least include:

(a) in the case of corporate entities:

(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards; a percentage of 25 % plus one share shall be deemed sufficient to meet this criterion;

(ii) the natural person(s) who otherwise exercises control over the management of a legal entity:

(b) in the case of legal entities, such as foundations, and legal arrangements, such as trusts, which administer and distribute funds:

(i) where the future beneficiaries have already been determined, the natural person(s) who is the beneficiary of 25 % or more of the property of a legal arrangement or entity;
(ii) where the individuals that benefit from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;
(iii) the natural person(s) who exercises control over 25 % or more of the property of a legal arrangement or entity;

Article 3 (8) of the EU AML/CFT Directive 2005/60EC (3rd Directive):
(8) "politically exposed persons" means natural persons who are or have been entrusted with prominent public functions and immediate family members, or persons known to be close associates, of such persons;

Excerpt from Commission directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis.

Article 2 of Commission Directive 2006/70/EC (Implementation Directive):

Article 2
Politically exposed persons

1. For the purposes of Article 3(8) of Directive 2005/60/EC, "natural persons who are or have been entrusted with prominent public functions" shall include the following:
(a) heads of State, heads of government, ministers and deputy or assistant ministers;
(b) members of parliaments;
(c) members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;
(d) members of courts of auditors or of the boards of central banks;
(e) ambassadors, chargés d'affaires and high-ranking officers in the armed forces;
(f) members of the administrative, management or supervisory bodies of State-owned enterprises.
None of the categories set out in points (a) to (f) of the first subparagraph shall be understood as covering middle ranking or more junior officials.
The categories set out in points (a) to (e) of the first subparagraph shall, where applicable, include positions at Community and international level.

2. For the purposes of Article 3(8) of Directive 2005/60/EC, "immediate family members" shall include the following:
(a) the spouse;
(b) any partner considered by national law as equivalent to the spouse;
(c) the children and their spouses or partners;
(d) the parents.

3. For the purposes of Article 3(8) of Directive 2005/60/EC, "persons known to be close associates" shall include the following:
(a) any natural person who is known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a person referred to in paragraph 1;

(b) any natural person who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit de facto of the person referred to in paragraph 1.

4. Without prejudice to the application, on a risk-sensitive basis, of enhanced customer due diligence measures, where a person has ceased to be entrusted with a prominent public function within the meaning of paragraph 1 of this Article for a period of at least one year, institutions and persons referred to in Article 2(1) of Directive 2005/60/EC shall not be obliged to consider such a person as politically exposed.

VI. LIST OF ANNEXES

See MONEYVAL (2009) 29 ANN 1 & ANN 2