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TECHNICAL PAPER

**Expert opinion, in the format of a Technical Paper, on the proposed amendments to the Law on the Prevention of Money Laundering and the Financing of Terrorism in the Republic of Serbia following the Expert Opinion and proposals for amendments provided in November 2012
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This Technical Paper has been drawn up in accordance with the conditions under Contract DGI/KT/IK/AA/IN/IY/TL//ds in terms of the 2274 / Project against Money Laundering and Terrorist Financing in Serbia (MOLI Serbia). It is complementary to the Technical Paper drawn up in November 2012 under Contract DGI/CE/AA/IN/IY/TL/tne/ds 2274 (MOLI Serbia) which forms an integral part of the analysis in this Paper.

Executive summary

In November 2012 the Serbia Authorities were provided with a Technical Paper analysing various financial legislation including the Law on the Prevention of Money Laundering and Terrorist Financing (AML/CFT Law) and providing recommendations and draft legal text to upgrade the legislation with the objective of further strengthening compliance with international standards. The Technical Paper was provided in accordance with the terms of the CoE Contract DGI/CE/AA/IN/IY/TL/tne/ds drawn up under the 2274 / Project against Money Laundering and Terrorist Financing in Serbia (MOLI Serbia). The Serbia Authorities have consequently reviewed the AML/CFT Law accordingly as per Working Document of 4 June 2013 and the Report on the Implementation of Recommendation 16 on wire transfers, annexed to this Paper. This Paper reviews the proposed amendments and provides an opinion on further amendments for better compliance with the international standards, mainly the 2012 FATF Standards. The review is based on the aforementioned documents and does not constitute a detailed assessment for evaluation purposes.

An assessment of the Working Documents of 4 June 2013 of the Serbia Authorities including the Report on the Implementation of Recommendation 16 on 'wire transfers' (Article 12 of the AML/CFT Law) shows that while the main proposed amendments to the Law are important and contribute to strengthen the AML/CFT legal regime in Serbia they fall short in addressing important elements indicated in the November 2012 Technical Paper in order to upgrade the Law to the provisions and requirements of the new international standards.

The main issues that have not been addressed or have been inappropriately addressed in the Working Document refer to:

- (i) Some definitions are not in line with standards in international documents;
- (ii) Obligations for the maintenance of meaningful statistics;
- (iii) Some obligations for money and value transfer service providers;
- (iv) CDD as regards the identification of beneficiaries of life insurance policies;
- (v) Provisions for reliance within the same group of institutions;
- (vi) Clarity on the distinction of domestic and foreign PEPs;
- (vii) National risk assessments and measurement of system effectiveness;
- (viii) Strengthened obligations for activities concerning higher risk countries;
- (ix) Lifting of confidentiality in complying with the AML/CFT Law;
- (x) Clarity of responsibilities and powers of supervisory authorities including the APML.

In conclusion therefore, it is opined that the proposed amendments, while important for upgrading the AML/CFT Law, fall short in upgrading and strengthening the AML/CFT Law to better comply with the main new provisions of the 2012 FATF Standards.

This Paper therefore, while acknowledging that the prerogative to decide what is to be included in the country's laws lies with the Serbia Authorities, and while taking note of the importance of the proposed amendments in the Working Document and the Report on the Implementation of FATF Recommendation 16, recommends a further review of the Working Document including the Report on Recommendation 16 taking account of the main proposals in the November 2012

Technical Paper as indicated in this review and other recommendations in this Paper, which are meant to address stronger compliance with the international standards.

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List of Acronyms used

AML/CFT	Anti-Money Laundering / Countering the Financing of Terrorism
APML	Agency for the Prevention of Money Laundering
CDD	Customer Due Diligence
CoE	Council of Europe
EU	European Union
FATF	Financial Action Task Force
MER	Mutual Evaluation Report
MONEYVAL	The Council of Europe ‘Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism’
MVT	Money or Value Transfer
PEP	Politically Exposed Person
UN	United Nations

Expert review and opinion of the proposed amendments to the Law on the Prevention of Money Laundering and the Financing of Terrorism in the Republic of Serbia following the proposals provided in the November 2012 Technical Paper.

1. Introduction

This expert review of the proposed amendments to the Law on the Prevention of Money Laundering and the Financing of Terrorism in the Republic of Serbia (hereinafter ‘AML/CFT Law’) is being provided in accordance with the provisions of the CoE Contract DGI/KT/IK/AA/IN/IY/TL//ds drawn up under the 2274 / Project against Money Laundering and Terrorist Financing in Serbia (MOLI Serbia) on 22 July 2013. The review of the proposed amendments follows the expert opinion and proposals for upgrading the AML/CFT Law and other financial legislation for better harmonisation with international standards on the prevention of money laundering and the financing of terrorism provided in November 2012 in accordance with the provisions of the CoE Contract DGI/CE/AA/IN/IY/TL/tne/ds also drawn up under the 2274 / Project against Money Laundering and Terrorist Financing in Serbia (MOLI Serbia).

The November 2012 Technical Paper, which forms an integral part of the analysis in this Paper, in providing an opinion on the compliance of the AML/CFT Law, among other legislation, with the international standards, provided draft legislative text to the Law meant to upgrade the Law to such international standards with particular reference to the 2012 FATF Standards

Consequently, this expert review is not an in-depth analysis of compliance with international standards already provided under the November 2012 Technical Paper but an assessment of the amendments proposed by the Serbia Authorities taking account of the adoption or otherwise of the November 2012 proposals and other amendments that the Serbia Authorities may have deemed appropriate in a review of the AML/CFT Law. This Technical Paper however provides an opinion on the degree of compliance with international standards but is not to be interpreted as forming part of any mutual evaluation.

This Technical Paper is drawn up as follows. It first lays down the basis of opinion and the approach adopted. Next it presents an assessment of the proposed amendments to the AML/CFT Law as provided by the Serbia Authorities in the Working Document. The Paper then re-assesses those main proposals made in the November 2012 Technical Paper and which the Serbia Authorities, in their discretion, have not taken on board. Unless necessary, no new drafting amending text is being provided. Next the Paper assesses and reviews the Report of the Serbia Authorities on the Implementation of FATF Recommendation 16 on wire transfers. Finally the Paper concludes with an overall assessment of the degree of compliance with the FATF Standards together with an opinion on the Working Document complemented with recommendations to the Authorities of the Republic of Serbia.

For ease of reference, but forming an integral part thereof, the Paper is complemented by three Annexes - the November 2012 proposals in Annex I, the Working Document and Explanatory Notes in Annex II and the report on FATF Recommendation 16 in Annex III.

2. Basis of Opinion and Approach adopted

The opinion is provided on the basis of the English version of the proposed amendments to the AML/CFT Law in accordance with the Working Document and Explanatory Notes of 4 June 2013 together with the Report on the Implementation of FATF Recommendation 16 on wire transfers through Article 12 of the AML/CFT Law as provided by the Serbia Authorities. In doing so this Paper takes account of the proposed amendments as per the Expert Opinion provided in November 2012 and reassess the importance of proposals made therein for better harmonisation with the international standards while making recommendations.

To this effect the Paper assesses to what extent the Working Document reflects the November 2012 proposals, and thus the new FATF Standards, and whether, together with other amendments included, better reflect harmonisation with international standards. In this regard the Paper indicates whether those November 2012 proposals not included in the Working Document have implications on the November 2012 proposed amendments to other laws, decisions and regulations issued by the relevant authorities in terms of the prevention of money laundering and financing of terrorism regime. As had already been indicated in the November 2012 proposals the draft amending text provided was primarily meant to indicate changes and is not necessarily expected to be adopted in the same format as drafted.

It should however be mentioned that documents provided for this review do not explain why certain proposals made in the November 2012 Technical Paper – and in particular those meant for better harmonisation with the new international standards - have not been adopted.

3. Review of the Working Document amending the Law on the Prevention of Money Laundering and the Financing of Terrorism.

The following is a review of the Serbia Authorities' Working Document of June 2013 on proposed changes to the AML/CFT Law. Comments hereunder are in sequence to the articles and paragraphs of the Working Document with cross references to the November 2012 proposals where appropriate. Moreover comments are only made as necessary and where this review agrees with proposed amendments, in particular where these are minor amendments, no comments are made. Where proposed amendments in the November 2012 Technical Paper are adopted but reflected differently in the Working Document comments are made to the extent of the degree of reflection and hence impact on harmonisation with international standards and implications on other decisions and regulations revised in the November 2012 Technical Paper. As had already been indicated in the November 2012 proposals the draft amending text provided was primarily meant to indicate changes and may not necessarily be adopted in the same format as drafted as long as the objective of the proposal is respected.

- (i) Paragraph (24) of Article 3 is being amended by referring to a 'public official' as opposed to 'foreign official' for the purposes of defining what constitutes 'politically exposed persons' in the FATF Standards. Various other amendments are included for other Articles of the AML/CFT Law such as Article 30. The FATF Standards (2012) make a distinction between foreign and domestic PEPs. The November 2012 Technical Paper tried to propose the reflection of this distinction by creating separate definitions (Article 3) for foreign and domestic PEPs and creating appropriate procedures to be followed (Articles 30 and the proposed Article 30A) in accordance with the FATF Standards. Although the proposals in the Working Document try to reflect most of the November 2012 proposals, it includes both definitions in one definition while falling short from applying the principle procedures to close family

members and close business associates as defined. Moreover the proposed paragraph (2b) to Article 3 while making reference to paragraph (4) of Article 30 - which paragraph does not exist - fails to apply all the enhanced measures under paragraph (2) to a domestic public official. In conclusion the amendments as proposed in the Working Document enhance the issue of PEPs but *it is advisable to reassess the proposed amendments* taking account of the previous (November 2012) proposals and the distinction created under the FATF Standards – refer also to item (vi) below and item (xvii) in the following Section. *It is also highly recommended to consult the recent (June 2013) FATF Guidance on Politically Exposed Persons (Recommendations 12 and 22).*

- (ii) The inclusion of ‘public notaries’ as obligors under Article 4 is a positive inclusion.
- (iii) The removal of paragraphs (3) and (4) under Article 4 relating to occasional business activity or limited business activity is acceptable as this is an option under international standards and therefore Serbia Authorities may decide not to adopt such option at their discretion.
- (iv) Proposed amendments to Article 7 on risk analysis reflect the November 2012 proposals to a large extent and are acceptable. However, the proposed amendments should be read and construed within the context of the complementary November 2012 proposed amendments to the ‘Decision on The Guidelines for Assessing the Risk of Money Laundering and Terrorism Financing’.
- (v) The proposed amendments to Article 28 on general provisions for the application of enhanced due diligence measures are welcomed. The proposed amendments enhance and clarify the application of enhanced due diligence in further compliance with international standards – refer also to item (xvi) in the following Section.
- (vi) Please refer to item (i) above re proposed amendments to Article 30 on public officials – please refer also to item (xvii) in the following Section.
- (vii) The introduction of the proposed Article 31a on countries that do not comply with international standards is welcomed as it enhances harmonisation with the new FATF Recommendation 19 on higher risk countries. It partly reflects the proposed Article 60A in the November 2012 Technical Paper. The proposed Article 31a however falls short on various obligations and lacks clarity for application as included in the proposed Article 60A (November 2012 Technical Paper) which is highly inspired through paragraph (20) of the Interpretative Note to FATF Recommendation 10 and Recommendation 19 of the new Standards – see also item (xxv) in the following Section. Moreover, as drafted Article 31a does not apply to lawyers. *It is recommended that the proposed Article 31a is better harmonised with the proposed Article 60A for better compliance with the relevant FATF Standards.*
- (viii) The proposed amendment to Article 39 reflecting the November 2012 proposal on the appointment of the Compliance Officer for sole employers is welcomed.
- (ix) The proposed amendment to Article 41 reflecting similar provisions in the November 2012 proposal is welcomed as it enhances the role of the Compliance Officer in terms of the Interpretative Note to Recommendation 18 under the new FATF Standards.
- (x) It is the prerogative of the Serbia Authorities to decide on powers of supervision and hence the reduced list of supervisory authorities under Article 82 and the introduction of a risk sensitivity approach to supervision is fine – but refer to item (xxvii) in the following Section

- (xi) The proposed replacement of paragraph (1) to Article 83 giving the APML overall supervisory powers for all obligors (but not for lawyers) either independently or in cooperation with other supervisory authorities could create problems as certain obligors, by law, would therefore have two separate supervisory authorities, for example the financial sector. This notwithstanding that Article 83 specifies those obligors that fall within the supervisory remit of the APML by law. *It is recommended to revise* but refer also to item (xxviii) in the following Section.
- (xii) The proposed two new Articles under Section XI Transitional and Final Provisions are procedural.

4. Re-assessment of the November 2012 Technical Paper proposals not adopted.

Although no information has been provided for those November 2012 proposals that have not been adopted, the following paragraphs try to re-highlight their importance for better harmonisation with international standards and hence again these are either being recommended for adoption or for reconsideration. In such cases the side comments provided in the November 2012 Technical Paper (Annex I to this Paper) remain valid. In some instance reasons for non adoption are assumed which may render their adoption not possible for Serbia. In such instances, unless such assumptions are not correct, it is advisable that the Serbia Authorities reconsider their position. Moreover, as already indicated in the previous Section, some of the proposals not adopted could have implications for proposed amendments to other laws, decisions or regulations within the context of the regime for the prevention of money laundering and the financing of terrorism. Notwithstanding this Paper recognises and acknowledges that it only provides advice and therefore it remains the prerogative of the Serbia Authorities to decide what should be included in their laws.

- (i) The proposed amendment to Article 2 upgrades the definition of money laundering within the provisions of the Vienna Convention and consequently within FATF Standards. It is presumed that non adoption of this proposal could be that it is against the Constitution or the legal system of Serbia. *Serbia Authorities to reconsider.*
- (ii) The proposed amendment to the definition of ‘property’ in Article 3 upgrades the definition to the FATF Standards, the Vienna Convention, the UN Convention against Transnational Organised Crime and other UN Conventions and the CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198 which Serbia has signed and ratified). *Recommended.*
- (iii) The proposed amendment to the definition of ‘beneficial owner of a customer’ in Article 3 is meant to partly reflect the definition of ‘beneficial owner’ under the FATF Glossary - unless the text as currently drafted is meant to be already reflecting this in which case this may be a linguistic issue – where the beneficial owner could be the natural person or persons on whose behalf a transaction is conducted. *Serbia Authorities to reconsider.*
- (iv) Item (2) of paragraph (2) of Article 4 provides for the inclusion of the ‘provision of accounting services’ as an ‘obligor’ for the purposes of the AML/CFT Law. Although this is in line with the EU Third AML Directive it falls short of meeting the FATF Standards under Recommendation 22(d) as the circumstances under which the accountancy profession is subject to preventive obligations under the Recommendation – which are similar to those for lawyers - do not necessarily fall within ‘the provision of accounting services’. The November 2012 proposed

amendment intends to create compliance with the FATF Standards while retaining that with the EU Third AML Directive. This has implications for other proposed amendments such as those proposed in Article 37 – refer to item (xviii) below. This issue has been long debated in MONEYVAL evaluations where similar recommendations have been made as countries could not prove that the listed activities fall within the accountancy profession although these may be undertaken by the accountancy profession. *Recommended.*

- (v) The proposed definition for Trust and Company Service Providers (TCSP) has not been adopted presumably because this activity does not exist – as indicated in the MONEYVAL Third Round MER. However the Serbia Authorities may wish to ensure that such activity is not provided by lawyers and accountants in which case the definition should be retained for the purposes of the proposed inclusion of item (3) to paragraph (1) of Article 46 which should be retained and the proposed amendment to the definition of ‘provision of accounting services’ as per above item (iv) – refer to item (xxi) below. *The Serbia Authorities may wish to reconsider.*
- (vi) There is no clear legal obligation in the AML/CFT Law for obligors to develop and maintain adequate documented internal procedures to prevent money laundering and terrorist financing. It is suggested the *Serbia Authorities reconsider* the inclusion of the proposed paragraph (1a) under Article 6 in this regard to strengthen compliance with Recommendation 18 under the new FATF Standards.
- (vii) The maintenance and availability of meaningful statistics has become a very important element under the FATF Standards. This is strongly reflected in the new Evaluation Methodology for Effectiveness for the FATF in its forthcoming fourth round of evaluations. The November 2012 proposals aimed to create a strong legal obligation for the maintenance of statistics through amendments to or insertion of new Articles - Article 6, Article 46, Article 52B, and Article 82. The objective of the proposals in the November 2012 Technical Paper (new Article 52B) is to ensure that the APML would be in a position to assess the effectiveness of the system and to demonstrate such effectiveness during mutual evaluations, which is now mandatory - see also item (xxiv) below. *Recommended.*
- (viii) The Serbia Authorities *may wish to reconsider* the proposed amendment to paragraph (6) of Article 12B in relation to risk based policies and procedures for payment service providers upon which to determine whether there is suspicion due to lack of data and information and what action to take in such circumstances. This is now a requirement under the FATF Standards for Recommendation 16 – but refer to the following Section on the ‘Report on the Implementation of Recommendation 16 (Wire Transfers)’.
- (ix) It is presumed that the proposed Article 12D on the obligations for MVT service providers who appoint agents has not been adopted due to prohibitions on the appointment of agents. If this is the case then the proposal should not be adopted. However, if MVT service providers, as is normally the case, can appoint agents to receive and/or effect funds transfers, then it is important that the proposed Article 12D be adopted in conformity with the requirements under Recommendation 14 of the FATF international standards. Moreover, since in item (8) of Article 3 of the AML/CFT Law the term ‘Money Remitters’ (a term not used in the Law) is defined as opposed to ‘Money or Value Transfer Services’ it may be appropriate to retain consistency in definition in both Articles. *Serbia Authorities may wish to reconsider.*
- (x) Article 13 to Article 18 and Articles 25 and 26 empower the obligor to obtain a written statement from the customer as to the veracity of data and credibility of documents obtained where the obligor has doubts on their veracity and credibility

during the identification and verification process. This goes diametrically opposite to the obligations of the obligor under Article 8(2) of the Law which requires the obligor not to undertake the business or to terminate and consider reporting. The November 2012 Technical Paper proposed alternative procedures that would not impact on the obligations under Article 8 paragraphs (2) and (3). *The Serbia Authorities may wish to reconsider.*

- (xi) Amendments proposed to Article 20 introduce the identification of the ‘mind and management’ of a legal person while highlighting the identification procedures for persons under foreign law where these are in the form of trusts in accordance with the Interpretative Note to FATF Recommendation 10. *Recommended.*
- (xii) The FATF has always considered the beneficiaries under an insurance policy as being the ‘beneficial owners’ for the purposes of the policy. This concept, previously referred to in a footnote in the FATF Methodology, has been strengthened and given higher importance in the new Interpretative Note to Recommendation 10 under the new FATF Standards. The proposed Article 20A is meant to comply with this obligation. *Recommended.*
- (xiii) Various amendments have been proposed to Article 23 on reliance on third parties for part performance of the customer due diligence and for introduced business which also reflect on Article 24. The Serbia Authorities *may wish to reconsider* these proposals due to legal ambiguities in the current text in the AML/CFT Law and for better harmonisation with international standards.
- (xiv) There is some legal ambiguity in the current text of Article 25 as the AML/CFT Law cannot be applied to persons outside Serbia. The proposed amendments therefore place the responsibilities of complying with the Law in obtaining information and documentation for third party reliance upon domestic obligors under Article 4. The proposed amendments also remove current legal ambiguity where there is doubt on the information and documents obtained for identification purposes in conformity with the AML/CFT Law itself – see also item (x) above. *The Serbia Authorities may wish to reconsider.*
- (xv) Recommendation 17 of the 2012 FATF Standards has introduced obligations where reliance is made on institutions within the same group as the obligor. This is of particular importance for those countries that host subsidiaries of international foreign banks. The November 2012 proposal to include a new Article 26A partly (see side comment in November 2012 amending proposals to the Law) reflects this thus enhancing compliance for Serbia with the new Standards and provide for domestic subsidiaries of foreign institutions operating in the country. *Serbia Authorities may wish to reconsider.*
- (xvi) Recommendation 15 of the new FATF Standards now requires monitoring not only of new technologies that could be used illicitly with anonymity (see previous Recommendation 8) but also on ‘the development of new products and new business practices, including new delivery mechanisms’. This brings the FATF Standards and the EU Third AML Directive more in harmony. The proposed amendments to Article 29A are to this effect. Moreover in the light of the proposed amendments to Article 28 as per Working Document, the proposed amendments to Article 29A call for a minor amendment to the proposed item (3a) of paragraph (1) of said Article 28 to refer also to ‘products’. *Recommended.*
- (xvii) Please refer to item (i) in the previous Section regarding proposed amendments to Article 30 and the introduction of Article 30A re public officials (PEPs) and enhanced procedures to be applied. It is opined that the proposed amendments in

the November 2012 Technical Paper provide more legal clarity and are more faithful to the FATF Standards. Notwithstanding, subject to some further amendments and refinements to the proposed amendments to Article 30 in the Serbia Authorities June Working Document the same goals could be achieved. *Recommended for review.*

- (xviii) The proposed amendments to Article 37 on reporting obligations are two fold. First they ensure that the reporting obligation applies to past transactions which may later be identified and considered as suspicious (paragraph (3)) – see also item (xxii) below. Second they bring the reporting obligation for the accountancy profession at equal level with that for the legal profession (new paragraphs (4a) and (4b)) and therefore in harmony with the FATF Standards. *Recommended.*
- (xix) The proposed amendments to Article 38 on the application of measures in foreign countries are threefold. First to remove legal ambiguity in that the AML/CFT Law cannot be directly applied outside Serbia (paragraph (1)). Second for better harmonisation with the new obligations under Recommendation 18 of the new FATF Standards by the requirement to apply, where appropriate, group wide policies (paragraph (1)). Third to establish actions that could be taken by the APMML where measures similar to those of Serbia for the prevention of money laundering and the financing of terrorism cannot be applied (new paragraph (2a)) in accordance with the Interpretative Note to Recommendation 18. *Recommended.*
- (xx) The proposed amendment to Article 44 introduces the element of proportionality for the internal auditing of the AML/CFT function. The concept of proportionality is recognised throughout the FATF Standards since the requirements of institutions of different sizes and risks vary in all countries. The Serbia Authorities *may wish to reconsider.*
- (xxi) Since the AML/CFT Law provides differently for obligors under Article 4 and lawyers specifically at times it creates an uneven playing field with some of the main obligations for obligors in general not being applied to lawyers. This may have been done purposely but then this is not in compliance with the international standards. The proposed amendments to Article 46 aim to remove some of this uneven playing field as regards the maintenance of internal controls and procedures and the appointment of the Compliance Officer – reflecting the amendments to Article 39 (see item (viii) in the previous Section. Moreover the proposed amendments provide for the obligations under the Law to apply to lawyers also where they act as company service providers – refer to item (v) above. *Serbia Authorities may wish to reconsider.*
- (xxii) The proposed amendments to Article 48 on reporting obligations for lawyers is consistent with that for Article 37 in ensuring that the reporting obligation applies to past transactions which may later be identified and considered as suspicious – see also item (xviii) above. *Recommended.*
- (xxiii) In proposing a new Article 52A on Assessing Risks at National Level the November 2012 Technical Paper comments that “The new Recommendation 1 has now made it mandatory for countries to undertake a national risk assessment and to allocate resources and systems to prevent or mitigate effectively identified AML/CFT risks. The proposed articles are indicative of what should be included in the AML/CFT Law but Serbia Authorities may wish to consider this obligation within the remit of the *Standing Co-ordination Group for Monitoring the Implementation of the National Strategy against Money Laundering and Terrorism Financing* if this Standing Group is still active.’ Although in the November 2012 Technical Paper it has been suggested that such responsibilities could be imposed on the Standing Co-ordination Group rather than the APMML as proposed, the legal obligation should still be provided for. Compliance with Recommendation 1, which also includes the obligation for obligors to assess

their own business related risks and vulnerabilities, has become of paramount importance in the evaluations procedures as far as effectiveness and the risk based approach are concerned. *Recommended*

- (xxiv) The proposed new Article 52B places the responsibility on the APML to measure the effectiveness of the system, and thus the obligation to gather statistics, reflecting the importance of measuring effectiveness under the new FATF Methodology for Evaluations – see also paragraph (vii) above. *Recommended*.
- (xxv) The proposed Article 60A on High Risk Countries is meant to bring the Serbia AML/CFT Law closer to the obligations under Recommendation 19 and its Interpretative Note from which the proposed Article is inspired. Although this is partly being addressed through the proposed Article 31a in the Working Document – see item (vii) in the previous Section – yet most of the obligations and requirements are not covered by the proposed Article 31a. Although some of the requirements could eventually be included in an administrative directive, retaining these in the law would avoid uneven playing fields in between the different sectors of obligors while retaining the AML/CFT Law comprehensive and consistent. *Recommended* for reconsideration and inclusion.
- (xxvi) The proposed amendment to Article 74 on the application of confidentiality aims to meet concerns expressed in previous mutual evaluations regarding Recommendation 9 (previously Recommendation 4) on the non-application of secrecy laws as a reason for not complying with international standards in sharing of information. *Recommended* as being a provision in a specific law it will override all confidentiality provisions in other laws to this effect and thus creating consistency for all obligors.
- (xxvii) The November 2012 proposed amendments to Article 82 are meant to provide for the supervisory powers of the supervisory authorities (with the exception of the APML whose powers are provided for in Article 83 as proposed), including the maintenance of statistics, in better harmonization with the relevant FATF Recommendations – refer to side comments in Annex I. This amendment ensures that supervisory authorities who have a supervisory remit for other purposes (for example prudential supervision in the financial sector) do not automatically apply such powers under other legislation for the purposes of the AML/CFT Law. The proposed amendments further provide for the application of a supervisory risk based approach and the collection and maintenance of meaningful statistics for the purposes of measuring the effectiveness of the system as is being proposed in Article 52B – refer to item (xxiv) above. *Recommended*.
- (xxviii) The November 2012 proposed amendments to Article 83 are complementary to the proposed amendments to Article 82 also recognizing the powers of the APML for on-site and off-site supervision and examinations. *Recommended*. On a second review, it is however suggested that paragraph (1) of Article 83 be retained in its original format:

Article (83)(1) The APML shall conduct supervision of the implementation of this Law by the obligors and lawyers by collecting, processing, and analysing data, information, and documentation sent to the APML under this Law.

A new paragraph (1a) could be inserted providing for the powers for the APML to participate in supervising all obligors, in cooperation with other supervisory authorities – refer to item (xi) in the previous Section – as follows:

Article (83)(1a) The APML shall cooperate and, at its discretion, participate jointly with other supervisory authorities referred to in Article 82, in carrying out their supervisory responsibilities in accordance with this Law.

All other proposed amendments to Article 83 as per November 2012 Technical Paper are still *recommended*.

5. Report on the Implementation of FATF Recommendation 16 – Wire Transfers

FATF Recommendation 16 (previously Special Recommendation VII) is currently to a large extent covered through Article 12A to 12C of the AML/CFT Law. The November 2012 Technical Paper proposed an amendment to paragraph (6) to Article 12B requiring that payment service providers develop risk sensitivity procedures for determining when to execute, reject or suspend a wire transfer lacking the required information and for follow up action – see item (viii) in the previous Section. The Report presented by the Serbia Authorities finds the current provisions of the AML/CFT Law with regards to payment services as being overly broad but at the same time not fully compliant with the revised FATF Standards and the provisions of Regulation 1781/2006 of the European Parliament and of the Council on information on the payer accompanying transfer of funds of 15 November 2006 and as currently being reviewed by the EU.¹

The Report makes extensive provisions to replace the current Articles 12A to 12C which, according to the Report, provide better clarifications and legal certainty on the obligations of the payment service providers of the payee and the beneficiary and in intermediary activities. The proposals are heavily inspired by EU Regulation 1781/2006 and proposed amendments for its review in accordance with the new FATF Standards. Indeed the proposed amendments to the AML/CFT Law transpose the Regulation faithfully with the exception of those provisions that are not mandatory on Serbia not being a member state of the EU. Consequently the proposed provisions are clearer and avoid any legal ambiguity. It should be held that although it is being proposed to totally replace the current Articles 12A to 12C, yet the provisions of these Articles, including the amendments proposed by the November 2012 Technical Paper are included in the provisions as proposed. It is therefore at the *discretion of the Serbia Authorities to decide* either to adopt these proposals in their entirety and thus ensure that there is sequence, consistency and legal clarity with the recent international standards or else to try to refine what is already in the AML/CFT Law.

Notwithstanding, this Technical Paper further proposes the following points for consideration:

- (i) Although the AML/CFT Law (Article 3) currently defines terms used in the proposed text, including the term 'payment and collection service provider' (item 30) with a link to include 'money transfer services' as defined in item (8), yet the list of obligors under Article 4 only captures 'Provision of money transfer services'. By definition this does not include 'payment and collection service providers' of which money transmission services forms part. *It is therefore recommended* that item (7) of Article 4 be amended to read 'Payment and collection service providers including money transfer services'.
- (ii) Some terms used in the proposed text are not consistent with definitions in the AML/CFT Law. For example, whereas the law defines 'originator of the wire

¹ OJ L 345, 08.12.2006, p. 1

transfer' and 'beneficiary of the wire transfer' the proposed text uses the terms 'payer' and 'payee' respectively. Also whereas the Law defines 'payment chain intermediary' the proposed text uses the term 'intermediary payment service provider'. *It is recommended that for legal clarity consistency be maintained throughout definitions and legal text.*

- (iii) On the other hand some terms used in the text may not be defined. One example is the reference to 'batch file transfers' in the proposed Article 12D which is optional. Should the Serbia Authorities opt to include this option, then the term 'batch file transfers' should be defined in terms of the EU Regulation and the FATF Standards as 'a number of individual wire transfers that are bundled together for being sent to the same financial institutions, but may/may not be ultimately intended for different persons'.
- (iv) Although as an obligor (see item (i) above) the payment service provider would be caught under the record keeping requirements under the AML/CFT Law, for the sake of legal clarity and consistent with the international standards, it is recommended that this obligation be specifically imposed on the payment service provider of the payer and the payee and the payment service provider acting in the intermediary chain by including specific paragraphs to this effect as follows:
 - Article 12B new paragraph (7): The payment service provider of the payer shall keep records of complete information on the payer which accompanies transfer of funds in accordance with this Law.
 - Article 12E new paragraph (6): The payment service provider of the payee shall keep records of information received on the payer which accompanies transfer of funds in accordance with this Law.
 - Article 12G new paragraph (7): The intermediary payment service provider shall keep records of all information which accompanies transfer of funds in accordance with this Law.

6. Overall Assessment

Although not specifically stated in the Working Document, the main objective of the proposed amendments to the AML/CFT Law is presumed that of strengthening the AML/CFT Law with better harmonization to the international standards, more specifically to the FATF Standards of 2012. Likewise was the objective of the proposals made through the November 2012 Technical Paper.

The above analysis of the Working Document shows that a number of amendments required in order to upgrade compliance with the international standards remain missing. This is clearly identified through the number of proposals of the November 2012 Technical Paper reflecting the new FATF Standards which have not been taken onboard – admittedly the real reason being not known – and acknowledging that it is and remains the prerogative of the Serbia Authorities to decide what is to be included in their laws. Notwithstanding, even if there are valid reasons for these omissions, then Serbia will eventually have difficulties in demonstrating compliance with the international standards and the effectiveness of its regime for the prevention of money laundering and the financing of terrorism through an eventual mutual evaluation.

Moreover some of the proposed amendments in the November 2012 Technical Paper that have not been taken onboard have implications for proposed amendments to other pieces of legislation, Decisions and Regulations issued by the respective authorities under the Law. Such

implications will further render the Serbia money laundering and financing of terrorism preventive measures less compliant with international standards. Of particular importance in this regard are in relation to the proposed amendments to:

- The Decision on conditions and manner of opening, maintaining and closing Bank Accounts.
- The Decision on minimal content of the "Know Your Client" Procedure.
- The Decision on the Guidelines for Assessing the Risk of Money Laundering and Terrorism Financing.

Some important amendments that remain missing in the Working Document as identified above and which would strongly contribute to strengthen compliance with international standards, in particular those new requirements and obligations introduced under the FATF 2012 Standards, could be summarized as referring to:

- (i) Some definitions are not in line with standards in international documents;
- (ii) Obligations for the maintenance of meaningful statistics;
- (iii) Some obligations for money and value transfer service providers;
- (iv) CDD as regards the identification of beneficiaries of life insurance policies;
- (v) Provisions for reliance within the same group of institutions;
- (vi) Clarity on the distinction of domestic and foreign PEPs;
- (vii) National risk assessments and measurement of system effectiveness;
- (viii) Strengthened obligations for activities concerning higher risk countries;
- (ix) Lifting of confidentiality in complying with the AML/CFT Law;
- (x) Clarity of responsibilities and powers of supervisory authorities including the APML.

7. Conclusion

The Guidance and Interpretative Notes together with the Evaluation Methodology published by the FATF in 2012 provide assistance for countries and jurisdictions to initiate programmes for upgrading their AML/CFT regimes in compliance with the new FATF Standards. Compliance with some new standards, such as those relating to proliferation, may not be easily attainable as much as compliance with other modified or new standards. It is therefore the latter that Serbia should seek to comply with in the short to medium term. This will put Serbia in the forefront of countries that took immediate steps to upgrade their legislation to the new international standards.

The main related issues are addressed in the November 2012 Technical Paper as analysed and discussed above.

In conclusion of the above it is opined that the proposed amendments in the Working Document, although in themselves being important for the enhancement of the AML/CFT regime in Serbia, fall short in meeting various of the main principles of the new FATF Standards. It may be argued that some of the new requirements under the revised international standards and as proposed in the November 2012 Technical Paper may still be achieved through administrative directives issued by the relevant competent authority to those sectors within its remit. Although this could be the case, experience in mutual evaluations has shown that such an

option creates uneven playing fields through the different sectors of obligors unless all directives are consistent – a process that becomes more costly in terms of time, human and financial resources.

Consequently it is recommended that the Working Document and the Report on the Implementation of Recommendation 16 (wire transfers) be further reviewed as detailed in this Paper for upgrading the AML/CFT Law in further strengthening compliance with the new international standards. This would then have to be followed with a structured implementation programme to ensure effectiveness.

Annexes

- Annex I** **November 2012 Technical Paper proposals for amending the AML/CFT Law.**
- Annex II** **Working Document of Serbia Authorities proposals for amending the AML/CFT Law.**
- Annex II** **Summary of major amendments to the AML/CFT Law.**
- Annex III** **Report on implementation of FATF Recommendation 16 on wire transfers**