

Anti-money laundering and counter-terrorist financing measures

Serbia

Fifth Round Mutual Evaluation Report

April 2016



The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism - MONEYVAL is a permanent monitoring body of the Council of Europe entrusted with the task of assessing compliance with the principal international standards to counter money laundering and the financing of terrorism and the effectiveness of their implementation, as well as with the task of making recommendations to national authorities in respect of necessary improvements to their systems. Through a dynamic process of mutual evaluations, peer review and regular follow-up of its reports, MONEYVAL aims to improve the capacities of national authorities to fight money laundering and the financing of terrorism more effectively.

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LIST OF ACRONYMS USED

AML	Anti-money laundering
APML	Administration for the Prevention of Money Laundering
ATM	Automated teller machine
BNI	Bearer negotiable instrument
BO	Beneficial ownership
C	Compliant
CARIN	Camden Assets Recovery Inter-Agency Network
CC	Criminal Code
CDD	Customer due diligence
CEN	Customs Enforcement Network
CFT	Countering the financing of terrorism
CHF	Swiss franc
CPC	Criminal Procedure Code
CSP	Company Service Provider
CTR	Cash transaction report
DIOPC	Department for International Operational Police Cooperation
DNFBP	Designated non-financial businesses and professions
DPNK	Democratic People's Republic of Korea
EC	Economic crime
EDD	Enhanced due diligence
EU	European Union
EUR	Euro
EUROPOL	European Police Office
FATF	Financial Action Task Force
FI	Financial institution
FIU	Financial intelligence unit
FT	Financing of terrorism
GBP	British pound
GDP	Gross domestic product
GRECO	Council of Europe's Group of States Against Corruption
GRETA	Council of Europe's Group of Experts on Action Against Trafficking in Human Beings
ILECU	International Law Enforcement Cooperation Units
IMF	International Monetary Fund
INTERPOL	International Criminal Police Organization
IO	Immediate outcome
IOSCO	International Organization of Securities Commissions
ISIS	The so called "Islamic State"
IT	Information technology
JIT	Joint investigation team
KYC	Know Your Client
Law on Recovery	Law on the Recovery of the Proceeds from Crime
LC	Largely compliant
LEA	Law enforcement authority/agency
LFA	Law on the Freezing of Assets with the Aim of Preventing Terrorism
LLC	Limited Liability Company
LLLE Law	Law on the Liability of Legal Entities for Criminal Offences
LPS	Law on Payment Services
MEQ	Mutual evaluation questionnaire
MER	Mutual evaluation report
MFA	Ministry of Foreign Affairs
ML	Money laundering
MLA	Mutual legal assistance
MLA Law	Law on Mutual Legal Assistance in Criminal Matters

MOLI Serbia	Project against Money Laundering and Terrorist Financing in Serbia
MoI	Ministry of Interior
MoJ	Ministry of Justice
MoU	Memorandum of understanding
MTO	Money transfer operator
MVTS	Money and value transfer service
MVTSP	Money and value transfer service provider
NBS	National Bank of Serbia
NC	Non-compliant
NGO	Non-governmental organisation
NPO	Non-profit organisation
NRA	National risk assessment
OC	Organized criminality
OCG	Organized crime group
PC	Partially compliant
PEP	Politically exposed person
PF	Proliferation financing
PPO	Public prosecutor's office
R	Recommendation
RBA	Risk-based approach
RILO	Regional Intelligence Liaison Offices
RS	Republic of Serbia
RSD	Serbian dinar (currency)
SAR	Suspicious activity report
SBRA	Serbian Business Register's Agency
SCG	Standing Coordination Group for Monitoring the Implementation of the National Strategy against ML and FT
SEE	South East Europe
SELEC	Southeast European Law Enforcement Centre
SIENA	Secure Information Exchange Network Application
SIPRU	Social Inclusion and Poverty Reduction Unit
STR	Suspicious transaction report
SWIFT	Society for Worldwide Interbank Financial Telecommunication
TC	Technical compliance
TCSP	Trust and company service provider
TFS	Targeted financial sanctions
TMIS	Transaction Management Information System
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
UNSCR	United Nations Security Council Resolution
USD	United States dollar
WMD	Weapons of mass destruction

EXECUTIVE SUMMARY

1. This report provides a summary of the anti-money laundering/counter-terrorism financing (AML/CFT) measures in place in Serbia as at the date of the on-site visit (28 September to 9 October 2015). It analyses the level of compliance with the Financial Action Task Force (FATF) 40 Recommendations and the level of effectiveness of Serbia's AML/CFT system and provides recommendations on how the system could be strengthened.

Key Findings

- Serbia has made efforts to improve its AML/CFT legal and institutional framework since the previous evaluation. Deficiencies remain with respect to some important FATF Recommendations, particularly those dealing with financing of terrorism (FT) and proliferation financing (PF) targeted financial sanctions (TFS), non-profit organisations (NPOs), financial sanctions, supervision of certain designated non-financial businesses and professions (DNFBPs), politically exposed persons (PEPs), wire transfers and high-risk jurisdictions.
- Serbia faces a range of significant money laundering (ML) threats and vulnerabilities. Organised criminal groups involved in the smuggling and trafficking of narcotic drugs and trafficking of human beings pose a major ML threat in Serbia. Tax evasion and corruption offences are considered to generate substantial criminal proceeds. The purchase of real estate, valuable moveable property and investment in securities is a preferred laundering method. The misuse of domestic and foreign (offshore) legal persons together with multiple use of wire transfers are common money laundering typologies. The country's exposure to cross-border illicit flows is significant.
- There are various factors pointing to an elevated degree of FT risk in Serbia, particularly in relation to the non-profit sector and informal money remittances. Terrorism risks originate from separatist and/or extremist groups situated in the region and in certain parts of the southern regions of Serbia. Countries and territories in the region have recently experienced an increase in Islamic radicalisation and nationals joining the so-called Islamic State (ISIS) as foreign fighters in Syria and Iraq.
- Serbia understands some of its ML/FT risks. It was the first country in MONEYVAL to have conducted a full scope ML national risk assessment (NRA), for which it is to be commended. Following the completion of the ML NRA in 2013, and a separate FT NRA in 2014, the Serbian authorities' understanding of risks continued to evolve, taking into account new and developing threats and vulnerabilities. Nevertheless, further efforts should be made to ensure that all the risks, threats and vulnerabilities faced by the country are properly understood.
- The Administration for the Prevention of ML (APML) plays a central role in generating financial intelligence. The analysis products generated by the APML are of good quality and have the potential of supporting the operational needs of law enforcement agencies (LEAs). However, some information which is necessary for analytical purposes is either not easily retrievable or not made available to the APML in a timely manner. The dissemination procedure, which involves discussion between the APML and the Prosecutor's Office, may impact negatively on the APML's ability to develop and disseminate cases independently from the operational priorities of law enforcement authorities. LEAs use financial intelligence in the pre-investigative phase of ML investigations, parallel financial investigations, investigations of associated predicate offences and FT. Although financial intelligence was used to generate ML investigations, it appears that this is rare due to difficulties by law enforcement authorities in undertaking and conducting investigations for money laundering in the absence of specific indication of the predicate crime.

- The Serbian authorities have not been effective in investigating ML offences and prosecuting and convicting offenders. The results do not reflect the risks faced by the country. The majority of ML convictions were for self-laundering connected to a domestic predicate offence. Very few persons were convicted for third party laundering, despite the existence of organised criminality. There have been no foreign predicate convictions. The limited number of outgoing money laundering-related mutual legal assistance (MLA) requests suggests that the Serbian authorities are not active in this area despite the threat from foreign predicate crime. No stand-alone ML convictions have been achieved. There is still reluctance to pursue ML cases until a conviction for the predicate crime has been achieved.
- Confiscation of proceeds of crime is a high policy objective in a number of strategic documents and legislation. In practice though, and notwithstanding some significant results achieved, the totality of the results do not necessarily reflect the risks and the number of predicate offence convictions. The structure for the management of seized and confiscated assets is effective and commendable. Whilst there is a system of control for cross border movement of cash/bearer negotiable instruments (BNIs) in place, it does not appear to sufficiently address the ML and in particular FT risks associated with such movement.
- There have been no convictions for FT and only one prosecution. More attention should be directed towards potential FT activity linked to insufficient financial transparency and inadequate control of funds raised by NPOs, as well as to cash movements across the border through alternative remittance systems and money remitters. FT investigations do not appear to be carried out systematically in the context of terrorism investigations and there are difficulties in securing sufficient evidence to bring the investigations forward. However, the authorities broadly understand the risk posed by FT and have taken some measures to address this risk.
- Serbia has a legal framework in place to apply targeted financial sanctions regarding FT. However, the mechanism in place does not enable the implementation of the lists “without delay”. Despite the occurrence of terrorism-related activities in the region, no designations were made pursuant to United Nations Security Council Resolution (UNSCR) 1373.
- While the Serbian authorities appear to understand the FT risk pertaining to the NPO sector, no formal review has been undertaken with regard to its size, relevance, activities and its vulnerability to misuse. This is a concern due to the FT risks that the country faces.
- There is no law or mechanism regulating targeted financial sanctions related to proliferation of weapons of mass destruction (WMD).
- Customer due diligence (CDD) measures and record-keeping requirements are applied effectively by all financial institutions (FIs) and most DNFBPs. However, there are serious concerns with respect to real estate agents, notaries and lawyers. This is very relevant in Serbia’s context, given that the NRA identifies the real estate sector as particularly vulnerable to ML. The application of the reporting requirement has improved within the banking and money remittance sector, although further improvements are needed. Very few reports are submitted by other reporting entities.
- Overall, the licensing authorities of FIs implement measures to prevent criminals from controlling reporting entities effectively. However, as concerns DNFBPs, the efforts undertaken by the authorities vary significantly amongst sectors. Supervisory authorities are not yet focussing the frequency and intensity of their supervision of sectors and individual licensees based on ML/FT risk. The banking supervisory department of the National Bank of Serbia (NBS) has already taken significant steps in this respect, as has the APML. All supervisory authorities, except for the NBS, have a significant shortfall in staff resources which have a negative impact on the thoroughness

of supervision. It was not demonstrated that the sanctioning regime has been used effectively.

- Basic information on legal persons is publicly available and, therefore, transparent. However, there is no process for verifying the information that is provided to the SBRA or the Central Securities Depository or for checking whether it requires updating. Beneficial ownership information is available in a timely manner. Legal persons are required to have a bank account and in addition there are limitations on the use of cash for trading in goods and services which make it impractical for any trading entity not to have a bank account.
- Serbia has made credible efforts to provide constructive mutual legal assistance and extradition in a constructive manner. Further efforts are required to ensure that assistance is provided in a timely manner. Serbia has actively sought assistance in one large case, demonstrating that there is a capability by the authorities when the need arises. However, the authorities should seek this type of assistance more regularly. Informal cooperation is largely effective.

Risks and General Situation

2. Serbia faces a range of significant ML and FT threats and vulnerabilities. Organised crime is a major ML threat in Serbia. Smuggling, trafficking and, to a lesser extent, the production of narcotic drugs is the most extensive form of criminal activity which organised criminal groups operating in Serbia engage in. Organised criminal groups are also active in the trafficking of human beings and, more recently, in the facilitation of migrant smuggling. Tax evasion is a major proceeds-generating offence within Serbia. Corruption-related offences, including embezzlement, accepting and giving of bribes and abuse of office, which are often directly linked to organised criminality, constitute a significant ML threat.

3. Transfer of property with the intent to conceal or misrepresent the lawful origin of the property, or conceal or misrepresent the facts about the property, and use of the property with knowledge that it originates from crime are the most frequent money laundering methods. An analysis of the proceeds seized by law enforcement authorities indicates that proceeds of crime, especially those generated by drug trafficking, are generally laundered through the purchase of real estate, valuable moveable property and investment in securities. The misuse of domestic and foreign (offshore) legal persons together with multiple use of wire transfers are common money laundering typologies in relation to all forms of proceeds-generating crime. The country's exposure to cross-border illicit flows is significant. This is largely related to the existence of organised criminal groups, which generally have links with foreign associates. Suspicious transactions reported to the FIU by reporting entities and related to foreign exchange payment operations and cross-border money transfers also indicate the importance of international links.

4. Serbia's geopolitical situation is highly relevant when considering the risks of terrorism and financing of terrorism that the country faces. The aftermath of past conflicts in the Balkan region is believed to have given rise to terrorism risks originating from separatist and/or extremist groups situated in the region and in certain parts of the southern regions of Serbia. Countries and territories in the region have recently experienced an increase in Islamic radicalisation and nationals joining the so-called Islamic State (ISIS) as foreign fighters in Syria and Iraq. Some members of the ethnic separatist and/or religious extremist groups in Serbia are also believed to have joined ISIS. There are various factors pointing to an elevated degree of FT risk in Serbia, particularly emanating from the non-profit sector and informal money remittances.

5. Serbian authorities view the region in or close to Kosovo* as being vulnerable to use by organised criminals involved in the trafficking of drugs, human beings and arms as a means of

* All references to Kosovo, whether to the territory, institutions or populations, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo. This footnote shall apply to all other mentions of Kosovo.

avoiding detection and prosecution. The porosity of the boundary line facilitates an active black market for smuggled consumer goods and pirated products. In addition, the region of Kosovo* and the neighbouring southern parts of Serbia alongside the boundary line were mentioned as areas vulnerable to the activity of religious extremist and/or ethnic separatist groups involved in terrorist acts.

6. In terms of materiality, the banking sector is the largest within the financial sector in Serbia. Banks account for 92.4% of assets held by the financial sector. Cross-border formal and informal money transfers are also a material component in Serbia. Statistics by the National Bank of Serbia indicate that formal and informal money transfers into Serbia constitute 9 to 10% of Serbian GDP, making them one of the largest sources of foreign income. Despite efforts made by the authorities, the shadow economy still constitutes a problem in Serbia. It is estimated that the size of the shadow economy is approximately 33.6% of GDP. The shadow economy is exacerbated by the widespread use of cash. According to the Tax Administration, cash transactions in significant amounts are conducted in businesses dealing with foreign trade, purchase of secondary raw materials and agricultural products, as well as in the entities engaged in the construction industry.

Overall Level of Effectiveness and Technical Compliance

7. Since the last evaluation, Serbia has improved its technical compliance with the FATF Recommendations. The ML and FT offences and the confiscation regime are largely in place. While most of the preventive measures are in line with the Standards, there are still significant shortcomings in relation to CDD, PEPs, wire transfers and high-risk countries. Notaries are still not subject to AML/CFT obligations. The institutional framework concerning the APML, LEAs and the financial supervisors is largely in place, except for the supervisory framework of notaries and casinos. Measures to ensure that NPOs are not misused for FT purposes are not adequate. Legislation has been enacted for the freezing of terrorist assets. However, the overall mechanism in Serbia does not implement the full set of requirements of the UN sanctions regime. In particular, it does not ensure the timeliness of the transposition of the UN Lists. There are no measures in place for the implementation of PF sanctions in Serbia.

8. In terms of effectiveness, Serbia achieves moderate ratings in IO 1, 2, 3, 4, 5, 6, 8, and 9 and low ratings in IO 7, 10 and 11.

Assessment of Risks, Coordination and Policy Setting (Chapter 2 – IO 1; R.1, R.2, R.33)

9. Serbia understands some of its ML/FT risks. It was the first country in MONEYVAL to have conducted a full scope ML NRA, for which it is to be commended. Following the completion of the ML NRA in 2013, and a separate FT NRA in 2014, the Serbian authorities' understanding of risks continued to evolve, taking into account new and developing threats and vulnerabilities. This was largely based on an on-going review of operational and other data (such as the results of strategic analysis by the APML) by the authorities within the Standing Coordination Group (SCG). Nevertheless, further efforts should be made to ensure that all the risks, threats and vulnerabilities faced by the country are properly understood. This applies, in particular, to cross-border ML/FT risks, especially those posed by wire transfers and cross-border cash movements, the ML threats emanating from certain predicate offences, the impact of the shadow economy on ML/FT, the risk posed by legal persons and NPOs, in the context of FT, and the vulnerability of the DNFBP sector to ML/FT. The next iteration of both NRAs, work on which is expected to begin in the near future, should present the perfect opportunity for updating Serbia's understanding of its ML/FT risks.

10. The SCG is the main mechanism for coordinating Serbia's responses to ML/FT risks at a national policy level. The latest strategy and action plan adopted by the SCG in December 2014 address the findings of the ML and FT NRAs, and provide a strong basis for building a comprehensive and co-ordinated approach to address ML, terrorism and FT. Some important recommendations identified in the ML NRA had still not been addressed at the time of on-site visit. For instance, an

* See footnote on page 9, paragraph 5.

action point relating to the collection of AML/CFT-related statistics had still not been implemented. In addition, significant resource gaps, such as the staff and premises gap in the APML, mostly still exist.

11. Serbia has strongly endeavoured to enhance cooperation and coordination between all competent authorities. There is clearly a good working relationship between the APML and the NBS at operational level. A memorandum of understanding was signed between the APML and the Republic Public Prosecutor's Office (RPPO) in January 2014 in order to govern cooperation between the public prosecutors' offices, including the formation of a working group comprising senior prosecutors responsible for coordination of ML and FT cases and the APML. As tax crimes were identified as the main proceeds generating crimes in Serbia, the APML and the Tax Police have developed more coordination. The public prosecutors and investigative units of the police, as well as those from the security services, appeared to understand the importance of strong co-operation. However, there are also some shortcomings. For example, prosecutors do not routinely advise supervisory authorities (including the NBS) of progress and outcomes of the sanctions promoted by the supervisors through the courts. Despite the legal powers of the APML to obtain information from other state authorities within strictly specified deadlines, the effective implementation of these powers is limited in certain cases (law enforcement information, tax information and feedback). Deficiencies are noted in regard to the access of the APML to data which would be required to coordinate the assessment and development of the system at the policy level. At the time of the evaluation there was no mechanism for the coordination of financing of proliferation of weapons of mass destruction.

Financial Intelligence, Money Laundering and Confiscation (Chapter 3 – IOs 6-8; R.3, R.4, R.29-32)

12. The APML plays a central role in generating financial intelligence. The analysis products generated by the APML are of good quality and have the potential of supporting the operational needs of LEAs. However, there are a number of issues which impact on the effectiveness of the process. Information needed by the APML for its analysis is not always easily retrievable from other public authorities. Some databases to which the APML has access do not contain current and up-to-date information. Information requested by the APML from LEAs and tax authorities is not always provided in a timely manner. The Customs Administration has not been effective in identifying ML/FT suspicions at the borders and have not submitted any reports to the APML. The reporting regime by the private sector is not yet fully effective. Although LEA's have direct and indirect access to numerous databases, they tend to rely heavily on the APML channel to gather information on their behalf, mainly to circumvent the more cumbersome procedures set out in the Criminal Procedure Code (CPC). This has a negative impact on the resources of the APML. LEAs use financial intelligence in the pre-investigative phase of ML investigations, parallel financial investigations, investigations of associated predicate offences and FT. Although financial intelligence was used to generate ML investigations, it appears that this is rare due to difficulties by law enforcement authorities in undertaking and conducting investigations for money laundering in the absence of specific indication of the predicate crime. . This is mainly due to the reluctance of prosecutors to pursue cases which do not contain a direct link between the predicate offence and the ML and the prioritisation of predicate criminality by LEAs. This is not the case with respect to FT, where APML notifications have been used successfully by LEAs in investigations, resulting in indictments.

13. The cooperation arrangements in place between the APML and the Prosecutor's Office, which are intended to enhance the dissemination process, are positive. However, this procedure may impact negatively on the APML's ability to develop and disseminate cases independently from the operational priorities of law enforcement authorities. Additionally, the APML should consider increasing the number of cases disseminated to LEAs and assess, together with LEAs, arrangements to ensure that those cases are properly pursued including in ML investigations. Cooperation between the APML and the authorities responsible for investigating organised crime and terrorism financing is a positive aspect of the system. The prioritisation of work in this area is a welcome development and reflects the risks faced by the country. Existing similar arrangements with the tax authorities should be further enhanced.

14. There are several issues with the effective identification, investigation and prosecution of ML. These issues permeate the entire process and whilst Serbia has achieved some results, the overall results do not reflect a strong functioning system. The authorities do not regularly use financial investigations to identify ML cases. The results achieved by Serbia do not reflect the ML risks it faces. For instance, no ML convictions have been achieved in relation to proceeds generated by tax evasion and corruption and only one ML conviction was achieved in relation to organised crime, despite the fact that these are considered to pose the highest ML threat in Serbia. The majority of ML convictions were for self-laundering connected to a domestic predicate offence. Only four of the 35 persons convicted of ML were for third party laundering. There have been no foreign predicate convictions. The limited number (5) of outgoing money laundering-related MLA requests in five years suggested that the Serbian authorities are not active in this area despite the threat from foreign predicate crime. No stand-alone ML convictions have been achieved. As stated earlier, there is still reluctance to pursue ML cases until a conviction for the predicate crime has been achieved. The sanctions for ML which have been ordered by the courts are not considered effective, proportionate and dissuasive. The statistics indicate that the highest custodial sentences handed down by the courts have been for one year's imprisonment.

15. The provisions on confiscation and provisional measures are largely in place, although there remain some shortcomings with regard to the requirements of Recommendation 4 (in particular with regard to confiscation of instrumentalities and assets of equivalent value). Confiscation of proceeds of crime is a high policy objective in a number of strategic documents and legislation. In practice though, and notwithstanding some significant results achieved, the totality of the results do not necessarily reflect the risks and the number of predicate offence convictions. The recent adoption of a Financial Investigations Strategy seeks to address several identified shortcomings but its implementation is ongoing and therefore its effect so far cannot be properly measured. Seizure of assets pursuant to foreign MLA requests has been undertaken successfully in practice, no requests have been received by Serbia in relation to confiscation. The structure for the management of seized and confiscated assets is effective and commendable.

16. Whilst there is a system of control for cross border movement of cash/BNIs in place, it does not appear to sufficiently address the ML and in particular FT risks associated with such movement. In particular, cross-border controls focus exclusively on compliance with the declaration obligation, rather than detection of potential ML/FT. This conclusion is further underlined by the low awareness of ML/FT risks and typologies by the competent authorities. The evaluation team also had serious concerns regarding the control of the boundary line with Kosovo*.

Terrorist Financing and Financing of Proliferation (Chapter 4 – IOs 9-11; R.5-8)

17. The understanding of FT risks has evolved since the NRA and the evaluation team was satisfied that individual authorities have a good understanding of FT risks within their own roles. Moreover, the authorities established a Permanent Mixed Working Group to focus specifically on terrorism and FT risks. This demonstrates that the Serbian authorities are cognisant of FT risks and the need to keep them under review. The Permanent Mixed Working Group meets on a weekly basis and is an analytical forum. The group discusses FT suspicious transaction reports (STRs) and suspicious persons and NPOs, and it considers terrorism and FT risks in Serbia and in the region, terrorist activity from Islamic fundamentalists, and the potential risk from Serbia being used as a gateway for illegal migration. Despite these efforts, there have been no convictions for FT and one prosecution. More attention should be directed towards potential FT activity linked to insufficient financial transparency and inadequate control of funds raised by NPOs, as well as to cash movements across the border through alternative remittance systems and money remitters. FT investigations do not appear to be carried out systematically in the context of terrorism investigations and there are difficulties in securing sufficient evidence to bring the investigations forward. There is no concrete counter-terrorism strategy to deal with the identified FT risks. There are concerns over Serbia's lack of actively pursuing foreign financiers of FT.

* See footnote on page 9, paragraph 5.

18. Serbia has a legal framework in place to apply targeted financial sanctions regarding FT, however a number of deficiencies compromise the effectiveness of the system. Most importantly, the transposition of the designations made by the UN Sanctions Committees into Serbian legal system is done through a Governmental Decision on the basis of a proposal by the Ministry of Foreign Affairs. The same procedure is applicable in case of an amendment. This two-step process does not enable the implementation of the lists “without delay”. In addition, the Government Decision establishing the list of designated persons does not transpose into the Serbian legal order the designations stemming from UNSCR 1988(2011) in relation to the Taliban. Whilst there is a system for domestic designations in line with UNSCR 1373, this does not extend to proposing designations to the relevant UN Committees or to requesting a foreign jurisdiction to apply freezing measures. There are concerns about adequacy of the mechanisms to inform reporting entities about the lists and their changes. Despite the occurrence of terrorism-related activities in the region, no designations were made pursuant to UNSCR 1373. While the Serbian authorities appear to broadly understand the FT risk pertaining to the NPO sector, the proper assessment of this risk is hindered by the fact that no formal review has been undertaken with regard to the size, relevance and activities of the sector, its vulnerability to misuse or that of the adequacy of the domestic legal framework in this field.. Even though NPOs and religious organizations have already been used as vehicle for FT in the region, outreach activities to increase awareness and understanding of FT risk have not been consequential. Shortcomings have also been identified in the monitoring of activities of NPOs.

19. There is no law regulating targeted financial sanctions related to proliferation of WMD and the obligations stemming from UNSCR 1718 (concerning the Democratic People’s Republic of Korea (DPRK)) and UNSCR 1737 (concerning the Islamic Republic of Iran). Although these lists are de facto forwarded through the Government and the NBS to some of the reporting entities the latter are left without instructions or guidance as to their obligations in case of a match. In any case, in the absence of a regulatory framework, no authority would have the power to implement these UN sanctions and freeze the related assets.

Preventive Measures (Chapter 5 – IO 4; R.9-23)

20. Banks and money remitters in Serbia demonstrated a good understanding of ML and FT risks and apply AML/CFT mitigating measures accordingly. Whilst the understanding of ML risks was satisfactory amongst the majority of other FIs and some DNFBPs, FT risks were not considered or understood at all by the sectors other than banks and money remitters.

21. It appears that all financial institutions and, in most cases, DNFBPs apply basic CDD measures and record-keeping obligations effectively. The majority of banks in Serbia form part of international financial groups and therefore apply AML/CFT measures based on group policies. Financial institutions, as well as auditors and some accountants, demonstrated an understanding of beneficial ownership requirements and endeavour to comply with these requirements in practice, with varying levels of success. In addition, they also confirmed that they assess their clients based on risk, pursuant to which they apply different level of CDD measures. There were, however, doubts about the actual understanding and implementation of the risk based approach in practice outside the banking sector.

22. Notwithstanding the aforementioned, the evaluation team did not consider that the risks connected to the real estate sector are sufficiently mitigated by the DNFBP sectors involved in real estate transactions (real estate agents, lawyers and notaries). This is due to the fact that real estate agents do not recognise the high risk connected with their business, lawyers refuse to acknowledge their AML/CFT obligations and notaries public are not covered by the AML/CFT framework at all. This is particularly relevant, as real estate transactions were identified in the NRA as posing the highest risk outside the financial market.

23. The vast majority of SARs are made by the banking sector and money remittance service providers. The APML is of the view that the quality of the reports, in particular from banks, is improving. Reports are rarely submitted by other sectors. It was found that reports are sent only when a connection is made to a specific indicator from the list issued by the authorities and they would rarely contain any further support for the suspicion. It appeared that a high level of proof for a

suspicion would have to be met in order for a reporting entity to file an suspicious activity report (SAR).

24. The effectiveness of the system remains undermined by several legislative shortcomings, the most relevant being the fact that requirements connected to domestic PEPs are not included in the AML/CFT framework, obligations in connection to wire transfers are incomplete and the measures to mitigate risks connected with high-risk countries are limited. In particular the former requirements are highly relevant in the context of the risk identified in the country.

Supervision (Chapter 6 – IO 3; R.26-28, R.34-35)

25. With the exception of accountants, all FIs and DNFBPs are required to obtain a licence in order to undertake their business. As a whole, the licensing authorities of FIs are implementing the measures in legislation to prevent criminals from controlling reporting entities, however, as concerns DNFBPs, the efforts undertaken by the authorities vary significantly amongst sectors. Overall, the implementation in practice is negatively affected by shortcomings in the legislation.

26. The AML/CFT Law clearly designates the authorities responsible for AML/CFT supervision. The only exception is notaries, which are not subject to the AML/CFT Law, and casinos, in relation to which the discrepancy between the AML/CFT Law and sectoral legislation results in a lack of clarity on the actual supervisor. In practice, casinos, lawyers and notaries are not subject to AML/CFT supervision. Whilst the NBS maintains an understanding of the risks of the banking and insurance sectors as a whole and of individual institutions, the understanding of risks of the other supervisors varies.

27. The majority of financial sectors, accountants and auditors are subject to off-site supervision in the form of periodic questionnaires. On-site inspections are undertaken by the banking and insurance departments of the NBS, the Securities Commission, the Tax Administration in relation to currency exchange bureaux, the Ministry of Trade for real estate agents and the APML. Supervisory authorities are not yet focussing the frequency and intensity of their supervision of sectors and individual licensees based on ML/FT risk. The banking supervisory department of the NBS has taken significant steps in this respect, as has the APML.

28. Sanctions for AML/CFT breaches can be applied either directly by the supervisor based on sectoral legislation (applicable only to some sectors) or pursuant to the AML/CFT Law through court proceedings. In practice only the latter procedure is used and, as a result, remedial action for encountered violations does not lie with the discretion of the supervisor and the period before a sanction is imposed by the court is, on average, two years.

29. The NBS's banking supervisory department has recently dealt with its staff resource deficiency in a positive way by recruiting additional staff but the effectiveness of all of the new staff has yet to be proven. All other supervisory authorities have a significant shortfall in staff resources which have a negative impact on the thoroughness of supervision. With the exception of the supervisory department of the APML, the frequency of AML/CFT training by the supervisory authorities is not adequate. The APML has been particularly commended by industry representatives in relation to the training and awareness raising activities it provides to the private sector. A highly pro-active approach by the NBS in this respect has also been noted in respect of the banking sector.

Transparency of Legal Persons and Arrangements (Chapter 7 – IO 5; R.24-25)

30. Serbia's ML NRA contains some information on legal persons but this does not comprise an overall assessment of the vulnerabilities posed by legal persons (and arrangements), particularly in relation to specific sectors and forms of predicate offending, or the action that the authorities should take as a result. Although some key authorities have a more developed understanding of the risks of misuse of legal persons and the adequacy of current mitigating measures than is reflected in the NRA, overall the authorities do not have a fully documented comprehensive assessment to inform their responses to risk sufficiently. Work to address this is expected to take place in 2016.

31. Information about the creation and types of legal person and arrangement under the law of Serbia is publicly available. All legal persons are required to be registered. Bearer instruments are not issued in the jurisdiction. Basic information is publicly available and, therefore, transparent and, in addition, there is no process for verifying the information that is provided to the SBRA or the Central Securities Depository or for checking whether it requires updating. While there is a legal requirement for changes of basic information in respect of all legal persons to be reported to the SBRA within 15 days, and there is a strong incentive to provide up to date information because changes to legal persons do not have legal effect until they are made to the SBRA's register, failure to comply is not subject to any penalty. Consequently, it is not enforceable. In addition, there is no requirement to report changes to information held by the Central Securities Depository. Nevertheless, in practice, the adequacy, accuracy and currency of information at the registries appears to be satisfactory.

32. Beneficial ownership information is available in a timely manner. Legal persons are required to have a bank account and in addition there are limitations on the use of cash for trading in goods and services which make it impractical for any trading entity not to have a bank account.

33. Banks therefore occupy a key role in the ability of the authorities to obtain beneficial ownership information. For virtually all legal persons that have bank accounts the identity of beneficial owners is established and verified. Banks retain the information under the AML/CFT Law. This information is adequate, accurate and current and authorities have timely access to it. In general, the position in respect of legal arrangements is weaker than for legal persons as the obligations to do with beneficial ownership are less well understood. Although there is no statutory requirement for trustees to disclose their status to FIs and DNFBPs, such disclosure happens in practice. There are a few gaps in the CDD on legal persons carried out by some other FIs.

34. With regard to DNFBPs, notaries are not subject to CDD obligations and there are significant gaps in CDD by notaries and lawyers (which are involved to a large extent with the creation of legal persons and also involved to a large extent in real estate transactions).

35. Information held by the Serbian Business Register's Agency (SBRA), the Central Securities Depository and reporting entities is available to the authorities in a timely way.

36. Few sanctions appear to have been imposed for failure to comply with beneficial ownership requirements to date. As a generality, the available sanctions for breaches in relation to basic and beneficial ownership information are not effective, proportionate and dissuasive and there is a lack of clarity around responsibility for imposing sanctions on NPOs. In addition, concerns about the approach to sanctions taken by the authorities and the need for criminal rather than administrative procedures in relation to breaches of the AML/CFT Law are undermining the effective implementation of the sanctions that are applicable to reporting entities.

Cooperation with Other Jurisdictions (Chapter 8 – IO 2; R.36-40)

37. Serbia provides MLA pursuant to multilateral and bilateral international conventions and should there be no such convention in place, national legislation. The overall framework enables the authorities to provide and seek a wide possible range of MLA in relation to investigations, prosecutions and related proceedings for ML, FT and predicate offences. Whilst the authorities demonstrated that MLA has been provided effectively in practice, concerns remain over the timeliness of the execution of received requests. As concerns seeking MLA, the authorities presented a very large-scale case where cooperation successfully took place with a large number of foreign jurisdictions. It does not, however, appear that MLA would be sought regularly when the case so requires.

38. There is a sufficient legal basis for international cooperation of the FIU, law enforcement authorities and supervisors. The APML, the Police and the Customs Administration extensively exchange information with their foreign counterparts. Law enforcement authorities also reported a number of occasions when they participated on joint international operations. As concerns supervisory authorities, whilst the NBS is active in seeking and providing information

internationally, no information was provided in this respect with regard to the other supervisors and from the on-site visit it appeared that no cooperation takes place.

39. Some measures have been put in place to ensure cooperation with the authorities of Kosovo*. The evaluation team did not consider, however, that it was demonstrated that these would be fully proportionate to the corresponding risks.

Priority Actions

- The Serbian authorities should update the ML and FT NRAs so that they take account of their more developed thinking since the NRAs were completed, contain greater information and analysis (for example, in relation to predicate criminality, organised crime and cross-border risks) and demonstrably tie in the threats and vulnerabilities so as to build a coordinated, comprehensive and substantiated understanding of risk.
- Serbia is strongly encouraged to pursue the prosecution of ML where the ingredients of that offence are present and the evaluation team strongly encourages an increased focus on third party and standalone ML cases and the absence of a predicate offence conviction should not prevent or delay the timely prosecution of ML. In order to assist prosecutors and the judiciary, Serbia may consider implementing Article 9(6) of CETS 198 in domestic legislation.
- The Serbian authorities should establish a clear criminal policy on ML investigations and prosecutions. This should at the least include a centralised database for all ML cases and also a co-ordinated strategy which applies to all the relevant law enforcement bodies setting out the circumstances in which ML investigations need to be initiated. The policy should reflect the ML risks that Serbia faces and consideration should be given to the introduction of a mechanism for centralised co-ordination of AML investigations and prosecutions.
- FT investigations should be carried out on a systematic basis when terrorism is being investigated.
- Serbia should fully implement its Financial Investigations Strategy. Measures should be put in place to ensure that financial investigations are undertaken systematically in all proceedings involving illicit assets derived from organised crime and other sorts of serious offences within the scope of the Law on Recovery. Furthermore, the evaluation team strongly encourages an increase in the practice of carrying out financial investigations in parallel with the investigations of all major proceeds- generating offences and not simply conducted subsequent to the investigations of predicate offences.
- Measures should be taken to ensure that control of cross-border transportation of currency also takes into consideration identifying ML/FT suspicions and customs authorities should include in their focus the identified risks.
- A formal review of the NPO sector should urgently be undertaken with regard to its activities, size and vulnerabilities to FT and adequate awareness-raising programmes should be carried out in the sector.
- The governmental procedure through which targeted financial sanctions provided under the relevant UNSCRs and their updates are implemented should urgently and radically be simplified and accelerated.
- The Serbian authorities should set up a mechanism to identify potential targets of financial sanctions for all relevant UNSCRs. The procedure for domestic listing should be simplified and proposals should be accepted from a wider range of state authorities.

* See footnote on page 9, paragraph 5.

- Serbian authorities should urgently adopt new legislation which will regulate targeted financial sanctions related to proliferation and carry out an adequate outreach programme for its fast and effective implementation.
- Supervisors should follow the lead being taken by the banking department of the NBS and the work being done by the APML in seeking to maintain an understanding of the risks of individual licensed entities and take steps so as to ensure that the frequency and intensity of supervision is based on risk; the authorities should link supervision of AML/CFT compliance to the particular risks identified in the NRA; in relation to the Tax Administration, in order to facilitate this process, the Administration should be provided with statutory ability to obtain offsite supervisory information.
- The sanctioning regime for all supervisors should be reviewed and enhanced in order to ensure that proportionate and dissuasive sanctions are applied. Such sanctions should be applied effectively, including in a timely manner.
- In line with their current plan, the Serbian authorities should introduce a registration system for beneficial owners of legal persons with appropriate penalties for non-compliance and the provision of false information. In addition, Serbia should introduce a framework enabling the registrars of basic and beneficial ownership information to be able to verify whether information provided to them is adequate, accurate and current; this framework should be actively implemented by the registrars.
- The authorities should review the MLA framework in order to identify the areas which are negatively impacting on the timeliness and overall effectiveness of provision of MLA and take steps to remedy these. In particular, sufficiency of the resources of the Ministry of Justice (MoJ) should be assessed. Consideration should be given to expanding the areas where direct co-operation, for example between prosecutors, can be done.
- The authorities should harmonise the legislative framework with the FAFT Standards, in particular concerning the following issues:
 - remedy the shortcomings connected to CDD measures, domestic PEPs and identification of beneficiaries of wire transfers;
 - notaries should be introduced as reporting entities under the AML/CFT framework.

Effectiveness & Technical Compliance Ratings

Effectiveness Ratings

IO.1 Risk, policy and coordination	IO.2 International cooperation	IO.3 Supervision	IO.4 Preventive measures	IO.5 Legal persons and arrangements	IO.6 Financial intelligence
Moderate	Moderate	Moderate	Moderate	Moderate	Moderate
IO.7 ML investigation & prosecution	IO.8 Confiscation	IO.9 FT investigation & prosecution	IO.10 FT preventive measures & financial sanctions	IO.11 PF financial sanctions	
Low	Moderate	Moderate	Low	Low	

Technical Compliance Ratings

AML/CFT Policies and coordination

R.1	R.2
PC	LC

Money laundering and confiscation

R.3	R.4
LC	LC

Terrorist financing and financing of proliferation

R.5	R.6	R.7	R.8
LC	PC	NC	PC

Preventive measures

R.9	R.10	R.11	R.12	R.13	R.14
LC	PC	LC	PC	PC	LC

R.15	R.16	R.17	R.18	R.19	R.20
LC	PC	C	PC	PC	C
R.21	R.22	R.23			
C	PC	PC			

Transparency and beneficial ownership of legal persons and arrangements

R.24	R.25
LC	PC

Powers and responsibilities of competent authorities and other institutional measures

R.26	R.27	R.28	R.29	R.30	R.31
PC	LC	PC	LC	LC	LC
R.32	R.33	R.34	R.35		
LC	LC	LC	PC		

Cooperation with other jurisdictions

R.36	R.37	R.38	R.39	R.40
LC	LC	LC	LC	PC

MUTUAL EVALUATION REPORT

Preface

This report summarises the AML/CFT measures in place as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the AML/CFT system, and recommends how the system could be strengthened.

This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by Serbia, and information obtained by the evaluation team during its on-site visit to Serbia from 28 September to 9 October 2015.

The evaluation was conducted by an assessment team consisting of:

- Mr Lajos Korona, Public Prosecutor, Metropolitan Prosecutor's Office, Hungary (legal/law enforcement expert)
- Mr Steven Meiklejohn, Legal Adviser, Law Officers' Department, Jersey (legal expert)
- Mr Evgeni Evgeniev, Director, Financial Intelligence Directorate, Bulgaria (law enforcement expert)
- Mr Richard Walker, Director of Financial Crime Policy, Guernsey (financial expert)
- Mr Ante Biluš, Head of Service, Financial Intelligence Analytics, Anti-Money Laundering Office, Croatia (financial expert)
- Ms Francesca Montagna, Mr Michael Stellini and Ms Katerina Pscherova of the MONEYVAL Secretariat

The report was reviewed by the FATF Secretariat and the Financial Market Integrity staff of the World Bank.

Serbia previously underwent a MONEYVAL Mutual Evaluation in 2009, conducted according to the 2004 FATF Methodology. The 2009 evaluation and the follow-up (2010 and 2012) reports have been published and are available at:

http://www.coe.int/t/dghl/monitoring/moneyval/Countries/Serbia_en.asp .

That Mutual Evaluation concluded that the country was compliant with 1 Recommendation; largely compliant with 21; partially compliant with 21; and non-compliant with 5. One Recommendation was not applicable. Serbia was rated compliant or largely compliant with 8 of the 16 Core and Key Recommendations.

CHAPTER 1. ML/FT RISKS AND CONTEXT

1. The Republic of Serbia is located in the central part of the Balkan Peninsula. It is bordered by Hungary to the north and the “The former Yugoslav Republic of Macedonia” to the south. The neighbouring countries to the east are Romania and Bulgaria, to the west Croatia, Bosnia and Herzegovina and Montenegro. To the south-west is also a boundary line with Kosovo*.
2. According to the Statistical Office of Serbia, the estimated population in 2014 amounted to 7,131,787¹, with 1.2 million people living in the capital city, Belgrade, and 227,000 people living in Novi Sad, which is the second largest city in the country. Serbs make up the largest ethnic group, comprising of 83% of the population, followed by Hungarians at 3.5%. There are approximately 150,000 Roma people living in the country and 145,000 Bosniaks. Other minorities include Croats, Slovaks, Albanians, Romanians and Bulgarians.
3. Serbia is a parliamentary republic. According to the constitution of Serbia, the National Assembly is the supreme representative body and holder of constitutional and legislative power in the country. The Assembly is a unicameral legislature comprised of 250 elected deputies which are elected for a four-year term. The government is comprised of the Prime Minister as the head of government and a cabinet of ministers, who together are responsible for the executive affairs of the state. The head of state is the President, who holds a largely ceremonial position. Serbia’s legal system is based on civil law. Primary legislation is in the form of laws, while secondary legislation is mainly in the form of regulations.
4. Serbia is a member of the Council of Europe, the United Nations, the Organisation for Security and Co-operation in Europe, the International Monetary Fund, the World Bank, Interpol and other international organisations. The country was identified as a potential candidate for European Union membership in 2003. In 2008, a European partnership for Serbia was adopted, and the country formally applied for membership in 2009. The European Council decided on membership negotiations with Serbia in 2013, which formally started in 2014.

ML/FT Risks and Scoping of Higher-Risk Issues

Overview of ML/FT Risks

5. Serbia faces a range of significant ML and FT threats and vulnerabilities.
6. Organised crime is a major ML threat in Serbia. In a report issued by the United Nations Interregional Crime and Justice Research Institute², reference is made to the emergence of large-scale organised criminal groups at the beginning of the 1990s following the dissolution of Yugoslavia. This also coincided with the beginning of civil wars in Croatia and Bosnia and Herzegovina and sanctions imposed on the Federal Republic of Yugoslavia by the international community, which created an environment for organised criminal groups to trade illegally in arms. According to the report, as organised criminality flourished, the focus of criminal groups shifted to theft and smuggling of motor vehicles, followed by insurance fraud and counterfeiting of documents, trafficking of heroin and cocaine and production of cannabis and synthetic drugs, trafficking in women and children, child pornography and trafficking of human organs. Later, cybercrime also emerged, together with piracy and bank and securities fraud.
7. The evaluation team could not obtain any reliable estimates to determine the extent to which proceeds-generating crime in Serbia is committed by organised criminal groups. Indeed, Serbia is not in a position to estimate the volume of criminal proceeds generated within its territory. However, the indications are that it is significant. Despite intensive efforts by law enforcement authorities to curb the expansion of organised criminality, the systematic targeting of ML through

* See footnote on page 9, paragraph 5.

¹ http://webrzs.stat.gov.rs/WebSite/repository/documents/00/01/88/32/02_POPULATION.pdf

² The report can be downloaded from the following link:

http://www.unicri.it/topics/organized_crime_corruption/archive/corruption_serbia/

financial investigations, as a means of depriving organised criminal groups of their ill-gotten assets, does not appear to be conducted with a frequency commensurate to the number of convictions for higher risk proceeds-generating offences.

8. Various public sources of information³, which are supported by the findings of the NRA carried out by Serbia in 2012-2013, suggest that the smuggling, trafficking and, to a lesser extent, the production of narcotic drugs is the most extensive form of criminal activity which organised criminal groups operating in Serbia engage in. Organised criminal groups have taken advantage of Serbia's geographical location within the so-called Balkan route⁴ to smuggle heroin originating from the Middle East and South East Asia or, more recently, marijuana from cannabis plantations in Albania⁵ to Western Europe. In recent years, organised criminal groups have also become involved in the smuggling of cocaine from South America to Western European countries. Other organised criminal groups are primarily engaged in the production of synthetic drugs in illegal laboratories and smuggling of synthetic drugs and precursors from Western Europe to Serbia⁶.

9. Organised criminal groups in Serbia are also active in the trafficking of human beings and, more recently, in the facilitation of illegal migration (migrant smuggling). Serbia is a country of origin, transit and destination for trafficking in human beings for all forms of exploitation, particularly sexual and labour exploitation. According to statistical information presented in a 2013 report issued by the Council of Europe's Group of Experts on Action Against Trafficking in Human Beings (GRETA)⁷, the number of criminal proceedings initiated on grounds of trafficking in human beings was 56 in 2009, 68 in 2010 and 48 in 2011. The number of convictions was 26 in 2010 and 63 in 2011, with imprisonment sentences ranging from six months to 10 years. As regards 2012, GRETA was informed that 36 criminal charges were filed for trafficking in human beings in respect of 68 alleged perpetrators and involving 63 victims (including 28 children). All but one of the alleged perpetrators as well as 92% of the victims were Serbian nationals and the majority of the victims (42) had been subjected to trafficking for sexual exploitation.

10. According to Frontex⁸, the Western Balkan route showed the highest relative increase at the European Union level in the last few years in detections of migrants from the Middle East, South East Asia and North/East Africa. Figures have increase drastically in 2015 as a result of the mass exodus by refugees from Syria. After arriving in "The former Yugoslav Republic of Macedonia", migrants would typically make use of an open taxi system which profits significantly from smuggling people to the Serbian borders from where similar illegal service providers would assist them on their way to Hungary or to Croatia.

11. The evaluation team, similarly to the approach followed in all previous MONEYVAL evaluations of Serbia⁹, did not extend its evaluation to the territory of Kosovo* (which has, however, been done by in the context of the PECK project of the EU and the Council of Europe). Notwithstanding that, the evaluation team considers that certain concrete risks emanating from Kosovo* might have a significant impact on the ML/FT situation in Serbia and these risks need to be acknowledged in the report.

³ 'The Illicit Drug Trade Through South-Eastern Europe', UNODC, March 2014, 'National Report on Drug Situation in Serbia', European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), April 2014

⁴ 'South-Eastern Europe has long served as a corridor for several drug-trafficking routes to Western and Central Europe. Owing to its geographical position between Afghanistan, the world's most important opiate-producing country, and the large and lucrative markets for opiates in Western and Central Europe, South-Eastern Europe is a crucial stage on one of the world's most important heroin trafficking routes, the "Balkan route".': 'The Illicit Drug Trade Through South-Eastern Europe', UNODC, March 2014, p.7

⁵ 'The Illicit Drug Trade Through South-Eastern Europe', UNODC, March 2014, p.102

⁶ Ibid. pp. 92

⁷ http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2013_19_FGR_SRB_public_en.pdf

⁸ <http://frontex.europa.eu/trends-and-routes/western-balkan-route/>

⁹ Evaluated as Serbia-Montenegro in 2003.

* See footnote on page 9, paragraph 5.

12. According to a study¹⁰ published by the Council of Europe in 2013, Serbian authorities view the region in or close to Kosovo* as being vulnerable to use by organised criminals involved in the trafficking of drugs, human beings and arms as a means of avoiding detection and prosecution. The authorities the evaluation team met onsite echoed these risks while other sources referred to elsewhere in the report also mentioned the trafficking of drugs (most recently herbal cannabis) and the flow of illegal migration routinely passing through the boundary line between Kosovo* and Serbia towards the EU. A report published in the framework of the Council of Europe PECK project¹¹ found that the porosity of this boundary line facilitates an active black market for smuggled consumer goods and pirated products largely along the boundary line¹². In line with this, the 2015 European Commission report on assessing Serbia's preparation to meet EU membership requirements¹³ found that despite the implementation of the IBM (integrated boundary management) between the two jurisdictions, illegal crossing roads and by-passes, in particular in the north of Kosovo*, continue to be regularly used to smuggle substantial amounts of goods and urged Serbia to take measures to stop illegal crossings. In addition, the region of Kosovo* and the neighbouring southern parts of Serbia alongside the boundary line (eg. Raška district) were mentioned both in the FT related NRA and by the interlocutors the evaluation team met as areas affected by the activity of religious extremist and/or ethnic separatist groups involved in terrorist acts.

13. The occurrence of such extremist/separatist movements in the region in or close to Kosovo* that are widely known to be financed by use of cross- boundary transport of cash and BNI is a serious FT threat to Serbia. Similarly, the presence of organised criminal groups along the boundary line engaged in, and gaining substantial proceeds from various trafficking offences is an acute ML threat particularly as these proceeds, consisting typically of cash, are likely to appear within Serbia with a view on their legalisation. Phenomena like these would call for effective measures to mitigate the risks, such as the enhancement of information sharing and operative cooperation between the authorities of the respective jurisdictions as well as a firm and effective border control including the control of physical transport of BNIs. Whereas the evaluation team is aware that some mechanisms have already been put in place between Belgrade and Pristina both in terms of inter-jurisdictional cooperation and boundary line control (see under IO.2 and IO.8) the effective implementation of such measures and thus the intention and potential to mitigate the aforementioned risks was not at all demonstrated by the Serbian authorities – in fact, the evaluation team was not given, despite all efforts, any relevant piece of information on matters relating to Kosovo* during the onsite visit.

14. Tax evasion is a major proceeds-generating offence within Serbia. According to official figures, tax evasion constitutes 15.9% of the total number of reported criminal offences. The volume of funds involved in tax evasion is not known, although it is believed that the proceeds are substantial¹⁴. The NRA indicates that most common forms of tax evasion generally involve presenting false turnovers, forging of documents and bringing smuggled goods and illegally manufactured goods into legal circulation. There are also strong links between tax evasion and organised criminality. Financial intelligence unit (FIU) information indicates that the majority of suspicious transactions related to trade in goods and services have tax evasion as an underlying predicate offence. Tax evasion is directly linked to the shadow economy (estimated at 33.6% of Serbia's GDP) and the widespread use of cash in the country. The use of shell companies, domestic

¹⁰ <http://www.coe.int/t/DGHL/cooperation/economiccrime/corruption/Publications/MOLI-SE/Research%20Feasibility%20study/S%201%20eng.pdf>

* See footnote on page 9, paragraph 5.

¹¹ <http://www.coe.int/t/DGHL/cooperation/economiccrime/corruption/Projects/PECK-Kos/PUBLICATIONS/AML%20ENG%20WEB.pdf>

¹² Paragraph 109

¹³ http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_serbia.pdf

¹⁴ Forty per cent of persons charged with tax evasion were indicted for an aggravated form of the offence on the basis of the considerable underlying sums involved.

and foreign, features prominently in tax evasion typologies. These phenomena are discussed in greater detail under the 'Materiality' section below.

15. Although in recent years the authorities have intensified their efforts to eradicate corruption¹⁵, it still appears to be endemic. Corruption-related offences, including embezzlement, accepting and giving of bribes and abuse of office, which are often directly linked to organised criminality, constitute a significant ML threat. According to the NRA, the areas mostly affected by corruption are public enterprises, the health-care sector, the judiciary and the real estate sector. The privatisation process of state-owned companies, which started in the 2000s and is still on-going, has been characterised by many high profile corruption cases. According to Transparency International's Corruption Perception Index, in 2014 Serbia ranked 78th out of 175 countries with a score of 41 over 100. A very recent report issued in 2015 by GRECO¹⁶ states that: *'Serbia has come a long way in creating a regulatory and institutional framework for fighting corruption, but much remains to be done to have the system work properly and to close the noticeable gap between the law and practice. Perceptions of corruption have been decreasing over the years but remain quite high'*.

16. Transfer of property with the intent to conceal or misrepresent the lawful origin of the property, or conceal or misrepresent the facts about the property, and use of the property with knowledge that it originates from crime are identified in the NRA as the most frequent money laundering methods. An analysis of the proceeds seized by law enforcement authorities indicates that proceeds of crime, especially those generated by drug trafficking, are generally laundered through the purchase of real estate, valuable moveable property and investment in securities. The misuse of domestic and foreign (offshore) legal persons together with multiple use of wire transfers are common money laundering typologies in relation to all forms of proceeds-generating crime. For instance, in one case referred to in the NRA, members of an organised criminal group laundered proceeds derived from drug trafficking by purchasing shares in enterprises during the privatisation process by using fictitious documents and presenting fictitious activities of their companies. In another case, involving proceeds obtained from corruption, a person received funds in his company account for the provision of goods by presenting fictitious invoices. The funds were then transferred to a foreign supplier, which was a shell company established in an offshore jurisdiction and owned by the same person, and then further transferred to other foreign companies. With respect to tax evasion, laundering generally takes place by transferring proceeds through the accounts of several legal entities, suspected to be shell companies, based on trade in goods and services, so that it would eventually be withdrawn by one or more related individuals.

17. The NRA indicates that the country's exposure to cross-border illicit flows is significant. This is largely related to the existence of organised criminal groups, which generally have links with foreign associates. A report issued by Transcrime (a research centre on transnational crime)¹⁷ stated that Serbian organised criminal groups operate on both a national and transnational scale and cooperate with each other. They also cooperate with other criminal associations based abroad in countries such as Bulgaria, Bosnia and Herzegovina, Croatia, "The former Yugoslav Republic of Macedonia", Romania, Turkey, Austria, Germany and Italy. Traditionally, it is believed that Albanian criminal groups play an important role in drug trafficking throughout Serbia, particularly in smuggling heroin and cannabis to Western Europe. Regional organised criminal groups are said to have links with several Italian organisations and to cooperate with them for the purpose of trafficking drugs, arms and cigarettes. This has an impact on the nature of the threat faced by Serbia and the importance of active international cooperation and stringent controls at the border.

18. Suspicious transactions reported to the FIU by reporting entities and related to foreign exchange payment operations and cross-border money transfers also indicate the importance of international links. The total amount of funds transferred from Serbia in 2011 was EUR 57,587,085

¹⁵ According to media reports, on 26 December 2015 (outside the evaluation period) Serbia arrested 80 persons in an anti-corruption sweep, which included persons who had previously held top governmental positions.

¹⁶[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4Rep\(2014\)8_Serbia_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4Rep(2014)8_Serbia_EN.pdf)

¹⁷ <http://unpan1.un.org/intradoc/groups/public/documents/UNTC/UNPAN019080.pdf>

and the total amount of money transferred to the country was EUR 78,350,896. Concerning cross-border money transfers, the risks relate to the following areas: transactions related to transfers based on trade in goods and services; deposits by non-residents, foreign capital deposits that do not increase equity, deposits based on long-term loans, deposits based on investments in the capital market, etc. When it comes to non-residents, the analysis of transaction participants has also established that, in addition to transfers through offshore destinations, a significant number of transactions, in the case of non-resident accounts, are carried out with the United States, the Netherlands, Canada, Austria, Slovenia, Montenegro, Bosnia and Herzegovina and Hungary. According to a report of the NBS of 31 December 2011, there were 115,374 non-resident customers in total in the banking sector of Serbia. The share of non-residents from high-risk countries was 4.3%. Foreign individuals account for 14% of the total number of individuals that are founders of companies in the Republic of Serbia, while foreign legal entities account for 31% of the total number of legal entities that are founders of companies.

19. Serbia's geopolitical situation is highly relevant when considering the risks of terrorism and financing of terrorism that the country faces. The aftermath of past conflicts in the Balkan region is believed to have given rise to terrorism risks originating from separatist and/or extremist groups situated in the region and in certain parts of the southern regions of Serbia. Countries and territories in the region have recently experienced an increase in Islamic radicalisation and nationals joining the so-called Islamic State (ISIS) as foreign fighters in Syria and Iraq. Some members of the ethnic separatist and/or religious extremist groups in Serbia are also believed to have joined ISIS. The distinction between the terrorism risk emanating from ethnic separatist groups on the one hand and radicalised Islamic groups on the other appears to be blurred. However, the authorities have reported that in certain instances links between ethnic separatist groups and well-known foreign terrorist groups were established. It was also noted that some ethnic separatist groups in Serbia have adopted radical Islamist ideologies. Serbia has arrested, prosecuted and convicted a number of persons on terrorism charges.

20. There are various factors pointing to an elevated degree of FT risk in Serbia, particularly emanating from the non-profit sector and informal money remittances. Serbia's FT NRA highlights the existence of several NPOs in the Balkan region engaged in Islamic missionary work, which are suspected of radicalising and training activists for terrorism purposes. There is limited information on the funding of these NPOs. The FT NRA has identified the insufficient financial transparency and inadequate control of funds raised by NPOs, and the absence of supervision of this sector, as a potential high risk for abuse, particularly in relation to radical Islamic movements. Turning to informal remittances, risks were noted as arising from small but steady sums of money sent by members of the Serbian diaspora in Western Europe to terrorist groups, operating in Serbia which include but are not limited to groups with radicalised Islamic ideologies or sums sent to foreign fighters leaving Serbia to fight in conflict areas abroad. These sums are sent principally through cash across the borders via couriers or bus drivers, or by using money remitters such as Western Union.

Country's risk assessment

21. Serbia adopted the first NRA for ML in 2013 and FT in 2014. In preparing the ML and FT NRAs the Serbian authorities considered a range of sources from inside and outside the country. The ML NRA assesses threats by considering threat from the perspective of criminal offences and their ML risk. Vulnerability is considered from the perspective of the system as a whole at national level and on a sectoral basis. Like the ML NRA, the FT NRA assesses threats and vulnerabilities. Existing strategies for mitigating FT risk are assessed, together with the operational efficiency of the system for preventing FT. Both NRAs conclude with an action plan. There is substantial information about threats and vulnerabilities in both NRA but it is not clear how the threats tie in with the vulnerabilities and, therefore, to what extent the consequence and residual risk of the threats and vulnerabilities are understood. This issue is further explored in Chapter 2.

22. The authorities have not limited their endeavours to understand risk to the NRAs. Views on risk by the authorities have developed in a range of areas since the NRAs were completed. An

AML/CFT strategy and action plan were introduced after the completion of the ML NRA (adopted on 31 December 2014). These documents further facilitate understanding of risk.

Scoping of Higher Risk Issues

23. The assessment team identified those areas which required an increased focus through an analysis of information provided by the Serbian authorities, including the NRAs, and by consulting various open sources.

24. **Organised criminal groups** – Publicly-available information suggests that organised criminality constitutes a significant threat in Serbia in terms of ML. There are indications that organised criminal groups are mainly involved in trafficking of narcotics and human beings, but also other activities such as vehicle theft, trading in illegal arms and counterfeiting of money. During the on-site visit, the evaluation team met with specialised law enforcement units dealing with organised crime to determine whether measures are being taken to curb the activities of organised criminal groups by identifying, tracing, seizing and confiscating their criminal proceeds, rather than simply targeting the underlying predicate offences.

25. **Tax evasion, the shadow economy and the use of cash** – The ML NRA identifies tax evasion as one of the main proceeds-generating offences in the country. The size of the shadow economy and the fact that Serbia is still predominantly a cash-based economy, are directly linked to the evasion of taxes. The evaluation team examined whether any concrete policies have been undertaken in Serbia to minimise the use of cash in the country and tackle the shadow economy. During the on-site visit, the evaluation team sought to determine whether tax and other law enforcement authorities are pursuing ML in connection with tax offences. The inflow and outflow of cash through the borders, both in terms of ML and FT risks, were also carefully examined.

26. **Corruption** – The NRA identifies corruption, particularly embezzlement, accepting and giving of bribes and abuse of office, as a major ML threat in Serbia. Meetings were held by the evaluation team with anti-corruption bodies to discuss existing cooperation arrangements with other law enforcement authorities in order to pursue ML offences. The evaluation team considered the issue of corruption both as a predicate offence for ML and as a contextual factor potentially having an impact on the criminal justice process.

27. **Financing of Terrorism** – Potential FT risks emanate from the presence of radicalised Islamic/nationalist groups within the country and in neighbouring countries, whose members are believed to also have travelled to war-torn areas in Syria and Iraq, the existence of Islamic NPOs in the Balkan region, which are suspected of radicalising and training activists for terrorism purposes, the prevalence of informal money remittances sent by the diaspora in Western Europe to terrorist groups operating in Serbia and severe deficiencies in the legal framework governing targeted financial sanctions. Careful consideration was given to the measures undertaken by law enforcement authorities to identify the financial flows in terrorism investigations, measures to regulate NPOs and the application of targeted financial sanctions by the private sector.

28. **Misuse of legal persons** – Many of the typologies presented in the ML NRA involved the misuse of domestic and foreign shell companies for ML purposes. As a result, the evaluation team discussed at great length with the authorities and the private sector the measures in place to ensure the transparency of beneficial ownership of legal persons.

29. **Banking sector and money remittances** – Banks account for the largest proportion of underlying assets in the Serbian financial sector. The volume of cross-border money transfers within the financial sector is significant. As a result, the evaluation team focussed most of their private sector meetings with banks and money remittance providers.

30. **Real Estate Sector** – The NRA identifies the real estate sector as being one of the sectors most vulnerable to being abused for ML purposes. The sector involves various DNFBPs (i.e. real estate agents, notaries and lawyers). A significant amount of new construction is purchased in cash. The most valuable real estate activity appears to be through share transfer (i.e. through legal persons). The risk of real estate is increased by notaries not being subject to the AML/CFT Law and therefore an absence of supervision, the absence of meaningful supervision by the Bar Association of

lawyers and gaps in CDD by notaries and lawyers. Meetings were held with these categories of DNFBPs to determine whether preventive measures were implemented effectively.

Materiality

31. According to the World Bank, Serbia is an upper-middle income economy. Serbia's 2014 Gross Domestic Product (GDP) was EUR 40.25 billion. The economy is driven by the services sector (54.9% of GDP), industry (36.9% of GDP) and agriculture (8.2% of GDP). Foreign direct investment is an important component of the Serbian economy. In 2013 it represented 3.8% of the GDP and was linked to trade, construction real estate and financial services.

32. The banking sector is the largest within the financial sector in Serbia. Banks account for 92.4% of assets held by the financial sector. The banking sector, which is comprised of 30 banks, is dominated by subsidiaries of banks headquartered within the European Union. In total they hold approximately 75% of banking sector assets. According to information in the ML NRA, 0.51% of bank customers are classified as posing a higher risk, while 0.03% of customers are considered to pose an unacceptable level of risk. The majority of customers are classified as medium risk (60.74%) or low risk (38.73%). Banking services are traditional in nature, such as deposits, loans, money transfers, currency exchange and guarantees. There is no significant private banking sector.

33. Cross-border formal and informal money transfers are a material component in Serbia. Statistics by the NBS indicate that formal and informal money transfers into Serbia constitute 9 to 10% of Serbian GDP, making them one of the largest sources of foreign income. Formal remittances into Serbia can be carried out by banks, banks as agents or sub-agents for money transfer providers (such as Western Union), by the Serbian Post and through online funds transfer and payments systems (such as Moneybookers). Remittances from Serbia may be carried out by banks, the Serbian Post and online payment and e-commerce systems (such as PayPal). In 2011, the estimated cross-border transfers into Serbia amounted to EUR 614 million (66% bank SWIFT transfers and 34% MTO remittances). Informal remittance systems take the form of large aggregate volumes of cross-border movements of cash and gifts of medium- and high-value goods (mainly carried in person or by family members of friends or through the use of cash couriers, including bus and truck drivers) originating from the Serbian diaspora. The informal remittance corridors are from Germany, Austria and Switzerland, although other countries such as France, Italy, USA, Canada and Scandinavian countries also feature.

34. Despite efforts made by the authorities, the shadow economy still constitutes a problem in Serbia. It is estimated that the size of the shadow economy is approximately 33.6% of GDP. According to the NRA, the shadow economy is present in the construction industry, foreign trade, textile and footwear trade, trade in secondary raw materials, construction material production and trade, selling of goods in the black market, cash flow outside the formal payment system, services, undeclared funds in foreign currency brought in or out of the country, violation of working hours and incomplete recording of income from agricultural products. There are indications that some currency exchange offices appear to be involved in the shadow economy. The shadow economy is exacerbated by the widespread use of cash. According to the Tax Administration, cash transactions in significant amounts are conducted in businesses dealing with foreign trade, purchase of secondary raw materials and agricultural products, as well as in the entities engaged in the construction industry.

Structural Elements

35. There is a high-level commitment in Serbia to address AML/CFT issues. AML/CFT policy-making and coordination is conducted through the Standing Coordination Group for supervising the implementation of the National Strategy for Combating Money Laundering and Terrorism Financing. The Committee is composed of very senior officials representing all the authorities involved in the prevention of ML/FT.

36. The constitution of Serbia provides for a system of democratic governance and rule of law, including stable and accountable institutions. However, the presence of organised criminality and

corruption has a negative impact on democratic stability, the accountability of institutions, the rule of law and economic development in Serbia.

Background and other Contextual Factors

37. The GRECO report referred in the section on ML/FT risks highlights a number of areas, which in the evaluation team's view could have an impact on the overall effectiveness of the AML/CFT regime. In particular, the findings of the report indicate that the judiciary and the prosecution service and their self-governing bodies, the High Judicial Council and the State Prosecutorial Council are exposed to undue outside influence and pressure exerted by politicians and the media. More guidance is needed to raise the awareness of judges and prosecutors on questions of ethics and integrity and more attention should be devoted to the avoidance and management of conflicts of interest. The report concludes that while it is noteworthy the government has taken significant measures to pursue a policy of zero tolerance towards corruption, it is crucial that the necessary reforms be carried through in a timely manner, that they gain the support of a large spectrum of political forces and of civil society and that they bring about tangible and sustainable results.

38. Turning to financial inclusion, the evaluation team was informed that the government of Serbia established the Social Inclusion and Poverty Reduction Unit (SIPRU) in July 2009. The aim of the unit is to develop and implement social inclusion policies and support to the government to coordinate and monitor the measures to implement policies. The social inclusion policies are integrated in the regular activities of relevant public authorities at all levels. This includes financial inclusion policies. In this respect, in January 2015 an analysis of status, barriers benefits and opportunities concerning financial inclusion was conducted.

39. The NBS, within its competences, conducts a series of activities related to financial inclusion, such as public disclosure of information on interest rates charged on current account overdrafts, encouraging of financial education, etc. The setting up a special organisational unit – the centre for financial consumer protection and education – reflects the NBS's commitment to provide support to citizens in the exercise of their rights and interests, as well as assistance in understanding and using services of financial institutions. The centre for financial consumer protection and education also includes the NBS call centre where citizens may get information about advantages and risks to be taken into account when deciding which financial products and services to use.

Overview of AML/CFT strategy

40. Shortly before the previous assessment, in 2008, Serbia adopted its first Strategy against ML and FT. This Strategy was for the period from 2009 to 2014 and was therefore valid for the majority of the period under review. Building up on this strategic document, Serbia adopted in 2014 the Strategy against ML and FT for 2015 – 2019, which is the current strategic instrument in force. Concrete actions for the implementation of this Strategy are further developed in a dedicated Action Plan.

41. The current Strategy against ML and FT partially based its conclusions on the outcomes of the NRA, which was adopted in 2013, as well as on other considerations taken by the authorities (in particular related to negotiations on Serbia's entry in the EU). The objectives of the Strategy focus on the following themes: increasing the coordination and cooperation between relevant national authorities, strengthening of preventive measures and repressive actions for countering ML and FT, as well as increasing the integrity and capacity of the competent authorities.

42. The implementation of the Strategy is coordinated and monitored by the Standing Coordination Group for Monitoring the Implementation of the National Strategy against ML and FT (SCG). The SCG is composed of all the principal authorities involved in the AML/CFT framework and submits reports on the implementation of the Strategy to the Government of Serbia.

43. In addition, both NRAs also include dedicated Action Plans foreseeing steps to be taken in order to mitigate the identified risks. The ML NRA identifies the most recurrent predicate offences,

as well as the risks inherent to some sectors. In addition, it points to the low number of ML convictions, uncoordinated activity of state authorities and the lack of integrated statistics. The Action Plan envisages improving the maintenance of records, conduct of periodic reviews of functioning of the AML/CFT framework, strengthening of the capacities and integrity of involved authorities (including supervisory authorities) and raising awareness and improving the quality of the implementation of the AML/CFT framework by reporting entities. It also foresees measures to decrease the level of informal economy and to increase transparency of legal persons and overall availability of information amongst the different stakeholders in the system. Finally, objectives are formulated to enforce cooperation on international level, which reflect the importance of the international aspect in criminality occurring in Serbia.

44. As a result of identified lacunas in the CFT legislative framework, the FT NRA Action Plan foresees the adoption of laws and secondary legislation in order to remedy the remaining shortcomings. In addition, it focuses on strengthening the capacities of state authorities. The envisaged measures are mainly related to customs and wire transfers, as cross-border transfer of funds was identified as particularly risky for potential FT. It is considered that, given the identified lack of knowledge and awareness of FT risks and typologies amongst some of the authorities and private sector, it would have been beneficial to set a higher emphasis on awareness raising in this respect.

45. The Action Plan in the ML NRA as well as the National Strategy against ML/FT briefly refer to the need to enforce the system for the identification, tracing, seizing and confiscation illicit assets, they do not go, however, more deeply into the issue. Notwithstanding, asset recovery is one of the key axes in the Anti-Corruption Strategy, based on which the authorities adopted the Financial Investigations Strategy for 2015 - 2016. The Financial Investigations Strategy sets out a comprehensive set of objectives aimed at identifying illicit funds and depriving criminals thereof.

46. There is no policy approach to countering the financing of proliferation.

Overview of the legal framework

47. Money laundering is criminalised under Article 231 of the CC. Serbia has adopted an all-crime approach and the legislation does not require a prior conviction for the predicate offence in order to initiate proceedings for ML. Since the amendments to the Law on Capital Market in 2011, which introduced in the Serbian legal framework the offences of insider trading and market manipulation, the Serbian criminal legislation covers all the categories of predicate offences designated by the FATF Standards. The wording of the ML offence is broadly in line with the international conventions; some minor technical shortcomings however remain.

48. The FT offence is criminalised under Article 393(1) of the CC. Although a number of technical deficiencies have been identified, the FT offence is largely compliant with international standards.

49. The Criminal Code (CC) also provides for mandatory confiscation of illicit assets, also subject to minor technical lacunae (in particular in relation to confiscation of instrumentalities). The general procedure for confiscation is set out in the CPC. The CPC requires all proceeds from crime to be determined within any criminal proceedings ex officio. In addition, a specific confiscation regime is set out in the Law on Recovery, which is applicable with regard to particular offences listed in the law, as well as to offences where the proceeds exceed a threshold of 1.5 million RSD (approximately €12,245). In such cases, the Law on Recovery enables also the application of reversed burden of proof with regard to assets which appear disproportionate to the level of licit income. In addition, within the scope of its application, the Law on Recovery also provides for the conduct of financial investigations. These are conducted by the Financial Investigations Unit within the Ministry of Interior.

50. The law enforcement agencies investigate criminal offences of economic nature ex officio. The CPC foresees a broad range of ordinary investigative methods, as well as it empowers the LEAs to recur to a number of special investigative techniques, should the conditions enabling their

application be met. Special investigative techniques may be applied following an order by the preliminary proceedings judge upon motion of the competent public prosecutor.

51. The pre-trial process can be distinguished in pre-investigative proceedings and formal investigation. Whilst both are undertaken under the lead of the competent prosecutor, the pre-investigative phase is conducted principally by the police which may undertake all the measures to which it is empowered by the CPC, subject to notifying the competent public prosecutor thereof. Once formal investigation is initiated, it is the prosecutor that becomes the principal actor of the case and the police would merely assist him should it be requested to do so. Financial investigations are also ordered by the competent public prosecutor who then also exercises the leading role.

52. The provision of MLA is set out in the Law on Mutual Legal Assistance in Criminal Matters (MLA Law) and with regard to the tracing of assets also in the Law on Recovery, which would be applicable as *lex specialis*. In general, given the direct applicability and priority of international conventions in Serbia over national legislation, both laws would only be relevant in the absence of an applicable international convention. Overall, it is considered that Serbia is able to provide MLA to a broad variety of requests and Serbian authorities can apply their powers in order to execute a MLA request in the same extent as in a domestic case.

53. In the previous assessment, the evaluation team concluded that the legal and institutional framework for the implementation of the UN TFS suffered deficiencies amounting to a non-compliant level of the system with the international standards. Serbian authorities have taken a number of steps in the period under review. In particular, a Law on the Freezing of Assets with the Aim of Preventing Terrorism came into force in March 2015, as well as secondary legislation was adopted to assist the implementation of the law. Despite the clear progress achieved, the framework still suffers from a large number of technical shortcomings and the evaluation team has serious concerns about the timeliness of the procedure.

54. The Government establishes a single list of designated persons and entities. Persons and entities are included on the list based on designations made by the UN, other international organisations of which Serbia is a member, as well as pursuant to proposals made by competent Serbian state authorities and requests of foreign countries. On 16 July 2015 the Government adopted a Decision establishing the list of designated persons, in line with UN resolutions 1267(1999) and its successor resolution 1989(2011). The Governmental Decision does not transpose into the Serbian legal order the designations stemming from UNSCR 1988(2011) in relation to the Taliban and does not reflect, thus far, any designations made pursuant to UNSCR 1373.

55. As concerns designations pursuant to UNSCR 1373 based on the proposal of competent domestic authorities, such proposals to the Government are made by the Ministry of Interior, a state authority in charge of security and intelligence and the APML. No precise deadline is given to the Government to decide whether to include the person into the list of designated persons. As concerns designations pursuant to UNSCR 1373 made upon request of foreign authorities, these requests are received by the Ministry of Foreign Affairs, which then proposes to the Government the inclusion of the person in the list of designated persons/entities. The Government, within three working days from receipt of the request decides on the proposal of the MFA on the inclusion of the person in the list.

56. In relation to designations made further to UN lists and relative updates to these lists, these are received by the MFA. Any update is translated into Serbian and an opinion on the amendments must be received from various Ministries before the MFA can recommend the Government to adopt the updated list. The timeliness of the procedure is thus not ensured.

57. As concerns designations made in pursuance to UNSCR 1373, there is no specific mechanism in place for identifying targets for designation to be included in the single list of designated persons or entities. Whilst Serbia can give effect to foreign requests, there is no mechanism to request foreign jurisdictions to implement freezing measures adopted by Serbia.

58. Following a designation, the freezing of assets does not take place automatically. Should a reporting entity find a match with a person included on the list of designated persons, it is to refrain

from conducting business with the person and inform the APML of the match. A freezing decision is then to be issued by the Ministry of Finance.

59. Serbia has not adopted satisfactory measures or procedures to implement the targeted financial sanctions related to the financing of proliferation.

Overview of the institutional framework

The Standing Coordination Group for the Implementation of the National Strategy against ML and FT

60. The SCG was established by the Decision on the Establishment of the SCG, adopted in 2015 (Official Gazette of RS, no. 37/2015). Its principal task is to monitor the implementation of the National Strategy against ML and FT, but also to coordinate the activities foreseen in the Action Plan. In addition, it is in charge of conducting and updating the ML and FT risk assessments and the overall coordination of AML/CFT efforts between the relevant stakeholders in Serbia. It is composed of all the principal authorities involved in the AML/CFT framework and it is co-chaired by representatives of the Ministries of Finance, Justice and Interior and the Director of the APML. The institutions involved in the SCG are the following:

- The Ministry of Finance
- Ministry of Justice
- Ministry of Foreign Affairs
- Ministry of Defence
- Ministry of Trade, Tourism and Telecommunications
- Ministry of Economy
- APML
- Public Prosecutor's Office
- Supreme Court of Cassation
- Criminal Police Directorate, within the Ministry of Interior
- NBS
- Securities Commission
- Tax Administration
- Customs Administration
- Anti-Corruption Agency
- Security Information Agency
- Serbian Business Register's Agency

61. The SCG reports regularly to the Government on the implementation of the National Strategy against ML/FT. In addition, it is responsible to undertake analysis of the AML/CFT framework in place and propose legislative changes in this respect; it also presents to the Government outcomes of its work in this respect.

The APML

62. The APML is the Serbian FIU. It is established as an administrative body within the Ministry of Finance. Its primary and main functions are the core functions of an FIU. The APML is a key source of intelligence and has vast powers in obtaining information from other state authorities, as well as reporting entities. It also actively cooperates on an international level.

63. Furthermore, it is the leading authority in the majority of AML/CFT initiatives in Serbia. In this respect, the APML co-chairs the Standing Coordination Group, its representatives participated extensively and coordinated the undertaking of the NRA and a significant number of training and awareness raising activities are organised under its auspices both for representatives of other institutions and the private sector. In addition, the APML is also the initiator behind the majority of legislative proposals related to the AML/CFT framework and it issues bylaws and guidelines for the purposes of implementation of the AML/CFT Law, in particular indicators for reporting entities for reporting suspicious transactions. Finally, since 2012, it is also responsible for the supervision of accountants and auditors.

The Ministry of Interior, the Police, Tax Police

64. The Police is part of the Ministry of Interior. It conducts pre-investigation and, under the lead of the competent public prosecutor, the investigation of offences within its competence. It is given broad powers by the criminal procedure legislation.

65. ML investigations fall under the competence of the Criminal Police Department which operates through several specialised units and 27 regional centres. With relevance for ML is particularly the Service for Combating Organised Crime, which is further composed of the following units: Department for Suppression Drugs Smuggling, Department for Suppression of Organised Financial Crime, Department for Suppression of Organised General Crime, Financial Investigations Unit, and HIGH-TECH Crime Department. ML and FT cases with an organised crime aspect fall under the competence of the Section for Suppression of ML which is part of the Department for Suppression of Organised Financial Crime. A specialised section for the suppression of financial crime is also in each of the regional centres.

66. A Financial Investigations Unit has been established within the Ministry of Interior as a dedicated unit within the police in charge of undertaking financial investigations pursuant to the Law on Recovery. As stated above, financial investigations are undertaken in cases of particularly serious offences.

67. The Tax Police Sector is established within the Tax Administration which functions under the auspices of the Ministry of Finance. It is responsible for the detection and investigation of tax offences. It is empowered to a large number of investigative actions; contrary to the other law enforcement agencies, however, it is attributed these powers by the Law on Tax Procedure and Tax Administration and not the general legislative framework governing criminal procedure and powers of the LEAs.

Ministry of Foreign Affairs and Ministry of Finance

68. The Ministry of Foreign Affairs is the authority responsible for receiving UN lists of designated persons and their updates, as well as requests from competent foreign authorities for the application of freezing measures to persons considered to be linked with terrorism. It then formulates and proposes amendments to the list of designated persons to the Government for adoption. In order to freeze the assets of the designated persons, it is the Ministry of Finance which issues a specific freezing order with regard to a particular designated person identified by a reporting entity.

Public Prosecutor's Office

69. The Public Prosecutor's Office is responsible for initiating, guiding, controlling and overseeing ML/FT investigations and for instituting criminal proceedings for ML/FT offences. ML and FT cases are in the competence of higher prosecutor's offices, which are 26 in Serbia. In cases where the ML or FT offence would be related to organised crime or other serious criminality, the competent office would be the Organised Crime Prosecutor's Office, which is part of the Higher Prosecutor's Office in Belgrade.

70. In addition, public prosecutors' offices, together with the judiciary, are also responsible for MLA, depending on the stage of the proceedings.

Military Security Agency, Military Intelligence Agency, State Security Agency

71. The Military Security Agency is a security service performing security tasks relevant for the defence of Serbia and, amongst others, detects, monitors and disrupts terrorism, crimes against the constitutional order of Serbia, organised crime cases, ML and others. It is vested with a broad range of powers when undertaking investigations.

72. The Military Intelligence Agency is a security service responsible for intelligence tasks relevant for the defence of Serbia. In this respect, its competencies are also related to terrorism threats.

73. The Security Information Agency is the intelligence service of Serbia and is responsible for the detection and prevention of action undermining the constitutional order and security of Serbia.

This encompasses also countering organised crime with international dimension and would extend also to related ML activities. Furthermore, it has competencies with regard to the prevention and suppression of terrorism activities.

Ministry of Justice

74. The Ministry of Justice is responsible for executing MLA requests. In practice, it considers whether the requests comply with the basic requirements of the legislation and forwards incoming requests to the competent court or prosecutor and outgoing requests to its foreign counterpart. In addition, the Ministry of Justice is responsible for the preparation of legislation in criminal matters.

75. Finally, since the introduction of notaries public into the Serbian framework, the Ministry of Justice is also responsible for their registration and licensing.

The Customs Administration and the Border Police

76. The Customs Administration is administratively set up within the Ministry of Finance, whilst the Border Police operates under the auspices of the Ministry of Interior. Both authorities together control the external borders of Serbia and are, amongst other, responsible also for control of compliance with the obligation to declare cross-border transportation of currency and BNIs in the value equal or above the threshold of EUR 10.000.

77. The competencies of the Customs Administration are connected more closely to securing public revenue and implementing the customs policy as such, whilst the Border Police focuses predominantly on the detection and disruption on cross-border criminality, predominantly smuggling.

78. Whilst the powers to control compliance with the declaration obligation lie more with the Customs Administration, both authorities extensively cooperate and undertake jointly their duties at the borders and the powers they are vested with are generally complementary.

Directorate for the Management of Confiscated Assets

79. Established by the Law on Recovery, the Directorate is responsible for the management of assets provisionally seized or permanently confiscated as a result of criminal proceedings, in particular within the scope of a financial investigation.

Anti-Corruption Agency

80. The Anti-Corruption Agency is an independent state authority. It is involved in a broad range of issues related to countering corruption, in particular in the coordination of activities of other state authorities competent in the field of anti-corruption, control of public officials' assets, financing of political parties and electoral campaigns, drafting of anti-corruption legislation, as well as training and awareness raising initiatives.

81. It maintains a register of public officials, the property thereof and it receives income declarations from public officials. It has further powers to file proposals to initiate misdemeanour and criminal proceedings to the prosecutor's office with regard to violations of the obligation to declare property by public officials, as well as for corruption offences as such.

Supervisory authorities

82. State institutions responsible for AML/CFT supervision are clearly designated in the AML/CFT Law and generally mirror the framework in place for prudential supervision of the financial institutions and DNFBPs. The state authorities relevant in this context are the NBS, the Securities Commission, the Tax Administration (established within the Ministry of Finance), the Ministry of Trade, Tourism and Telecommunication and the Bar Chamber. The different roles of the authorities are described below.

Overview of the financial sector and DNFBPs

83. Serbia is not a highly developed financial centre and sophisticated products are not offered by Serbian financial institutions, as well as complex business relations are rarely present in Serbia. The banking sector is the most developed sector of the financial market.

Table 1: The composition of the financial market and DNFBP sectors at the time of the on-site visit

Type of reporting entity	Total number of entities
Banks	30
Participants on the capital market	53
Providers of life insurance	13
Financial leasing companies	16
Voluntary pension funds	6
Voluntary pension fund management companies	4
Exchange offices/Exchange spots	2,668/3,580
MVTSPs	2
Entities providing factoring services	11
Casinos	2
Real estate agents	888
Lawyers	8,234
Notaries	93
Auditors	61
Accountants	7,254

84. At the time of the on-site visit, there were 30 banks operating in Serbia. In addition, there were 28 insurance companies (out of which 13 provide life insurance), 16 providers of leasing services and 6 voluntary pension funds, managed by 4 voluntary pension fund management companies. Serbian financial system is dominated by banks with the insurance, financial leasing and voluntary pension funds sectors being relatively small by comparison. Banks are exclusively involved in acceptance of deposits, lending, safekeeping, financial guarantees, issuing of payment cards. The above listed sectors of the financial market are licensed and supervised by the NBS.

85. Participants on the capital market are supervised by the Securities Commission; these comprised at the time of the on-site visit 28 broker-dealer companies, 4 investment fund management companies, 13 authorised banks¹⁸ and 8 custody banks.

86. As concerns the capital market, the volume of operations on the capital market in Serbia has significantly declined in the past years and the number of financial institutions participating therein reduced since the previous evaluation to less than a third (from 92 entities in 2010 to 53 in 2015). The authorities reasoned the change principally by the finalisation of the privatisation process which was the main source of activity on the capital market. In addition, the authorities and representatives of the private sector informed the evaluation team that this decline has been accompanied by a reduction in particular in foreign investment on the Serbian market. The conclusions of the NRA,

¹⁸ Article 2 of the Law on Capital Market defines an authorised bank as “an investment firm which is an organisational unit of a credit institution and whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis involving one or more financial instruments”

where the capital market was assessed as posing a medium-low risk, were therefore based mainly on this development.

87. Further sector subject to the AML/CFT framework are providers of money remittance services, including the Post Office. The sector is newly subject to a licensing requirement based on the Law on Payment Services (LPS), which was adopted in 2014 and entered into force in October 2015. In addition to the Post Office, there were two entities providing money transfer services in the period under assessment. A significant difference was observed between the numbers of incoming and outgoing transactions, as well as their values (to illustrate, in 2014, there were 984.775 incoming payments amounting to EUR 258.9 million, whilst in the same year there were 139.977 outgoing payments in the total value of EUR 30 million). The average value of a transaction is about EUR 300 for incoming and EUR 200 for outgoing transactions. This was reasoned by the authorities based on the key role of money/value transfer service providers (MVTSPs) for the Serbian diaspora sending funds to their relatives in Serbia.

88. There were 2.668 certified exchange operators in the first quarter of 2015, most of which are entrepreneurs or small companies. Licensed foreign currency exchange offices operate through "exchange spots" and one office may therefore operate through a higher number of such spots. Exchange bureaus are licensed and supervised by the Tax Administration. Representatives of both the entities and the supervisor confirmed that the majority of exchange operations are of small values. The turnover was EUR 8 billion in 2012, EUR 9,3 billion in 2013 and EUR 9,1 billion in 2014. The NRA considers the sector as medium to low risk, noting in particular the risk of ML being undertaken by the operators of exchange bureaus themselves. The currency exchange sector presented a growth in the number of registered participants from 2,321 in 2010.

89. Following the adoption of the Law on Factoring on 24 July 2013, entities engaging in factoring business are required to register with the Ministry of Finance. In 2014, 11 entities were registered, out of which five were engaged in international factoring. The turnover of the sector was approximately EUR 42 million, remaining at comparable values with the previous years. The NRA assessed the sector as presenting a low ML/FT risk.

90. There were two casinos licensed at the time of the on-site visit. The evaluation team was, however, able to meet with the representative of only one of them and was not able to ascertain whether the second casino was operating in practice or not. Following amendments to the Law on Games of Chance, internet casinos are also able to operate in Serbia, subject to obtaining a license from the Sector for Exchange and Foreign Currency Operations of the Tax Administration. At the time of the on-site visit, no such licenses were issued. As discussed in further detail in the TC Annex and in the analysis under IO 3, given the contradictory legislative provisions, there is no authority which would supervise casinos in practice. As a result, the information that the evaluation team obtained during the on-site visit with regard to the sector was limited.

91. The real estate sector has been identified by the ML NRA as the riskiest sector amongst DNFBPs. This was mainly based on the ML cases and typologies analysed by the authorities, as well as overall data on confiscated proceeds of crime. These showed that the real estate figures repeatedly as the sector were proceeds of crime are invested. In order to mitigate the risk presented by this sector, Serbia adopted the Law on Intermediary Services in the Sale and Rental of Real Estate¹⁹ which entered into force on 8 November 2013. It regulates the activities of this sector and in particular obliges real estate agents to obtain a license and register with the Register of Real Estate Agents kept by the Ministry of Trade, Tourism and Telecommunications and is publicly available. All real estate agents were required to register by 8 May 2015. It is to be noted in this respect that despite the enforcement of regulation of real estate agents, contracts related to real estate can be concluded without the involvement of a real estate agent. This can be undertaken either between the involved parties directly or through the services of lawyers or notaries.

92. Lawyers in Serbia are required to be licensed and they are involved in real estate transactions, as well as to a large extent in the formation of legal entities. They are supervised by the Bar Association. During the on-site visit, both representatives of sector itself, as well as

¹⁹ "Official Gazette of RS", No. 95/2013, adopted on 31 October 2013

representatives of the supervisor appeared not to be aware of their obligations under the AML/CFT framework or not to accept the need to undertake AML/CFT measures. Generally, conflict with the legal privilege was raised to substantiate the conviction that lawyers should not be subject to the AML/CFT requirements. The Bar Association does not undertake any supervision of the sector and in particular it does not monitor compliance with the AML/CFT obligations. It was considered by the evaluation team that this structural deficiency was not taken into consideration to a sufficient level when considering the risk connected to the sector.

93. Notaries public were introduced into the Serbian system in 2014, when the Law on Notaries Public²⁰ came into force, and there were 93 registered notaries in Serbia at the time of the on-site visit. Notaries are not subject to the AML/CFT obligations, even though the evaluation team was informed that draft amendments to the AML/CFT Law in this respect are already being considered. Pursuant to the Law on Notaries Public, every agreement on the disposal of rights over immovable property has to be concluded in the form of a notarial deed. Furthermore, in respect of real estate contracts, notaries public have a clearly defined geographical jurisdiction and the parties are not given discretion as to which notary they will approach. In practice, this gives the notaries an extensive role as gate-keepers with regard to the real estate market, given that they endorse every real estate transaction.

94. At the time of the on-site visit there were 61 licensed audit companies and 7,254 companies and entrepreneurs providing accounting services. Auditors are required to be licensed by the Ministry of Finance and are mainly subsidiaries of large international auditing companies. Providers of accounting services, on the contrary, are not required to license, they are merely required to register with the Serbian Business Register's Agency. The accounting sector is composed predominantly of small companies or sole entrepreneurs. Whilst the awareness of and compliance with AML/CFT obligations by auditing companies was assessed by the authorities as high (partially due to the implementation of group policies), they confirmed that awareness raising and supervision with regard to accountants is more difficult due to their high number and small size. This consideration was reflected in the NRA, which attributed to the accounting sector a level of risk higher than to auditors. Both sectors are subject to AML/CFT supervision of the APML.

Overview of preventive measures

95. The AML/CFT framework is set out comprehensively in the AML/CFT Law. All entities included in the FATF Standards are covered, subject to a number of exceptions. TCSPs as such do not exist in Serbia and are therefore not included as reporting entities, as trusts cannot be formed in Serbia and CSPs do not exist as separate businesses. The AML/CFT Law prohibits the use of cash in a value equal or higher than EUR 15,000, as a result of which dealers with precious stones and metals are also not covered by the AML/CFT framework. Finally, notaries public have been introduced in the Serbian framework only recently and have not yet been subject to the AML/CFT obligations²¹. Given the high involvement of notaries in the trade in real estate, which was identified as a sector with frequent occurrence in ML typologies, the fact that this sector is not covered by the AML/CFT Law is considered as contrary to the identified ML/FT risks.

96. The preventive framework set out in the AML/CFT Law broadly covers the requirements of the FATF Standards, with some remaining shortcomings. The obligations emanating from the preventive framework apply equally to FIs as to DNFBPs. Specific measures are set out only for lawyers and they also mirror to a large extent the general preventive framework. Reporting entities are obliged to apply CDD measures and keep records. They shall undertake a risk analysis of their business and customers and apply the AML/CFT preventive measures in an extent commensurate to the level of identified risk.

²⁰ Law on Notaries Public ("Official Gazette RS" No. 31/2011, 85/2012, 19/2013, 55/2014, 93/2014, 121/2014, 6/2015 and 106/2015)

²¹ Draft amendments to the AML/CFT Law were presented to the evaluation team during the on-site visit which incorporate notaries public in the AML/CFT Law as reporting entities. These amendments were, however, not yet adopted at the time of the on-site visit.

97. As stated above, mitigation of ML/FT risks by the preventive framework remains hindered by a number of legislative lacunas, with the most significant being the lack of requirements related to mitigation of risks connected with domestic PEPs and restrictive requirements with regard to wire transfers (information on beneficiaries is not required to be included in the information accompanying the transfer). In addition, conditions when simplified CDD measures may be applied pursuant to the AML/CFT Law are broader than allowed by the FATF Standards and, when simplified CDD is undertaken, the AML/CFT Law does not require the beneficial owner to be identified. The CDD requirements which apply to (foreign) legal arrangements are incomplete. Conducting business with persons from high risk countries is required to be taken into consideration by the reporting entities when undertaking their business activities. Consideration of geographical risk is however left to a full discretion of the reporting entities and no specific obligations are given with regard to the countries designated as high-risk countries by international organisations.

98. The implementation of the AML/CFT Law is strengthened by secondary legislation issued by the authorities. Most significant in this respect is the Rulebook on Methodology for Implementing Requirements in Compliance with the AML/CFT Law, issued by the APML in 2011, which is applicable for all reporting entities. The APML, NBS and Securities Commission also issued Guidelines on ML and FT Risk Assessment for the reporting entities under their supervision. Finally, the implementation of the preventive measures by reporting entities is further assisted by lists of indicators for reporting of suspicious transactions issued by the APML, these lists are sector-specific and reflect the particularities relevant for each type of reporting entity.

Overview of legal persons and arrangements

99. Numerous types of legal persons can be formed in Serbia. At the time of the on-site visit, a total of more than 120,000 legal entities were in existence. All legal persons are obliged to register with the SBRA upon formation. The SRBA does not hold beneficial ownership information. The legal framework for establishing a legal person in Serbia is set out in the Law on Companies, Law on the Procedure of Registration with the SBRA and the Rulebook on the Content of the Serbian Business Register Agency and Documents required for Registration. A legal entity acquires a legal personality by registering with the SBRA.

100. As stated above, CSPs as such do not exist in Serbia, companies would therefore be established directly by the founders or with the use of services of lawyer. Serbia is not an international centre for the creation or administration of legal persons.

101. The table below lists the different types of legal persons that may be established pursuant to the Serbian legislation. In addition, it presents the numbers of all legal entities registered in Serbia at the end of 2015. It is considered that the numbers do not differ significantly from the numbers at the time of the on-site visit.

Table 2: Number of legal persons established in Serbia on 31 December 2015

Type of legal entity	Total number of legal entities registered
Limited liability companies	112,327
Joint stock companies	1,337
General partnerships	1,729
Limited partnerships	267
Branch and representative offices of foreign companies	1,964
Business associations	61
Socially owned companies	68
Public companies	718

Cooperative and cooperative federations	2,263
Total	120,734

102. Legal arrangements cannot be established in Serbia, as the Serbian legislation does not regulate the establishment or operation thereof. It has been confirmed by the representatives of the banking sector, however, that they do have clients which have foreign legal arrangements (in particular trusts) in their structure. This is the case only with regard to the banking sector, which also emphasised that the occurrence of such entities is very seldom. No other sectors had clients with trusts in their ownership structures.

103. The non-profit sector in Serbia is composed of associations (voluntary and non-governmental NPOs) and foreign associations, endowments and foundations, both domestic and foreign. At the time of the on-site visit, over 28,000 NPOs and representative offices of foreign NPOs were operating in Serbia. NPOs are registered in the Register of Associations and Register of Foreign Associations and the Register of Endowments and Foundations and the Register of Representative Offices of Foreign Endowments and Foundations. These registers are kept by the SBRA. Whilst some measures are in place to ensure the transparency of NPOs in Serbia, it was considered by the evaluation team that these are not sufficient to fully mitigate the risk connected with the sector.

Table 3: At the time of the on-site visit, there were the following numbers of NPOs registered in Serbia:

Type of NPO	Total number in September 2015
Associations	27,973
Representative offices of foreign associations	77
Endowments	125
Representative offices of foreign endowments	2
Foundations	574
Representative offices of foreign foundations	20
Total	28,771

Overview of supervisory arrangements

104. Licensing, regulation and supervision of financial institutions and DNFBPs is undertaken by a number of different authorities. With regard to the majority of sectors, AML/CFT supervisory framework mirrors the designated prudential supervisors. Compared to the previous round of assessments, the APML has been attributed responsibilities in the supervisory framework, in particular for the supervision of accountants and auditors.

105. All sectors with the exception of accountants are required to obtain a license from the respective designated supervisory authority. Requirements which have to be complied with are set out in the sectoral legislation and include, amongst others, measures preventing criminals to control reporting entities. Nevertheless, the requirement of a clean criminal record varies in its scope between the different sectors and it does not cover all of the requirements of the FATF Standards. Further conditions with regard to integrity and experience of managers and owners are formulated by the legislation, also differing amongst the sectors.

106. Violations of all requirements of the AML/CFT Law are covered by the sanctioning provisions of the AML/CFT Law which provide for a broad range of fines applicable in case of non-compliance or for the issuance of an order to remedy the identified shortcoming. The variety of sanctions foreseen by the AML/CFT Law is not considered as sufficiently broad in order to reflect the circumstances in each individual case. This is partially remedied by the possibility to apply sanctions on the basis of sectoral legislation, this is however not available in relation to all sectors. In addition,

there are concerns that the sanctioning framework does not apply to all the persons in the management and control of the reporting entities.

107. The supervisors have sufficient powers to undertake their duties and control compliance with the AML/CFT legislation by the reporting entities. Sanctions for AML/CFT breaches can be applied either on the basis of sectoral legislation (for some sectors) or directly on the basis of the AML/CFT Law. The evaluation team formed the following concerns in respect of the sanctioning powers. The possibility to apply sanctions pursuant to sectoral legislation has not been demonstrated by the authorities. The sanctions applicable for breaches of the AML/CFT Law pursuant to the same law (without recurring to sectoral legislation) can be applied only through a misdemeanour procedure, which is initiated by the respective supervisor by sending a motion to the competent prosecutor to initiate misdemeanour proceedings with the court. It is fully in the discretion of the prosecutor to decide whether the motion should be put forward or not. In this respect, it appears that not all the supervisory authorities are not aware of the outcomes of the motions they file.

108. At the time of the on-site visit, steps with the view of applying risk-based approach to supervision have been taken only by the Department for Supervision of Banks of the NBS. The other sectors of the NBS, as well as the other supervisory institutions, were not yet in the position to do so. A lack of resources was noted in respect of several supervisory authorities, leading in some cases to the inability to undertake onsite inspections and to ensure sufficient expertise of staff in AML/CFT matters.

National Bank of Serbia

109. The NBS is an independent state authority which is accountable directly to the National Assembly of the Republic of Serbia. It performs its functions pursuant to the Law on the NBS and other sectoral legislation which sets out its competencies with regard to the different sectors of the financial market with regard to which the NBS has competency. The main objective of the NBS is the achievement and preservation of price stability. Related to this, it also endeavours to ensure the stability of the financial system. It is active with regard to proposing legislation related to its competencies, as well as it issues secondary legislation in this respect.

110. The NBS is the regulator and supervisor of the majority of sectors of the financial market in Serbia: banks, financial leasing providers, insurance companies, payment institutions and voluntary pension funds. With regard to the same sectors, it is also the designated AML/CFT supervisor.

Securities Commission

111. The Securities Commission is an independent state authority responsible for the overall functioning of the capital market in Serbia. It is involved in proposing legislation regulating the capital market and its participants, it is responsible for ensuring the transparency and efficiency of the capital market in Serbia, as well as it is the prudential supervisor of the entities involved on the market. It licenses and supervises broker-dealer companies and investment fund management companies, as well as banks with a license to undertake custody and broker-dealer activities.

Tax Administration

112. The Tax Administration is an administrative unit of the Ministry of Finance. It is the main state body responsible for issues related to taxation and public revenue and, correspondingly, disruption of shadow economy. In addition, it also has a number of responsibilities with relevance to the AML/CFT framework in Serbia. Firstly, in accordance with its role in the decrease of the shadow economy, it is the key authority with responsibility to identify persons and business providing services without a license, this is of relevance to all businesses, but also the sectors subject to AML/CFT obligations. It also controls compliance with the prohibition of the use of cash in the value equal or above the threshold of EUR 15.000 by providers of services and sellers of goods in Serbia. In addition, it is the responsible authority for licensing of foreign currency exchange providers, as well as prudential and AML/CFT supervision thereof. Furthermore, it is the designated AML/CFT supervisor of entities engaged in factoring and international money transfers. With regard to

providers of games of chance, it is responsible for organising the technical aspects of the public call for attribution of licences by the Government.

DNFBP supervision

113. The Market Inspectorate Sector is an organisational unit of the Ministry of Trade, Tourism and Telecommunication and is responsible for the supervision of entities involved in the trade in real estate, as well as it is responsible for supervising compliance with the prohibition of cash payments, together with the Tax Administration.

114. The APML has been designated as the authority competent for supervision of accountants and auditors in 2012. The supervisory department of the APML remains hindered in its activities by the clear lack of resources. Nevertheless, the evaluation team positively noted the significant efforts undertaken by the APML, in particular concerning its awareness raising activities and efforts enhancing compliance of the entities subject to its supervision with legal requirements.

115. There is a lack of clarity concerning the authority responsible for AML/CFT supervision of casinos. The Bar Chamber, as the authority responsible for supervision of the legal sector, does not undertake AML/CFT supervision and it did not appear convinced that the legal sector should be subject to the AML/CFT obligations.

CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

Key Findings and Recommended Actions

Key findings

Serbia understands some of its ML/FT risks. Following the completion of the ML NRA in 2013, and a separate FT NRA in 2014, the Serbian authorities' understanding of risks continued to evolve, taking into account new and developing threats and vulnerabilities. Nevertheless, further efforts should be made to ensure that all the risks, threats and vulnerabilities faced by the country are properly understood. While there is a mechanism to coordinate national ML/FT policies, further efforts should be made to implement national strategies, and related action plans, in a more efficient manner. Serbia has strongly endeavoured to enhance cooperation and coordination between all competent authorities. However, there are some shortcomings. At the time of the evaluation there was no mechanism for the coordination of efforts to counter the financing of proliferation of weapons of mass destruction.

Recommended Actions

A number of improvements are needed to Serbia's AML/CFT system in terms of national AML/CFT policies and coordination:

- As already planned, the Serbian authorities should update the ML and FT NRAs so that they take account of their more developed thinking since the NRAs were completed, contain greater information and analysis (for example, in relation to predicate criminality, organised crime and cross-border risks) and demonstrably tie in the threats and vulnerabilities so as to build a coordinated, comprehensive and substantiated understanding of risk;
- The SCG should develop a plan and the authorities should devote resources to (a) addressing the major structural vulnerabilities identified in the existing NRAs such as the low level of statistics and the their lack of integration; (b) identifying areas where coordination between Government authorities can be improved and ensuring coordination takes place in practice; and (c) identifying areas where greater outreach on risk can be provided to reporting entities, in particular lawyers and notaries, and also transmitting relevant material from the FT NRA more widely;
- The SCG should be provided with a properly resourced and permanent secretariat so that it can be a more active coordinating body;
- Policies and activities in connection with the financing of the weapons of mass destruction should, as planned, be subject to coordination by the SCG;
- The exemptions in the AML/CFT Law and the ability in the law for reporting entities to adopt simplified measures should be reconsidered and legislative action taken so that these measures are consistent with the FATF Standards and risk;
- The AML/CFT Law should be revised to address the gaps in Recommendation 1 in relation to reporting entities' obligations on risk mitigation.

The relevant Immediate Outcome considered and assessed in this chapter is IO1. The recommendations relevant for the assessment of effectiveness under this section are R1-2.

Immediate Outcome 1 (Risk, Policy and Coordination)

Country's understanding of its ML/FT risks

116. Serbia understands some of its ML/FT risks. It was the first country in MONEYVAL to have conducted a full scope ML NRA, for which it is to be commended. Following the completion of the ML

NRA in 2013, and a separate FT NRA in 2014, the Serbian authorities' understanding of risks continued to evolve, taking into account new and developing threats and vulnerabilities. This was largely based on an on-going review of operational and other data (such as the results of strategic analysis by the APML) by the authorities within the SCG. Nevertheless, further efforts should be made to ensure that all the risks, threats and vulnerabilities faced by the country are properly understood. This applies, in particular, to cross-border ML/FT risks, especially those posed by wire transfers and cross-border cash movements, the ML threats emanating from certain predicate offences, the impact of the shadow economy on ML/FT, the risk posed by legal persons and NPOs, in the context of FT, and the vulnerability of the DNFBP sector to ML/FT. The statistical framework will also need to be improved. The next iteration of both NRAs, work on which is expected to begin in the near future, should present the perfect opportunity for updating Serbia's understanding of its ML/FT risks.

117. The ML NRA assesses threats by considering threat from the perspective of criminal offences. The NRA goes beyond reported criminal offences and convictions. It also considers operational data (which the authorities refer to as dark and grey figures), STRs and external independent reports (such as reports by MONEYVAL, GRECO and other international institutions on crime patterns in Serbia). However, it is not apparent that all available sources of information have been used consistently in order to assess and understand threats from all relevant perspectives so as to allow the magnitude and significance of overall criminal activity, as well as criminal activity that may not have been detected and foreseeable trends, to fully be taken into consideration.

118. The major threats are considered by the Serbian authorities to be tax evasion; the illicit production and circulation of narcotics; and abuse of office. Indeed, these three areas of predicate offending appear to the evaluation team to present some of the highest threats. However, human trafficking and smuggling, kidnapping, fraud (including securities fraud) were also examined by the evaluation team. These offences were not mentioned, either by the authorities or by other interlocutors the team met onsite, to present a high ML threat. Some of these are mentioned in the NRA but not considered in detail. The statistics related to the number of these categories of offences would suggest that they also pose a significant threat. The reasons for not seeing these offences as higher risk threats are not substantiated in the NRA or elsewhere. Clearly, in some respects, understanding of risk had evolved since the NRA. For example, the APML was of the view that human trafficking was a medium risk offence while the NRA refers to human trafficking as low risk. This change of view reflects the major migrations which have taken place since the NRA. The evaluation team welcomes the monitoring of risk by the Serbian authorities and the development of its views.

119. Furthermore, the ML NRA does not focus on the organised aspect of predicate criminality in general (i.e. beyond the scope of the three "high risk" offences) whereas organised criminality appears to be at the heart of much of the proceeds-generating crimes in Serbia and should have thus justified considering the activity of organised criminal groups as a ML threat in its own right²². This notwithstanding, organised criminality is regarded by Serbian authorities as a phenomenon that represents a high risk to society and it appears to be adequately addressed by criminal legislation and by the formulation of specific state bodies targeting organised criminality at the level of law enforcement and prosecution alike. Several high profile organised crime cases have been successfully concluded, which involved working closely with international counterparts and neighbouring countries. The authorities have also developed a dedicated strategy for combatting organised crime. The authorities, however, agree that it would be useful to consider organised criminality as a separate threat in the next iteration of the ML and FT NRA.

120. The NRA does not address cross-border risk comprehensively such that its impact can be assessed and understood, or linked to and contextualised with the threats emanating in other areas such as organised crime and drug trafficking. There appears to be no explicit assessment of the use of wire transfers in a cross-border context. Serbia remains a cash-based economy, with a diaspora in Europe, links to transnational organised groups and drug trafficking and migrant smuggling. The

²² This is underlined by the statistics on the structure of predicate offences in ML cases in which proceeds are derived from the crime of association for the purpose of committing criminal offences (or "criminal alliance" see Art.364 CC).

data on cross-border cash movements in the NRA was limited only to the year 2011 and suggests that the number of declarations is very low. In addition, during the on-site element of the evaluation it was apparent that the Customs focus is on pursuing minor offences (consisting of a failure to declare or to comply with administrative limitations) while not paying sufficient attention to the ML/FT threat in this area (as opposed to the Border Police which seems to have a better understanding of ML/FT).

121. Since the completion of the NRA, there have been attempts to enhance understanding of cross-border risks. In June 2014, the APML issued revised indicators for reporting suspicion in the money remittance sector. During 2015, the APML undertook analysis of STRs made by agents and subagents in the money remittance sector from 2010. The resulting report includes assessment of which types of entity have made STRs (mainly agents), and how in practice only a small percentage of reports are related to ML/FT. The evaluation team suggests that, to enhance understanding, assessment should be undertaken of the reasons for the differences between the geographic areas which are the source of funds compared with the jurisdictions which are the subject of outgoing transfers. This work was followed up in 2015 when APML staff held meetings with representatives of money remitters to seek improved quality of reporting by remitters through description of the grounds for suspicion and analysis. These initiatives should lead to further increase the understanding of risk by the money remittance sector. In April 2015 the APML also produced a strategic analysis of foreign currency operations and money laundering. However, more needs to be done to ensure that cross-border risk is understood holistically, especially with respect to wire transfers and cross-border movement of cash, which is particularly significant in Serbia in terms of FT risk (see below for discussion of the understanding of FT risk).

122. The shadow economy is considered in the NRA. Its size is not known although data from 2008 estimates that it comprises approximately one third of GDP. The implications of this economy are considered from the perspective of potential criminality and use of cash, and to be understood by the authorities from a theoretical perspective (i.e. that a high level of tax evasion is caused by the fact that a significant part of business activity is carried out in cash with the aim of tax evasion and that a large amount of cash is diverted from legal cash flows and the money used for funding various forms of the grey economy). Nevertheless, understanding of the risk in practice still appeared uncertain and it would be beneficial for the authorities to assess the risks presented by cash more deeply.

123. Legal persons are referred to briefly in the NRA but their risks are not assessed. In the NRA and during the evaluation the dialogue on risk centred on use of trading companies for tax fraud (by, for example, creating fictitious invoices). The NBS sees the major risk of legal persons arising from those with complex legal structures (linked to construction and hotels). As part of revising the NRA the authorities already plan to undertake work on the risk of legal persons (not included in the NRA) and the differences in relation to natural persons, understanding of beneficial ownership by reporting entities, understanding of trusts by reporting entities, banks and cash transactions.

124. The NRA identifies the banking sector as being the most vulnerable to ML in the financial sector. At the time of the on-site visit, the authorities held the same view. The NBS has a good understanding of risk in the sector arising in part from responses to questionnaires sent to FIs and on-site inspections. Risks of the sectors supervised by the NBS are understood. The significant shortfall in resources in the other supervisory authorities provide reduced opportunities for understanding risk as their approaches have yet to migrate to a risk-based approach. Understanding of risk relating to DNFBPs appears to have been refined in some areas since the NRA. For example, it is the construction sector and the potential for cash to be paid to developers which are seen as presenting a greater vulnerability in relation to the real estate sector than real estate agents themselves. Information on the relative risks of accountants and auditors were provided to the evaluation team with lack of licensing of accountants providing enhanced risk. However, supervision of casinos focuses on licensing rather than AML/CFT supervision; this decreases understanding and increases the vulnerability in that sector. In addition, in light of the absence of meaningful supervision of lawyers, the low standards of AML/CFT compliance by lawyers and the failure by lawyers to contribute to the NRA process, the risks posed by legal professionals cannot be understood in practice.

125. The FT NRA concludes that the risk to Serbia from FT is either low or low to moderate (the NRA has two different conclusions, which should be made consistent). The FT NRA assesses threats and vulnerabilities. Threat is considered from the perspective of international terrorist groups carrying out FT through Serbia's financial and non-financial system. The NRA concludes that there have been no indicators that international groups have conducted FT in Serbia. The NRA also refers to radical groups at a domestic or regional level being financed in Serbia through donations by local supporters and financing outside the banking system, and the absence of information on FT in relation to Serbia's cases on terrorism. Operations of ethnic separatist organisations are also categorised as a threat. More generally, the NRA notes the rise of radical organisations and the stronger radicalisation of existing organisations combined with the departure of volunteers from the Balkans (including Serbia) to war torn areas. Threats (in reality, this is largely vulnerabilities) are also described through assessments of national and international cooperation, cash movements, cross-border currency transfers, wire transfer and remittance systems and alternative remittance systems. Within the business sectors the largest potential for abuse is alternative money transfers and, in relation to formal transfers, money remittance service providers provide the most significant possibility for abuse. The role of NPOs is also included to some extent. NPOs are seen as presenting a risk primarily due to Serbia's geographical position, and its neighbourhood and transit routes between the Middle East and Western Europe. Lack of financial transparency and lack of control, including the lack of a designated supervisory authority are seen as leading to vulnerability. However, vulnerabilities which are mentioned in the ML NRA, and which are relevant to FT, are not assessed. For example, resource issues for supervisors and the APML are not included in the FT NRA - these might potentially have an even greater impact in the context of FT. Existing strategies for mitigating risk are described (although not assessed in practice), together with the operational efficiency of the system for preventing FT.

126. The evaluation team disagrees with the conclusion reached in the NRA that the risk of FT is low or low to moderate. While it agrees with the process and methodology used by the authorities, it is of the view that the conclusions are not reasonable and that more weight should have been given to the threats and vulnerabilities identified. During the on-site element of the evaluation it was clear that individual authorities have better knowledge than is contained in the NRA and have a good understanding of FT risks within their own roles although the understanding of cross border cash movements should be enhanced. They are also conscious that FT risks have evolved since the FT NRA was completed and what these risks are. A number of recommended actions have also been addressed, meaning that additional measures are in place to facilitate understanding. These include significant legislative developments, including legislation addressing individuals seeking to become terrorist fighters. Additionally, the NRA has provided a foundation on which to build understanding and focus on FT, including the establishment of a multi-agency working group in January 2015, which meets weekly, to address FT issues. This notwithstanding, the evaluation team considers that there is a clear need for Serbia to develop further its articulation about terrorism financing methods, including in respect of the use of the NPO sector, and to address these issues adequately.

National policies to address identified ML/FT risks

127. The SCG is the main mechanism for coordinating and monitoring Serbia's responses to ML/FT risks at a national policy level. The mandate of the SCG is to set out a national strategy and an action plan to address the ML/FT risks identified in the NRA, together with its monitoring role. The latest strategy and action plan were adopted in December 2014 covering the period from 2015 to 2019. The strategy and action plan address the findings of the ML and FT NRAs, and provide a strong basis for building a comprehensive and co-ordinated approach to address ML, terrorism and FT (including the prioritisation of resources). The authorities stated that the SCG monitors the implementation of the action plan on a periodic basis. Since the adoption of the new strategy the issues discussed by the SCG included transparency of legal persons, analysis of banks' internal controls, indicators for reporting suspicion of ML/FT, the new law on the freezing of terrorist assets (and the MONEYVAL evaluation). Two subgroups were established in September 2015 to update the NRA and update the SCG on measures adopted under the law on freezing terrorist assets. More

subgroups are planned, including subgroups on supervision and law enforcement. A new strategy for FT is also being developed.

128. Since the new action plan was adopted relatively close to the date of on-site evaluation visit, the evaluation team reviewed the application of the action plan adopted under the previous strategy (which expired in 2014). Serbia demonstrated that a large majority of the actions set out in the previous AML strategy had been completed. It is clear though that some important recommendations had still not been addressed. For instance, an action point relating to the collection of AML/CFT-related statistics had still not been implemented. In addition, significant resource gaps, such as the staff and premises gap in the APML, mostly still exist. The evaluation team would have expected attention to these resource gaps to have been accorded priority in resolution by Serbia and is of the view that the SCG should be more active in its coordination.

129. The FT NRA also contains recommendations on, for example, strengthening capacity of the relevant authorities, instilling trust in legitimate channels for wire transfers, improved access to financial services, adopting laws on payment services and asset freezing, stricter controls on persons and funds whose final destination is countries with a high risk of FT and drafting a manual for Police and Customs on risky passengers. The recommendations on new legislation have been addressed. In addition, Serbia has given priority to developing issues by, for example, introducing legislation addressing volunteers travelling to war torn areas.

130. Since the last evaluation round, national AML/CFT coordination has developed outside the SCG as demonstrated by several successful examples of coordination between authorities, including in day-to-day case operations. However, demonstration of the overall success of coordination remains challenging. While the evaluation team accepts that there is a lot of commonality in the individuals involved in various initiatives (for example, the individuals on the SCG and the individuals from key authorities developing the new December 2014 strategy after the expiry of the last strategy are often the same as those on the SCG). This is important as the SCG exists only during the designated period of implementation for each strategy. Nevertheless, the evaluation team is of the view that on-going coordination in addressing risk would benefit from the SCG being established on a permanent basis. The SCG has yet to undertake serious efforts in order to ensure that the AML/CFT strategy and national coordination are integrated within other national crime strategies and related actions. A stronger focus is required on monitoring and measuring success.

131. With regard to the banking and real estate sectors, which the ML NRA concludes as having the greatest vulnerabilities in the financial and DNFBP sectors respectively, there has been action to address these vulnerabilities. Reporting suspicious transactions guidelines and indicators, together with ML typologies and trends, were issued to the banking sector in 2014. In addition, a new law has been introduced on the registration of real estate agents, new suspicious transaction reporting (STR) guidelines and red flags have been adopted and awareness raising events have been held with real estate agents. These are positive steps being taken by Serbia in addressing ML risks.

Exemptions, enhanced and simplified measures

132. The Serbian authorities have not sought to dis-apply any of the FATF Recommendations.

133. With regard to simplified measures for lower risk scenarios, Articles 12 and 12A of the AML/CFT Law provide exemptions from CDD in relation to certain services. These include exemptions for insurance companies, brokers and agents, concluding life insurance contracts with low premiums; and for voluntary pension fund management companies when conducting contracts for membership in voluntary pension funds or pension plans in certain circumstances. In addition, the effect of Articles 12B and 12C is to exempt requirements to obtain data on wire transfer originators in a range of circumstances (see criterion 1.6 in the technical annex).

134. Some exemptions (wire transfers) are not based on low risk specified in the NRA or in any other assessment of risk, while some (life insurance and voluntary pension funds) are consistent with the results of the NRA (reporting entities are also prohibited from applying exemptions when there is a suspicion of ML or FT.) Wire transfers are identified in the NRA as having a high vulnerability to risk and the analysis of STRs made by agents and subagents in the money remittance

sector from 2010 to 2015 highlights the lack of originator information held by remitters as a problem.

135. Also, as indicated in criteria 1.8 and 1.12 of the Technical Annex, simplified due diligence is allowed not only in the specific circumstances referred to above but also by FIs and DNFBPs as a result of their own risk assessment. Whilst this discretion is guided by the Guidelines on Risk Assessment issued by the supervisory authorities, these are not binding and during the on-site visit the evaluation team encountered situations where customers were classified by reporting entities as low risk contrary to the findings of the NRA (for example, representatives of the real estate sector informed the evaluation that the majority of their clients are considered as low risk, which is not in line with the high risk connected with this sector in the NRA).

136. Turning to higher risk scenarios, Article 24 of the AML/CFT Law prevents reliance on third parties if the customer is an offshore legal person or an anonymous company. Articles 28 to 31 of the law specify the circumstances in which enhanced due diligence (EDD) or special attention are required to be applied by reporting entities (see criterion 10.17 of the Technical Annex). These include certain but not all correspondent banks; LORO correspondent banks from countries considered as meeting international AML/CFT standards and published on a list in the Official Gazette are not subject to EDD. This approach does not appear to be supported by an assessment of risks. The other Articles cover new technologies, unusual transactions, foreign officials and non-face-to-face customers.

137. In addition, reporting entities are required to apply EDD when they assess that, due to the nature of the business relationship, form or manner of execution of a transaction, customer's business profile or other circumstances related to a customer, a high level of ML or FT risk exists. The NBS has issued guidelines for FIs for assessing the risk (geographic, client, transaction and product). EDD for these additional circumstances is not defined, but examples of additional measures are given (eg. if high risk is a result of a complex ownership structure), highlighting that the reporting entity should define concrete measures in its internal procedures; the Guidelines state that the nature of additional measures to be implemented by the reporting entity in the situation where a certain client is classified as high risk based on the reporting entity's risk assessment depends on the concrete circumstances. The AML/CFT Law and the Guidelines issued by the NBS, the Securities Commission and the APML (for accountants and auditors) are not inconsistent with the NRAs.

Objectives and activities of competent authorities

138. A stronger focus is required to ensure that the objectives and policies of individual authorities are consistent with national policies and risks. All of the supervisory authorities except the authority for lawyers are engaged in supervision with varying degrees of effectiveness but none completely undertakes risk based AML/CFT. The NBS undertakes AML/CFT supervision of banks following a risk-based approach based on all aspects of risk, including AML/CFT. Further steps are being taken to ensure that the NBS will be supervising banks completely on an AML/CFT risk-sensitive basis. All supervisory authorities have significant resource deficiencies for AML/CFT supervision except the NBS. The NBS has recently recruited additional staff in order to address the staff deficiency identified in the NRA. This significantly handicaps those authorities where there is a deficiency.

139. In their activities, not all supervisory authorities appears to have explicitly linked AML/CFT compliance by licensed entities to the threats (i.e. the highest risk predicate offences) and their potential for laundering identified in the NRA. There is increased focus on the banking sector which has greater vulnerability, as the NBS has recently increased the number of staff devoted to banking supervision, and is focusing on certain activities of banks' clients identified in the NRA as most common predicate offences (possible tax evasion), and is focusing on activities of clients from sectors identified in the NRA as presenting greater risk.

140. There have been positive developments which are consistent with identified risk and priorities. Strategies and approaches have evolved in relation to identified risks such as activity in relation to organized crime and corruption.

141. The APML has undertaken significant action related to the NRA and the adopted action plan, including through extensive strategic analysis, and enhancing the cooperation with other state authorities as described in detail under Immediate Outcome 6. In addition, the APML has exerted significant effort to amend its practice in order to provide on a timely basis the competent authorities with significant information in regard to certain risk areas identified by the NRA (particularly organized crime). The efforts undertaken by the APML to react to the risks identified has been noted by the evaluation team although some deficiencies remain as discussed under IO6.

142. Having met senior prosecutors as well as all of the other myriad of players in the intelligence, investigation and prosecution process, such as the police including specialised police for organised crime, security agencies, APML, the evaluation team was satisfied that the objectives and activities of these agencies focused on the ML risks which are identified by Serbia, particularly as regards large-generating proceeds offences such as corruption, drug trafficking and other organised crime related predicates. However, related ML is not being adequately targeted, as explained in more detail under Immediate Outcome 7. As regards FT, however, there remains some concern that the activities are not adequately addressing risks associated with NPOs and cash movements across the border.

National coordination and cooperation

143. Core Issue 1.2 above includes information on national policies and activities, including the role of the SCG. All of the competent authorities in Serbia contribute to this work through the SCG.

144. In light of the conclusion in the NRA that there should be better coordination between Government authorities, Serbia has strongly endeavoured to enhance this part of the AML/CFT framework. Good examples of coordination of activities include:

- There is clearly a good working relationship between the APML and the NBS at operational level. This extends to joint initiatives such as the issue of indicators for issuing STRs and guidelines for reporting STRs in December 2014. These indicators include tax crimes therefore linking the project to the NRA.
- A Memorandum of Understanding (MoU) was signed between the APML and the RPPO in January 2014 in order to govern cooperation between the public prosecutors' offices, including the formation of a working group comprising senior prosecutors responsible for coordination of ML and FT cases and the APML. The MoU provides for a channel of enhanced cooperation. This has proven to be effective. However, as stated under Immediate Outcome 6, this agreement could have a potential negative impact on the dissemination function of the APML. There is clear benefit to the APML and prosecutor co-operating in the development of a case, and doing so through meetings as opposed to correspondence. However the extent of such co-operation should not impact on the independence of the APML.
- As tax crimes were identified as the main proceeds generating crimes in Serbia, the FIU and the Tax Police have developed more coordination. This arrangement needs to be enhanced further for it to produce concrete results.
- The public prosecutors and investigative units of the police which the Evaluation Team met, as well as those from the security services, appeared to understand the importance of strong co-operation. The agencies were generally satisfied with the contributions that each made to the process and pointed to significant convictions and confiscations which demonstrated the strength of the co-operation which exists.

145. However, there are also some shortcomings. For example, prosecutors are reducing the effectiveness of the system by not routinely advising supervisory authorities (including the NBS) on progress and outcomes of the sanctions promoted by the supervisors through the courts. Despite the legal powers of the APML to obtain information from other state authorities within strictly specified deadlines, the effective implementation of these powers is limited in certain cases (law

enforcement information, tax information and feedback). Significant deficiencies are noted in regard to the access of the FIU to data which would be required to coordinate the assessment and development of the system at the policy level.

146. At the time of the evaluation there was no mechanism for the coordination of financing of proliferation of weapons of mass destruction. The evaluation team welcomes the proposed coordination by the SCG.

Private sector's awareness of risks

147. The private sector was included within the NRA process. They contributed to the process by completing questionnaires. The complete ML NRA was shared with all reporting entities and published on the APML website. The full FT NRA was distributed to the following reporting entities: banks, insurance companies, accountants, auditors, law chamber, broker-dealer companies, investment fund management companies and money transfer remittances. The other reporting entities received a version of the NRA, which did not contain confidential information, through their supervisory authorities.

148. The NRA was also discussed by the APML and NBS during annual events with bank compliance officers from 2012 to 2015. Other training and events have also been held to discuss topics related to the NRA findings. Separate meetings have been held with representatives of every bank and seminars have been held with various groups of reporting entities. The seminars included two events for real estate agents one of which was organised with the Belgrade Chamber of Commerce; two events for internal auditors one of which was training organised with the Authorised Auditors Chamber of Belgrade; an information session put on for members of the Belgrade Chamber of Commerce; a seminar for accountants organised by the Belgrade Chamber of Commerce along with other activity undertaken by the APML; an event for the Serbian Association of Auditors; a roundtable discussion for the NPO sector; and outreach by the APML and the Tax Administration to currency exchange bureaux. This activity includes the two sectors – banks and real estate agents – regarded in the ML NRA as having the highest vulnerability to ML.

149. However, from the perspective of risk and their roles in relation to real estate transactions, demonstrable outreach could usefully be undertaken to notaries and lawyers on the implications of the NRA. Similarly, outreach could be undertaken to insurers, leasing companies, voluntary pension fund managers, investment firms, money remitters and casinos on the implications of the NRA.

150. The APML has also held workshops and roundtables, for example, with the accountancy sector to make topical issues familiar and accessible.

151. The representatives of banks met by the evaluation team showed a proactive approach to the assessment and consideration of risk, and had a broad understanding of it. Understanding of risks by entities engaged in money remittances is high. Insurers, leasing companies and capital market participants are aware of risks; awareness of risk within the currency exchange bureaux varies within the sector. However, the evaluation team had some concerns about the level of understanding in the investment sector. The real estate and legal sectors do not acknowledge the identified risk connected to their sectors; notaries, even though they are not subject to AML/CFT requirements, demonstrated a substantive knowledge of the risks inherent to their duties. Knowledge within the accountancy sector in particular and, to a lesser extent, the audit sector is variable. Immediate Outcome 3 provides further information.

Overall Conclusion

152. The Serbian authorities have made credible and serious efforts to understand Serbia's main ML/FT risks. Separate NRAs have been developed for ML and for FT. In addition, further analyses on, for example, STRs have been undertaken since the completion of the NRAs, which inform understanding of risk.

153. There are some gaps in the risk assessment material, which means that risks can be considered as largely but not fully identified and assessed within this material. The conclusions of

both NRAs, but the FT NRA in particular, are not clearly substantiated. It was clear to the evaluation team that understanding of both ML and FT risk by the authorities had developed since the NRAs have been completed. The evaluation team considers that some areas of ML risk are now substantially understood by the authorities. Steps will need to be taken to identify, assess and understand other risks. It appears that most FT risks are understood. However, the articulation of that understanding can be improved. The evaluation team welcomes and strongly encourages the authorities' planned initiative to update the NRAs, given the period of time that has elapsed since their adoption.

154. Serbia has taken the positive step of appointing the SCG as the main forum for coordination. It is also positive that the gap on coordination in relation to combating financing of proliferation of weapons of mass destruction is to be addressed by the SCG. Nevertheless, the SCG is not sufficiently active and it would be beneficial for the group to be established on a continuous basis. A significant proportion of the actions arising from the previous AML strategy has been completed. The new strategy and action plan agreed in December 2014 provide a strong basis for building a comprehensive and co-ordinated approach to address ML, terrorism and FT. Areas of high vulnerability agreed by the authorities in relation to the banking sector and real estate sectors have demonstrably received greater attention and focus in the last two years. The statistical and resource (and other structural gaps), which should have received greater prominence in the NRAs have not been addressed except for the recent recruitment of several staff at the NBS.

155. There are some exemptions in the AML/CFT Law in relation to wire transfers that are not supported by the NRA and, more generally, FIs and DNFBPs' ability to adopt simplified measures is not, in all cases, premised on the requirement that it be consistent with Serbia's assessment of ML/FT risks. There are also gaps in compliance with Recommendation 1 in this area (see the Technical Annex).

156. A stronger focus is required to ensure that the objectives and policies of individual authorities are consistent with national policies and risks. The NBS is making strong efforts to transition to an AML/CFT risk based approach, applying greater focus on sectors and activities identified in NRA as posing the greatest risk, and has increased its supervisory capacity by increasing the number of staff devoted to banking supervision.

157. In light of the conclusion in the NRA that there should be better coordination between Government authorities, Serbia has strongly endeavoured to enhance this part of the AML/CFT framework. The evaluation team noted good examples of such cooperation although there are still areas which can be improved (for example, prosecutors providing more active feedback to supervisory authorities on sanctions).

158. Relevant parts of the ML NRA have been widely shared but the FT NRA was circulated only to a limited number of sectors. There has been significant activity by the APML and the NBS's banking department in particular, and also by the Tax Administration in relation to currency exchange bureaux, in connection with seeking to ensure that reporting entities are aware of the implications of the NRAs. In light of their roles in relation to real estate transactions outreach on these implications should be extended to lawyers and notaries. Such outreach would usefully also be extended to other sectors.

159. **Overall, Serbia has achieved a moderate level of effectiveness with Immediate Outcome 1.**

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings and Recommended Actions

Key Findings

The APML plays a central role in generating financial intelligence. The analysis products generated by the APML are of good quality and have the potential of supporting the operational needs of LEAs. However, there are a number of issues which impact on the effectiveness of the process. Information needed by the APML for its analysis is not always easily retrievable from other public authorities. Some databases to which the APML has access do not contain current and up-to-date information. Information requested by the APML from LEAs and tax authorities is not always provided in a timely manner. The Customs Administration has not been effective in identifying ML/FT suspicions at the borders and have not submitted any reports to the APML. The reporting regime by the private sector is not yet fully effective. Although LEA's have direct and indirect access to numerous databases, they tend to rely heavily on the APML channel to gather information on their behalf, mainly to circumvent the more cumbersome procedures set out in the CPC. This has a negative impact on the resources of the APML.

The use of financial intelligence by LEAs in the pre-investigation phase and financial investigations has been amply demonstrated to the evaluation team. However, it was not demonstrated that financial intelligence is actually used for generating and initiating ML investigations.. This is mainly due to the difficulties of the authorities in investigating money laundering in the absence of specific indication of the predicate crime. This is not the case with respect to FT, where APML notifications have been used successfully by LEAs in investigations, resulting in indictments.

The identification of ML cases is not performed on a systematic and consistent basis, and the number of ML investigations is low when compared against the number of convictions for proceeds generating predicate offences. ML is not being targeted in a holistic manner and the coordination between authorities is a challenge given the complex structure.

The authorities have responded to the risks of organised crime by setting up specialist units within the prosecutor office, court and the police. There has been overall moderate success in investigating ML connected with OCGs with one significant case resulting from the efforts of the authorities. This included 3rd party ML convictions but the majority of ML convictions in the period of assessment were for self-laundering and the sanctions have not been sufficiently dissuasive and proportionate.

There are in general several issues hampering the effective prosecution of ML as detailed further below but these can be summarised as follows: severe delays and case management issues, ML in some circumstances not being tried until there is a conviction for the predicate offences, other offences of predicate offences being prosecuted instead of ML, lack of expertise in the prosecutor office and the court.

Confiscation of proceeds of crime figures amongst the objectives in a number of strategic documents and steps have been taken by the authorities to introduce a policy-based approach to asset recovery. A commendable and effective structure for the management of seized and confiscated assets has been put in place.

Whilst undertaking of financial investigations is foreseen by a number of high-level policy instruments, these are not undertaken systematically. There have been significant seizures and some confiscations of proceeds of crime in the period under assessment, in particular related to a case involving a large organised criminal group. Notwithstanding, the overall results of the confiscation regime in practice, however, did not demonstrate that provisional measures and confiscation would be systematically applied, both with regard to ML cases, as well as with regard to criminal proceedings in general. The seizures reported involve to a large extent immovable property and legal persons, which corresponds to the identified typologies of investment of ill-gotten gains in Serbia. The levels of applied provisional measures and confiscation orders, however, are not proportionate to the levels of criminality in Serbia.

There is a framework in place for control of cross-border transportation of currency and BNIs. Whilst certain effectiveness has been demonstrated by the authorities, their efforts focus solely on identifying breaches of the declaration obligation, as opposed to ML/FT suspicions. As a result, the system in place appears inadequate to address FT activities committed by cash transfer in small amounts. There is no policy approach to control of cross-border transportation of cash and BNIs and, in practice, it is not conducted in line with identified risks. Serious concerns are in place with regard to the control of the boundary line with Kosovo*.

Recommended Actions

Immediate Outcome 6

- Guidance should be developed and additional training provided to prosecutors and law enforcement authorities on the proactive use of financial intelligence for developing and pursuing new ML cases, even in the absence of information on the specific predicate crime at the early stages of the investigation;
- The guidance should clarify that the role of the APML is not to gather evidence on the specific predicate crime underlying ML suspicions. The cooperation agreement between the Prosecutor's Office and the APML should not be used by the Prosecutor's Office to require the APML to obtain information on the specific predicate offence before disseminating a notification. The authorities should ensure that the consultation taking place within the ambit of this cooperation agreement does not impede the APML from developing and disseminating cases independently from the operational priorities of law enforcement authorities;
- The APML's access to law enforcement information, information on real estate property, tax information, information held by the Anti-corruption agency should be enhanced;
- Law enforcement authorities should adopt a more balanced approach when requesting information from the APML and be more proactive in obtaining information directly from databases to which they have access to. This should ensure that the APML is not overburdened by requests for information from law enforcement authorities;
- APML should be provided with appropriate feedback on the notifications that it disseminates and Serbian authorities should ensure that adequate statistics on the use of financial intelligence are maintained to be in a position to review the effectiveness of the system;
- The APML should be provided with additional resources in order to be able to perform its core functions and continue to fully meet the operational needs of the LEAs.

Immediate Outcome 7

- Serbia is strongly encouraged to pursue the prosecution of ML where the ingredients of that offence are present and the evaluation team strongly encourages an increased focus on third party and standalone ML cases and the absence of a predicate offence conviction should not prevent or delay the timely prosecution of ML. In order to assist prosecutors and the judiciary, Serbia may consider implementing Article 9(6) of CETS 198 in domestic legislation;
- The Serbian authorities should establish a clear criminal policy on ML investigations and prosecutions. This should at the least include a centralised database for all ML cases and also a co-ordinated strategy which applies to all the relevant law enforcement bodies setting out the circumstances in which ML investigations need to be initiated. The policy should reflect the ML risks that Serbia faces and consideration should be given to the introduction of a mechanism for centralised co-ordination of AML investigations and prosecutions;
- The sanctions for ML imposed so far have been mild and the evaluation team encourages Serbia to strengthen the sanctioning policy;

* See footnote on page 9, paragraph 5.

- Serbia should consider further specialisation within the prosecution and judiciary, and increase the amount of training for ML, especially on stand-alone ML prosecutions, drawing on successful ML prosecutions in other countries and on the relevant provisions of CETS 198.

Immediate Outcome 8

- Authorities should take steps to apply consistently provisional measures in all criminal proceedings for proceeds generating crime (including those in relation to which no financial investigation can be initiated);
- Serbia should fully implement its Financial Investigations Strategy. Measures should be put in place to ensure that financial investigations are undertaken systematically in all proceedings involving illicit assets derived from organised crime and other sorts of serious offences within the scope of the Law on Recovery. Furthermore, the evaluation team strongly encourages an increase in the practice of carrying out financial investigations in parallel with the investigations of all major proceeds- generating offences and not simply conducted subsequent to the investigations of predicate offences (this recommendation applies to both IO7 and IO8);
- Authorities should review the framework for confiscation in order to identify the possible bottlenecks and take appropriate steps to ensure that criminal proceeds are confiscated in all cases;
- Authorities should assess whether sufficient efforts are made to trace property situated abroad and take appropriate action in the light of this assessment;
- Measures should be taken to ensure that control of cross-border transportation of currency also takes into consideration identifying ML/FT suspicions and customs authorities should include in their focus the identified risks;
- Authorities should review the existing legislation and make any necessary amendments to ensure that the full range of instrumentalities and assets of corresponding value can be confiscated;
- Along the boundary line with Kosovo*, control measures similar in their effect to those being in place at international borders of Serbia should be instituted and implemented including the effective control of physical cross-border transport of cash and BNIs.

The relevant Immediate Outcomes considered and assessed in this chapter are IO6-8. The recommendations relevant for the assessment of effectiveness under this section are R.3, R4 & R29-32.

Immediate Outcome 6 (Financial intelligence ML/FT)

Use of financial intelligence and other information

(a) Access to information

160. LEAs have direct and indirect access to a number of databases (as described more in R.31 in the TC annex), which appear to be consulted routinely in both stages of a criminal investigation, as well as in parallel financial investigations. The CPC also provides for a range of measures to obtain relevant financial information, including acquiring data from banks or other financial institutions on accounts and the monitoring and temporary freezing of suspicious transactions (see C31.3 in the TC Annex). However, the representatives of LEAs and prosecutors met on-site did not appear to be familiar with such measures and could not demonstrate that they had been applied in any investigation of ML, associated predicate offences, or FT.

161. LEAs regularly request banking information from the APML in the pre-investigative stage of a criminal case for two reasons: (1) no central register of bank accounts of individuals existed in

* See footnote on page 9, paragraph 5.

Serbia at the time of the on-site visit²³; and (2) to avoid the lengthy and cumbersome procedure provided for under the CPC, which requires the competent prosecutor to address each FI. The APML channel is effective and takes no more than a couple of days. In the investigative phase, particularly if coercive measures need to be taken, the APML channel is not an option and the procedures provided for under the CPC need to be applied.

162. Law enforcement authorities submit requests to the APML when information is needed in an investigation of a predicate offence, even where a specific suspicion of ML does not arise. It is the view of the evaluation team, that while this information is helpful to law enforcement authorities, the APML and LEAs should be more selective and focus primarily on ML-related exchanges, since the APML's resources are limited.

163. The APML has access to a number of databases, some of which are integrated in its IT system. In particular, the APML has access to the NBS's database of foreign currency payment operations and the Customs Administration's database of transportation of cash and bearer negotiable instruments. In addition, the FIU relies on the Business Registers Agency's database of registered business entities and the Privatisation Agency's database of privatised public enterprises. Publicly-available data and information (not integrated in the IT system) is also used, including the register of active accounts held by legal entities, the Anti-Corruption Agency Register and Real Estate Cadastre. As indicated later on in the analysis, the information contained in these databases is not always complete. Information on beneficial ownership is obtained by the APML either from the Business Registry (this applies only where the shareholders are natural persons or where the shareholders are legal persons established in Serbia which are owned by natural persons) or directly from banks. Neither the APML nor the LEAs have ever encountered any difficulties in obtaining beneficial ownership information from banks.

164. In 2014, APML sent in average 477 requests for provision of information per bank, out of which 64% referred to data on account turnover and 36% to data on account balances. These figures show an increase in the number of requests sent by APML in comparison to 2013 and 2012, when banks were sent 475 and 353 requests per bank per year respectively, especially bearing in mind that the number of business banks operating in Serbia decreased by 12.5% since 2012. In 2014, APML sent also an average of 79 requests per MVTs provider for information on transactions executed through their system. An increase of those requests by APML is also noted in comparison to 2013 and 2012, when an MVTs provider received in average 25 and 33 requests per year respectively. This demonstrates that the APML actively seeks information in order to adequately perform its analysis function.

(b) Use of intelligence

165. Financial intelligence disseminated by the APML appears to be extensively used in the pre-investigative phase of ML/FT and investigations of associated predicate offences and parallel financial investigations. This was confirmed by the evaluation team in discussions with the authorities on-site. The APML provides intelligence which is useful for identifying assets, identifying the beneficial ownership including through the international information exchange and trying to identify related money laundering activities and potential accomplices. Intelligence also appears to be used to generate ML cases. Two of these cases are provided below. However, it was not demonstrated in how many cases financial intelligence was actually used for generating and initiating ML investigations. Moreover, no feedback is provided to the APML by LEAs, despite the existence of a requirement in the AML/CFT Law to do so. It appears that the APML intelligence rarely results in successful investigations, prosecutions and convictions, because of the difficulties faced by the authorities in undertaking and conducting investigations for money laundering in the absence of specific indication of the predicate crime. This is discussed further under the subsection on the dissemination process and under Immediate Outcome 7. The situation is different with respect to FT investigations. The authorities have shown that APML notifications have been successfully used to

²³ A central register of accounts held by natural persons was established in October 2015 within the National Bank of Serbia, however this falls outside the scope of the evaluation given that under MONEYVAL's Rules of Procedure, MER shall reflect the situation in the country or territory at the time of the on-site visit.

develop evidence in FT cases which have led to indictments (see information under 'Disseminations').

ML Case Study no. 1

The director of a public enterprise signed a high amount contract with a foreign company on purchase of machinery. The owner of the foreign company is a person related to the director in question. After the public enterprise transferred funds to the account of the foreign company, as a payment for the machinery, these funds were further transferred to the account of a daughter company, based on fictitious invoices. Then the daughter company transferred the funds to a non-resident account held abroad by the director of the public enterprise, based on representation services. The machinery from the contract was never delivered, and this business was conducted through usage of falsified documentation, which the management of the public enterprise was familiar with. The funds transferred to foreign accounts were later used by the subject persons for the purchase of real estate, vehicles and vessels.

Participants in this corruption scheme were later convicted to imprisonment for commission of the crimes of abuse of office and money laundering. Serious prison sentences were pronounced for the director, management and one employee and assets worth approx. EUR 3,000,000.00 were confiscated from the convicted individuals.

ML Case Study no. 2

Natural person F, a foreign citizen, is a member of an OCG which deals with credit card frauds, falsification of personal IDs, abuse of office and money laundering in several countries. This person has several non-resident accounts in Serbia to which members of the OCG he belongs to transfer funds. Natural person F then transfers a part of the funds abroad and spends the rest using payment cards abroad as well. Formal investigation was launched on the case.

STRs and other reports received and requested by competent authorities

166. The APML acts as a central agency for receiving communications from reporting entities concerning ML/FT suspicion. STRs are submitted prevalently by the financial sector, largely by banks and money remitters. Hardly any reports are submitted by DNFBPs. Apart from the reporting regime, relevant information on ML/FT suspicion is also communicated to the APML by supervisory bodies, as well as LEAs and prosecuting authorities.

167. In 2014, the APML went to great lengths to ensure the quality of reporting, particularly of banks, by elaborating new indicators and clarifying the reporting requirements. It held meetings with the banking sector to ensure the adequate application of the reporting criteria based on risk and an assessment of the information available to the banks. The purpose of these activities was also to limit defensive reporting and to ensure that proper supporting documentation is included in the reports. This is one of the explanations for the significant decrease of STRs issued by banks in 2013 and, to a lesser extent, in 2014. Concerns still remain on the quality of reporting considering the number of actual disseminations and deficiencies noted under IO.4.

168. The APML receives information from the Customs Administration on cash declarations. The evaluation team is of the view that Customs officials are generally unfamiliar with their obligations to report ML/FT suspicions. Hence, the data obtained from the Customs Administration is limited to cash declaration reports exceeding the threshold.

169. The APML also receives and analyses CTRs. Analysis takes place either periodically or, if specific criteria for ML/FT suspicion are met, also immediately on an ad hoc basis. The APML pays

special attention to certain forms of cash transactions typically related to tax evasion as one of the high risk ML predicate offences.

Operational needs supported by FIU analysis and dissemination

(a) Tactical analysis

170. The APML carries out its analytical function based on experienced and well-trained analytical staff, detailed internal procedures, the use of a number of software tools and the access to a wide range of information apart from the STRs and CTRs received.

171. The staff of the APML engaged in the performance of the FIU's analytical function consists of 12 positions, of which 9 were filled at the time of the on-site visit. In addition to the analysis of STRs and CTRs, the analytical department is engaged in the performance of a number of tasks. These include responding to LEA requests, strategic analysis and cooperation with foreign FIUs. The staff complement in the analysis department is considered to be insufficient compared to the staffing of FIUs of countries in the region and taking into account the level of additional tasks performed and the number of requests sent by LEAs. In addition, the 2012-2014 budget of the APML shows a significant decrease despite the number of additional tasks of the APML, including the coordination of the AML/CFT system in the country.

172. The analytical function of the APML is carried out in accordance with a written procedure adopted by the Director of the APML in 2012. The procedure provides for a two-stage analytical process based on a pre-analytical and an analytical phase. The pre-analytical section is mainly responsible for preliminary analysis of STRs. It also processes requests by government authorities, requests related to financial investigations, analysis of cash transactions, planned transactions and reports made by customs authorities with regard to cross-border cash declarations. The analytical section deals with referrals from the pre-analytical section, all other requests made by government authorities in line with Article 58 of the AML/CFT Law, and performing strategic analysis.

Table 4: Cases analysed per year by the FIU

Cases analysed per year		2012	2013	2014
Cases dealt with by the APML, including other authorities' requests and foreign requests	Total number of cases	626	860	788
	Number of on-going cases from previous years (included in the above)	55	81	144
Total SARs from reporting entities that are subject to analysis		839	697	1117
Cases based on SARs related to persons previously unknown to the FIU		193	306	333
Cases based on SARs assessed as having enough reason for suspicion after preliminary analysis, which were subsequently transferred to the Department for Analysis (new analytical cases)		89	135	134
Cases based on SARs remaining in the Pre-Analytical Section		104	171	199
SARs on FT		1	2	4
Disseminations of SARs on FT		1	2	4
Total number of responses related to requests by state authorities		349	495	464
Requests by foreign FIUs		70	102	69

Total number of information (cases) disseminated	172	196	158
Total number of SARs whose information resulted in dissemination	574	521	790
Cases disseminated based solely on CTRs and cross-border cash declarations	3	2	3

173. All suspicious activity reports (SARs) have been subject to preliminary analysis since 2013. There are no strict criteria which analysts follow when performing the preliminary analysis. The first step is always to determine whether there is a link between the case and persons already known to the APML. The analysis is generally based on the explanation of the suspicion in the SAR and the experience of the analyst. The case is subject to further discussion with the management. The preliminary analysis takes on average up to three days unless information is required from LEAs. Further analysis based on SARs was performed in regard to 306 cases in 2013 and 333 cases in 2014 which resulted in 196 and 158 disseminations respectively.

174. In performing its analytical function, the FIU relies on a sophisticated IT system and electronic internal processing of cases. This system allows for efficient processing of cases developed by the APML. However, there are some issues in relation to a number of the registers maintained in Serbia which have an impact on the effectiveness of the analysis process. There is a centralised real estate register kept by the Republic Geodetic Authority which is, however, not completely accurate and up to date. As a result, in many cases, the APML needs to resort to other authorities, such as tax authorities, local authorities, analysis of bank data, or Ministry of Interior address checks to obtain accurate information whether a person under analysis owns real estate. This has proven to be ineffective and time-consuming. The APML also cited difficulties in obtaining historical data on previous shareholders and directors of legal persons (especially in relation to joint-stock companies and various types of shares) since these are not directly available to it. Full financial statements have been accessible to the APML on the web site of the SBRA in regard to all companies only since 2014. There are issues with the data maintained by the NBS in regard to foreign payments (lacking identification of natural persons) and bank accounts (maintained only for legal persons²⁴).

175. The APML faces difficulties in accessing tax information and information held by LEAs. Responses from LEAs could take up to three months (especially where operative data is sought). This deficiency is only partially mitigated by the significant number of requests sent to the FIU by various law enforcement units, containing a detailed explanation of the reasons of suspicion of ML. This information is then used by the FIU to inform its own decisions. This is considered by the evaluators to be quite useful in terms of the availability of law enforcement information that could affect the direction of the analysis of new financial intelligence received by the FIU and guide the dissemination function of the FIU.

176. The evaluators have concerns in regard to the relatively low number of requests pursuant to Art. 55 of the AML Law to LEAs compared to the total number of cases analysed based on SAR data of previously unknown subjects. For example in 2014 there were 333 cases based on SARs where the subject of reports were persons unknown to the APML and there were 143 requests under Art. 55, of which about 50% to LEAs.

Table 5: Number of requests made by the APML to LEAs pursuant to Art. 55 in the period 2012-2014

	Art. 55 of the AML/CFT Law	Art. 59 and 55 of the AML/CFT Law (information and request together)	Total
2012	121	60	181
2013	102	73	175
2014	143	101	244

²⁴ This changed after the on-site visit as noted above.

177. In a number of cases, requests are sent by the APML to LEAs to establish a link to a predicate offence. This would require the requested LEA to carry out checks and substantiate the potential predicate crime. The procedure could be considered as an example of joint work and should be viewed in conjunction with the radical changes of the penal system to which the APML had to adapt (please see also below - disseminations to Prosecutor's Office). However, the information is not generally provided in a timely manner and this has an impact on the development of sensitive or more complex cases. Moreover, the APML is dependent on the priorities of the other authorities and their understanding of the feasibility of pursuing ML investigations to the fullest possible extent. The additional requests by LEAs to the APML after the dissemination, puts a further strain on the resources of the APML in addition to possibly impeding timeliness. Further strain on APML resources is put by the extensive work devoted to LEA's requests on their own cases (see below) and dissemination to a large extent guided by LEA priorities.

(b) Strategic Analysis

178. The APML has been conducting extensive strategic analysis of high quality since 2012. The APML significantly contributed to both ML and FT NRAs. The outcome of analyses is included not only in the annual reports of the APML in terms of typologies and trends but also in separate research documents by the APML. Strategic analysis²⁵ covers a significant number of aspects of the functioning of the AML/CFT system in Serbia. Part of the analysis was also conducted with the assistance of OSCE and the Council of Europe (MOLI Project).

179. Strategic analysis was also used to further assist the data mining capabilities of the APML and the dissemination of relevant information to LEAs, e.g. analyses on the transportation of money across the state border for some individuals, analysis of offshore companies, and analysis of money transfers to/from selected countries.

180. In 2014 and 2015, analysis was carried out on the application of the preventive measures by banks including STRs, the type of clients, the status of compliance officers (their numbers and how this affects suspicious transaction analysis), the crimes that were identified by reporting entities according to their risk assessments and the way they apply the NRA findings on risk. Similar analysis has been made for money transfer agents and transactions that they have reported. In 2014, the APML developed detailed Suspicious Transaction Reporting Guidelines. This document consists of short recommendations on how to analyse a suspicious situation.

181. The APML has jointly produced analysis with the Organised Crime Prosecutor's Office and the Ministry of Interior and has developed an overview of typological transactions and trends for the period 2012 - 2014. In cooperation with OSCE, two typologies documents were drafted and published (on ML sector vulnerability and on ML typologies in high-risk crimes). Strategic analysis was also conducted on the outflow of money towards high risk destinations, outflow of money to some European countries, role and ML risk of virtual offices, money transfer – analysis of geographic risk and frequency of participation of individuals from certain countries, as well as analyses of new payment methods and use of such services in Serbia. These publications are intended to assist reporting entities and state authorities alike in their future analysis and provide examples of ML prevention.

(c) Dissemination

182. As concerns the dissemination function, the APML does not follow a formal procedure but relies on the quality of the explanation or reasoning for suspicion, based on the SAR or other information received.

183. As of 2014, the APML increasingly relies on the discussion of cases with the Prosecutor's Office, Ministry of Interior or Tax Police (particularly where the information is inconclusive), in order to determine the most appropriate manner to proceed. A decision is generally taken once further checks are conducted by the LEA concerned. This is in part a result of the reform of the

²⁵ These include analyses of exchange offices, betting places, money transfer agents, virtual offices, prepaid cards, transfer of money across the state border, NGOs, international payment operations and terrorism financing. A key analysis on new payment methods was also provided to all reporting entities.

Serbian criminal procedure in 2012 - 2013 towards prosecutorial investigation and the need to fully substantiate the predicate crime in order to pursue a money laundering investigation.

184. According to a cooperation agreement entered into by the Prosecutor's Office and the APML in 2014, the APML meets with the contact person from the competent public prosecutor's office in order to agree on further action to be taken on the specific case. In addition, the cooperation agreement stipulates that further measures shall be subject to agreement in each specific case, including immediate dissemination of the information to the competent higher prosecutor, monitoring the financial operation of persons, collection of additional information or temporarily suspending a transaction. The authorities view these measures as a consultation mechanism that does not interfere with the legal obligations of the APML. The evaluation team considers that these provisions, despite ensuring closer cooperation and allowing swift reaction by the Prosecutor's Office, may have a number of adverse effects, notably: affect the independent decision-making process on the dissemination of cases; inhibit the proactive development of cases; and discourage the gathering of necessary information and the reaching of an independent conclusion on the presence of suspicion. The potential impact of the agreement appears to be corroborated by the minutes of the meetings held between the APML and the Prosecutor's Office pursuant to the agreement as well as by the decreasing number of disseminations to the Prosecutor's Office.

185. Following the conclusion of the above-mentioned agreement, the State Prosecutor's Office no longer receives the majority of disseminations; the information is disseminated directly to the Prosecutor's Offices that lead the respective investigations. In 2014, most of the cases were disseminated to the Higher Public Prosecutor's Office.

186. Since 2014 a change in practice has also occurred in relation to information disseminated to the Ministry of Interior as most cases are forwarded to the General Directorate of Police rather than, as was the case in the past, to various units of the Ministry of Interior. These changes are viewed by the main stakeholders and the evaluators as ensuring better coordination and more efficient cooperation.

Table 6: Dissemination of information to other state authorities

Year	2012	2013	2014
Prosecutor's offices	112	123	57
Tax Administration	21	32	37
Ministry of Interior	18	11	37
Security Intelligence Agency	18	19	11
Securities Commission	2	3	7
Military Security Agency	/	/	4
Anti-Corruption Agency	/	/	3
Customs Administration	/	4	2
Market Inspection	/	4	/
Agency for Chemicals	1	/	/
Total	172	196	158

187. The main recipient of FIU disseminations in the period under review is the Prosecutor's Office. The evaluation team notes that the APML seeks to disseminate the most high-quality cases to the Prosecutor's Office. This is one of the explanations for the decreasing number of disseminations to the Prosecutor's Office in 2014. Thus, about 14% of the cases analysed by the APML in 2014 resulted in dissemination to the Prosecutor's Office, down from about 40% in 2013. The other cases are disseminated to other State authorities so that they can further elaborate the ML suspicion and the predicate crime with their own information and cooperate with the APML to develop the case.

The number of disseminations to other state authorities however do not entirely compensate for the decrease in the disseminations to the Prosecutor's Office, considering the overall reduction in the number of disseminations. The reasons for this are mainly related to the following:

188. Despite the usefulness of intelligence provided by the APML, the role of the unit does not seem to be always understood by the other stakeholders in the system. The Prosecutor's Office appears to expect and strongly encourage the APML to furnish it with evidence admissible in court and to secure sufficient information on the specific predicate crime in every case that is disseminated. This is not the role of APML.

189. Various LEA representatives commented on the monitoring and postponement powers under the AML/CFT Law. There were 77 postponements in the period 2010-2011 and 10 postponements in the period 2012-2014, of which only one in 2014, which is a significant decrease of the use of this power since 2012. The absence of further developments of those 87 cases (in terms of prosecutions and convictions) in which such powers were used before 2012 was mainly due to difficulties in proving the predicate crime. The lack of further development is considered by the evaluators to be the main factor discouraging the use of those powers of the APML after 2012.

190. The APML has prioritised joint work and cases with government authorities in charge of the fight against organised crime, as well as terrorism financing. Information related to SARs with suspected links to terrorist financing is provided within 2 days on average to the respective law enforcement authorities (Ministry of Interior or the Security Intelligence Agency). In 2013 and 2014, the APML worked on 3 cases related to FT based on SARs and 8 FT cases based on requests from LEAs. After the dissemination of information on FT, further action is usually taken based on feedback provided by the receiving authority and the additional requests for information from the LEAs depending on the specific case. The contribution of the APML in regard to FT cases was acknowledged by all stakeholders and was seen as useful for the purposes of checking important financial information necessary to confirm or discard the suspicion of terrorist financing. This has not been corroborated by respective convictions. However, as demonstrated by the case below, the APML contribution has led to indictments.

191. Cases related to organised crime are also considered a priority and reported to the competent Ministry of Interior department or the Prosecutor's office for organised crime (which received 15 and 8 disseminations in 2013 and 2014, respectively). In 2013 and 2014 the Prosecutor's office for organised crime sent 36 and 14 requests respectively. The evaluation team was informed that the dissemination of cases potentially related to organised crime take on average 7 to 8 days when they relate to new cases and take less time where the information relates to a previously opened case. Requests received from the Ministry of Interior are a criterion for attaching any new information based on SARs (or other sources of the FIU) to the case and disseminating as a matter of priority. They are considered useful in providing information to the APML where the SAR itself is not sufficient. Potential human trafficking cases are also dealt by the APML on a priority basis and disseminated in a similar manner as the organised crime cases.

192. The information is disseminated and delivered (using couriers) in line with the requirements of the legislation on classified information. However, it is noted that the procedure for ensuring the proper clearance level for the FIU staff is still not completed. It is therefore unclear whether the FIU staff is in practice subject to the legislation on classified information and whether there are sufficient safeguards to ensure that for the security and confidentiality of the dissemination procedure.

193. Numerous examples of cases of analysis of the APML as well as joint work with all relevant authorities were provided to the evaluators and indicate the efficiency of the FIU's efforts. The evaluators were satisfied with the analytical input of the APML to the further work of the law enforcement authorities.

Cooperation with the Ministry of Interior and Security Agencies – Case of Terrorism Financing through an NPO

An NPO based in Serbia, which has a mosque operating by its side, receives credits into its bank accounts, by the order of individuals from Arabic countries, as well as through MVTs from Western Europe. Working on this case, the relevant authorities established that the funds had been sent to cover travel expenses of persons recruited to battlefields around Syria; in this particular case indictment was issued for terrorism financing.

194. In the opinion of the evaluation team, the change in practice of the APML with regards to disseminations contributes to the timely availability of adequate and precise information to the respective authorities and more adequate further action by LEAs. Moreover, this contributes to more efficient checks on cases by the Prosecution, taking into account the difficulties mentioned by the Prosecutor's Office in gathering evidence to prove ML and the recent changes of the criminal procedure to prosecutorial investigation.

Cooperation and exchange of information/financial intelligence

195. A significant part of the APML's work at the analysis stage, as demonstrated in Table 7 and discussed under the section of the report concerning tactical analysis, is related to cases that are based on requests from state authorities pursuant to Article 58 of the AML/CFT Law and on the joint development of cases based on the information available to the FIU from SARs, CTRs and information on cash carried across border. Usually checks involve CTRs and STRs database, account turnover and balance, account holders or proxies to accounts, safe-deposit boxes, and transactions conducted through money transfer service providers. The information from CTRs and notifications on cash carried across border is widely used to support the cases under analysis and in addition data mining is performed on a regular basis in accordance with pre-defined criteria and red flags.

Table 7: Data provided in response to state authorities' requests 2012 - 2014

Year	2012	2013	2014
Prosecutor's offices	44	73	37
Tax Administration	13	19	17
Ministry of Interior	254	363	357
Customs Administration	/	6	5
Securities Commission	8	8	2
Anti-Corruption Agency	/	/	17
Anti-Corruption Council	/	/	1
Military Security Agency	/	/	9
Security Intelligence Agency	26	25	19
Foreign Exchange Inspectorate	4	/	/
Market Inspection	/	1	/
Total	349	495	464

196. In the period between 2012 and 2015 the APML participated as a member of 15 inter-agency working groups, including, 14 working groups on the fight against organised crime and 1 working group on fight against terrorism financing. The APML contributed significantly to these cases by collecting and analysing relevant financial data. Furthermore, a task team composed of

members of the APML and the Tax Administration, Sector of Tax Police, has been established and has started operating²⁶. This is considered to be a sound venue for cooperation and joint work in regard to tax evasion and tax-related crimes which are assessed as carrying a high risk for ML. This also provides for effective and timely use of the information of the Tax Administration and could be considered to contribute to the fulfilment of the tax authorities' tasks.

Task Team formed by the APML and the Tax Administration Sector of Tax Police

The search of CTRs and STRs is to be carried out according to a number of criteria, including a) cash deposits by non-resident clients into non-resident accounts kept with commercial banks in the Republic of Serbia; b) wire transfers of funds from accounts of legal persons into accounts of natural persons based on specific payment codes; c) transfer of foreign currency funds from accounts of legal persons into accounts of companies registered in offshore destinations - trade in goods and services; d) cash deposits and wire transfers by natural persons into accounts of legal persons based on specific payment codes.

Following the search of CTRs and STRs and once obtained the preliminary results, the Task Team meets and decides what further steps to take with respect to the ten top ranking subjects which meet the criteria on each of the agreed search. Minutes are made after all the facts and data available to both state authorities have been considered.

After an agreement has been reached on the further steps to take, depending on the perceived risks as well as the capacities of both authorities, in line with Article 55 of the AML/CFT Law, the APML shall request from the Tax Police additional data for the purpose of identifying reasons to suspect ML or FT. The Tax Police is obliged to provide the APML with data from its databases for each subject of the request within a reasonable timeframe.

197. At the same time the effectiveness of this mechanism is still not entirely clear. Difficulties have been experienced in the cooperation with the tax authorities, particularly in relation to the development of FIU cases (STR-based) where information is required, for instance, on phantom companies or on suspected tax-related cases involving a large number of persons.

198. The statistics on requests (disseminations) by the APML to the tax administration indicate that wider use of tax administration information would be beneficial to the APML. In 2013, the number of requests roughly coincided with the number of cases that were assessed by the APML as being related to tax fraud (respectively 33 cases and 32 requests to the tax administration). In 2012, out of all of the received SARs, 47 were assessed as potentially related to tax crimes and 21 requests were sent to the tax authorities. The evaluation team considers that extending access of the APML to tax information could be useful also in developing more complex cases of suspected money laundering cases related to organised crime and abuse of office, which are also designated as carrying high-risk in the NRA. It is noted, however, that very few of the cases disseminated to the tax authorities would actually result in criminal proceedings.

199. In the period 2010 – March 2015, the Financial Investigations Unit, on the basis of 1,175 orders of the prosecution, conducted financial investigations against a total of 5,005 persons. The powers of the APML are routinely used in regard to financial investigations and the APML responded to 246 requests from the Financial Investigations Unit in 2014, 269 in 2013 and 155 in 2012. In addition, the APML responded to 111 other requests from the Ministry of Interior in 2014, 94 in 2013 and 99 in 2012. The cooperation is also subject to the procedures provided under the Financial Investigation Guidelines which were not provided to the evaluators. The significant contribution of the APML was noted by the authorities met on-site.

200. The evaluation team was informed of the significant contribution of the APML in terms of identifying assets abroad, identifying ownership, gathering the necessary financial information on

²⁶ In line with the « Operating procedures of the Task Team for cooperation and information exchange between the Administration for the Prevention of Money Laundering and Tax Administration, Sector of Tax Police », agreed on 26.12.2014

cases investigated by the LEAs, as well as the possibility to monitor and postpone transactions. As explained by the authorities roughly half of the requests for information by the APML to foreign FIUs were based on requests from the LEAs. The exchange takes place using the secure channel of Egmont Group.

Overall Conclusions on Immediate Outcome 6

201. LEAs and the APML have unfettered powers to access a wide variety of information. In practice, however, some information maintained by public authorities is not easily retrievable and available databases may not always contain current and up-to-date information. Additionally, information requested by the APML from LEAs and tax authorities is not always provided in a timely manner. This has an impact on the timeliness and quality of the analysis function of the APML. Although LEAs have direct and indirect access to numerous databases, they tend to rely heavily on the APML channel to gather information on their behalf, mainly to circumvent the more cumbersome procedures set out in the CPC. The evaluation team is of the view that a more balanced approach should be adopted by LEAs, to ensure that the APML, whose resources are already limited, is not overburdened.

202. The use of financial intelligence by LEAs in the pre-investigation phase and financial investigations has been amply demonstrated to the evaluation team. The output of the APML has the potential of supporting the operational needs of LEAs in terms of tracing assets, providing new leads and relevant and accurate information. However, it was not demonstrated in how many cases financial intelligence was actually used for generating and initiating ML investigations despite several examples provided by the authorities.. This does not appear to be the result of limitations in the output generated by the APML, but the difficulties for the authorities in undertaking and conducting investigations for money laundering in the absence of specific indication of the predicate crime. This is not the case with respect to FT, where APML notifications have been used successfully by LEAs in investigations resulting in indictments.

203. The APML is the central authority for the receipt of STRs and CTRs. The quality of STRs has improved due to significant efforts made by the APML. However, very few STRs are submitted by reporting entities other than banks and money remitters. Very little information is received by the APML from the Customs Administration concerning ML/FT suspicions related to cross-border movements of cash. Some deficiencies with regard to the proceeds of crime reporting requirement raise concerns whether all relevant information is received and used by APML.

204. The analysis function of the APML is a strong point in the system, in terms of both tactical and strategic analysis. The analysts of the APML are experienced and well-trained and have at their disposal sophisticated IT tools. The APML has made significant efforts to overcome some of the limitations restricting the availability to information. However, additional efforts by the law enforcement authorities in responding to APML's requests and disseminations would further enhance the analysis function of the APML. The strategic analysis products generated by the APML have assisted both law enforcement authorities and the private sector in identifying typologies.

205. The cooperation arrangements in place between the APML and the Prosecutor's Office, which are intended to enhance the dissemination process, are positive. However, additional effort is needed to ensure that the system does not impact negatively on the APML's independent decision-making process and inhibit the proactive development of cases by the APML. Additionally, the APML should consider increasing the number of cases disseminated to LEAs and assess, together with LEAs, arrangements to ensure that those cases are properly pursued including in ML investigations.

206. Cooperation between the APML and the authorities responsible for investigating organised crime and terrorism financing is another positive aspect of the system. The prioritisation of work in this area is a welcome development and reflects the risks faced by the country. Existing similar arrangements with the tax authorities should be further enhanced.

207. Serbia has achieved a **moderate level of effectiveness** with Immediate Outcome 6.

Immediate Outcome 7 (ML investigation and prosecution)

ML identification and investigation

208. Serbia has a relatively complex law enforcement network for the investigation of ML. Various law enforcement authorities, with different competences, are responsible for the actions related to the preliminary investigation and the investigation of ML cases. These agencies include the Prosecutor's Office and the Police acting under the instructions and supervision of the Prosecutor's Office, the Military Security Agency, the Security Information Agency, and the Tax Police. The Anti-Corruption Agency also has a role in this process but it is unclear from the information provided whether it has investigative powers. Within the Prosecutor's Office, ML investigations are conducted by the Higher Prosecutor's Office. Although there are no specialised ML units, some prosecutors in the Higher Prosecutor's Office are said to be specialised in the investigation of ML offences. The Organised Crime Prosecutor's Office also prosecutes ML and FT crimes where the proceeds of crime derive from organised crime, corruption and other particularly serious crimes. Within the Police, the units responsible for ML investigations are the Economic Crime Unit and the Organised Crime Unit. The Section for the Suppression of ML and, to some extent, the Financial Investigations Unit within the Organised Crime Unit are tasked with ML investigations. There is no similar specialised unit within the Economic Crime Unit. However, it appears that certain police officers have special competences in ML investigations. More detailed information on the functions, competences and responsibilities of each authority is provided under Chapter 1. There is no central authority coordinating the AML activities of the different LEAs and no central database aggregating all active and concluded ML investigations conducted within the country. To some extent this undermines the ability of the country to target ML in a holistic manner.

Identification of ML cases

209. The identification of ML cases is not performed on a systematic and consistent basis. This appears to be caused by the absence of a national criminal policy to pursue ML cases applicable to all LEAs responsible for ML investigations. Equally, none of the LEAs have an institutional policy establishing the circumstances in which ML cases should be initiated. It is not clear whether the authorities view this as a shortcoming, since none of the strategy documents viewed by the evaluation team include the identification of ML cases as an action point in its own right.

210. In most cases, ML is identified in the course of an investigation of a predicate offence. The authorities maintain that they are guided by the general obligation under the CC to investigate any suspicion that a crime has been committed. This would imply a proactive approach to the identification of ML cases. However, this assumption is not borne out by statistics. A comparison of the number on convictions for predicate offences and the number of ML investigations indicates that LEAs do not often pursue ML in connection with predicate offences. For instance, in 2014 the number of convictions for predicate offences was 13,428, whereas only 2 ML investigations were carried out by the Section for Suppression for ML. The authorities pointed out that proceeds from predicate crime are often seized from the perpetrator before they are laundered. However, it was not possible for this claim to be substantiated by the statistics on the number of confiscations for assets following conviction for certain predicate offences (the statistics are provided in IO 8 below). The authorities have also claimed that in a number of cases evidence could not be gathered but this is not a strong justification for a lack of investigations.

211. Some authorities indicated that ML cases are identified on the basis of intelligence generated internally by operational units (e.g. Service for Crime Analysis within the Police). Crime trends and threat assessments generally dictate the priorities to be included within the authorities' annual work plan. This enables LEAs to focus on those crimes, and related ML, which pose the most significant threat in Serbia within a given period of time e.g. organised crime, and crimes that generate substantial amounts of proceeds. The Ministry of Interior, in 2013, published guidance on registering, classifying and monitoring activities of organised crime which the authorities say identifies the risks and threats from ML and other organised crime. The aim is to provide for early

detection of organised crime but the authorities did not elaborate further on how this leads to developing strategies to identify ML cases generally.

212. Some ML cases are identified as a result of financial investigations carried out in accordance with the Law on Seizure and Confiscation of the Proceeds of Crime, which was enacted in 2008. The Financial Investigations Unit of the Police (an operational unit within the Service for Combating Organised Crime, which was established on 1st June 2009) confirmed that a financial investigation is initiated upon the request of the PPO where it is in possession of information indicating that a person acquired property through the commission of an offence or that a person is in possession of property that exceeds the person’s personal income. The Evaluation Team was not given a satisfactory explanation concerning the low number of financial investigations, given the number of convictions for proceeds generating offences.

213. The authorities noted that during a financial investigation, evidence is gathered on the assets, legal income, and the expenditure of the person being investigated as well as the activities of associates. The Financial Investigations Unit may engage the services of an expert or institution although the evaluation team was informed that this had thus far not occurred in practice. At the close of the investigation, the report is provided to the prosecutor.

214. The authorities presented figures (Table x below) on the number of financial investigations initiated in the period under review. It is evident that financial investigations are very rarely used to identify ML cases. The main predicate offences underlying financial investigations were said to be misfeasance in business, abuse of office, tax abuse and drug production and distribution. The authorities acknowledge that prosecutors consider financial investigations solely as a mechanism for asset recovery or confiscation and not as a means to identify and document the movement of money during the course of criminal activity.

Table 8: Number of financial investigations in the period under assessment

Year	The total number of financial investigations	The number of financial investigations of money laundering
2010	241	2
2011	188	1
2012	191	4
2013	191	7
2014	192	5
2015	261	8
TOTAL	1,264	27

215. Towards the end of 2014 (the precise date has not been provided), Serbia adopted the ‘Financial Investigation Strategy for the Period from 2015 through 2016’ in fulfilment of one of the objectives set out in the National Anti-Corruption Strategy 2013-2018. The primary purpose of the strategy is to set out practical measures to identify and document money flows during criminal activities, i.e. to discover the origin of the money, how it is transformed and used and to identify the final destination. Financial investigations must be conducted simultaneously with investigations for predicate offences. Ultimately the goal is to prevent criminals from integrating unlawfully acquired funds into the financial system. The other goals of the strategy are to enhance cooperation between the relevant law enforcement bodies and ensure that advanced training on financial issues is provided on an on-going basis. The emphasis of the strategy is on an efficient organisation of the public prosecutor’s offices, the police and courts and building their capacity in dealing with financial investigations. A recommendation is made to set up forensic accounting offices.

216. While the adoption of the strategy is a very welcome development, its implementation at the time of the on-site visit was still at its early stages and it is not clear to what extent the objectives have been addressed. The Evaluation Team was not satisfied that the authorities had reached the goal of adopting a proactive approach to financial investigations but instead the practice continued of financial investigations not being initiated until after criminal charges were filed, instead of simultaneous investigations, thus increasing the risk of dissipation. The low number of ML

prosecutions and the explanations given on-site demonstrate that there are still issues with the prosecutor offices and others seeing financial investigations solely as a mechanism for asset recovery/confiscation, which the Strategy acknowledges is a narrow understanding. Regarding specific objectives of the Strategy mentioned above, these have not yet been actioned such as the formation of specialised offices for financial crime within the regional higher prosecutors' offices and regional higher courts, the appointment of liaison officers to improve co-operation, and the hiring of forensic accountants to assist the prosecutors. Therefore the effectiveness of the Strategy could not yet be demonstrated at the time of the on-site visit.

217. ML cases are also identified through notifications disseminated by the APML (an analysis of the dissemination procedure is provided under Immediate Outcome 6). LEAs are generally satisfied with the quality of these notifications. However, the extent to which notifications are used by LEAs to identify ML cases could not be verified, since no statistics are maintained. The authorities could not demonstrate that notifications routinely serve as a basis for launching successful ML/FT investigations. There are various factors which appear to militate against the effective use by LEAs of APML notifications (which are set out under Immediate Outcome 6). For instance, the Prosecutor's Office is of the view that the APML has limited powers to obtain evidence and is often not in a position to gather sufficient information on the specific predicate crime, which is, in the view of some of the prosecutors, a prerequisite for the successful prosecution of ML cases. This is not the role of the APML. LEAs should clarify their understanding of what the functions of the APML are.

218. ML cases are rarely identified by government authorities, such as the Customs Administration or financial supervisory authorities, as a result of information they may come across in the course of their daily operations. This is largely attributable to lack of awareness. Measures to rectify the situation are currently in train. For instance, every government authority relevant to AML/financial crime will be expected to appoint a liaison officer to connect with the prosecutor's office and police, pursuant to the objective of improved cooperation of the Financial Investigation Strategy. The Evaluation Team was informed that liaison officers have been appointed at the Tax Administration, Prosecutor's Office for Organized Crime, Security Information Agency, Military Security Agency, and Ministry of Interior.

Investigation of ML cases

219. The Authorities provided figures on the number of ML preliminary investigations.

Table 9: Number of preliminary ML investigations

Year	The number of criminal reports sent to the Prosecutor's Offices	The number of ML offences contained within the criminal reports	The number of perpetrators contained within the criminal reports	The amount of laundered money in RSD contained within the criminal reports
2010	20	91	108	868,246,013
2011	31	181	210	1,671,383,981
2012	65	123	143	3,845,336,554
2013	8	25	41	79,606,010
2014	11	26	39	1,085,383,604
2015	N/A	N/A	N/A	N/A
TOTAL	135	446	541	7,549,956,162

220. Separately, the authorities provided data on the number of persons subject to ML investigations and indictments (see table 10 below) and also on the number of persons convicted of ML.

Table 10: Number of ML investigations and indictments in the period under assessment

Year	Number of persons subject to ML investigation	Number of persons subject of ML indictment
2010	97	87
2011	46	18
2012	44	20
2013	22	2
2014	13	1
2015	32	4

221. The number of ML convictions has been on the increase in the previous two years (see table 11 below), however the number of persons being investigated has fluctuated and the indictments have seen a dramatic decrease in the previous three years. These figures did not therefore allow the evaluation team to conclude that the investigation of ML was being carried out in an effective manner commensurate with the country’s risk profile. It should be highlighted that the figures above on the number of indictments do not correspond to the number of “prosecutions” in table under IO 8, making it difficult for the evaluation team to fully and properly measure these statistics.

222. ML investigations are carried out by the Public Prosecutor’s Office, with the assistance of the Police. Where ML has its origins in organised crime, terrorism, abuse of office or abuse of official duty, the Prosecutor’s Office for Organised Crime has special jurisdiction in respect of such criminal offences. The enhanced role of the Prosecutor’s Office in investigations is a development since the last evaluation in 2009.

223. The law enforcement authorities of Serbia have at their disposal “special investigative techniques” which may be deployed where there are grounds for suspicion that the person has committed, inter alia, a ML offence. The benefits of these special investigative techniques (or special evidentiary actions) and in particular interception of communication and covert surveillance under chapter VII, Part 3 CPC have been useful in investigating ML. The authorities explained that, in practice, the deployment of one technique can often lead them to discover evidence which can be used as the basis for the deployment of a further technique, thus allowing the investigation to construct a comprehensive picture of the ML.

224. The CPC provides that the Public Prosecutor is the authority which manages the pre-investigation proceedings and all authorities participating in such proceedings are required to notify the competent prosecutor of all actions taken aimed at detecting a criminal offence or locating a suspect. In practice, in the course of the pre-investigation stage, the prosecutor submits information requests to the APMML to obtain information on bank accounts, beneficial ownership and other financial information, provided that a suspicion of ML exists. This is considered to be a useful and efficient source of information and the authorities are encouraged to continue making use of it.

225. Where there are grounds for suspicion of a criminal offence, the police are required to implement necessary measures for, inter alia, detecting and securing traces of the criminal offence and objects which may serve as evidence and the collection of information which may be of benefit for the proceedings. If the police conduct an evidentiary action during the pre-investigation proceedings, they are mandated to inform the public prosecutor without delay. In the context of ML, the powers in Art 143 et seq. of the CPC are important. Where there are grounds for suspicion of ML and the person possesses accounts or conducts transactions, the prosecutor through the court may order that accounts or suspicious transactions be checked and this may encompass the acquiring of

data, the monitoring of suspicious transactions or the temporary suspension of a suspicious transaction.

226. The public prosecutor initiates an investigation when there are sufficient grounds for suspicion that a criminal offence has been committed, and the order is issued before or immediately after the first evidentiary action undertaken by the public prosecutor/police in the pre-investigation proceedings (not later than 30 days after the public prosecutor was notified about the police taking their first evidentiary action). The public prosecutor conducts the investigation but may obtain forensic, analytical or other assistance from the police and other state authorities.

227. The evaluation team met with several of the intelligence and investigative agencies including the APML, the Service for Combating Organised Crime, the Security Information Agency, the Military Security Agency, and the Tax Administration Police. The agencies emphasised the strong co-operation that exists between them, and also with the competent prosecutor's office. This cooperation often lays the foundations for pursuing investigations of ML effectively. Working groups are set up to progress matters. An Agreement between the RPPO and the APML requires that, prior to dissemination, the APML meet with the contact person in the relevant prosecutor's office to agree on further work to be completed on the case. There is an obvious benefit in the APML and prosecutor co-operating in shaping a case, and doing so through meetings as opposed to mere correspondence.

228. Nevertheless, given the complex internal structure of LEAs, horizontal and vertical coordination poses a challenge. It is difficult to envisage a nationally coordinated approach to ML in the absence of a system which assigns a unique case number to every ML case and enables the interconnection of databases for criminal investigations. Moreover, there is no integrated system for statistical monitoring of ML cases in the whole system, starting from STRs to criminal reports and to judgement. Indeed, the Financial Investigations Strategy acknowledges that a new law on the re-organisation and re-distribution of competences of law enforcement bodies and the courts is required, even going as far as recommending that a national department dealing exclusively with ML, among other financial crimes, should be set up.

Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies

229. The ML investigations and prosecutions in Serbia to some extent reflect the risks that the country faces.

230. As noted in the Section on ML/FT risks in Chapter 1, organised criminality poses a significant ML threat in Serbia. Efforts to combat organised criminality have been on-going since 2003. A specialised unit was set up within the Higher Prosecutor's Office to deal with organised crime cases. An Organised Crime Unit was also set up within the Police, with a specialised section for the suppression of ML. In addition, the Security Information Agency also performs the tasks related to countering organised international crime, which include detecting, investigating and documenting the most serious forms of organised crime with an international dimension, e.g. drugs smuggling, illegal migration, and human trafficking, arms smuggling, money counterfeiting and money laundering, as well as the most serious forms of corruption linked to international organised crime. The evaluation team was satisfied that the country is cognizant of the risk emanating from organised crime and has allocated resources to mitigate that particular risk. The authorities have had some success in investigating ML related to organised crime (see cases below). While commending the efforts of the authorities, it should be noted that there was just one (large) case of ML related to organised criminal groups. No other cases were reported.

231. The NRA identifies tax evasion as one of the most prevalent proceeds-generating crimes in Serbia and therefore posing a significant threat in terms of ML. The Action Plan based on the findings of the NRA proposes various measures to mitigate the related ML threat. It envisages the strengthening of the Tax Administration and the Tax Police and intensifying the auditing and sanctioning for failure to declare taxable income. It is not clear to what extent these objectives have been achieved. On a positive note, a task force bringing together experts from the APML, the Tax Administration and the Tax Police was created in December 2014 (further details under Immediate

Outcome 6) to identify suspicions of ML related to tax crime. It appears that very few cases disseminated to the tax authorities resulted in criminal proceedings. There were no ML convictions related to tax crimes.

232. Measures to eradicate corruption are taken very seriously by the authorities. An anti-corruption agency was set up. The Organised Crime Prosecutor’s Office was granted specific competence to prosecute ML crimes where the proceeds of crime derive from corruption. The Military Security Agency is responsible for corruption offences involving the Serbian army. The authorities have achieved tangible results in this area, insofar as corruption offences are concerned. However, very few ML cases related to corruption have been taken forward.

Types of ML cases pursued

233. The majority of ML convictions were for self-laundering connected to a domestic predicate offence. Only four of the 35 persons convicted of ML were for third party laundering see table below. There have been no foreign predicate convictions. The limited number (5) of outgoing money laundering-related MLA requests in five years suggested that the Serbian authorities are not active in this area despite the threat from foreign predicate crime. No stand-alone ML convictions have been achieved.

Table 11: Number of ML convictions in the period under assessment

Cases	Total number of persons convicted of ML	Number of convictions for self-laundering	Number of convictions for third party laundering+
2010	1	0	1
2011	2	1	1
2012	1	1	0
2013	13	13	0
2014	18	16	2
2015	N/A	N/A	N/A
Total	35	31	4

234. The practice of requiring predicate offence convictions before a ML prosecution is initiated also highlights the focus of the Serbian authorities on prosecuting self-laundering cases, instead of allocating resources and powers to pursue more instances of 3rd party ML, stand-alone ML or foreign predicate offence ML.

235. The authorities provided information on the third party ML convictions in the context of a larger drug trafficking conspiracy orchestrated by an OCG headed by Darko Saric. The two third party ML convictions arising out of this conspiracy related to a company owner and a bank manager. Summaries of each case below provides an illustration:

- **The first case regarding the bank manager** involved the abuse of the privatisation process. On behalf of the OCG, 42 natural persons (coerced members of staff of the hotels which were to be purchased) made cash deposits on different days and of varying amounts below the reporting threshold, into accounts under their own names. These sums were used, with the connivance of the bank manager, to provide the legally required guarantee for the purchase, by two OCG controlled companies, of state owned hotels at auction. The bank paid for the purchase of the shares and then recouped the funds from the 42 bank accounts. Thereafter, illicit proceeds continued to be laundered by way of being invested in the reconstruction of the hotels, using the same *modus operandi*. 15 individual hotel workers were coerced to open foreign

currency accounts and make deposits which were used to guarantee the construction work. An investigation was opened following intelligence gathered by the Security Information Agency, and the Agency was commended by the Prosecutor's Office for Organised Crime for detecting the *modus operandi* in this case. The bank manager originally denied the allegations but entered into a plea agreement, pleading guilty to ML. He was sentenced to 12 months' imprisonment and was barred from the banking profession for three years, and the NBS revoked the bank's licence.

- **The second case involved the owner of a profitable company** selling the company to the OCG, to enable the OCG to have control of a company with the requisite turnover to purchase State owned agricultural land. Through its lawyer, the OCG identified a company dealing in electronic chargers for mobile phones. The company's business had already been transferred to another company and the OCG therefore effectively purchased the good standing of the company for EUR 350,000 which was paid in cash to the owner, and the company was subsequently used to purchase shares in an agricultural land owning company. Following detection by the APML of the company owner's attempt to deposit the EUR 350,000, court orders were made on the motion of the prosecutor to temporarily suspend transactions. Following an investigation, the defendant agreed to a plea bargain agreement pleading guilty to ML and he was sentenced to 12 months' imprisonment and surrendered for confiscation the amount of EUR 350,000.

236. The above 3rd party ML convictions demonstrate the capabilities of the authorities to detect and pursue organised crime and ML, and the authorities should be highly commended for the results achieved in the Darko Saric litigation. In particular, using special investigative techniques such as the search of premises, phone tapping and the interception of emails, the authorities were able to effectively follow the money trail and identify the ultimate beneficial owners of legal entities used in the process. The international co-operation used in this process was also vital in obtaining key evidence. As mentioned in Immediate Outcome 2, the acceptance by the courts of evidence legally obtained in other jurisdictions, such as through the use of phone tapping in Italy, allowed the process to be expedited and the authorities to use key evidence to establish the ML patterns.

237. In addition to the 3rd party ML convictions referred to above, the efforts of the Serbian authorities in the Saric conspiracy has led to the effective abolition of a considerable OCG and several convictions for high proceeds generating predicate crime offences such as drug trafficking. The evaluation team was informed that ML proceedings regarding several of the co-conspirators were on-going.

238. The results referred to above are very encouraging but the overall number of ML convictions does not demonstrate a fully effective system. The evaluators were informed of the difficulties facing the prosecutors and the judiciary regarding ML cases, which appear to be having a direct impact on the efficiency of the process. The main issues identified are as follows:

- **The delays in processing an ML case.** A typical case, particularly where there are multiple defendants, witnesses, experts and documents can require around 60-80 court days and may last with interruptions for around two years. Such interruptions regularly occur given the other responsibilities of the judges, even within the specialised department of the Higher Court in Belgrade. The pressure on physical courtroom space exacerbates this issue. The confirmation of indictments was said to have turned into a cumbersome process. In terms of case management, the judges feel constrained from being able to properly exercise discipline and control on the times spent during the trial. This includes the cross examination of expert witnesses, which in large multiple defendant cases can be long and repetitious, especially when counsel fail to agree indisputable facts, which appears to be a common occurrence. Delays are also caused by defence counsel submitting late evidence or seeking the exclusion of prosecution evidence, and also submitting numerous applications using the provisions under Chapter III CPC for a judge to recuse himself. The evaluation team welcomed the approach by one Chamber of the specialised organised crime department of the Higher Court in Belgrade prohibiting repeated applications for recusal.
- **Requiring a conviction for a predicate offence.** In some circumstances, ML prosecutions are delayed until there is a conviction for a predicate offence. Conflicting reports were received by

the evaluation team as to the extent to which this occurs. It seems that indictments including both the predicate offence and the ML offence are often being separated, thus effectively suspending the ML prosecution pending the resolution of the predicate offence. Whilst this may be understandable in rare circumstances (i.e. large-scale cases with multiple defendants, witnesses and documents), the evaluation team is concerned as to the effects of such a practice becoming a norm. The authorities reported that no such practice would technically be applied as regards foreign predicate offences, but that the ML offence would naturally be easier to prove if there was a conviction elsewhere. However, waiting for another jurisdiction to convict for the predicate offence could be a dangerous approach leading to undue delay. The ML offence in Article 231 CC does not require a predicate offence to be proved, and adopting such a system causes delays, additional burdens on the prosecution, and potentially fosters a system which only focuses on self-launderers.

- **ML is not being prosecuted in some circumstances even where possible.** The evaluation team was told that where the ingredients for the offence of “Concealment” under Art 221 CC²⁷ are present, there is a temptation to opt for this charge, given the similarities with the ML offence. As concealment can be prosecuted without prior proof of the predicate offence, this increases the potential temptation to pursue this charge instead of ML. This is not a mere question of judicial labelling, given that the maximum penalty for concealment is significantly lower than that of ML. Moreover, the authorities acknowledged that in practice, some prosecutors favour prosecuting the predicate offence and showing a disproportion between assets and income to achieve confiscation as this is perceived as an easier option than pursuing ML.
- **ML requires economic and specialised expertise which prosecutors and judges do not always possess.** It was noted that money launderers are often sophisticated or are at least advised by knowledgeable economic experts. Both the previous report and the NRA mentioned the need for further ML training for prosecutors. The evaluation team heard that some prosecutors were not equipped with sufficient financial expertise and that they were not being provided with enough assistance from financial experts. There was a suggestion that there should be further specialisation within the prosecution and judiciary to deal purely with ML and financial crime. Indeed, the evaluation team was informed of plans to have specialised economic crime prosecutors.

239. Several of the ML convictions are said to be subject to appeal, although the exact number was not given. The authorities asserted there have been no difficulties with the statutory limitation periods.

240. The CPC contains provisions empowering the prosecutor to enter into a plea bargain agreement with a defendant, which requires court approval, and such approval is subject to the agreement complying with the requirements in Articles 313-319 CPC. Agreements have been used as a tool to obtain ML convictions and the confiscation of assets and to avoid the difficulties associated with ML prosecutions as rehearsed above. The authorities also reported that jurisprudence has allowed concluded plea agreements to be admitted as evidence against co-perpetrators (who themselves have not entered into any such plea agreement) and to prove the existence of an OCG, which the evaluation team considers a very encouraging development subject to the concerns expressed as regards sanctions below.

241. The evaluation team is also of the view that the corruption-related issues noted under the section on background and context may have a potentially negative impact on the effective prosecution of ML cases.

²⁷ Article 221(1) CC: “Whoever conceals, circulates, purchases, receives in pawn or otherwise obtains an object he knows was acquired by criminal offence or whatever was obtained for it by sale or exchange, shall be punished with a fine or imprisonment of up to three years, with the proviso that the penalty may not exceed the statutory penalty for the offence by whose commission the object was acquired.”

Effectiveness, proportionality and dissuasiveness of sanctions

242. The sanctions provided for by the CC for ML are set out comprehensively in the TC Annex under Criterion 3.9 (natural persons) and 3.10 (legal persons).

243. The sanctions for ML which have been ordered by the courts are not considered effective, proportionate and dissuasive. The statistics indicate that the highest custodial sentences handed down by the courts have been for one years' imprisonment. The authorities acknowledge that these sentences have been milder than those for predicate offences.

Table 12: Highest sentences for ML during the period 2010-2014

	Highest Non-Custodial Sentence	Highest Custodial Sentence
2010	N/A	12 months
2011	10,000 EUR	12 months
2012	50,000 EUR	12 months
2013	N/A	7 months
2014	3,000 EUR	12 months

244. Compared with the available sanctions in the CC, those sentences which have been handed down by the courts appear rather lenient, which is also at odds with the severity of ML in general. The evaluation team was informed that in some of the ML cases, the offenders were subject to significant imprisonment terms for predicate offences, such as drug trafficking. However, this does not reduce the need for the ML offence itself to be subject to strong and dissuasive sanctions. Not all ML cases are grounded on predicate offences which carry significant sentences, since persons convicted of third party ML will regularly not be sanctioned for a predicate offence.

245. It was explained to the evaluation team that the mild sanctions applied for ML might be because it is a relatively new phenomenon and is not always viewed as seriously as underlying predicate offences. Serbia is encouraged to strengthen its sanctioning policies for ML.

246. As highlighted above, plea bargain agreements have been reached for some ML convictions, and such agreements were reached in the third party ML cases mentioned above (e.g. in the "Darko Šarić conspiracy", in which the defendants were sentenced to 1 years' imprisonment). The evaluation team acknowledges that the use of plea bargain agreements may be useful not only in terms of achieving convictions (and sometimes confiscations), but also for establishing the existence of an OCG and being able to use such agreements as part of the case against their larger players. However, the evaluation team cautions against mild sanctions being agreed, particularly where the sentences for persons in the same OCG for the predicate drug trafficking offences have ranged from 4 to 11 years. In the context of those harsher sentences for predicate crimes, it is difficult to justify the term of 1 year imprisonment for third party ML as being appropriate.

247. For the above reasons, the sanctions for ML which have been ordered by the courts are not considered effective, proportionate and dissuasive.

Extent to which other criminal justice measures are applied where a ML conviction is not possible

248. As mentioned in the context of Immediate Outcome 8, the Serbian authorities assert they consistently pursue asset confiscation by using the powers available under the Law on the Recovery. Whilst this indisputably reduces the profitability of crime, it should not prevent the law enforcement and prosecution authorities from also targeting ML where possible, and in particular third party

launderers (in any event see the conclusions under IO8 on the extent to which this practice is occurring).

249. The CPC provides for the possibility of confiscation even in the absence of a conviction, if necessary for protecting the interests of society or for reasons of morality. It is therefore conceivable, where a ML conviction is not possible (because the perpetrator has absconded, has died in the course of the criminal proceedings or the offence falls outside the statute of limitations), that the courts nevertheless order the confiscation of criminal proceeds. However, the evaluation team is not aware that this situation has ever arisen in practice and that the implementation of this possibility has thus been tested.

Overall Conclusion

250. Serbia has made some efforts to ensure that ML offences are investigated and offenders are prosecuted. There are indications that the law enforcement authorities have become more active in looking for ML elements during the investigation of a predicate offence. In particular, the country has had a few recent third party ML convictions which formed part of the dismantling of a wider conspiracy. However, the number of ML convictions remains low. The large majority of ML convictions achieved in the period under review were for self-laundering, mainly involving domestic predicate offences. The overall effort to combat ML is not consistent with the risks faced by Serbia. There remain several deficiencies which seriously undermine Serbia's ability to establish an effective system to investigate, prosecute and convict ML activities. Most notably, ML offences are not yet being sufficiently prosecuted. It appears that not all authorities consider ML as serious as the underlying predicate offences. Where ML is being prosecuted, procedures are subject to unnecessary delays, the conviction rate is relatively low and the sanctions lack a dissuasive effect.

251. **Serbia has achieved a low level of effectiveness with Immediate Outcome 7.**

Immediate Outcome 8 (Confiscation)

Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective

252. Objectives stressing the importance of financial investigations on a strategic level were formulated initially in the Action Plan which forms part of the ML NRA. The specific actions formulated therein focus in particular on enhancing the overall effectiveness of the framework in place in this respect, such as increasing the capacity and integrity of the authorities involved in financial investigations and asset recovery, improving the effectiveness of execution of confiscation and seizure orders and enhancing international cooperation in connection to asset recovery. These general objectives were further developed into concrete actions in the Action Plan. Taking into consideration the conclusions of the NRA, one of the general themes of the National Strategy against ML and FT for the period 2015-2019 is to detect and disrupt ML and FT threats, to sanction criminals, and to seize and confiscate illicit proceeds. As concerns concrete objectives set in the Strategy in this respect, it mainly focuses on enhancing cooperation and coordination between the relevant national authorities.

253. The key strategic document is, however, the Financial Investigations Strategy for 2015-2016 which was adopted in 2014. This Strategy builds up on the above mentioned AML/CFT strategic documents, as well as on the National Anti-Corruption Strategy. The Financial Investigations Strategy contains an analysis of the current practice and formulates accordingly objectives and actions that shall be taken by the authorities in order to improve the system in place. The authorities reported that the National Strategy against ML and FT was not synchronised with other strategies which engage asset confiscation, such as the Anti-Corruption Strategy and the Strategy for the Prevention of Drug Abuse. The adoption of the Financial Investigations Strategy which follows up on the above mentioned strategic documents, does however show that a comprehensive approach is now being taken, although as stressed in IO7 above the Strategy has not yet been fully implemented.

254. The policy commitment to confiscating assets is also underpinned by the legislation requiring the compulsory confiscation of laundered property, proceeds and FT funds pursuant to the CC and CPC as well as the special regime under the Law on Recovery for the confiscation of proceeds from organized and other serious predicate offences as well as high scale money laundering offences (where the money laundered exceeds 1,5 million RSD²⁸), as it is set out in further details in the TC Annex (Recommendation 4). The technical shortcomings identified in Recommendation 4 regarding the confiscation of instrumentalities have a potential cascading effect on the efficiency of the confiscation regime. A financial investigation would be instituted against a person when grounds for suspicion exist that he or she possesses considerable assets derived from one of the criminal offences within the scope of the Law on Recovery but whether there exists such a suspicion is decided on a case-by-case basis. Where there is an opening of a criminal investigation and such suspicions become apparent, the competent prosecutor will liaise with the Financial Investigations Unit from the Ministry of Interior's Criminal Police Directorate and relevant intelligence agencies. If there is a reasonable suspicion of assets which appear disproportionate to the defendant's income, this shall justify a financial investigation.

255. During a financial investigation, the Financial Investigations Unit may seek co-operation from other agencies, such as the APML, the Tax Administration and the Anti-Corruption Agency, as well as intelligence agencies (such as the Security Information Agency and the Military Information Agency). The authorities considered co-operation between such agencies in financial investigations to be strong. The prosecution, as the leader of the investigation, was satisfied by the added value of the numerous agencies involved in the process.

256. Notwithstanding the above described policy framework and the clear efforts being taken by the authorities, it has not been demonstrated to a full extent that confiscation of criminal proceeds is pursued as a matter of policy in practice. As stated above, the authorities informed the evaluation team during the on-site visit that whether financial investigations would be initiated is decided on a case by case basis and the statistics provided did not enable the evaluation team to conclude that there is a consistent approach to confiscation of proceeds.

Table 13: Number of financial investigations conducted by the authorities in the period under assessment

Year	Number of convictions for selected categories of proceeds generating crime ²⁹	The total number of financial investigations for all crimes	Total number of ML prosecutions ³⁰	The number of financial investigations of ML	Total number of ML convictions	Number of confiscations in ML cases
2010	3.410	241	20	2	1	5
2011	2.882	188	31	1	2	2
2012	2.968	191	65	4	1	1
2013	2.809	191	8	7	13	3
2014	2.223	192	11	5	18	2
TOTAL	14.292	1.003	135	19	35	13

257. It is to be stressed that the evaluation team was not presented with fully comprehensive and comparable statistics which would enable to draw fully illustrated conclusions. As a result, the table presented above is not to be considered as fully comprehensive, but solely with a view to illustrate the asset recovery efforts undertaken by the Serbian authorities. It allowed the evaluators however to substantiate the concerns that despite the high-level objectives to deprive criminals of

²⁸ 1,5 million RSD equates to approximately EUR 12,300

²⁹ Ibid.

³⁰ As mentioned above in IO7, there is an inconsistency in the figures on the number of prosecutions and indictments which were presented to the evaluation team

the assets generated by crimes, these are not followed up consistently in practice. The table includes only the proceeds generating crimes which were identified by the authorities as most recurrent as predicate offences in ML investigations and that generate the highest amounts of illicit proceeds, but even when considering only these four types of offences, the difference between the number of convictions in the period under review (total of 14.292) and the total number of financial investigations (1.003) shows that financial investigations are not applied consistently. This is confirmed also in ML cases, where financial investigations were also undertaken in a minimum of cases.

258. The concerns of the evaluation team are corroborated by the assessment of the current situation undertaken by the authorities in the Financial Investigation Strategy. The review concluded that financial investigations are generally initiated only after criminal charges have been filed, that there is a lack of a pro-active approach from the LEAs and prosecutors, as well as it pointed to a lack of sufficient expertise in this respect on the side of competent authorities.

Confiscations of proceeds from foreign and domestic predicates, and proceeds located abroad

259. Serbia has provided statistics to show the range of assets seized and confiscated between 2010 and September 2015 in a number of cases of ML and predicate offences. The underlying predicate crimes include participation in an organised crime group, narcotics offences, tax crimes and offences against official duty. This is consistent with the proceeds generating predicate offences identified in the NRA. The prevalence of real estate amongst the assets confiscated is also consistent with the major typology. The value of confiscated non-monetary assets was however not provided to the evaluation team. Furthermore, the value of assets owned by seized companies and other legal persons was reported as significant, but a breakdown of these assets was not provided. The lack of such qualitative information on a general level makes it difficult to fully assess effectiveness (note that specific case examples given further below have contained more information on the value of the assets).

260. The evaluation team positively noted a clear improvement since the previous round of evaluations. At the time of the previous MER, no comprehensive statistics were available. Three cases of assets seized by the Ministry of Interior in the course of ML investigations were reported, concerning values between EUR 100.000 and 200.000. No confiscations were ordered in ML cases. Currently, Serbian authorities presented statistics which are maintained by the authorities involved in the criminal proceedings and asset recovery. These demonstrate that the authorities clearly endeavour to increase their focus on retrieving the assets involved in the investigated cases, as formulated by the national policy instruments.

261. It is to be noted that no information was provided on the assets which were recovered in practice by the state authorities following a confiscation order. Effectiveness cannot be, therefore, concluded on effectiveness in this respect.

Table 14: Number and type of assets seized in ML cases in the period under review

	2010	2011	2012	2013	2014
Number of cases	25	33	26	26	28
Cash (EUR)	443,160	8,091,264	185,000	372,750	358,471
Businesses and Companies	18	5	1	2	2
Immovable Property					
Residential (Houses, apartments etc.)	67	43	61	60	33
Commercial premises	6	7	10	28	13
Garages	10	9	9	30	7
Agricultural	400 hectares				

Land					
Industrial Land	49 hectares				
Movable Property (other than cash)					
Motor vehicles	12	33	18	8	23
Boats/vessels		1			
Watches		13			
Paintings		29			
Jewellery		2,500 grams			

Table 15: Number and type of assets confiscated following a conviction for ML in the period under review

	2010	2011	2012	2013	2014
Number of cases	5	2	1	3	2
Cash (EUR)	692,430	4,340			
Immovable Property					
Residential (house, apartments)	7	2		2	
Movable Property (other than cash)					
Cars	2	2		1	
Boats					
Watches		5			
Gold			11,034 grams		12,034 grams
Historical coins					33

262. The Serbian authorities reported that they have been able to effectively trace assets where necessary, in particular by using the special investigative techniques available under the CPC. Provisional measures are considered useful and prosecutorial orders against disposal of moveable assets are being used in practice to mitigate dissipation risks. It should be noted that there is no statutory limit on the duration of such orders, i.e. it lasts until the court decides on temporary seizure. Other measures, such as monitoring or postponement of transactions under the AML/CFT Law, have also been used in practice. Whilst statistical data on the use of APML powers in this respect are presented below, the evaluation team was not provided with sufficient clarifications in order to understand the interrelation between this information and the general statistics on confiscation.

Table 16: Postponement of transactions by the APML

Year	Number of postponement orders issued by APML to suspend transactions/block account	Number of cases where the APML order was followed by a preliminary investigation and a freezing order was issued	Number of cases where a prosecution /indictment was initiated	Convictions and confiscation	
				Cases	Amount (in EUR)
2010	32	32	0	0	0,00

2011	45	45	1	1	24.693,99
2012	7	7	0	0	0,00
2013	2	2	0	0	0,00
2014	1	1	0	0	0,00

263. As described above, the Law on Recovery provides a strong basis for seizing and ultimately confiscating proceeds of crime. As stated above, the prosecutor, when presenting a motion for confiscation, has to demonstrate a manifest disproportion between the defendant's legitimate income and the assets the defendant holds. It is then for the defendant to displace the presumption that he or she has benefited from the crime. It is clear that this has yielded significant results. The evaluation team was presented with a case where property which existed prior to the commission of the offence was confiscated.

Case example: Money laundering of proceeds of drug trafficking case

An organised criminal group engaged in sale of narcotic drugs invested the proceeds of its criminal activities in legal financial flows on the territory of Serbia. These proceeds were invested in the purchase of businesses, agricultural land, other real estate, as well as in the financing of business activities connected with the criminal group (see the case examples for 3rd party ML Convictions in IO7).

As a result of the prosecutions of predicate offences in this OCG conspiracy,, a plethora of property (including real estate, hotels, resorts, restaurants, flats, houses and significant swathes of agricultural land) was seized and ultimately confiscated. The evaluation team was informed that the value of the assets in connection with this conspiracy exceeded EUR 100 million.

The property is managed by the Directorate for Management of Seized and Confiscated Assets which described its management practices to the evaluation team. As an example, the evaluation team was informed that the seized property in these proceedings involved a company which owned an agricultural farm. The Directorate was concerned about the quality of the performance of the business and, as a result, replaced the directors of the seized legal entity.

264. The evaluation team was concerned about a recent case, in which the court had required the prosecutor to show that proceeds had been used to purchase the specific property in respect of which the prosecutor was seeking seizure. This requirement appears to be at odds with the Law on Recovery, and such practice could have serious effectiveness consequences. Of further concern to the evaluation team were instances in which the national courts did not allow the authorities to confiscate assets located in third countries, even where the foreign counterpart had allowed this. There are also reported instances where previously confiscated assets were not being taken into account when establishing a disproportion between assets and income.

265. Overall, as has been stated in the analysis under Core Issue 8.1, doubts remain regarding the overall effectiveness of tracing proceeds of crime and the consistency of the approach to undertaking financial investigations, as well as actually applying confiscation measures following convictions. In addition, it is not clear if all the property confiscated is actually recovered by the state authorities. Specifically concerning ML cases, the tables above show a clear discrepancy between the assets provisionally seized and permanently confiscated. The authorities stated in this respect that this discrepancy is caused by the elapse of time between the imposition of provisional measures and the final conviction, which was said to last several years. The evaluation team acknowledges that this could present a partial explanation; nevertheless, the number of cases where seizure was applied is on average 30 per year, whilst the number of cases where confiscation order was issued remains under 10 annually and it is not increasing throughout the years. The lack of clarity, therefore, relates in particular as to whether the property remains seized and confiscation was not yet applied due to the lengthiness of proceedings or whether the property seized was given back to the owner due to termination of the proceedings without a conviction. In respect of the latter, the reader is referred to

the analysis under Immediate Outcome 7, pointing to a low effectiveness of achieving ML convictions by Serbian authorities.

266. In this respect, the evaluation team was informed that some prosecutors favour prosecuting the predicate offence, together with applying for confiscation under the Law on Recovery, instead of prosecuting ML. The authorities met on-site partially justified this practice by stating that it ensures a higher efficiency of depriving criminals of illicit proceeds, as it avoids the lengthiness of ML proceedings. This is particularly an issue given the fact that a conviction for the predicate offence would be on many occasions awaited before pursuing the ML.

267. The statement above was, however, not corroborated by any further information provided by the authorities. Statistical data on confiscation orders issued in other than ML cases was not provided to the evaluation team for the entire period under review, but only for year 2011. As can be observed in the table below, the number of cases where confiscation of proceeds, as well as instrumentalities, was applied is clearly disproportionate to the number of convictions. Not only does this information contradict the claim of the authorities that preference is given to confiscating assets in predicate offence proceedings instead of prosecuting ML, but it leads to doubts about the overall level of effectiveness of the confiscation framework.

Table 17: Numbers of confiscation orders issued following convictions for ML and selected predicate offenses in the year 2011

	Convictions	Object recovery	Confiscation on the basis of the CPC	Confiscation on the basis of the Law on Recovery
Tax evasion (Art. 229)	626	3	5	30
Illicit production and circulation of narcotics (Art. 246)	1,501	0	61	79
Abuse of office (Art. 359)	704	4	20	135
Accepting bribes (Art. 367)	55	6	12	8
Human trafficking (Art. 388)	29	0	0	2
Illicit production, possession, carriage and circulation of firearms and explosive materials (Art. 348)	603	370	0	0
Theft (Art. 203), Aggravated theft (Art. 204)	4,857	2	0	0
Grand larceny (Art. 205), Robbery (Art. 206)	14,017	20	0	0
Counterfeiting money (Art. 223)	108	0	2	0
Counterfeiting and misuse of payment cards (Art. 225)	83	5	1	0

268. In addition, Articles 313-319 CPC provide for the use of so-called plea bargain agreements. These may include agreements on the confiscation of the pecuniary benefits from crime. The evaluation team was informed that agreements had been utilised to include the voluntary surrender and confiscation of significant assets of €1 million in cash, two park suites in Belgrade and luxury

cars. Statistical information is not maintained in this respect and it is, therefore, not possible to reach a conclusion on the quantity of cases and volume of assets to which this practice is applied.

269. As regards the application of provisional measures pursuant to MLA requests, one request for asset seizure was received by Serbian authorities in 2013 and executed in 2014 (4 houses, 6 offices and 2 auxiliary facilities were seized). There have not been any cases where confiscation has been requested within an MLA request.

270. As has been concluded under the analysis of effectiveness of ML prosecutions, that the Serbian authorities have not demonstrated that the threat of ML with an international aspect is being sufficiently addressed. This is corroborated by the statistics below which show that no requests were sent by the Serbian authorities with the view of tracing assets abroad.

271. Effective measures are in place to ensure that seized and confiscated assets are preserved and managed appropriately. The Directorate for Management of Seized and Confiscated Assets is empowered to store, safeguard and sell provisionally seized "proceeds". It has a strong co-operation with other agencies, notably the Public Prosecutor Offices and the Financial Investigations Unit. It manages property in a pragmatic manner, often by leasing temporarily-seized immovable property to the owner or a third party for a fee at market value in order to reduce costs. Currencies are held in a special purpose bank account of the directorate to protect the value and obtain interest.

272. Temporarily-seized legal entities are usually entrusted to the management of another legal or natural person. Such entities are obliged to submit reports at least biannually, although in practice this usually happens on a quarterly basis. Whereas day-to-day functions are delegated to appointed directors, a representative from the Directorate for Management of Seized and Confiscated Assets sits on the management board of the seized entity in order to provide oversight. This may involve removing and replacing current directors, or allowing them to remain in post if they are not associates or connected to the defendant's criminal activity. Where there is dissatisfaction as to the performance of a business, the Directorate for Management of Seized and Confiscated Assets will replace the directors of the temporarily seized legal entity. In order to preserve the value of assets, the directorate may provide loans to enable a business to continue functioning.

273. The evaluation team was also provided with examples of seized immovable property and motor vehicles being donated to charitable organisations, and examples of such property remaining with the organisations after confiscation. It considers that this is a sensible manner in which to put such assets to good use, especially whilst proceedings are pending. The evaluation team was informed that powers to sell movable assets are rarely used. However, there may be depreciating assets where a sale is necessary to preserve the benefit for either the state or the defendant if later acquitted.

274. The delays in ML prosecutions, as mentioned above, could have an undesired knock-on effect in delaying the ultimate confiscation of assets. This is undesirable because it places more pressure on the management of Seized and Confiscated Assets in terms of managing seized property for longer periods, and the associated risks of depreciation.

275. The evaluation team was informed that where property is confiscated, the proceeds go directly into the general budget of the Serbian government. Given the concerns expressed under Immediate Outcome 7 regarding the effectiveness of ML prosecutions, there is value in considering designation of such funds to be used solely for criminal justice. Such funds could be directly applied to meet some of the challenges which the authorities face, such as lack of specialisation, rising litigation costs, and limited physical court space.

Confiscation of falsely or undeclared cross-border transaction of currency/BNI

276. Serbia is a landlocked country and borders Hungary, Romania, Bulgaria, "the former Yugoslav Republic of Macedonia", Croatia, Bosnia and Herzegovina and Montenegro. Serbia also shares a boundary line with Kosovo*.

* See footnote on page 9, paragraph 5.

277. Due to its geographical position and risk profile, Serbia is vulnerable to cross-border illicit flows. Serbia's vulnerability results predominantly from the fact that the country is used as a gateway for international organised criminal groups, but also as a transit point for migration. Significant money flows are also connected with the large Serbian diaspora, based mainly in the countries of Western Europe, which sends money to Serbia, usually in support of their relatives. In this respect, the authorities pointed out during the interviews in particular a frequent practice of money being sent from Western Europe to Serbia in small amounts in buses. This trend was raised also in connection to possible manners of FT. Overall, the risks connected with cross-border flows of currency and BNIs were recognised by all the relevant authorities met on-site. For further information in this respect, the reader is referred to Chapter 1 and the analysis under IO 1.

278. Serbia has implemented a declaration system, where all cash or BNIs equal or exceeding the value of EUR 10.000 have to be declared. The regime applies only to natural persons crossing the borders and there is no explicit coverage of physical cross-border transportation of such instruments through container cargo or shipment. The authorities competent in the control of borders are the Border Police and the Customs Administration and the evaluation team concluded that they are vested with sufficient powers to undertake their duties in this respect (for further information the reader is referred to the analysis under Recommendation 32 in the TC Annex). The evaluation team was not presented with any cases where the authorities seized assets at the border solely on the basis of a ML/FT suspicion when there was no breach of the declaration obligation.

279. Controls are either random or targeted based on a request from another state authority. Random checks of persons crossing the border for violations of the declaration obligation take place on a case by case basis. Customs officers make decisions based on their personal experience, and the evaluation team was informed that foreign citizens are usually subject to more controls.

280. According to the statistics (see the table below), there have been several seizures each year of money at border crossing points in different currencies. Seizures upon exit were mostly made from foreign persons, consistent with the fact that, as stated above, the authorities generally focus more on controlling foreign citizens.

Tables 18: Money seizures at border crossing points in the period under review (upon exit)

Year	The number of seizures EXIT POINT	Currency code				Other seizures (value in RSD)	Citizenship		
		EUR	USD	GBP	CHF		Foreign	Serbian	Total
2010	35	574,885	25,900	/	10,900	602,328.51	25	10	35
2011	64	1,919,850	1,069,433	/	/	2,680,483.93	37	27	64
2012	64	2,322,227	59,200	/	21,000	2,386,174.25	47	17	64
2013	52	2,086,890	16,760	250	14,480	2,111,366.89	47	5	52
2014	51	1,448,610	72,950	5,000	99,050	1,591,187.14	41	10	51
2015	66	1,806,315	33,640	3,540	51,560	1,888,837.27	55	11	66
TOTAL	332	10,158,777	1,277,883	8,790	196,990	11,260,377.99	252	80	332

Tables 19: Money seizures at border crossing points in the period under review (upon entry)

Year	The number of seizures ENTRY POINT	Currency code				Other seizures (value in RSD)	Citizenship		
		EUR	USD	GBP	CHF		Foreign	Serbian	Total
2010	7	87,200	97,800	33,070	/	203,806.51	2	5	7
2011	8	251,390	3,100	/	/	253,582.83	5	3	8
2012	10	159,325	45,000	/	/	194,111.62	7	3	10

2013	11	60,065	/	186,700	/	284,464.01	8	3	11
2014	27	860,835	/	/	7,600	867,070.13	17	10	27
2015	29	2,305,370	4,400	76,110	200,000	2,605,152.24	24	5	29
TOTAL	92	3,724,185	150,300	295,880	207,600	4,408,187.34	63	29	92

281. The information clearly demonstrates that seizures are significantly higher upon exiting than at entry. As can be noted from the table above, whilst in the period under review a total of 424 seizures took place, out of these 332 (78%) were upon entry. A total of EUR 13,882,962 and USD 1,428,183 were seized, out of which 73% and 89%, respectively, were seized upon exit. The authorities during the interviews clearly pointed to significant money flows into Serbia from the Serbian diaspora abroad. These statements are confirmed by the values of incoming and outgoing wire transfers undertaken through money remittance providers, where in the year 2011, EUR 206.8 million were transferred to Serbia and only EUR 19.3 million were transferred from Serbia abroad. As a result, it can be concluded that there is a clear disproportionality of the seizures at borders with the value of funds transferred in reality. It appears that the reason is that the authorities dedicate a higher focus on controlling persons upon exiting, which does not necessarily correspond to the risks.

282. The general approach for controlling cross-border transportation of currency appears to focus solely on situations where the amount exceeds the statutory threshold for a declaration (EUR 10,000). The authorities informed the evaluation team that they do not have any indicators, guidance or internal procedures for recognising ML/FT suspicions. [The Border Police reported that in one case they made a reference to the public prosecutor with resulting investigations for ML which are on-going. However, there is no general AML/CFT approach by the Customs Administration and it has not reported any ML/FT suspicions to the APML or other competent state authorities. The authorities should consider an increased focus on detecting ML/FT suspicions regardless of whether the amount of cash is above the threshold for declaring, particular consideration should be given to increasing the expertise in this respect of the competent authorities. This is relevant in particular given that all authorities met on-site confirmed that cash is being brought to Serbia mainly in small values.

283. In this context, it has not been demonstrated that there is sufficient co-operation and co-ordination between the authorities responsible for the control of borders and the other authorities involved in the AML/CFT framework. This is noted both with regard to cooperation on operational level, as well as in the context of raising awareness of the competent authorities about ML/FT risks and typologies connected to cross-border transportation of cash and BNIs.

284. The Border Police is reportedly informed of the list of designated persons (UNSCR 1267/1989) issued by governmental decision pursuant to the LFA – with all its limitations and deficiencies discussed elsewhere in this report. In addition to that, they also receive list of foreigners considered as potential terrorists as referred to under IO.9. It was not demonstrated however whether the Customs officers also receive this sort of information.

285. In order to prevent and detect crimes in the field of cross-border crime, the Border Police Directorate carries out an exchange of information through channels established for police communication as discussed more in details under IO.2. In addition to that, based on a governmental decision, a mixed joint contact centre for police and customs cooperation with the Republic of Bulgaria has also been established but the evaluation team received no detailed information about its performance. The Customs Administration also cooperates on international level and informed the evaluation team about its participation in a joint operation organised under the auspices of the World Customs Organisation.

286. The physical transportation of cash and BNIs appears to have crucial importance in respect of the boundary line between Serbia and Kosovo*. Considering the activity of organised criminal groups engaged in trafficking offences alongside the boundary line, which involve significant

* See footnote on page 9, paragraph 5.

proceeds in cash, as well as the presence of terrorism-related extremist-separatist movements in the same region that have allegedly been financed through supplies of cash donated from abroad. Both phenomena represent an imminent threat of ML/FT, the mitigation of which evidently requires a firm and effective control, including the control of cash transport. The evaluation team learnt that so far 6 common crossing points have been established along the boundary line³¹. Parallel customs activities are carried out on both sides³². However, it would still be unsafe to conclude that the controls in place with regard to movements of cash, goods or persons between Serbia and Kosovo* are yet effective³³. Despite the efforts of the evaluation team during the onsite visit, Serbian authorities did not demonstrate effective controls to the boundary line with Kosovo* are applied.

Consistency of confiscation results with ML/FT risks and national AML/CFT policies and priorities.

287. As mentioned above, immovable property makes up a large portion of the seized assets, which is consistent with the identified risk of the real estate sector being used to launder the proceeds of crime. The statistics from the MoI also show immovable property to be the main asset "identified" in connection with money laundering. The underlying predicate offences also reflect the offences identified by the NRA as being high risk for generating proceeds. The evaluation team positively noted the success of the authorities achieved in the group of cases related to the OCG headed by Darko Saric, as this demonstrates the commitment of the authorities to pursue the illicit proceeds, as well as their ability to achieve confiscations in high value cases.

288. However, despite the increasing success in confiscating illicit proceeds, concerns remain about the overall effectiveness of the system. Confiscation is applied in a minimum of cases when a conviction for a proceeds-generating crime or ML is issued. In addition, considering the levels of organised criminality and high value proceeds-generating criminality taking place in Serbia, the assets confiscated do not seem proportionate to the overall risks inherent to the country.

289. As regards the values of confiscations of falsely or undeclared cross border movement of cash/BNIs, the evaluation team cannot conclude whether these correspond with Serbia's risk profile. Nevertheless, as described above, from the information provided to the evaluation team, it is clear that more money would be expected to be entering the country, rather than leaving. The extreme disproportion between seizures of outgoing and incoming cash therefore clearly shows that the results achieved by the authorities are not corresponding to the identified risks.

Overall Conclusions on Immediate Outcome 8

290. Serbia has a legal and institutional framework in place which enables it to trace illicit assets, apply provisional measures and confiscate assets in criminal proceedings. Depriving criminals of proceeds of crime and the undertaking of financial investigations are set out as policy objectives in a number of high-level instruments. A commendable and effective structure for the management of seized and confiscated assets has been put in place.

291. In practice, the authorities demonstrated some success in seizing assets of significant value in a number of different cases, in particular with regard to a group of cases involving an OCG. The evaluation team considered that these results demonstrated that Core Issue 8.2 had been achieved to some extent. Overall, however, financial investigations are not applied systematically and the total levels of seized and confiscated property are disproportionate to the identified levels of criminality.

³¹ Agreement on IBM crossing points at

http://www.media.srbija.gov.rs/medeng/documents/ibm_agreed_conclusions-eng_serb.doc

³² see also the agreement on recognition of Customs stamps at

http://www.media.srbija.gov.rs/medeng/documents/customs_stamp-eng_serb.doc

* See footnote on page 9, paragraph 5.

³³ see in the 2013 CoE study referred to under IO.1

Given the extent of risk connected with cross-border criminality, the lack of pro-active approach to tracing property abroad also raises concerns.

292. The authorities involved in the control of cross-border transportation of currency are vested with adequate powers and have demonstrated that these have been used in practice. It has been, however identified that focus is given solely to identifying breaches of the declaration obligation, as opposed to identifying possible ML suspicions. In addition, cross-border transportation of cash is controlled mainly upon exit from Serbia, which does not correspond to the identified typologies and risks. This leads to serious concerns, in particular given that cross-border transportation of cash has been identified as a serious vulnerability in Serbia both in respect of ML and FT. Whilst some mechanism is in place to control the boundary line between Serbia and Kosovo*, it has not been demonstrated that the applicable framework would be effective.

293. Although deficiencies have been identified with respect to all four core issues, it has been demonstrated that progress has been achieved with regard to three of the core issues. It can therefore be said that Serbia has achieved the Immediate Outcome to some extent but that major improvements are required.

294. **Overall, Serbia has achieved a moderate level of effectiveness with Immediate Outcome 8.**

* See footnote on page 9, paragraph 5.

CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings and Recommended Actions

Key Findings

The legislative gaps in relation to the criminalisation of FT have a potential cascading effect on the effective prosecution and conviction of FT. There have been no convictions for FT and only one prosecution with elements of collection, movement and use of funds. The risk of FT was not fully assessed by the Serbian authorities at the time of the National Risk Assessment but the understanding has developed since.

FT investigations do not appear to be carried out systematically in the context of terrorism investigations and it has been reported that there are difficulties in securing sufficient evidence to bring the investigations forward.

There is no written counter-terrorism strategy to deal with the identified FT risks but there is a multi-agency working group in place which meets regularly to discuss threats and develop strategies with regard to terrorism and FT.

Serbia has a legal system in place to apply targeted financial sanctions regarding terrorist financing; however serious technical shortcomings question the effectiveness of the system. The designation and freezing mechanisms fall short of ensuring that the freezing measures can be carried out without delay, particularly in cases of urgency. Although a Governmental Decision establishing the list of designated persons has been issued and published in the Official Journal and on the APMML website, it is limited in scope and is not updated in a timely fashion. Reporting entities, and particularly most of the DNFBPs, are thus left with incomplete and out-dated information which represents a serious impediment to the immediate identification and freezing of terrorist assets.

Despite the occurrence of terrorism-related activities and even indictments and convictions in the region, no consideration has been given to introducing a domestic list according to UNSCR 1373.

The risk of abuse of NPOs for FT purposes has not been sufficiently addressed by the Serbian authorities. The lack of formal governmental review of the NPO sector and of its vulnerabilities as well as the absence of monitoring activity targeting the potential FT abuses, inevitably lead to a general unawareness of the NPO sector in this respect. This is in contrast with the fact that NPOs and religious organizations have already been used as vehicles for financing terrorist-extremist activities in the region. Nevertheless, NPOs identified, on a case by case basis, as posing higher risk are regularly considered by the multi-agency working group on terrorism and TF.

While the country prohibits the export and import of nuclear, chemical or biological weapons and means for their proliferation, Serbia has not taken any adequate legislative or other measures to implement, without delay, targeted financial sanctions concerning the UNSCRs relating to the combating of financing of proliferation of weapons of mass destruction. Other than FIs, other reporting entities are not aware of the UN sanctions regime related to the financing of proliferation. Even where reporting entities are aware, due to the absence of a regulatory framework on TFS related to proliferation of WMD, no authority would have the power to implement these UN sanctions and freeze the related assets.

Recommended Actions

Immediate Outcome 9

- FT investigations should be carried out on a systematic basis when terrorism is being investigated;
- Increased efforts should be made to identify and pursue the financiers of terrorism through domestic and international co-operation;
- The Serbian authorities should continue to develop their inter-agency strategies to deal with and address counter terrorism and FT;

- Serbia should amend the legislation to remedy the shortcomings identified in Recommendation 5 as regards the full implementation of the FT offence in the FT Convention. Such shortcomings may otherwise have a cascading effect on the effectiveness of the CFT regime.

Immediate Outcome 10

- The freezing mechanism should be extended to cover targeted financial sanctions pursuant to UNSCR 1988 (the Taliban list);
- The governmental procedure through which targeted financial sanctions provided under the relevant UNSCRs and their updates are implemented should urgently and radically be simplified and accelerated to bring them fully into line with FATF expectations on timeliness;
- Access to all of the relevant and updated UN lists on targeted financial sanctions related to terrorism and terrorist financing should be provided to all reporting entities together with adequate governmental guidance as to their responsibilities in the freezing regime;
- The Serbian authorities should urgently consider issuing a domestic list of persons or entities related to terrorism pursuant to UNSCR 1373 and creating a procedure for other countries to give effect to such designations;
- The Serbian authorities should set up a mechanism to identify potential targets of financial sanctions for all relevant UNSCRs. The procedure for domestic listing should be simplified and proposals should be accepted from a wider range of state authorities;
- A formal review of the NPO sector should urgently be undertaken with regard to its activities, size and vulnerabilities to FT and adequate awareness-raising programmes should be carried out in the sector;
- Appropriate and proportionate action should be taken to ensure greater financial transparency and control over funds raised by NPOs which are at the greatest risk of being misused by terrorists;
- Clear procedures or mechanisms should be put in place to effectively monitor the legitimate functioning of civil associations or foundations as well as religious organisations in order to identify FT abuses and to implement the sanctioning regime if necessary.

Immediate Outcome 11

- No actions can be recommended to improve effectiveness as long as there is no legislation in place to provide for measures for implementing targeted financial sanctions concerning the respective UNSCRs. Serbian authorities should urgently adopt new legislation which will regulate targeted financial sanctions related to proliferation and carry out an adequate outreach programme for its fast and effective implementation.

The relevant Immediate Outcomes considered and assessed in this chapter are IO9-11. The recommendations relevant for the assessment of effectiveness under this section are R.5-8.

Immediate Outcome 9 (FT investigation and prosecution)

Prosecution/conviction of types of FT activity consistent with the country's risk-profile

295. Further to amendments made in 2013, more terrorism predicate offences have been introduced in the Serbian CC. Nonetheless, as noted under R.5 of the TC Annex, the legislation does not incorporate in the FT offence all of the necessary terrorism acts as set out in the international instruments listed in the Annex of the FT Convention, thereby having a potential cascading effect on the effective prosecution and conviction of FT. Furthermore it is difficult to analyse the effectiveness of the new amendments given their recent entry into in force.

296. As indicated under IO1. Serbia's FT NRA identified its FT risk as being low or low to moderate, with risks being noted as arising from small but steady sums of money sent by members of the Serbian diaspora in Western Europe to terrorist groups, operating in Serbia (which include

but are not limited to groups with radicalised Islamic ideologies) or sums sent to foreign fighters leaving Serbia to fight in conflict areas abroad. These sums are sent principally through cash across the borders via couriers or bus drivers, or by using money remitters such as Western Union. These FT activities are largely consistent with the underlying terrorism risks associated with the country i.e. radicals carrying out terrorist attacks in Serbia or elsewhere and so called foreign fighters³⁴. There is also a risk of militant ethnical separatism in and adjacent to the territory of Kosovo* and other neighbouring regions. The FT NRA equally identified the insufficient financial transparency and inadequate control of funds raised by NPOs, and the absence of supervision of this sector, as a potential high risk for abuse, particularly in relation to radical Islamic movements. The evaluation team did not agree with the conclusions of the NRA that the FT risk was low or low to moderate. However, as emphasised under IO1, the understanding of FT risks has evolved since the NRA and the evaluation team was satisfied that individual authorities have a good understanding of FT risks within their own roles. Moreover, the establishment of the Permanent Mixed Working Group (detailed further below under core issue 9.3) is a welcome step that further demonstrates that the Serbian authorities are cognisant of FT risks and the need to keep them under review.

297. The Prosecutor’s Office for Organised Crime has exclusive competence to prosecute FT and terrorism offences, while the Higher Court in Belgrade (Special Chamber) has exclusive competence for trials related to FT and terrorism offences. The Evaluation Team was informed that three prosecutors are employed within the Prosecutor’s Office for Organised Crime who focus on FT.

298. There have been relatively few terrorism convictions in the period between 2010 and 2014.

Table 20: Convictions on terrorism

Terrorism offences	2010	2011	2012	2013	2014	2015
	Persons	Persons	Persons	Persons	Persons	Persons
	/	/	9	2	2	0

299. There have been two group cases with final judgments for terrorism in which multiple persons were convicted. Fifteen persons were said to have acquired, inter alia, large quantities of weapons, explosives and military equipment. The members intended to eliminate a Muslim community leader and target a local mosque and police station. The defendants were found to have been of limited means and they were funded from abroad, i.e. by Central and Western European countries (mainly Austria). Some of the funds received were also intended for financing persons leaving Serbia to fight for terrorist organisations in Syria. The authorities considered that there had to be substantial financial resources in order for the group to have obtained the above equipment. The money in cash was reported to have been sent by couriers and through Western Union, in relatively modest amounts and under different names. The Serbian authorities did not pursue FT or seek extradition of the financiers. The evaluation team was informed that it was not possible to obtain the information about the full identity of the individuals involved in order to pursue individuals or seek their extradition for a FT prosecution. The Serbian police had sent all operational information to other countries but the feedback from the other countries did not enable the Serbia authorities to make any further progress with identifying the financiers. No information was available on whether or not prosecutions occurred in the other jurisdictions. Therefore, there are potential concerns over the lack of effectively pursuing overseas financiers of terrorism and this is particularly so given the inherent risks associated with cross border movement of cash into Serbia.

300. Serbia has had no FT convictions to date. The authorities note that in many cases the individuals have limited means and no FT has been identified. In this respect, the authorities stressed that in all terrorism related cases they sought to discover if there was any financing. The evaluation team has been informed of only one prosecution (on-going at the time of the on-site visit)

³⁴ In responding to one of the underlying terrorism threats, in 2014 Serbia added the predicate offences of participating in war or armed conflict in a foreign country, or organizing a group or recruiting, training, or inciting others to commit such offence, thus responding directly to the identified risk of persons committing such offences. It has not been confirmed whether there have been any convictions for offences under Art 386a/b CC.

* See footnote on page 9, paragraph 5.

involving five persons and an NPO.³⁵ Four of the above-mentioned individuals were indicted on 11 September 2014 for FT and for the predicate offence of terrorist conspiracy (Article 393(a) paragraph 1 CC) in relation to the criminal offences of terrorism (Article 391 CC) and the recruitment and training in order to commit terrorist acts (Article 391(b) paragraph 1 CC). The defendants were involved in foreign fighting abroad and were allegedly financed through donations from several Western European countries made by person from the Islamic community, mainly through Western Union. This case has elements of collection, movement and use of funds³⁶.

301. More efforts should nevertheless be made to ensure that potential FT activity linked to insufficient financial transparency and inadequate control of funds raised by NPOs, as well as to cash movements across the border through alternative remittance systems and money remitters are fully understood and pursued either directly by the Serbian authorities or through cooperation with foreign counterparts.

FT identification and investigation

302. In the period under review (2010-2015) only one investigation has been conducted on FT (please see the case described above). The authorities reported that often those found to be involved with terrorism are of limited means and are not receiving financial assistance and that, for these reasons, there have been few investigations on FT. Although the evaluation team was informed that FT investigations are carried out systematically in the context of terrorism acts, the information provided by the authorities did not confirm this.

303. A number of authorities are involved in the investigation of FT activity. These include the Service for fighting terrorism and extremism in the Criminal Police Directorate, the Military Security Agency (MSA), the Military Intelligence Agency (MIA), the Security Information Agency (SIA) and the Prosecutor's Office for Organised Crime. The MSA investigates and gathers evidence in relation to crimes against the constitutional order and security of the Republic of Serbia committed against the army or the Ministry of Defence or involving military personnel, including terrorism and FT. It has set up a special organisational unit whose task includes detecting, investigating and documenting FT (and ML) crimes. It can carry out covert collection of data of a preventive nature, and apply special investigative techniques, within the limits of its competencies. So far, however, it has only collected operational data and has not been involved in a FT investigation. The MIA is competent for intelligence tasks for defence purposes in relation to threats, activities of foreign states and their armed forces, international organisations, groups and individuals, having a military, military policy, or military economic dimension, and related also to terrorist threats, directed from abroad against the system of the Republic of Serbia. The SIA is a security agency of a civil nature, it performs tasks related to the protection of the security of Serbia and detects and prevents crimes aimed at undermining or overturning the constitutional order. With respect to FT, its action is restricted to the pre-investigative stage of proceedings and can collect evidence and intelligence. The Prosecutor's Office for Organised Crime coordinates pre-investigative proceedings, leads the formal investigation and ensures that there is no duplication of efforts of the various authorities involved at the pre-investigative phase. Ad hoc teams with representatives of the various competent agencies can also be formed. As concerns the coordination between the various agencies involved in the collection of

³⁵ The Evaluation Team was informed following the on-site visit that two further persons were indicted for FT and were being tried *in absentia* as they had absconded to Syria.

³⁶ More specifically, the defendants are said to have belonged to the same terrorist organisation, with connections to the "Islamic state" and "Al-Nusra Front". The defendants were in Syria and joined the armed part of a terrorist association "Idis", in whose combat units they took part, while one of the accused was a commander of one such unit. The acquired funds were used to fund travel to and stay in Syria and also to organise the procurement of books, promotional materials and other literature with contents that promote and incite violence, which was distributed during religious ceremonies, with the aim of radicalization of potential members and increasing their willingness to use violence in order to achieve religious and ideological objectives.

intelligence before the pre-investigative phase in relation to FT, this is ensured by the Bureau for the coordination of Security Agencies of the National Security Council.

304. STRs collected and disseminated by the APML to the Service for fighting terrorism and extremism in the Criminal Police Directorate are said to represent the most common source of information for the identification of FT cases. Nonetheless, the statistics provided by the authorities highlight that few FT related STRs were received from reporting entities between 2010 and the first quarter of 2015: 0 in 2010, 2 in 2011, 2 in 2013, 4 in 2014 and 47 in 2015 (until March 31st). FT related STRs are regularly discussed in the Permanent Mixed Working Group and in a number of cases the STRs were disseminated to the competent authorities. However, none appeared to lead to the opening of an investigation or filing of criminal charges. The contribution of the APML in regard to FT cases was acknowledged by all stakeholders and it is frequently asked for information regarding bank accounts with its contribution said to be very valuable (see also IO6). Information is also obtained through the application of special investigative techniques under the CPC Part 3, Chapter 7.

305. Once FT is identified, as indicated under R. 31, Special Investigative Techniques can be applied.

306. At the time of the on-site a number of pre-criminal investigations were on-going; however, the authorities indicated difficulties in securing sufficient evidence to bring the investigations forward. In particular, the authorities noted difficulties in identifying the transfer of money by means other than regular banking and financial institutions i.e. through couriers and in differentiating between money sent across borders for legitimate purposes and those for illicit purposes. They informed the evaluation team that in these instances evidence is obtained through the application of SITs and acknowledged that to reduce such transactions tighter control by border police and customs authorities would be required. Furthermore, given the frequent use of money transfer agencies in potential FT cases, the transcription of names of the sender and recipient into Serbian and their consequent misspelling have a bearing on the correct collection of evidence.

FT investigation integrated with -and supportive of- national strategies

307. Serbia's understanding of its terrorism and FT risk is evolving and with it the Evaluation Team encourages strategies to continue to be developed to mitigate those risks.

308. The FT NRA, the national AML/CFT strategy and associated action plan provide a strong basis for which to build a comprehensive and co-ordinated approach to tackle terrorism and FT. The National Security Agency has been established as a body competent to consider issues which are relevant to national security and for directing the work of security services. It sits on a joint group for terrorism known as the "Permanent Mixed Working Group for the Fight against Terrorism", which also includes high ranking representatives from the Security Information Agency, Ministry of Interior, Military Security Agency, APML, Criminal Police Directorate, and Prosecutor's Office for Organised Crime.

309. The Permanent Mixed Working Group meets on a weekly basis and is an analytical and not operational forum. The Permanent Mixed Working Group discusses FT STRs and suspicious persons and NPOs, and it considers terrorism and FT risks in Serbia and in the region, terrorist activity from Islamic fundamentalists, and the potential risk from Serbia being used as a gateway for illegal migration.

310. By the time of the on-site visit, Serbia did not have a written counter-terrorism strategy or a strategy detailing the triggers for carrying out simultaneous FT investigations when investigating terrorism³⁷. However, it was explained that generally, financial investigations have been carried out where there has been suspicion of terrorism, but these had not resulted in any FT prosecutions or asset seizure as the persons involved had been of limited means. Persons involved are often poor and unemployed and are located in southern regions of Serbia with relatives elsewhere in Europe. Money is usually transferred to such persons in cross border cash parcels brought by bus and truck

³⁷ It is anticipated that a strategy and action plan will be adopted in 2016

drivers, and the amounts are rarely more than EUR 1,000 making it difficult for the authorities to distinguish between legitimate and illegitimate money movements. The evaluation team stressed in this context that the fact that persons are of limited means and there is a lack of sophisticated and significant finance should not be a bar to investigating whether there has been any financing of terrorist activities. Serbia confirmed in this respect that they do seek to establish if there is any financing in every case.

Effectiveness, proportionality and dissuasiveness of sanctions

311. There have been no FT convictions and therefore no sanctions.

Alternative measures used where FT conviction is not possible (e.g. disruption)

312. The Evaluation Team was informed that in the context of disrupting terrorism and FT, the Permanent Mixed Working Group maintains a list of persons who are potential foreign fighters and that they are monitored and in some circumstances are served with travel restrictions. This list has been established for the purpose of identifying persons who may potentially participate in the war in Syria and Iraq, and in order to maintain information about their movements. The list of persons is delivered on the basis of operational data and it is submitted, in electronic form, to all border crossing posts of the Border Police Directorate. Refusal of entry of listed persons would then be based on Article 11(6) of the Law on Foreigners which provides that entry into Serbia can be denied to foreigners for reasons related to the protection of the public order or the safety. So far, one person has been prohibited from entering Serbia on such grounds.

313. Given that the implementation of this list is based on the Law on Foreigners, it cannot prevent Serbian citizens from (re)entering the country.

314. There have thus far been no asset freezing using the new Law on the Freezing of Assets which was brought into force in March 2015. The Evaluation Team was not made aware of any further criminal justice and administrative measures used to disrupt FT.

Overall Conclusions on Immediate Outcome 9

315. Serbia is developing in its understanding of the FT risks it faces and the measures required to properly and effectively tackle those risks.

316. The legislative gaps in relation to predicate offences to FT (see R. 5) have a potential cascading effect on the effective prosecution and conviction of FT. There have been no convictions for FT and only one prosecution with elements of collection, movement and use of funds. More efforts need to be made to ensure that potential FT activity linked to insufficient financial transparency and inadequate control of funds raised by NPOs, as well as to cash movements across the border through alternative remittance systems and money remitters is fully understood and pursued either directly by the Serbian authorities or through cooperation with foreign counterparts.

317. FT investigations and financial investigations have in some cases been carried out in the context of terrorism investigations but this has not been systematic, and efforts to identify the terrorist financier have not been successful. There are also concerns over the lack of any actions taken to pursue foreign financiers.

318. As yet, there is no written counter-terrorism strategy to deal with the identified risks FT risks, thus it is not possible to fully conclude that FT investigations are integrated with and support national counter-terrorism strategies and investigations. However, as mentioned above, there are several documents which provide the foundations for a strategy and in practice, strategies are formulated at the Permanent Mixed Working Group which meets on a weekly basis.

319. As concerns the use of other criminal justice measures where it is not practicable to secure a FT conviction, Serbia has enacted a new Law on the Freezing of Assets which applies to persons who finance terrorism, however this has not yet been applied in practice. No other criminal justice,

administrative or regulatory measure have been brought to the evaluation team's attention other than the prevention of foreign persons from entering Serbia.

320. In conclusion, it is clear that Serbia is serious about developing strategies to further prevent and mitigate FT. There are deficiencies with each of the core issues. However, in relation to core issues 9.1 and 9.2, notwithstanding the general concerns expressed above regarding FT investigations and the identification and pursuit of the financier, there has been some limited progress with one FT investigation and one ongoing FT prosecution. Serbia also takes measures to identify terrorist and FT risks and is continuously up-dating its understanding thereof. Furthermore, regarding core issue 9.3, whilst there is no written counter terrorism strategy, there are a number of documents which lay the foundations for a strategic approach in this respect. The formation of the Permanent Mixed Working Group which meets weekly is a welcome step for increased co-ordination between agencies and the development of strategies to address the risks of terrorism and FT. It can therefore be concluded that Serbia has achieved the Immediate Outcome to some extent but that major improvements are required across each of the core issues.

321. **Serbia has achieved a moderate effectiveness with Immediate Outcome 9.**

Immediate Outcome 10 (FT preventive measures and financial sanctions)

Implementation of targeted financial sanctions for FT without delay

322. As it is noted in more details in the TC Annex, the evaluation team found substantial technical deficiencies regarding R.6 which seriously question the ability of the Serbian authorities to freeze without delay and effectively the assets of persons or entities targeted by the UN. Notably, the freezing mechanism provided under the recently adopted implementing legislative framework only covers persons and entities listed under UNSCR 1989 (the Al-Qaeda list) and does not cover targeted financial sanctions pursuant to UNSCR 1988 (the Taliban list). Furthermore, the Government decision transposing UNSCR 1989 is updated through a complex and lengthy two-tier procedure (ministerial proposal and Governmental decision) characterised by the absence of strict deadlines and requiring translation and transcription of the original amended list into Cyrillic Serbian. As a result, at the time of the on-site, the above-mentioned Government Decision was out-of-date and did not reflect the most recent designations under UNSCR 1989.

323. Notwithstanding the above technical deficiencies, the evaluation team also considers that the mechanisms available to inform in practice reporting entities about the lists of designated persons and entities are insufficient. Although the evaluation team was informed that the NBS systematically forwards updates to the UNSCR 1989 list to FIs on an informal basis before they are adopted by the Government, none of the reporting entities referred to this option as their source of updated information on UN sanctions. The information available on-site indicated that some reporting entities such as banks (but also money transmitters) have access to the relevant UNSCR lists, including the updated Al-Qaeda and Taliban lists, through updates received by their Group or by using specific IT tools that allow for real-time detection of possible matches. However, others referred, at best, to the incomplete and out-dated UN lists published by the Government and knowledge was very limited in other sectors as well, such as brokerage firms or investment fund managers. DNFBPs the evaluation team met onsite (e.g. accountants or representatives of exchange offices), were even less aware of the UN sanctions lists, the controls to apply and the measures to take in case of a match. Both DNFBPs and also some of the banks complained about the lack of adequate, if any, governmental guidance and outreach activity in this field (apart from a training event organized one month after the LFA entered into force).

324. Even where reporting entities have access to the updated UN lists, the effective implementation of TFS cannot be ensured. In effect, the freezing regime under the LFA only applies to entities included in the published governmental list. Thus, property belonging to persons or entities designated in recent updates to the UNSCR 1989 Al-Qaeda list which have not yet been transposed by a governmental decision or designated under UNSCR 1988 cannot be subject to any freezing action under the LFA. As a result, if banks and other reporting entities with access to the relevant and updated UN lists were to inform the APML of property belonging to persons or entities

designated by UNSCRs 1988 or under the updated UNSCR 1989, the APML would not be able to take measures and assets would eventually have to be released. The reporting entities appeared to ignore the limitation of the freezing regime under LFA and the related Government decision in this respect.

325. Some of the banks interviewed onsite claimed having had one or more matches with various sanctions lists (usually the OFAC list) but most of these were either namesakes or attempted and refused opening of accounts of which the APML was subsequently informed. To date, no freezing of terrorist assets has taken place in Serbia.

326. Notwithstanding the mechanism provided under Article 3 of the LFA providing the ability to adopt a list of designated persons, Serbia has not yet designated individuals or entities pursuant to UNSCR 1373. This is not in keeping with the prevalence of extremist-terrorist activities in the country and the region and the related incriminations and convictions (as was demonstrated in the FT related NRA and confirmed by interlocutors onsite). There is no mechanism through which natural or legal persons which have been officially identified as terrorists, terrorist financiers or who have been convicted or indicted for a terrorism-related offence in Serbia or in the region can be automatically taken into account for domestic designation. This opportunity has never been considered in relation to any individual who has been convicted for such crimes. The Serbian authorities should explore why no consideration has yet been given to issuing a domestic list of persons or entities related to terrorism pursuant to UNSCR 1373 in spite of the existence of potential targets stemming from closed or on-going criminal cases or from designations requests from other countries.

327. In addition, domestic listing is not facilitated due the limited range of State authorities that are empowered by the LFA to propose such a designation. These include the Ministry of Interior, the APML and state authorities in charge of security and intelligence. The Ministry of Justice, prosecutorial or judicial authorities (either directly or through the Ministry of Justice) cannot propose designations. This is considered to be a shortcoming in practice given that they possess immediate knowledge of persons who have either been indicted or convicted for a terrorism-related offence in Serbia, or who have been mentioned in a foreign MLA in relation to the commission of such crimes in the region. In these cases, the prosecutor, the judge or the Ministry of Justice would have to solicit one of the above-mentioned state authorities so that the latter propose a listing pursuant to the LFA; however, no such legal procedure is provided for and Serbian authorities appeared entirely unprepared for the potential occurrence of such a situation.

328. Serbia has not received requests from foreign countries for designations under UNSCR 1373. Furthermore, as indicated in the TC annex, there is no formalized procedure under which Serbia can request another country to give effect to freezing measures initiated by Serbia (and has made no requests to give effect to designations – which in any case have not been made). This approach also raises questions considering the region-wide occurrence of extremist-terrorist activities.

Targeted approach, outreach and oversight of at-risk non-profit organisations

329. Case examples presented in the FT NRA suggest that religious and/or charitable NPOs have been used for financing extremist-terrorist activities in the region, including NPOs seated and active in the territory of Serbia. Notwithstanding this, Serbia has not yet implemented a targeted approach, including achieving oversight of, and providing guidance to the NPO sector with respect to its potential vulnerability to terrorist abuse.

330. No formal review of the NPO sector has ever been undertaken with regard to its activities, size and vulnerabilities. This seriously limits the authorities' knowledge of the NPO sector and of its exposure to FT abuse, and the effectiveness of any action to be taken in this respect. Reference was made only to one instance, two weeks before the onsite visit, in which the SBRA performed a check of its NPO database against the UN sanctions list as issued in the Government decree. Although this operation did not yield positive results, the authorities were unable to explain what would have been the consequences if a match had occurred.

331. Notwithstanding the lack of a systematic oversight, vulnerability of the NPO sector is subject to consideration by the Permanent Mixed Working Group which, amongst other issues, regularly discusses the NPOs which have been identified by its members as presenting a higher risk of potential abuse for TF activities.

332. Apart from the formal registration procedure described in the TC Annex, there is no mechanism in place or a dedicated authority with responsibility to monitor the legitimate functioning of civil associations or foundations and to identify FT abuses. It is also not clear which authority is responsible for detecting offences committed under the relevant NPO legislation. The authorities interviewed onsite were unfamiliar with the sanctioning procedure and could only recall one case, which however was not related to FT.

333. In addition, the evaluators harbour concerns on whether and to what extent religious communities, which have also been referred to as potential vehicles for channelling funds to individuals engaged in terrorist activities, are subject to monitoring.

334. On-site interviews held with representatives of major Serbian NPOs showed that Serbian NPOs are generally unaware of their sectorial vulnerabilities to FT threats. Notwithstanding the outreach activities mentioned in the context of R.8, none of the NPOs met on-site reported of any FT-related governmental survey or awareness raising programme.

335. Only one of the banks interviewed onsite claimed to have reported an FT-related suspicious transaction involving Serbian NPOs (humanitarian associations) and, in one case, also on a match with a sanctions list. The Police also referred to one FT investigation in which an NPO was suspected of involvement in financing of terrorism activities; however the initial suspicions had not been confirmed.

Deprivation of FT assets and instrumentalities

336. As indicated under IO9, there have been no convictions for FT and there is only one on-going prosecution which has not led to the seizure of assets and instrumentalities related to FT. Furthermore, to date there has been no freezing of terrorist or terrorist financiers' assets in Serbia. There is evidence that individuals and entities involved in terrorism-related operations, including NPOs and/or religious organizations have received financial support typically through donations in relatively small amounts of money (even 300-600 €) from various countries through alternative remittance systems (e.g. by use of international bus drivers or hawala) or through money remittance services. It appears that the small volume and irregularity of such support has so far prevented Serbian authorities from effectively addressing this issue and from seizing assets related to FT activities.

Consistency of measures with overall FT risk profile

337. The FT NRA has assessed FT risk as being relatively elevated (low-to-moderate) and has considered the potential for abuse of NPOs for FT purposes as contributing to that level of risk. The assessment team has also noted additional factors which may also pose an elevated level of FT risk such as the recent migration crisis in the region (though this does not seem to have been addressed from a CFT perspective). The lack of adequate measures taken in relation to NPOs, failure to make designations for TFS under UNSCR 1373 and the absence of freezing action in Serbia does not appear to be consistent with the overall FT risk profile.

Overall conclusion on Immediate Outcome 10

338. Serbia has a legal system in place to apply targeted financial sanctions regarding terrorist financing, however the serious technical shortcomings which have been identified question the effectiveness of the system (i.e. the limited scope in which UN sanctions lists are implemented, the delays in the freezing mechanism due to the complex and lengthy procedure in place, etc.). Reporting entities, and particularly most of the DNFBPs, are left with incomplete and out-dated information provided under the governmental list published in the Official Journal and on the APML

website which represents serious impediment to the immediate identification and freezing of terrorist assets. Furthermore, the mechanisms to inform in practice reporting entities about the updated list are considered to be insufficient. Even where reporting entities have access to the updated UN lists, the effective implementation of TFS with respect to persons which appear on the updated UN list but not on the published Governmental list cannot be ensured as the freezing mechanism under the LFA only applies to entities included in the latter.

339. Despite the occurrence of terrorism-related activities and even indictments and convictions in the region, no consideration has been given to introducing a domestic list according to UNSCR 1373. Furthermore, domestic listing is not facilitated due to the limited range of State authorities that are empowered by the LFA to propose designations.

340. There is no formalized procedure under which Serbia can request other countries to give effect to its designations.

341. The risk of abuse of NPOs for FT purposes has not been sufficiently addressed by the Serbian authorities. Despite the fact that NPOs and religious organizations have already been used as vehicle for FT in the region, no governmental review of the NPO sector and of its vulnerabilities has been carried out, nor any monitoring activity targeting the potential FT abuses or outreach activities to increase awareness and understanding of FT risk.

342. Serbia has achieved a **low level of effectiveness** for Immediate Outcome 10.

Immediate Outcome 11 (PF financial sanctions)

343. As noted in the TC Annex, the evaluation team identified essential technical deficiencies in relation to the implementation of Recommendation 7. While the country prohibits the export and import of nuclear, chemical or biological weapons and means for their proliferation, Serbia has not taken any adequate legislative or other measures to implement, without delay, targeted financial sanctions concerning the UNSCRs relating to the combating of financing of proliferation of weapons of mass destruction.

Identification of assets and funds held by designated persons/entities and prohibitions

344. Despite the absence of a legal framework and satisfactory measures to address this matter domestically, the evaluation team noted some practical measures taken by the Serbian authorities and the private sector to prevent proliferation-related assets from entering the financial system. Similarly to the recent and unpublished updates to the Al-Qaeda list (see under IO.10), it appears that the lists and updates issued pursuant to UNSCR 1718 (concerning the DPRK) and 1737 (concerning the Islamic Republic of Iran) are informally distributed by the NBS to financial institutions (which can also have access to them group-wise or by using their IT tools)(see R.7 of the TC annex). Some of the reporting entities are thus presumably aware of these lists and may include them in their respective protocols. In case of a match, these financial institutions would report to the APML. However, due to the absence of a law regulating TFS related to proliferation of WMD, neither the APML nor any other authority would have the power to implement these UN sanctions and freeze the assets in question. To date, no match has been reported, partly due to the fact that most of the banks the evaluation team met with would refuse clients from the DPRK or Iran.

FIs and DNFPBs' understanding of and compliance with obligations

345. Reporting entities other than financial institutions were unfamiliar with the UN sanctions regime related to the financing of proliferation.

Competent authorities ensuring and monitoring compliance

346. There is no legislation providing for a publicly known mechanism to implement obligations stemming from the UNSCRs relevant for IO.11 given that Government decisions that reportedly transpose these UNSCR lists (without any specific authorization by primary legislation) are not

published (see R.7). The evaluation team has received no information indicating that supervisory authorities monitor FIs and DNFBPs for compliance with obligations regarding TFS relating to financing proliferation.

Overall conclusion on Immediate Outcome 11

347. Serbia has not taken any adequate legislative or other measures to implement, without delay, targeted financial sanctions concerning the UNSCRs relating to the combating of financing of proliferation of WMD. Other than FIs, other reporting entities are not aware of the UN sanctions regime related to the financing of proliferation. Even where reporting entities are aware, due to the absence of a regulatory framework on TFS related to proliferation of WMD, no authority would have the power to implement these UN sanctions and freeze the related assets.

348. **Serbia has achieved a low level of effectiveness for Immediate Outcome 11.**

CHAPTER 5. PREVENTIVE MEASURES

Key Findings and Recommended Actions

Key Findings

The banking sector generally has a high awareness of ML risks and the requirements of the AML/CFT framework. It implements to a satisfactory level AML/CFT obligations in practice, whilst applying mitigating measures in a manner commensurate to the assessed level of risk. A diligent approach is applied to identifying beneficial owners.

The understanding of ML risks and application of AML/CFT measures varies among the other sectors. A large number of sectors and entities consider that ML/FT risks are mitigated by the banking system and would not therefore apply AML/CFT measures in a manner proportionate to the actual risks they are facing. Overall, basic CDD and record-keeping requirements are complied with by all sectors.

Notaries are not subject to the AML/CFT Law. Lawyers do not accept their obligations resulting from the AML/CFT framework, as they are of the view that these are in contravention to the legal privilege. Concerns remain about the understanding of ML/FT risk and knowledge of the AML/CFT obligations by all accountants and foreign currency exchange bureaux.

There is generally a low understanding of FT risks among all sectors with the exception of money remittance service providers and banks.

The effectiveness of the mitigation of risk is seriously negatively affected by the remaining legislative shortcomings.

The vast majority of SARs are made by the banking sector and money remittance service providers, the APML stated in this respect that the quality of the reports, in particular from banks, is improving. Reports are rarely submitted by other sectors and from the interviews it was found that reports are sent only when a connection is made to a specific indicator from the list issued by the authorities and they would rarely contain any further support for the suspicion. It appeared that a high level of proof for a suspicion would have to be met in order for an entity to file an SAR.

Financial institutions have appointed compliance officers and have internal control and training programmes. The situation varies amongst the currency exchange and DNFBP sectors, mainly depending on the size of the entity. The APML provides regular trainings on the new developments of the AML/CFT framework, which are highly appreciated by the private sector, apart from that, however, there is a lack of available external training.

Recommended Actions

- The authorities should harmonise the legislative framework with the FAFT Standards, in particular concerning the following issues;
 - remedy the shortcomings connected to CDD measures, domestic PEPs and identification of beneficiaries of wire transfers;
 - notaries should be introduced as reporting entities under the AML/CFT framework;
- The authorities should take further measures to ensure that all lawyers, real estate agents, accountants and currency exchange bureaux are sufficiently aware of ML/FT risks and their obligations under the AML/CFT framework;
- The authorities should take steps to raise awareness on FT risks amongst all sectors;
- The authorities should ensure that general AML/CFT trainings are provided, in particular to provide a sufficient level of education to compliance officers.

The relevant Immediate Outcome considered and assessed in this chapter is I04. The recommendations relevant for the assessment of effectiveness under this section are R9-23.

Immediate Outcome 4 (Preventive Measures)

Understanding of ML/FT risks and AML/CFT obligations and application of risk mitigating measures

349. Pursuant to the AML/CFT Law, all reporting entities are required to have business risk assessments assessing the ML/FT risk particular to the entity and apply a risk based approach to conducting their business. In addition, reporting entities are assisted in the implementation of the risk-based approach by guidelines on risk assessments issued by the supervisors (these have been issued for all the sectors with the exception of currency exchange offices, casinos and lawyers). The relevant entities were aware of the guidelines and used them for their risk assessments.

350. Serbia is not a highly developed financial centre, sophisticated products are not offered by Serbian financial institutions and complex business relations are rarely present in Serbia. The banking sector is the most developed sector of the financial market and a significant portion of business of all other financial institutions and business entities would go at a certain stage through the banking system. This approach also explains the legislative restriction for persons selling goods or providing services in Serbia from accepting cash in the amount equal to, or higher than, EUR 15.000; this limitation was introduced in 2009³⁸. It is to be noted in this respect that on a number of occasions, representatives of reporting entities outside the banking sector shared with the evaluation team their view that all ML/FT risks are sufficiently mitigated by the banking sector. Whilst the banking sector is the most developed financial sector in Serbia, the market and the use of new technologies are only beginning to develop and there are no sophisticated services and products offered. The product risk is similar across the banking sector.

351. Banks, overall, have a good understanding of ML risks and apply the obligations resulting from the AML/CFT framework. The representatives of banks met on-site showed a proactive approach to the assessment and consideration of risk. The generally broad understanding of ML risks and obligations of the banking sector is further enhanced by a culture of compliance build up in many cases on the basis of international group policies and often go beyond the requirements of the Serbian legislative framework. In addition, the APML, together with the NBS, meet regularly once a year representatives of all the commercial banks in order to present identified typologies and trends.

352. Banks are categorizing risk prior to establishing business relationship based on certain categories (client, geographic, products, and transaction) and categorisation of risk is subject to changes resulting from on-going monitoring of customers. Business relationships are typically graded as low, medium or high. A vast majority of clients is considered as medium risk with a negligible percentage of customers being classified as high or low risk³⁹. Banks categorise as high risk the scenarios foreseen by the legislation (wire transfers, correspondent banking, relationships with PEPs, as well as links with high risk jurisdictions), but generally add cases assessed as higher risk based on their own experience, such as customers that are NPOs, complex legal structures or business relationships with high frequency of use of cash. The classification of the majority of customers as medium risk is mainly founded on the customer profiles in Serbia, the majority of these being individuals or small domestic legal entities. Depending on the attributed risk, banks apply differentiated levels of CDD measures, such as more or less intense frequency of on-going monitoring, further inquiries into source of funds, occupation of the client and others.

353. As has been described in further detail in Chapter 1, the volume of operations on the capital market in Serbia has significantly declined in the past years and the number of financial institutions participating therein reduced since the previous evaluation to less than a third. The conclusions of the NRA, where the capital market was assessed as posing a medium-low risk, were therefore based mainly on this development. In this context, representatives of the broker-dealer companies

³⁸ As a consequence, this restriction also excludes dealers in precious stones and metal from the being subject to the AML/CFT Law.

³⁹ According to an analysis of AML/CFT operations in banks undertaken by the APML in April 2015, enhanced CDD measures were applied in 2014 to 0,80% of clients and simplified CDD measures to 6,56%. The remaining customers were subject to standard CDD measures.

reported that, given the reduced number of customers and activity on the capital market, they are able to monitor closely all customers and transactions on an everyday basis.

354. The representatives of the participants on the capital market met on-site were aware of their obligations under the AML/CFT framework. They agreed with the conclusions of the NRA and stressed during the interviews that the risk of the sector is even lower than stated therein. It appeared that this view that risk is low, partly corroborated by the conclusions of the NRA, led to some extent to a complete disregard of ML risks, despite the fact that there have been ML cases in Serbia in the past involving the capital market. This view that risk is low can be observed also from the off-site questionnaires sent by the Securities Commission, from which it resulted that in 2014 over 80% of customers were classified as low risk; this leading to concerns about the diligence with which the risk-based approach is applied and is particularly relevant in the context of a lack of requirement to identify beneficial owners when simplified CDD measures are applied. Leasing and insurance companies showed also awareness of ML risks and their obligations resulting from the AML/CFT framework. They were familiar with the NRA and agreed with its conclusions.

355. During the on-site visit, representatives of participants on the capital market, leasing and insurance companies confirmed that they classify their customers based on risk, however, they do not tailor their risk-based approach to the particular conditions of the individual institutions and sectors, but it is based on the general factors set out in the AML/CFT Law and guidelines issued by the authorities. Customers are classified into three risk categories and the evaluation team was informed that simplified, standards or enhanced CDD measures are applied accordingly. Nevertheless, in the course of the interviews, representatives of some of the sectors had difficulties explaining the differences in the measures they would undertake in practice with respect to each of the different risk categories.

356. As concerns entities engaged in money remittance, there are two entities and the Post Office providing such services in Serbia. The evaluation team concluded that the understanding of ML/FT risks in the sector was high, and a sufficient application of mitigating measures was demonstrated. This is also strengthened by the affiliation of the entities to international groups and adoption of group AML/CFT policies. This was demonstrated during the interviews where examples were given of up-coming trends identified pro-actively by the sector, such as the effect on their business of an increased number of immigrants in Serbia recently. This was mentioned in the context of higher occurrence of situations when a third person, who appears not to be connected with the originator of the transfer, is involved in the transaction due to lack of identification documents or simply language barriers of the actual beneficiary. The MVTSPs take these trends into consideration when undertaking their risk assessment and applying mitigating measures.

357. Whilst the authorities are aware that currency exchange could be used as a means to conceal the proceeds of crime, ML risks in relation to exchange bureaux are being considered to a larger extent in the sense of the entities being misused by the persons operating them. This belief was also reproduced by the representatives of the sector itself, which considers the risks it is facing as low. Given the structure of the sector (there were 2.668 certified exchange operators on the market in the first quarter of 2015, of which a large majority are small companies or sole entrepreneurs); the awareness of risks, as well as the application of mitigation measures varies significantly within the sector.

358. There were two casinos licensed in Serbia at the time of the on-site visit. The evaluation team was able to meet only with the representative of one of the casinos and was not able to ascertain whether the other casino is actually operating in practice. The representative of the casino met on-site demonstrated a substantive knowledge of AML/CFT obligations. It was confirmed that certificates of winning are not provided. The majority of the clients of the casino are Serbian nationals and are rarely high value customers. Whilst no risk analysis as such is made by the casino, an example was given of a high value customer from a foreign jurisdiction upon which extensive checks were made. Despite a moderate level of awareness of potential ML risks, the evaluation team was informed that in practice all the risks are fully mitigated by "fair play" measures taken by the casino (such as controls preventing playing on even chances). Due to the lack of clearly designated supervisory authority, the sector of games of chance is left in practice without supervision and

without an authority which would be providing the entities with guidance and instructions (for further information in this respect the reader is referred to the analysis under IO.3).

359. Despite the real estate sector being identified as being the most vulnerable from the DNFBP sectors by the NRA and by the state authorities, the real estate agents encountered on-site did not consider that this would be the case. In particular, they consider that the risks are mitigated by the role the notaries are now playing in the real estate market. Given that the use of a real estate agent is not obligatory to conclude real estate contracts, the representatives of the sector are of the view that, since the registration and submission of real estate agents to new requirements, potential customers which would envisage concealing proceeds of crime would not use the services of a real estate agent. In conclusion, real estate agents are aware of their AML/CFT obligations and apply basic AML/CFT measures; nevertheless, they do not acknowledge the identified risks connected to their sector and consequently would not tailor the applied mitigation measures to the inherent risk. A higher risk was stated to be connected with the construction sector, mainly due to a higher occurrence of cash payments. Potential risk connected to this sector was also explored in the NRA and the high perception of risk connected with this sector was confirmed during the on-site visit by a number of state authorities and representatives of the private sector.

360. As concerns auditors and accountants, since its designation as supervisor of these sectors, the APML has taken a significant initiative in order to raise awareness of the sectors on ML/FT risks and obligations emanating from the AML/CFT framework. Representatives of both sectors met on-site were familiar with the ML and FT NRAs and were confident about the requirements of the AML/CFT Law. It is to be noted, however, that these were representatives of large accounting and auditing firms, predominantly affiliated with international groups. Concerns therefore remain, as also confirmed by the supervisor, about the effectiveness of the implementation of the obligations in particular by accountants. The accounting sector is specific for the following reasons: a) the large number of entities providing accounting services (over seven thousand); b) the majority of the sector is composed of small companies or individual entrepreneurs (having an impact also on the resources available to invest into AML/CFT measures); c) lack of a licensing requirement. The APML stated in respect of accountants that before it overtook the responsibility for supervision of the sector (in 2012), accountants showed a similar approach as lawyers in respect of professional secrecy. It was however confirmed that awareness raising efforts of the supervisor had a positive impact on the approach of the sector. It is to be noted, nevertheless, that the limited capacity of the supervisory department of the APML and the high number of entities providing accounting services cannot ensure that the outreach fully affects all the reporting entities of the sector. Following this consideration, the authorities included accountants as medium-low risk in the NRA (as opposed to auditors which are considered by the authorities as low risk).

361. The evaluation team was advised that the majority of lawyers are not aware of their AML/CFT obligations and the lawyers that know about their obligations refuse to comply with them⁴⁰, as they consider them either to be contrary to the legal privilege or they are of the view that there is no need to apply the measures due to the character of activities undertaken by the sector. This statement was confirmed during the interviews both with lawyers, as well as with the representative of the Bar Association which is designated as the AML/CFT supervisor of the sector. It is to be stressed in particular with regard to the refusal to acknowledge ML/FT risks of the sector that lawyers are involved to a large extent on the creation of legal entities in Serbia and the misuse of legal entities has been identified as the most recurrent ML typology by the authorities. In addition, lawyers are also involved to a large extent in real estate transactions. The role of lawyers as gatekeepers in this respect is therefore undeniable.

362. Notaries public were introduced into the Serbian system by the Law on Notaries Public, which was adopted in May 2011 and entered into force in September 2014⁴¹. Pursuant to this law, all transactions involving real estate property shall be undertaken through a notarial deed and are void

⁴⁰ Despite the refusal of the AML/CFT obligations by the legal sector, lawyers do apply basic CDD and record-keeping measures, as is discussed in further detail below.

⁴¹ Law on Notaries Public ("Official Gazette RS" No. 31/2011, 85/2012, 19/2013, 55/2014, 93/2014, 121/2014, 6/2015 and 106/2015)

without the endorsement of the notary public. At the time of the on-site visit, this sector was not subject to AML/CFT obligations⁴².

363. Notwithstanding the lack of a legal obligation subjecting the sector to the AML/CFT requirements, representatives of notaries encountered during the on-site visit demonstrated a substantive knowledge of the AML/CFT obligations, as well as of the risks inherent to their duties and role within the system, this in particular with regard to their responsibilities connected to the real estate sector. In addition, they showed a clear will to participate in the AML/CFT framework, evidenced for example by the fact that some of the notaries already tried to file SARs with the APML (but were told that they should not be doing so as they are not subject to the AML/CFT Law).

364. It is to be noted that the Securities Commission, the Tax Administration (as supervisor of exchange bureaux), as well as the APML (when supervising accountants and auditors), send regularly a questionnaire to reporting entities on the implementation of their obligations (due to resource restrictions, not all accountants are covered by this exercise). The authorities reported that this exercise helps to raise awareness of the entities with regard to their AML/CFT obligations; and they observe a clear improvement of the understanding of and compliance with the AML/CFT obligations.

365. ML risks are generally being considered by the financial sectors, and to a more limited extent by DNFBPs. With the exception of money remitters and banks, the understanding of FT risks focuses to a great extent on geographic risks, in connection with high risk jurisdictions, or would be assessed only in consideration of inclusion of a person on terrorist lists (either the Serbian list for the transposition of the UNSCRs or broader lists maintained by international financial groups). Money remitters considered that the risks connected with their sector are connected to a larger extent with FT than with ML and, accordingly, were very much aware of FT risks. Representatives of the sector also participate on the development of indicators at national level for the identification of suspicions of FT. It is to be noted, however, that other reporting entities were aware of their lack of understanding of the FT risks and stated that they would welcome further guidance and awareness raising on typologies and trends in this respect.

366. Finally, mitigation of risk is hindered by the legislative shortcomings, which are described below in relation to the application of enhanced CDD.

Application of CDD and record-keeping requirements

367. Information on the application of CDD requirements is also contained in the section above on the mitigating measures taken to address risk.

368. The financial sector demonstrated a rather high level of awareness of the CDD and record keeping obligations. Financial institutions are identifying and verifying the identity of their customers and all the financial institutions met on-site stated that they would not establish a business relationship or would terminate existing business relationship with a customer if they were unable to collect or update all necessary data.

369. Concerns exist only with regard to the currency exchange bureaux, which are required to identify their customers if the amount of a transaction or connected transactions exceeds EUR 5.000 and it appears that customers are not identified in all the situations prescribed by the law. During the interviews, currency exchange offices stated that the requirements to undertake CDD measures prejudice their business, as their customers are reluctant to identify themselves. The supervisory authorities confirmed that breaches of the CDD obligation were the most common violations encountered during inspections, in particular in cases of several related transactions. A certain level of compliance is, however, ensured by the obligation for all currency exchange offices to have a CCTV, which facilitates supervision and decreases the margin to undertake transactions without registering them. Nevertheless, these measures impact more significantly on the fight against shadow economy than AML/CFT supervision.

⁴² The authorities informed the evaluation team that draft amendments to the AML/CFT Law were prepared with the view of including notaries public as reporting entities.

370. Beneficial ownership requirements are generally well understood and all financial institutions interviewed confirmed that they would request information leading to the ultimate natural person behind the customer. The AML/CFT Law prescribes three steps in the process of identification and verification of beneficial owner. Firstly, the reporting entity would collect information from an official register of legal entities (SBRA for domestic legal entities). If it is not possible to obtain all the data on beneficial owner of the customer from the register, the reporting entity shall obtain the missing data from the representative of the customer (from additional reliable documentation, such as articles of association, minutes from meetings of shareholders, etc.). Additional information on the customer is also obtained through checks of the internet and commercial databases. If the reporting entity does not consider the information obtained through the previous steps as fully conclusive, the AML/CFT Law allows for the acceptance of a written statement by the representative of the customer stating who the beneficial owner is.

371. When identifying the beneficial owner of a legal person, all financial institutions would first request information from the company register either of Serbia or the country of establishment of the legal person. Should this enable the identification of the last natural person controlling the legal person, reliance is given to the information contained in the register and this person would be considered the beneficial owner. In this respect, the evaluation team was informed that all banks daily electronically overtake all the data from the Business Registry and therefore all the changes are available to banks on a timely basis. Further information on the concrete way how this system functions was not provided. In addition, when establishing a business relationship, banks obtain additional information on the customer through a questionnaire which contains information such as customers domestic and foreign business partners, principal business activities, financial statements, etc. All banks encountered on-site confirmed that the written statement, as allowed by the AML/CFT Law, would be resorted to only as a last resort and in general is used in practice only in a negligible amount of cases. The representatives of banks were convincing in stating that they would not enter into a business relationship unless the final natural person owning or controlling the client would be identified. The diligence of banks in this respect was confirmed by the NBS, as well as by representatives of other sectors. The NBS confirmed that, even though there remain cases of identified breaches of the CDD obligations, these have become less frequent and currently appear very rarely.

372. Whilst some representatives of other sectors of the financial market confirmed a similar practice, others (should the information held by the register not be conclusive) would satisfy themselves with the written statement directly without undertaking further efforts to verify the information contained therein. In addition, it resulted from the interviews that the presumption of high compliance with the requirements by the banking sector led in some other sectors to consider that the transparency necessary to mitigate ML/FT risks was sufficiently ensured by the banking sector and consequently resulted in somewhat less stringent approach to BO identification.

373. Even though representatives of banks were aware of their obligation to identify the beneficial owner of legal arrangements, and some confirmed to have foreign trusts in the structure of legal entities that are their clients, the understanding of the structure of a trust and the persons which would be considered as beneficial owners thereof for the purposes of identification was uneven. Representatives of other sectors seemed generally unaware of the characteristics of legal arrangements and their structure. It is to be noted in this context that only an insignificant number of banks reported to have legal arrangements in the structure of their clients who are a legal persons, and the vast majority of reporting entities do not have clients with complex corporate structures.

374. It is to be reiterated that reporting entities are exempt from identifying the beneficial owner when applying simplified CDD measures. This issue is more relevant outside the banking sector, as some representatives of a financial institutions and DNFBPs met on-site stated that most of their clients, including legal entities, are categorized as low risk and consequently simplified CDD measures are applied.

375. As concerns DNFBPs, application of CDD and record-keeping obligations varies significantly between the various sectors, as well as within the sectors. Real estate agents and the casino met on-

site showed a generally good knowledge of their obligations. Real estate agents apply CDD measures to all parties of the contract and stated that they would look for the beneficial owner of legal persons. If more agencies were involved (for example when each representing a different party), then both would obtain all the information relevant to all the parties. Notwithstanding, as mentioned above, the evaluation team was concerned about the quality of understanding of its ML/FT risks by the real estate sector. As a result, there are doubts whether the mitigating preventive measures applied would correspond to the risks.

376. The casino applies CDD measures mainly through identifying all customers upon entry into the casino and consequent close monitoring of customer activity within the casino, mainly as part of the casino's "fair play" procedures.

377. Significant differences may be observed within the sectors of auditors and accountants, mainly based on the size of the entity. This would be less of an issue with regard to auditors, as it was confirmed that the majority of auditing firms operating in Serbia are part of international groups and would be therefore applying group policies. In addition, it was confirmed by both the private sector, as well as by the APML as supervisor, that auditors overall had a substantial AML/CFT awareness already before being subject to the Serbian AML/CFT legislation, mainly due to the above raised application of group policies. It was confirmed by the APML that auditors identify fully beneficial owners, requesting also internal documents and other proof, to an extent comparable to banks. The situation is different with accountants, where in respect to some entities of the sector the same applies as for auditors, whilst for smaller entities there remain doubts about the comprehensiveness of the application of the AML/CFT framework.

378. Despite the fact that lawyers do not consider themselves as subject to AML/CFT requirements, they still apply basic CDD and record-keeping measures to the extent necessary for the undertaking of their business, irrespective of these requirements being part of the AML/CFT framework. This would consist of identifying the customer and verifying whether a person representing the customer is authorised to do so; they would however not look into the ownership structure in order to identify the beneficial owner. This same conclusion applies also to notaries public.

Application of enhanced or specific measures

379. As stated above, financial institutions apply enhanced CDD measures to all clients categorised as high risk. High risk is attributed to a business relationship in the cases foreseen by the legislation, as well as in situations identified as posing high risk based on an individual risk assessment of the institution or by group policies.

380. The requirements of the AML/CFT Law only apply to foreign PEPs and domestic PEPs are therefore not covered by the legal framework. It is to be noted in this respect that some banks stated that they conduct enhanced CDD also for domestic PEPs as a result of group policy. Financial institutions were generally aware of the requirements related to foreign PEPs and would automatically treat them as high risk. Customers are required to fill in a PEP form (a declaration as to whether the person is a foreign PEP) and larger entities (in particular members of financial groups) use commercial databases for the identification of PEPs. In particular banks encountered on-site were very confident in their measures to check whether a customer is a PEP or not, and they undertake such checks also for beneficial owners and apply all the enhanced CDD measures as required by the legislation. Some non-bank financial institutions, auditors and accountants, which do not have access to commercial databases, and real estate agents reported that they rely on the written statement of the customer and reported that they would welcome additional guidance on how to identify PEPs. In addition, these reporting entities do not conduct the necessary checks to determine whether the beneficial owner of a customer is a PEP. The representative of the casino and lawyers met on-site stated that they do not identify whether customers are PEPs.

381. As concerns measures related to correspondent banking, sufficient scrutiny is given by banks before establishing any correspondent relationship, compliance with the standards (within the scope of the requirements of the AML/CFT Law) demonstrated by banks appeared to be

satisfactory and potential correspondent institutions have been rejected when the Serbian bank was not satisfied with the quality assessment. Payable-through LORO correspondent accounts are prohibited by the AML/CFT Law, as well as correspondent relationships which would involve a shell bank.

382. As stated above, the financial market in Serbia is developing and no sophisticated products are offered by the reporting entities. The most developed sector is the banking sector, where compliance officers encountered on-site confirmed that the use of new payment methods, telephone banking, etc. would be treated as higher risk products. In addition, compliance departments are consulted when the introduction of a new product is being considered.

383. Regarding wire transfers, it is to be stressed firstly that the AML/CFT Law only requires FIs to obtain information on the originator and not the beneficiary. However, banks and MVTSPs encountered on-site stated that their information systems require all information on both beneficiaries and originators to be included with the transfer and the transfer would not be able to go through the system if any information was lacking. Given the legislative shortcoming, however, it is not possible to firmly state that all financial institutions would take measures should beneficiary information be missing. Banks consider wire transfers as high risk transactions and are paying special attention to transactions coming from high risk countries.

384. It is to be noted in this respect that the internal AML/CFT procedures of financial institutions which were available to the evaluation team reflected the scope of the national legislation and contained therefore the shortcomings related to domestic PEPs, wire transfers and correspondent banking.

385. As described in further detail in the analysis of IO 10, the effectiveness of the application by reporting entities of the system implementing targeted financial sanctions is hindered by the technical deficiencies of the framework, lack of timeliness of updating the list issued under the national procedure, as well as the difficulties in matching the names on the list due to the Cyrillic transcription. This is partially remedied in practice in the majority of the banking sector and in some money remittance service providers which use software (in the majority of cases this software is provided by the financial group) that incorporates directly the updated UNSCR lists. There is a very low level of awareness of the existence of targeted financial sanctions outside the banking sector and in particular within the DNFBP sectors. Few financial institutions are aware that such lists exist and links are available on the APML web-site (which are out of date). In addition, even when aware of the existence of lists, the entities were not clear on the requirements connected to the lists and stated that they would not enter into a business relationship with the person and/or report to the FIU. Some of the entities which were not aware of the existence of the UNSCR lists stated that these would not have any relevance for their business, as they do not have clients who could be posing any FT risks. To date, no freezing of terrorist assets has taken place.

386. Geographical risk is one of the principal factors on the basis of which financial institutions classify their business and customers into risk-categories. The level of awareness of this obligation was satisfactory amongst all the sectors met on-site, with the majority being able to state also the jurisdictions designated by the FATF at the time of the on-site visit as high risk countries. In addition, representatives of banks and some other financial institutions were also aware of the risks connected with other jurisdictions, such as offshore financial centres and would apply enhanced CDD also to customers from these jurisdictions. The FATF and MONEYVAL public statements on high risk jurisdictions are published on the website of the APML, even though the publication takes place with a considerable delay.

Reporting obligations and tipping off

387. The AML/CFT Law requires reporting entities to develop a list of indicators for identifying suspicions of ML and FT. In addition, the APML issued separate lists of indicators for each sector of reporting entities, which are tailored to the particularities of the sector and the business it undertakes. These lists should be incorporated into the individual lists maintained by the reporting entities, but are not exhaustive and do not prejudice the development of indicators based on

practical experiences of each reporting entity. The lists issued by the APML are published on the APML website.

388. There is a sound understanding of the ML reporting obligation throughout the whole banking sector and, as stated by the APML, quality of SARs submitted by banks is satisfactory. With several banks there is room for improvement mostly connected with insufficient justification of the suspicion on ML. The APML informed the evaluation team that reports sent by banks used to be based mainly on matches with one or more indicators, which resulted in a lower quality of SARs submitted to the APML. In order to address this issue, the APML held in 2012 meetings with banks with the purpose of increasing the quality of reports. This resulted in a decrease of the number of reports in 2012 and following years, as can be observed from the table below, and in a higher quality of the reports, according to the APML. The representatives of banks met on-site stated that they consider their particular experience when developing their list of indicators, as well as taking into consideration group policies. Whilst having a pro-active approach when setting internal policies on reporting, all the internal documents from banks the evaluation team was provided with stated explicitly that the AML/CFT compliance officer should be notified of suspicions “when at least one indicator is met”, setting therefore a checklist approach for the employees of the banks to flagging suspicions. Following this initial notification, the compliance officer is given a discretion to then further consider whether there is a reason for suspicion or not.

389. As can be observed from the statistics below, money remittance providers submitted a large number of reports in the period under review and the APML welcomed the positive attitude to the reporting obligation of the reporting entities in this sector. The evaluation team was informed in this respect that the reports filed were STRs, as opposed to SARs filed by the other sectors. In order to increase effectiveness of reporting, the system was modified and since 2015, money remitters are also submitting SARs with related STRs included in the attachment. The quality of the SARs and in particular their reasoning remain to be improved, as the APML informed that the majority of the reports often lack any support for suspicion, but merely a reference to an indicator met. Most reports are submitted when a certain amount is exceeded by a person in a given period or when the funds or involved persons are linked to a high risk jurisdiction. Money remitters are creating their own lists of indicators for recognizing suspicious activities in their business.

390. The other financial institutions rely on the indicators developed by the authorities and do not develop indicators of their own. They submit SARs strictly based on the indicators and the APML confirmed that the reports generally lack any support for suspicion, but merely a reference is made to the indicator met.

391. None of the DNFBPs met during on-site had submitted a SAR to the APML. They either stated that it is necessary to have a very high level of suspicion in order to report or they do not consider that their business poses risk for ML/FT. Lawyers stated they would consult the Bar Association before reporting or responding on an APML request and raised concerns regarding professional secrecy. It was confirmed by the APML, the Bar Association and the lawyers met on-site that, in general, lawyers do not consider themselves obliged to report suspicions and that there is a predominant conviction that the reporting obligation would be contrary to the professional secrecy resulting from the legal privilege. It is to be noted, however, that since 2013 a number of SARs were filed by lawyers and it was confirmed by the APML that some of the reports were connected to real estate transactions, which would correspond to the risks the lawyers are facing. Notaries are recognizing suspicious activities in their business (mainly in connection to transactions involving real estate) and stated that they tried to report to the APML, but as they are not subject to the AML/CFT Law, they were informed that they should not be reporting. The real estate agents stated that they would apply strictly the indicators issued by the authorities.

Table 21: Total number of SARs filed by reporting entities in the period under review

Type of reporting entity	2010	2011	2012	2013	2014	2015 (Jan-Sep)	Total
Banks	4.496	2.553	781	594	552	427	9.403
Broker-dealer companies	3	0	4	0	0	0	7
Insurance companies	9	0	7	26	5	9	56
Leasing companies	18	0	3	1	3	1	26
Bureaux de change	0	0	0	2	3	1	6
Money remitters	2.939	4.041	3.608	1.873	3.828	515 (3.117 related STRs)	19.406 STRs
Persons dealing with postal communication	11	17	12	5	1	9	55
Public notaries	0	0	0	0	0	1	1
Auditors	0	0	4	5	9	11	29
Accountants	0	0	0	0	1	2	3
Lawyers	0	0	0	1	13	0	14
Total	7.476	6.611	4.419	2.507	4.415	3.578	29.006

392. From the wording of the reporting obligation in the AML/CFT Law, the evaluation team was concerned whether the requirement to report attempted transactions is sufficiently clear in order to ensure full compliance in practice with the FATF Standards. The evaluation team was provided with statistical data which demonstrate that attempted transactions are reported by reporting entities to a certain extent. During the on-site visit, the evaluation team was, however, presented with cases which raise concerns as to whether the full scope of reporting attempted transactions is understood by all reporting entities. This in particular in the context when several representatives of reporting entities confirmed that they would refuse business when unable to comply fully with CDD requirements, but would not consider filing an SAR.

393. Overall, it appears that the understanding of reporting entities, other than banks and money remitters, of their reporting obligation consists of reporting to the FIU only if they have a substantiated conviction that the funds involved are proceeds of crime, despite outreach by the APML to clarify the reporting requirement. Many of the entities encountered on-site would first undertake an "investigation" of their own in order to be fully certain and would therefore not report based on a simple suspicion. The negative impact of this practice could also be aggravated by the only indirect requirement to report funds suspected to be proceeds of crime (as opposed to suspicious transactions). DNFBPs and FIs, other than banks and money remittance providers, over-rely on the quality of banks as gatekeepers leading to a view of these sectors that the obligation to report SARs lies primarily on banks.

394. The obligation to report suspicions of FT is generally understood only by the banking and money remittance sector. This conclusion is also confirmed by the fact that FT related SARs are being filed only by these two sectors (the total number of FT related reports submitted to APML in the period from 2010 to 2014 was 9 (out of which 7 were submitted by banks and 2 by money remitters). As concerns the awareness of the money remittance sector, the evaluation team

positively noted the high level of knowledge of the typologies and indicators specific to FT. Representatives of this sector participate in creating a list of indicators for FT at a national level, and they complement the reporting indicators set out at the national level with additional indicators identified on the basis of the experience of the individual institutions. As concerns the other reporting entities, FT risk is considered almost exclusively in relation to connections with high risk jurisdictions and, during the interviews, the possible occurrence of FT was dismissed by the representatives of the private sector by stating that they do not have any business relations with such countries.

395. Banks are receiving feedback on the quality of SARs and information on further steps taken by the APML as a result of received reports on annual basis. This includes a general meeting of the APML and the NBS with representatives of all banks with a view to providing general feedback, as well as feedback that is provided to banks on an individual basis. In addition, to improve the understanding of the reporting obligation by banks, the APML organised in 2012 the events described above in order to increase the quality of filed SARs by banks, and it issued for banks in July 2014 Recommendations for Suspicious Transaction Reporting. This document presents an analysis of the reports received in 2013 and contains general guidance, as well as concrete indicators for recognising suspicions. Since 2015, money remitters have been receiving feedback on SARs filed in the same manner as banks.

396. Overall, the APML reported that the quality of the SARs is sufficient and that there was a clear increase in the quality of the reports submitted over the past years, in particular it was positively noted that reporting entities endeavour to provide a more substantial reasoning for the suspicion, as well as more comprehensive documentation together with the report.

397. There have been no issues in relation to tipping-off. Reporting entities were familiar with the legal requirement in relation to tipping off.

Internal controls and legal/regulatory requirements impending implementation

398. All banks have internal monitoring units, which monitor compliance with AML/CFT. An analysis of the compliance function in banks undertaken by the APML in July 2015 confirmed that, whilst all banks had an AML/CFT compliance function consisting at least of the compliance officer and a deputy, the AML/CFT compliance officers were in the majority of cases not directly responsible to the management, but were more often part of the general compliance department and therefore several steps in the hierarchy below the management. Whilst banks confirmed that AML/CFT compliance officers are fully independent when considering the filing of an STR, they would have this independence with regard to the question of establishing/terminating a business relationship only in minimum of cases. In all banks a report is regularly (at least once a year) sent to the top management on the implementation of AML/CFT measures, usually as a section within the general report of the compliance department. In addition, the APML assessed in its report that in about half of the banks the number of staff dedicated to AML/CFT compliance should be increased, in particular as in many cases they are required to undertake a large amount of tasks not directly related to the basic AML/CFT issues (such as answering questionnaires or responding to requests from various state authorities). Nevertheless, it was stated that they were provided with sufficient IT tools and attended regularly training on AML/CFT issues. The compliance officers met on-site were generally knowledgeable and confident when discussing AML/CFT issues and feedback from the supervisors and APML was generally positive.

399. The compliance officers from banks met on-site all stated that they attend external trainings on AML/CFT issues, in particular the seminars organised by the APML on new developments of the AML/CFT framework. All banks have internal AML/CFT procedures which contain the requirement for periodic AML/CFT training of all staff, as well as introductory training for new staff. This internal education is generally provided by compliance officers. AML/CFT systems in all banks are subject to independent internal audit.

400. Financial leasing and insurance companies, as well as money remitters, have independent internal audit functions, as well as appointed compliance officers and their deputies. It was

confirmed by the Securities Commission that this is the case also with regard to the entities subject to its supervision (participants on the capital market). Compliance officers participate in external AML/CFT trainings, this would be also mainly the seminars organised by the APML. As concerns AML/CFT trainings for other staff and general AML/CFT trainings for compliance officers, the situation varied amongst the institutions met on-site. Whilst some had experienced compliance officers which provided regular internal trainings for other staff, others stated that staff are merely required by internal procedures to self-educate themselves in AML/CFT matters.

401. The casino met on-site had an appointed AML/CFT officer who was well aware of AML/CFT obligations. The casino developed an e-course and all new staff which have contact with customers are required to undertake this training and conclude it with a test. In addition, all staff are required to undertake the training at least once a year. The casino does not have an internal audit function; yearly reports on the activity and business in the casino are however prepared jointly by a number of departments for internal use. These reports also include AML/CFT aspects.

402. As concerns other DNFBPs and currency exchange bureaux, the situation varies significantly within the sectors, mainly depending on their size and resources. Representatives of exchange bureaux, auditors and accountants met on-site (who were however from larger firms) had appointed AML/CFT compliance officers. These would generally envisage participating at the training events organised by the APML, but overall they reported that they self-educate themselves. Consequently they provide trainings for the other staff. Nevertheless, this is not representative of the situation in the sectors as a whole, given that the majority of the entities providing these services are very small firms or sole entrepreneurs.

403. Finally, a recurrent problem identified by all the sectors, to a lesser extent with banks, accountants and auditors, was the low number of available external general trainings on AML/CFT issues, as the only regular educational events in this respect are provided by the APML and cover only new developments of the framework. It is to be noted in this respect that the AML/CFT Law requires all AML/CFT compliance officers and their deputies to hold a license by the APML for undertaking this function. This was foreseen as a way to ensure a high standard of AML/CFT compliance staff, as the Law contains a list of conditions which have to be met by the person, as well as a professional examination that is undertaken by the APML. Nevertheless, the last examination took place in November 2013, as due to lack of resources, the APML has stopped the licensing procedure since then. As a result, the reporting entities met on-site stated that the majority of compliance officers do not have such a license, because there is a lack of licensed individuals. It is considered that this requirement positively impacted on the quality of the compliance staff and it would be therefore recommendable to resume it.

404. There are no legal or regulatory difficulties which would impede the transfer of customer and other CDD information between entities appertaining to the same group. A number of entities (in particular from participants on the capital market and leasing firms) confirmed during the on-site visit that they would regularly obtain information from other members of the same group, in particular from banks.

Overall conclusions on Immediate Outcome 4

405. In terms of materiality and risk, particular importance was given to the banking sector is the most significant player on the financial market in Serbia. According to the NRA, as well as in the view of the state authorities and private sector met on-site, it is also the sector with highest risk amongst financial institutions. The evaluation team considers that banks in Serbia have a good understanding of ML and FT risks and apply AML/CFT mitigating measures accordingly. Compliance of the banking sector is also enhanced to a large extent by the fact that the majority of banks in Serbia are part of international financial groups and apply therefore AML/CFT measures based on group policies. In addition to the banking sector, higher risk was considered to be linked with money remittance services. With regard to this sector, the evaluation team considered their understanding of ML/FT risks inherent to the sector and their compliance with the AML/CFT requirements as satisfactory.

406. It appears that all financial institutions and, in most cases, DNFBPs apply well in practice basic CDD measures and record-keeping obligations. Financial institutions, as well as auditors and some accountants, also demonstrated an understanding of beneficial ownership requirements and they endeavour to comply with them in practice, with varying levels of success. In addition, they also confirmed that they assess their clients based on risk, pursuant to which they apply different level of CDD measures. There were, however, concerns in practice about the actual understanding and implementation of the risk based approach in practice outside the banking sector.

407. Institutions from the majority of sectors also have appointed compliance officers and, depending on their size, internal procedures and measures to ensure AML/CFT training for staff and internal controls. AML/CFT education of staff of reporting entities and, in particular, the compliance staff would nevertheless benefit from a broader offer of external AML/CFT trainings.

408. The effectiveness of the system is hindered in practice by several legislative shortcomings which are particularly relevant in the context of the risk identified in the country, such as the fact that requirements connected to domestic PEPs are not included in the AML/CFT framework and the obligations in connection to wire transfers are incomplete.

409. In addition, the risks connected to real estate transactions, which were identified as posing the highest risk outside the financial market, do not seem to be sufficiently remedied given that real estate agents do not recognise the high risk connected with their business, lawyers refuse to acknowledge their AML/CFT obligations and notaries public are not covered by the AML/CFT framework at all.

410. With the exception of money remitters and the banking sector, FT risks are not considered or understood at all.

411. **Serbia shows a moderate level of effectiveness for Immediate Outcome 4.**

CHAPTER 6. SUPERVISION

Key Findings and Recommended Actions

Key Findings

With the exception of accountants, all FIs and DNFBPs are required to obtain a licence in order to undertake their business. Some measures to prevent criminals from controlling or holding a management function in reporting entities are applied by licensing authorities, more thorough checks being undertaken by the NBS and the Securities Commission. . The Tax Administration is undertaking its licensing role seriously in relation to currency exchange bureaux and obtains certificates of non-conviction. Weaker controls are in place for DNFBPs. A very large majority of real estate agents have been licensed, although there are a significant number of real estate agents which are not yet licensed. There are no checks undertaken by the Ministry of Justice in relation to notaries. Certificates of non-conviction are obtained by the Bar in relation to lawyers before a lawyer can join the Bar. The founders and owners of the casinos were subject to checks before being licensed; measures have not been taken for the full range of beneficial owners or for the directors and management of the two existing casinos. It is not possible to be an auditor without providing the Ministry of Finance with a certificate of non-conviction.

Whilst the NBS maintains an understanding of the risks of the banking and insurance sectors as a whole and of individual entities, the level of understanding of ML/FT risks connected with the other sectors varies amongst the different supervisory authorities. The NBS's views on risk are dynamic and it maintains a substantial understanding of the risks of the banking sector as a whole and of individual banks. This is also the case for the insurance department. While the Securities Commission has some understanding, it is not in a position to understand fully the risks of the sector and of all licensees. The Tax Administration and the Ministry of Trade understand the risks of the sectors for which they are responsible; they are in a position to maintain an understanding of the risks of some but not all licensees; the APML is knowledgeable about sectoral risks, and has an understanding of individual audit practices and some accountancy practices. The Bar Association has a basic understanding of the risks in the legal sector.

Overall, supervisory authorities are not yet focussing the frequency and intensity of their supervision of sectors and individual licensees based on ML/FT risk. More specifically, the banking department of the NBS has robust onsite and offsite supervision of AML/CFT and is the best placed to undertake supervision on the basis of risk. Steps have already been taken and the department is working to introduce a methodology to introduce full risk based supervision. Other supervisors take ML/FT risks into consideration to a limited extent. Of these, with reference to DNFBPs, the APML continuously reassesses the risks to inform its supervisory approach and is not far from focussing the frequency and intensity of its supervision on risk.

The NBS, the NSC, the Tax Administration, the Ministry of Trade and the APML impose sanctions or apply through a court process for financial penalties to be applied when breaches of AML/CFT obligations are encountered. Most sanctions for AML/CFT breaches are applied through proceedings made directly to the court or indirectly to the court by application to a prosecutor. As a result, remedial action for encountered violations does not always lie with the discretion of the supervisor and the period before a sanction is imposed by the court is, on average, two years (although it can be much quicker). In addition, with the exception of the Securities Commission and the APML, the supervisory authorities have limited knowledge of the outcomes of their referrals to the prosecutor. Notwithstanding the approach taken of sanctioning all breaches, the framework for sanctions for reporting entities as a whole cannot be considered to be dissuasive and effective.

The NBS's banking department has recently dealt with its staff resource deficiency in a positive way by recruiting additional staff although the effectiveness of all of the new staff has yet to be proven. All other supervisory authorities have a significant shortfall in staff resources and, by extension, financial resources. The APML is additionally hampered by space constraints. These resource deficiencies have a negative impact on the thoroughness of supervision. With the exception of the

supervisory department of the APML, the frequency of AML/CFT training by the supervisory authorities is not adequate. This too will require the application of additional financial resources in order for systematic training programmes to be put in place.

The APML has been particularly commended by industry representatives in relation to the training and awareness raising activities it provides to the private sector. A highly pro-active approach by the NBS in this respect has also been noted in respect of the banking sector. Both authorities demonstrated a clearly positive effect they have on awareness of and compliance by the entities under their supervision (and by the APML more widely). However, there are gaps in relation to lawyers, notaries and casinos which need to be addressed.

Recommended Actions

- The remaining technical shortcomings of the licensing regime should be remedied and, outside the Core Principles FIs, a more active approach taken to preventing infiltration of licensees by criminals;
- As planned, measures should be taken to ensure that all real estate agents should be licensed;
- Measures should be taken to ensure that lawyers, notaries and casinos are supervised in practice;
- Supervisors should follow the lead being taken by the banking department of the NBS and the work being done by the APML in seeking to maintain an understanding of the risks of individual licensed entities and take steps so as to ensure that the frequency and intensity of supervision is based on risk; the authorities should link supervision of AML/CFT compliance to the particular risks identified in the NRA; in relation to the Tax Administration, in order to facilitate this process, the Administration should be provided with statutory ability to obtain offsite supervisory information;
- The sanctioning regime for all supervisors should be reviewed and enhanced in order to ensure that proportionate and dissuasive sanctions are applied. Such sanctions should be applied effectively, including in a timely manner;
- Staff resources should be significantly increased for all supervisory authorities with the exception of the NBS;
- Systematic training on AML/CFT issues should be ensured for the staff of all supervisory authorities.

The relevant Immediate Outcome considered and assessed in this chapter is IO3. The recommendations relevant for the assessment of effectiveness under this section are R26-28 & R.34 & 35.

Immediate Outcome 3 (Supervision)

412. The AML/CFT Law designates the authorities responsible for AML/CFT supervision of FIs and DNFBPs⁴³; this framework, with a few exceptions, mirrors the supervisory authorities

⁴³ According to Article 84 of the AML/CFT Law, AML/CFT supervision is undertaken by the following authorities:

- The NBS in respect of banks, financial leasing providers, entities involved in insurance business, voluntary pension fund management companies and e-money and payment institutions;
- The Securities Commission with regard to investment fund management companies, broker-dealer companies, as well as banks with respect to custody and broker-dealer business;
- The Foreign Currency Inspectorate in respect of foreign currency exchange bureaus and providers of money and value transfer services, including the post office, as well as entities engaging in factoring and forfeiting (please note that the Foreign Currency Inspectorate forms currently part of the Tax Administration)
- The APML supervises auditors, accountants and tax advisors;

responsible for prudential supervision. In addition, the Tax Administration and the Ministry of Trade are responsible for supervision of compliance with the restriction for persons selling goods and providing services in Serbia and the maximum permitted payment of cash to the value equal to or exceeding EUR 15.000⁴⁴.

Licensing, registration and controls preventing criminals and associates from entering the market

413. Serbia has a licensing regime in place for all Core Principles and other financial institutions. In addition, measures are in place to prevent criminals and their associates from controlling financial institutions. However, this regime does not cover fully the requirements of the FATF Standards. In particular, for some sectors the requirement for a clean criminal record does not cover the entire beneficial ownership structure and supervisors lack legal powers with respect to some sectors where significant shareholders obtain a criminal record after acquiring shares. There are no legal powers in Serbia in relation to associates of criminals. The TC Annex contains further detail.

The National Bank of Serbia (NBS)

Banks

414. The NBS requires substantial information before allowing a bank to be established in Serbia. Until the date of the on-site visit⁴⁵, individuals were not able to acquire a shareholding of more than 5% of a bank, meaning that all immediate shareholders of banks are legal persons. When an application is received, the NBS's banking department checks the media and liaises with other departments of the NBS, the Ministry of the Interior and the APML on the suitability of significant shareholders and beneficial owners. Certificates of a clean criminal record are required for both residents and non-residents, and criminal records from the jurisdiction of origin as well as where individuals have been employed are reviewed. The NBS also liaises with supervisory authorities in other jurisdictions. In particular, it asks these supervisors for input on firms and individuals where there is a link between the licensee and the beneficial owners or controllers with the foreign country. It draws a distinction between the different risk profiles of various jurisdictions and of potential bank holding companies, and calibrates its licensing process accordingly. The whole chain of ownership is subject to scrutiny by the NBS.

415. Some legal persons have not been permitted as shareholders or beneficial owners in light of reputational issues. Checks have led to the refusal by the NBS to license a bank as a result of the uncovering of inaccuracies. There have also been cases where applicants have withdrawn an application because of the standards expected by the NBS. By way of example, three applications were withdrawn in 2015; in all cases (one foreign natural person and two Serbian natural persons) the applicants could not prove the origin of property and, in the two cases of Serbian applicants, these did not comply with the requirements for relevant management experience.

Case example: Attempt to acquire direct ownership which would allow more than 50% of voting rights in a bank

In May 2015, a requirement for prior consent for the acquisition of ownership of a bank was

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- The Ministry of Trade shall supervise real estate agents;
 - The Bar Association is responsible for supervision of lawyers;
 - The Administration for Games of Chance shall supervise casinos and on-line casinos (please note in this respect that the Administration for Games of Chance ceased to exist in 2012).

⁴⁴ Due to this provision, dealers in precious stones and metals are not subject to the AML/CFT framework as reporting entities.

⁴⁵ The framework in question was modified by the Decision on Implementation of Provisions of the Law on Banks Relating to Granting of a Preliminary Bank Founding Permit, Bank Operating Licence and Consents and Approvals by the National Bank of Serbia (RS Official Gazette, No. 82/2015) which entered into force on 6 October 2015

submitted to the NBS by a natural person, who is a German citizen and the owner of numerous legal persons in different countries. The NBS was informed that the person is involved in trade in diamonds. As the application was not complete, the NBS requested the applicant to provide further documents, in particular information related to his previous professional experience, clean criminal record, detailed information on involvement in legal persons, origin of wealth and compliance with tax liabilities. Due to the fact that not all requested information was provided, the NBS refused to grant consent to the acquisition of shares.

416. With regard to ascertaining whether or not individuals might be an associate of a criminal, the NBS satisfies itself that all members of executive boards and management have good reputation and experience. Individuals are scrutinised as to whether they have any convictions, together with their experience in management, the penalties imposed on banks where that person has been employed, and references. Curricula vitae are also obtained. All foreign individuals have had finance sector experience and the NBS has been able to ascertain their reputation by contacting foreign supervisory authorities. This has included liaison with supervisory authorities in, for example, Austria, Germany, France, Greece and Turkey. Over twenty contacts with foreign supervisors are expected to be made in 2015, with twenty-six contacts being made in 2014 and fourteen in 2013. To date individuals have been rejected by the NBS as a result of lack of qualifications; there have been no cases where a rejection was necessary due to a criminal conviction or association with criminal elements.

417. Any changes to shareholders or beneficial owners, as well as of the management of banks, together with the reasons for the change must be notified to the NBS. The supervisor monitors whether any changes have been made without its approval during on-site inspections. To date, all changes have been notified to the NBS in accordance with the law. Banks have a cooperative approach towards the NBS and they are familiar with its requirements.

Other sectors subject to supervision by the NBS

418. The NBS departments responsible for the supervision of insurance providers and leasing companies generally follow the same approach as the banking department, with the variations which arise from the intrinsic differences between banking and the other businesses. In addition, based on the assessed low risk of the two sectors, they do not contact third parties or foreign supervisors, unless they consider that the supervisors have useful information or in case of a suspicion. The NBS is encouraged to consider a more systematic approach so that other supervisors are routinely contacted whenever there is a relevant link with an application. The last applications by an insurer and leasing company were in 2011/2012 and 2007 respectively. No application by an insurer or a leasing company has been refused for reasons linked to AML/CFT. Over 50% of the capital of a pension fund management company must be held by companies licensed for banking or insurance business; such fund management companies are, however, separate businesses and controls are therefore undertaken in their respect by the NBS independently from the banking and insurance sectors. The last application for a pension fund management company licence was in 2008, although there have been changes to beneficial ownership and directors since then. Management board members are sometimes interviewed by the NBS, which approach might usefully be followed by other departments of the NBS and other supervisors. There has been no known control of insurers, leasing companies or managers of pension funds by, or associates of, criminals.

419. Pursuant to the Law on Payment Services, which entered into force in December 2014 but with an implementation date of 1 October 2015, money remitters are required to be licensed by the NBS. Two applications were submitted in August 2015 and the licences became operational on 1 October 2015. The checks undertaken by the NBS were the same as for banks. Prior to October 2015, money remittance services were undertaken only by banks and the Post Office according to the Law of Foreign Exchange Operations and the Law on Payment Transactions. Banks and the Post Office must now operate according to the Law on Payment Services. The licensing procedure for banks is set out above. The Post Office is a state-owned entity and is therefore not subject to the licensing procedures of other financial institutions. It is regulated by the Law on Postal Services.

Securities Commission

420. As a result of the adoption of a new Law on Capital Market, which entered into force in November 2011, there was a transitional period of six months for licensees to meet the then updated requirements and apply for a new licence. The last application to the Securities Commission for a licence was in 2012. Individuals (shareholders, beneficial owners thereof and managers), wherever they are resident, are required to produce a certificate of non-conviction in relation to economic offences. Where significant shareholders and beneficial owners have a link with another jurisdiction's supervisory authority, an opinion on their standing is obtained from that supervisor. References and curricula vitae of individuals are also obtained. It is to be noted that there is a relatively small number of licensees with foreign beneficial ownership.

421. The Securities Commission reported that it has ascertained in some cases that sanctions had been applied by the Slovenian securities supervisory authority against individuals; consequently the Securities Commission refused to issue licences to the entities in question until those individuals had been removed from the beneficial ownership structure. On a number of other occasions, the Securities Commission has refused to issue a licence where it has not been able to establish the quality of the applicant (such as a clean criminal record or required professional experience).

422. Specific checks are not undertaken to ascertain if all changes to shareholders or beneficial ownership have been advised to the Securities Commission; this is on the basis that licensees are required to inform the Securities Commission when a change takes place. The Securities Commission was content that it would become aware eventually of any change and appropriate action would be taken, potentially to the court proceedings or a ban, if it had not been advised. There have been no cases where it had not been advised of a change. Nevertheless, the Securities Commission is encouraged to be more active in its approach.

423. The same approach applies to board members and management. Board members and management cannot be changed without the approval of the Securities Commission. No applications have been refused in relation to board members and management.

424. The Securities Commission is not aware of any cases where criminal elements or their associates have been involved as a beneficial owner or controller of a licensee.

Tax Administration – currency exchange bureaux

425. Until 2012, licensing of currency exchange bureaux was undertaken by the NBS; currently it is undertaken by the Department for Currency Exchange Operations of the Tax Administration (which forms part of the Ministry of Finance). Currency exchange bureaux mainly comprise small entities or individual entrepreneurs and in the majority of cases (some 60%) the founder also engages in the business activity. Before a licence is issued, the Tax Administration requires to be provided with certificates of a clean criminal record for owners, directors and the staff which are involved in the actual exchange of currency (contact with customers). In one case the Tax Administration did not license a currency exchange bureau as a foreign person involved with it did not provide a certificate of non-conviction, and on another occasion an application for a licence was refused to a Serbian national due to a previous criminal record. All changes of shareholders, beneficial owners and management must be notified to the Tax Administration and certificates of non-conviction must be provided. The Tax Administration would be willing to revoke the licence of a person convicted of an offence.

426. All representatives of currency exchange bureaux met by the evaluation team had provided information on their non-convictions to the Tax Administration. In 2015 an inspector established during the onsite inspection process that a director of an exchange bureau had been convicted for a criminal offence and, consequently, his licence was revoked. The authorities reported that, for matters related to AML/CFT (a director or an owner having a criminal record), two licences were revoked in the period from 2012 to the first quarter of 2015. Overall, a total of 97 licences were revoked in the same period. The most common underlying reason provided by the authorities was that the persons were undertaking activities without being registered at the SBRA. The Tax Administration noted that currency exchange bureaux at the time of the ML NRA were rumoured to be connected with criminal activity. It was aware of two such cases, as well as of two or three reports

about unlicensed providers of currency exchange which have been received by the Ministry of Finance during the last few years. The Tax Administration advised that the undertaking of unlicensed currency exchange operations is a criminal offence under the Law on Foreign Exchange Operations and as such falls under the competence of the police. Information has been passed by the Tax Administration to the police but it has not received feedback on developments. This suggests that there should be feedback mechanisms established between the police and the Tax Administration so that the supervisor is aware whether the cases are being taken forward actively.

Ministry of Finance - factoring

427. The vast majority of business is undertaken by government entities and only two companies are engaged in international factoring. Factoring businesses have been licensed (by the Ministry of Finance) only since 2014. The Ministry informed the evaluation team that proof of a clean criminal record would be required only from founders who are natural persons at the time of licensing.

Ministry of Finance – casinos

428. According to the Law on the Games of Chance, up to ten licences to providers of special games of chance (casinos) may be issued in Serbia. The licence is issued by the Government based on a recommendation by the Ministry of Finance. In practice, the Department for Currency Exchange Operations of the Tax Administration (part of the Ministry of Finance) has been responsible since October 2012 for the technical aspects of the public call for the attribution of licence by the Government (previously the licensing authority was the Administration for Games of Chance, which has ceased to exist). All further changes to the shareholder structure and management are subject to the prior approval of the Tax Administration. There are two operating casinos in Serbia, of which one is partially owned by the State Lottery of Serbia; the licences were issued in 2005 and 2009..

429. The evaluation team was advised that checks were undertaken on the founders and owners of casinos prior to the issue of the two licences to the extent by obtaining certificates of non-conviction issued by the Ministry of the Interior and by checking the media and other sources of information. Other information was also requested such as the origin of the assets. This, however, does not cover the full structure of beneficial ownership, and no fit and proper criteria are in place with regard to directors and managers of casinos. The one casino met by the evaluation team confirmed checks were not undertaken on its management. The Tax Administration advised that, since the licensing of the two casinos, changes to beneficial owners and owners of the casinos have been subject to provision of certificates of non-conviction, but no further checks have been undertaken by the authorities. Changes to the information held by the Tax Administration should be notified to it and in cases of non-compliance with the conditions attached to a licence, the Tax Administration would propose to the Government to revoke the license. Given the lack of supervision in practice, it cannot be certain that the Tax Administration would be aware of changes to the information held by it should these not be reported.

Ministry of Trade – real estate agents

430. The Ministry of Trade is responsible for both the licensing and supervision of real estate agents. Each activity is undertaken by a different department within the Ministry of Trade. It does not appear that the two departments liaise with each other in practice – such liaison is strongly encouraged. The evaluation team was advised that there are a significant number of real estate agents acting illegally without a licence. Since the adoption of the Law on Intermediation of Real Estate transactions more than 90% of agents have applied for a licence and a large number of these have been licensed. The other applications are being considered. Criminal non-conviction certificates do not have to be provided to the Ministry, which does not undertake any checks in relation to whether or not the shareholders, beneficial owners and managers are criminals or associated with criminals.

431. Certificates of non-conviction must be provided by agents in order to become members of the Real Estate Association. However, only a relatively small number of real estate agents are members of this association.

432. Representatives of the real estate agent sector met by the evaluation team consider that the Ministry of Trade should more assertively be taking steps to close down illegal agents.

Ministry of Justice

433. The Ministry of Justice licenses notaries. No further information was provided with regard to the requirements in practice.

Bar Association

434. The Bar Association is a self-regulatory body. Before a lawyer can join the Bar Association and practice as a lawyer, the Bar asks the lawyer to provide a certificate of non-conviction from the country of his or her birth; the lawyer is also required to provide information on any criminal proceedings. No further checks are undertaken and there is no mechanism for obtaining additional information, although the Bar considers that it receives helpful information from state authorities within Serbia and complaints which allow it to form judgements. There are no requirements on lawyers to update the Bar Association of any criminal conviction once they have become a member of the Bar.

Auditors

435. Auditors are required to have an operating licence from the Ministry of Finance; one of the conditions for this is for applicants to provide evidence of a clean criminal record. Auditors confirmed that it is not possible to be an auditor without having first provided the Ministry of Finance with a certificate of non-conviction from the court. Auditors must also pass an exam in order to undertake audits. While measures are in place to prevent criminals from becoming an auditor or from holding certain management positions in an auditing company, this is not a requirement with regard to shareholders and all the management of auditing companies.

Accountants

436. Accountants are not subject to any examination requirements and are not required to be licensed to carry out accountancy activity; they only need to be registered as a legal person or as an entrepreneur providing accounting services with the SBRA. There is also no requirement for an accountant to be a member of an accountancy association. In practice, there are no measures in place to prevent accountancy firms (or accountants themselves) from being owned or controlled by criminals or associated with criminals.

Dealers with precious stones and metals

437. Dealers in precious stones and metals are not subject to the AML/CFT framework, licensing or registration in light of the prohibition on accepting cash payments of a value equal to, or above, the threshold of EUR 15.000.

Supervisors' understanding and identification of ML/FT risks

NBS

438. The views of the NBS on risk are dynamic, in particular with regard to the banking sector. Continuous analysis is undertaken by the NBS of ML/FT trends and the current risk picture and it adapts its conclusions accordingly. It liaises with other state authorities in order to complement the information it holds (for example, it has met with the security agencies in order to discuss the FT risk in connection with wire transfers). The NBS's assessment and understanding of risks in the banking sector is facilitated by most banks having a comprehensive understanding of risks. The NBS proactively informs its views from this understanding by the sector itself through on-site inspections (where the risk assessments elaborated by the banks are reviewed), off-site questionnaires (which are completed by all banks every six months) and regular meetings with the banks and the banking association. The banking sector also considers that the NBS has a good understanding of risk.

439. The NBS assesses the risk of each individual bank as a whole and, while it includes ML/FT exposure within the overall risk assessment, banks do not receive a separate ML/FT risk rating. The

assessment of ML/FT risk is based on a detailed methodology developed by the NBS⁴⁶ and banks' responses to the questionnaires. The NBS maintained an understanding of the ML/FT risk of individual banks.

440. The NBS's insurance department also had a substantial understanding of the insurance sector. It considers the sector as low risk, in line with the conclusions of the NRA. This is mainly due to the small size of the life insurance market, the absence of unit linked products (with the lack of development in the insurance and capital markets suggesting that it is unlikely that unit linked insurance products will be issued in the short term), generally small amounts of money involved in policies and very low premiums. In addition, cash is rarely being used to pay premiums. The insurance department of the NBS is also aided in its understanding of risks by the good level of understanding of risks by insurers. The NBS reported that assessment of the specific risk level of individual insurers is formed and taken into consideration when performing supervision. This assessment is based on information obtained from responses to questionnaires, which are also used to plan on-site inspections. From an AML/CFT perspective, there is no written methodology or manual to support this statement made to the evaluation team.

441. The department responsible for leasing companies was also well informed of the risk at the sectoral level, commenting on the very limited range of activities of leasing companies and local ownership of leasing firms, with firms being the recipient of funds paid for the leasing arrangements (not in cash) and not handling customer funds. The leasing department of the NBS is informed about risk through responses to offsite questionnaires as it does not carry out onsite inspections. Pension fund management firms are part of banking or insurance groups. All pension fund contributions are paid into a bank. The leasing and pension fund management supervision departments of the NBS do not categorise the risk of individual licensees and do not maintain an understanding of risk in relation to each licensee.

Securities Commission

442. The Securities Commission is content at a general level with the level of risk ascribed to the capital market participants in the NRA. Whilst it has some understanding of ML/FT risks, it is not in a position to fully understand the risks of the sector, which was acknowledged by the representatives of the Securities Commission met on-site. This is due to its lack of resources, the low number of onsite inspections and the lack of awareness of ML/FT risk of the sector. The Securities Commission informs its views on ML/FT risk from onsite inspections and responses to twice-yearly questionnaires completed by supervised entities. Nevertheless, the lack of awareness with regard to ML/FT risks by the sector seriously undermines the adequacy of the outcomes of the risk assessment by the Securities Commission. It appears that no steps have been taken to categorise individual institutions or types of institutions by risk. These factors mean that the Securities Commission is not in a position to maintain a robust understanding of risk at a sectoral or licensee level.

443. In connection with ML risks arising from the existence of the sector itself, the Securities Commission noted the small capital market and that insider dealing and market manipulation risk is low with two cases of market manipulation having been referred to prosecutors by the Securities Commission.

Tax Administration

444. With regard to money remitters, the Tax Administration appears to understand the sector. It is aware of the specificities of the businesses and current trends in the sector. In terms of information held, the Tax Administration receives responses to questionnaires sent to remitters; these responses are used to help monitor the sector and inform the Tax Administration's risk analysis. Responses to the questionnaires are used to inform the view of the supervisor about the risks of the individual institutions.

⁴⁶ Methodology for Ranking Banks for the Purpose of the Proposed Annual Plan of Direct Management Control of Risk from Money Laundering and Terrorist Financing, Payment and Financial Services Consumer Protection, adopted by the NBS in September 2013.

445. As concerns currency exchange bureaux, with regard to ML/FT risks, the Tax Administration considers the principal risk to be the possibility of abuse of the currency exchange sector by criminals controlling the bureaux, rather than the potential laundering of funds through the offices. It was of the view that the licensing regime sufficiently mitigates this risk. The Tax Administration sees the main risks connected to transactional activity within the sector as the high turnover and the use of cash. It is content that, generally, these risks are reduced as currency exchange bureaux are aware of their obligations and have controls in place, and as they use software licensed by the NBS which records every transaction. The Tax Administration sees limited efficiency in using foreign exchange for ML. Notwithstanding this, the evaluation team was informed that there have been indications that currency exchange bureaux are involved in the shadow economy and that smurfing is used to evade detection. Overall, it appeared to the team that, in respect of currency exchange bureaux, the Tax Administration focused predominantly on their involvement in grey economy, rather than on possible ML/FT risks. Quite a large number of currency exchange bureaux (some 30%) do not complete the Tax Administration's offsite annual report, meaning that the supervisor cannot maintain an understanding of the risk of all bureaux.

446. With reference to casinos, the evaluation team considered that the Tax Administration appeared to understand the risks connected to the sector.

Ministry of Trade

447. The Ministry of Trade has some understanding, but does not appear to have a full understanding, of risk in the real estate sector. It repeated the conclusions of the NRA that real estate presents the riskiest sector amongst DNFBPs, but also stated that it did not encounter any cases of money laundering by real estate agents within its inspections and it therefore considers that the risk in the sector is low. In addition, it did not appear to have a broad knowledge of the nature of business of real estate agents (such as types of clients, amount and value of business) and the characteristics of the real estate market in Serbia. The Ministry of Trade is not in a position to maintain an understanding of the risks of all licensees.

Bar Association

448. The Bar Association has a basic understanding of risks posed by the legal sector but is not in a position to understand the risks posed by individual law firms. In particular, it is aware that lawyers consider that AML/CFT obligations conflict with those emanating from legal privilege and as a result consider their priority to be their duty to their customer, leading to a lack of compliance by the legal sector with its AML/CFT obligations. The views expressed by the Bar Association, however, mirrored the negative cultural approach of the legal profession to AML/CFT obligations and it did not accept the existence of other risks connected with the legal sector or the gatekeeper role lawyers should hold. The Bar Association does not undertake supervision and lawyers did not respond to the questionnaires issued with the intention of informing the ML NRA. The NRA designates the sector as low risk, which does not appear to be adequate in light of the systematic refusal of the sector to meet its AML/CFT obligations and the significant role played by lawyers in relation to legal persons and real estate transactions.

Chamber of Notaries

449. The Chamber of Notaries does not undertake supervision and therefore cannot be said to understand the risks of individual institutions and between types of institution. However, it does have views on the risks of the notary sector as a whole and its conclusions were in line with the other information provided to the evaluation team.

APML

450. The APML was knowledgeable about sectoral risks. It endeavours to understand the composition and activities in the accounting and auditing sectors and it monitors developments in awareness and compliance of the sectors with regard to their AML/CFT obligations. Its conclusions are informed by on-site inspections, off-site questionnaires which are circulated twice a year (to all auditors and selected accountants) and roundtable discussions it regularly organises for interested representatives of both sectors. Individual audit practices are categorised by risk based on the

responses to the questionnaires. . Given the significant number of accountants, the APML undertakes supervision based on risk even if it is not in a position to understand the risks of all licensees. The APML mentioned size and share of foreign clients as being amongst the factors it considered

Risk-based supervision of compliance with AML/CFT requirements

451. The table below provides an overview on the number of on-site inspections undertaken in the period under review. It includes both dedicated AML/CFT inspections, as well as inspections where AML/CFT issues were taken into consideration within the scope of a broader supervisory inspection. No supervision is undertaken in respect of casinos, lawyers and notaries and these sectors are therefore not included in the table.

Table 22: Number of on-site inspections in the period under review⁴⁷

	2010		2011		2012		2013		2014		Jan - Sep 2015	
	No of entities	No of visits	No of entities	No of visits	No of entities	No of visits	No of entities	No of visits	No of entities	No of visits	No of entities	No of visits
Banks	33	15	33	17	32	7	30	12	30	12	30	N/A
Securities	92	33	80	22	69	7	61	4	N/A	16	53	N/A
Insurance (companies/agents and brokers)	26/210	4/14	28/205	2/0	28/208	0/0	28/218	3/0	N/A	1/1	28	N/A
Currency exchange bureaus (offices /spots)	2321/3094	0	2373/3145	0	2535/3412	391	2648/3596	673	2669/3585	1105	2662/3598	1130
VPF management companies	6	1	6	0	5	1	4	3	N/A	1	4	N/A
Leasing providers	17	0	17	0	16	0	16	0	16	0	16	N/A
Factoring companies	N/A	7	N/A	0	N/A	0	11	0	11	N/A	11	N/A
Money transfer companies	2	4	2	0	2	2	2	0	2	N/A	2	N/A
Real estate	768	273	768	264	768	0	768	8	768	168	888	158
Accountants	N/A	-	N/A	-	7,266	0	7,134	18	7,254	8	7,254	3
Auditors	N/A	-	N/A	-	53	2	60	7	60	0	61	0

NBS

452. The NBS agrees with the findings of the NRA that the banking sector is the most vulnerable financial sector. Moreover, it is of the view that the risks have increased since 2012 when the NRA was concluded, noting wire transfers as a particular risk. It considers that the risk is mitigated to a high extent as the banking sector is the most organised sector in terms of AML/CFT with experienced compliance officers and a substantial degree of automatized processes. The NBS agrees with the conclusions of the NRA that the other sectors subject to its supervision are low risk. In terms of structure, separate departments have been established within the NBS responsible for the supervision of the different sectors. The departments are responsible for both prudential and AML/CFT supervision. Supervision plans are prepared and adopted independently by the relevant department.

⁴⁷ Please note that "N/A" is used when the information is not available, either because it was not provided to the evaluation team or because, as was the case with factoring companies before 2013, there was no licensing obligation and the number of entities is therefore not known.

Banks

453. The NBS conducts comprehensive prudential supervision of the banking sector, which is more in depth than the other sectors it supervises. The banking department is the best placed supervisory team within Serbia to supervise on the basis of risk and the evaluation team commends it for the seriousness of its approach and the developments it is making to continuously strengthen it. It has begun the process of moving to risk-based supervision and is taking strong steps to ensure that it will be supervising banks completely on a risk-sensitive AML/CFT basis.

454. As part of its offsite supervision, the NBS has meetings with individual banks separate to onsite inspections; these are organised on an ad-hoc basis, covering AML/CFT issues as part of the wider agenda. In addition, the NBS reviews banks' internal audit reports. Liaison with banks also includes ad hoc contact with compliance officers where, for example, the NBS has questions about written material it has received. There is substantial liaison with the APML; it is clear that there is an excellent working relationship between the two authorities and that the APML adds significantly to the NBS's ability to undertake its role. The individual and aggregated responses to the questionnaires inform the onsite inspection programme.

455. On-site inspection programmes are prepared annually. There have been some dedicated AML/CFT on-site inspections since 2011, as well as wider inspections covering AML/CFT matters. Planning of supervision is based on the Methodology for Ranking Banks, where ML/FT risk is among the elements taken into consideration, together with wider prudential and market conduct risk factors. Prior to an on-site inspection, the bank is requested to submit additional information to the NBS with regard to its business and customers. This information, together with the off-site questionnaires informs the choice of which customer files are sampled during the inspection. A similar number of customer files is sampled at each inspection (more than 200). Whilst the number of files and the length of the inspection are not risk sensitive, the type of customers and business reviewed is based on particular assessment of the institution and identified risks. Special attention is given to high-risk clients. Four AML/CFT inspections have been undertaken as a result of input from prosecutors. The NBS conducts a follow up on-site inspection to verify that shortcomings have been remedied. The NBS's approach to AML/CFT during onsite inspections of banks is guided by the methodology and appears to be thorough. Overall, the NBS has taken steps towards risk-based AML/CFT supervision and is working to introduce it fully.

456. As stated above, the NBS continuously strives to identify current trends and risks. It uses this information in order to enhance the specific focus of its supervisory activities. As an example, it has increased scrutiny of cross-border wire transfers and cash payments as a result of identified higher FT risks connected with the current migration trends. In addition, business connected to legal persons and real estate is treated with special attention.

457. Onsite inspections are generally undertaken by an average of three inspectors, depending on the size and characteristics of the bank. The NBS spends three to four weeks dedicated to inspecting AML/CFT compliance at each bank. A month prior to the on-site visit by the MONEYVAL evaluation team, five new staff were appointed to the NBS's banking supervisory department, increasing the department significantly from thirteen supervisors to eighteen supervisors (including senior management). It cannot yet be said that all of these new and inexperienced staff in relation to AML/CFT banking supervision fully deal with the resource deficiencies at the NBS, articulated in the NRA and well known to the NBS, but they provide a good springboard for the NBS as it moves forward. These new staff (and perhaps some of the more established junior staff) should be up-skilled through training and experience.

Other FIs supervised by the NBS

458. The insurance sector is not subject to AML/CFT off-site supervision and on-site inspections cover AML/CFT matters within prudential supervision. Supervision and its intensity is not predicated on ML/FT risk. Not all life-insurance companies have been subject to supervision since 2012. Before the time of the on-site visit by the MONEYVAL evaluation team, it was not using a manual or other methodology for undertaking on-site inspections although it presented a short, draft manual which it has prepared for future use to the evaluation team. This draft manual is

significantly less comprehensive than the document used by the banking department. Although the NBS suggested that the length of the document results from the lower risk of the sector, the manual does not seem to be more than an overarching guide, as opposed to a document which would ensure that a picture of the effectiveness of an insurer's AML/CFT programme would be obtained by the NBS. The department's discussions with the evaluation team suggested that a basic picture of the firm's approach to AML/CFT would be developed during the onsite inspection, although the evaluation team has not been provided with written material to form a more detailed judgement of the quality of inspections.

459. One to two inspectors undertake an on-site inspection of an insurer; on average three person days are dedicated to AML/CFT compliance. In addition, the evaluation team was informed that, on average, five files are reviewed per inspection, with higher focus being put on reviews of higher risk clients (this being decided mainly on the volume of the premiums involved). At each inspection, files for all high risk business relationships and a selection of low and medium risk relationships are reviewed. The NBS is encouraged to consider whether this approach means that a sufficient sample is checked to form a full picture of compliance of the firm with its AML/CFT obligations including, its risk categorisation of customers; the evaluation team has a concern that the sample might not be sufficient.

460. The insurance supervision department has 7 employees which are responsible for the overall supervision of the insurance sector. The staff have not been provided with AML/CFT training since 2012.

461. AML/CFT supervision of leasing companies is informed by an offsite questionnaire which is completed semi-annually. Leasing companies are not subject to onsite inspection. The frequency and intensity of the AML/CFT supervision is not risk sensitive. The leasing supervision department has five employees, out of which two are responsible for AML/CFT supervision (amongst other duties). No AML/CFT training has been provided to the staff since 2011.

462. The pension management company supervision department of the NBS undertakes offsite supervision by use of annual questionnaires. The findings are used for on-site planning purposes amongst other criteria. The NBS endeavours to carry out on-site inspections of VPF management firms every three years. Dedicated AML/CFT on-site inspections are not undertaken, though basic AML/CFT checks appear to be carried out within the general inspections. In general, neither the frequency nor the intensity of AML/CFT supervision is sensitive to risk. A detailed check-list on AML/CFT compliance is used for undertaking on-site inspections. Generally, about 50 customer files are inspected; samples are chosen in order to represent all categories of customers. The department has five employees, three of which are responsible for AML/CFT supervision amongst other duties. The staff have not received any AML/CFT training since 2013.

Securities Commission

463. There is no formal system for grading supervised entities by risk (prudential, market conduct or ML/FT). The Securities Commission intends to introduce a formal risk matrix for entities it supervises so that it can adopt a risk based approach. By way of off-site supervision, the Securities Commission issues questionnaires to licensees every six months. These questionnaires do not provide the complete information necessary to undertake a risk based approach and the useful information they do provide does not inform the frequency or intensity of supervision. Analysis of these questionnaires is published by the Securities Commission.

464. The on-site inspection programme is planned annually. The Securities Commission's approach to supervision is based on a combination of experience and some factors which would inform a view of risk. In arranging the programme, attention is paid to the outcome of the previous inspection (all licensees have been inspected at least once but this is over a period of many years), off-site monitoring by the Securities Commission's departments, information from the licensee, changes at the licensee, and to what extent the licensee has non-resident clients or a significant turnover. There are specific AML/CFT onsite inspections; these are generally undertaken to the extent that AML/CFT breaches found during a recent onsite inspection would lead to a follow up inspection. Follow-up inspections are undertaken as a matter of rule if a breach is identified during

supervision. Overall, whilst ML/FT risks are taken partially into consideration, this approach to onsite planning and the inspections themselves do not constitute a risk based approach to AML/CFT and there is no variation of frequency or intensity of supervision based on ML/FT risk. In addition, the lack of resources and quality of standards of AML/CFT supervision the team perceived in the investment sector might suggest that the onsite inspections of the Securities Commission are not as comprehensive as those of the NBS's banking department.

465. The Securities Commission has seven staff, who undertake all the types of supervision for which the Securities Commission is responsible. Training of staff took place in 2015; prior to this, the last training was in 2012. In practice, AML/CFT is a small part of the role and one inspector undertakes inspections, which take one to two days. The evaluation team considers that the Securities Commission has a significant staff resource gap; as a result, the number of onsite inspections has reduced significantly over time (see table 22) and it is not able to comprehensively supervise licensees for AML/CFT on a risk sensitive basis. In the absence of a formal risk based approach AML/CFT, the relatively low coverage of the investment sector by onsite inspections cannot be demonstrated as sufficiently comprehensive. Finally, at each onsite inspection, an average of five customer files is examined for each category of customers (such as natural persons, legal persons, residents, non-residents); the Securities Commission considers this to be a sufficient number to form a judgement on to what extent the licensee is effective in attributing different risk levels to customers and taking the appropriate mitigation measures. Nevertheless, this figure seems too low to the evaluation team.

Tax Administration

466. There are some 35 inspectors altogether engaged in the supervision of currency exchange bureaux, money remitters and factoring. Staff do not specialise in the particular sectors and cover all areas of activity. No additional staff have been recruited since 2012 although three staff have been transferred from other departments of the Ministry of Finance. There is a significant staff (and, therefore, financial) resource gap. All inspectors have an AML/CFT component to their role. Only four of them have received AML/CFT training (the last formal AML/CFT training took place before 2012); staff are expected to increase their knowledge by self-education. There are insufficient funds available to support training; this funding issue should be addressed and a formal training programme established.

467. The Tax Administration does not have individual institutional risk profiles with regard to the sectors under its supervision.

468. Factoring and forfeiting businesses have been subject only to offsite supervision since 2013. The questionnaire used in this respect is identical to the one filed by money remitters and the same conclusions as formulated above are therefore applicable.

469. Supervision of currency exchange bureaux by the Tax Administration is based on the size of the entities, information from other sources and information received from the entities themselves, particularly in annual reports prepared by the bureaux. Currency exchange bureaux are small businesses and the Tax Administration informed the evaluation team that its aim in requesting an annual report for offsite supervision is mainly to ensure that currency exchange bureaux are familiar with their obligations. Some 70% of bureaux provide annual reports to the Tax Administration; whilst there appears to be a sanction available for not preparing a report, there are no powers of sanction available for failure to provide the report to the Tax Administration. Annual reports have been required in 2015 (for the 2014 calendar year) and 2014 (for the 2013 calendar year). Failure to provide the annual report to the Tax Administration is a risk factor used by the Administration in forming its on-site inspection programmes, although not all such currency exchange bureaux are subject to inspection.

470. The Tax Administration has monthly and annual programmes of on-site inspections. The inspection programme and the inspections themselves cover prudential, tax and AML/CFT matters. There were 1,121 inspections in 2014 and 361 inspections in the first quarter of 2015; during these inspections a total of 65 breaches of the AML/CFT Law were noted. Inspections of exchange operations are undertaken by regional departments for control of exchange and foreign currency

operations, which is staffed with a total of 35 inspectors. Preparation and an onsite inspection together take some five days undertaken by one or, more usually, two inspectors. All currency exchange bureaux and their premises (bearing in mind that currency exchange bureaux can have more than one place of business) in Belgrade have been subject to inspection. Overall in Serbia, not all currency exchange bureaux and their premises have been visited. It appears that some currency exchange bureaux have received more than one inspection due to special reports (these being reports either by the police or any other person pointing to irregularities in the conduct of business of a bureau). It appeared to the evaluation team that, while the Tax Administration had a few high level elements of risk embodied in its approach to onsite supervision, it does not yet in practice undertake a risk sensitive approach in which the frequency and intensity of supervision is based on risk. No manual or checklist is in place to guide the inspectors when assessing AML/CFT compliance.

471. Representatives of currency exchange bureaux met by the evaluation team considered that the Tax Administration does a good job overall. A few noted that on-site inspections appear to be frequent, but questioned the sufficiency of the depth of the inspections. In particular, customer files were not reviewed for AML/CFT issues. Not all offices seemed to be aware that the Tax Administration is an AML/CFT supervisor as well as a tax office. The Tax Administration considered that it is undertaking awareness raising of AML/CFT to a sufficient level and in particular through the issue of questionnaires.

Ministry of Trade

472. The evaluation team has been advised that the risk profile of the real estate sector has led the Ministry of Trade to focus all efforts on onsite supervision; offsite supervision is not undertaken. Real estate agents are not graded individually according to risk. The on-site programme is developed on an annual basis. It is established on the outcomes of on-site inspections already undertaken, efforts to supervise entities which have not yet been subject to inspection, as well as a preference to inspect entities based in larger cities. STR processes are not reviewed as part of on-site supervision, which poses concerns in particular in connection with the high risk of the sector and low number of STRs filed. It also means that more depth is needed when undertaking inspections. In practice, the numbers of on-site inspections varied significantly amongst the years in the period under review, which suggests that approaches to supervision are not systematic.

473. The Ministry has 33 inspectors engaged in the inspection of all service providers (not only real estate agents) and a very small proportion of their time is engaged in AML/CFT. Significant additional resources are needed given the risks identified in the NRA and in this report in relation to real estate and construction. Representatives of the real estate agent sector met by the evaluation team also consider that the Ministry requires more staff to fulfil its role. In addition, while all inspectors have been trained in AML/CFT, the last training took place in 2013 and the Ministry does not have the financial resources or time to arrange and undertake training in AML/CFT.

APML

474. The APML has been responsible for the supervision of accountants and auditors since 2012. A good level of understanding of the differences between the sectors allows for a combination of approaches to off-site supervision in relation to auditors (questionnaires sent annually to each practice) and accountants (risk based with questionnaires sent annually to a selected sample of entities). If considered necessary, a follow-up in the form of an on-site inspection is undertaken. Individual risk profiles or categorisation by type are formulated by the APML to the extent that audit practices are divided into one of three categories of risk and, for accountancy practices, the APML considers the information contained in financial statements held with it (in particular, the size of the practice) when designing its onsite supervision plan for accountants.. On-site supervision is undertaken based on an annual programme. This programme is based on the NRA's categorisation of risk, statistical information, other information held by the APML and analysis of the responses to questionnaires. The procedure for each inspection differs depending on the individual characteristics of the reporting entity;

475. On-site inspections are undertaken pursuant to the APML's Procedures for Supervision and provide for supervision of compliance with the full set of AML/CFT obligations. Whilst the extent of

the inspection varies amongst the different reporting entities, the APML reported that the number of customer files reviewed starts at a minimum of five client files, which does not always seem to be sufficient for the supervisor to formulate a fully informed picture of compliance.

476. There is no set time limit for an inspection. The APML reported that, given the particularities of the accounting sector (high number and predominantly small companies or entrepreneurs), after it became a supervisor in 2012 its initial activities consisted of awareness raising activities. The higher focus on on-site inspections with regard to the accounting sector, rather than auditors is based, in part, on the risks identified in the NRA, the low number of STRs filed by the sector and the fact that on some occasions it has encountered reference to professional secrecy and refusal to meet AML/CFT obligations similar to the approach taken by lawyers. The APML continuously reassesses the risks connected with the sectors in order to inform its supervisory approach.

477. The APML supervisory department suffers from a serious lack of staff, which negatively impacts its ability to undertake supervision to a sufficient extent. For some years the APML's agreed staff structure has indicated that the department responsible for the supervision of auditors and accountants should comprise five staff. However, space constraints prevent this. At the time of the onsite visit, the department comprised two staff with a third person on maternity leave, between them responsible for the supervision of 53 auditors and more than 7,000 accountants. It is clear that the current number of staff is too low and steps should be taken to find accommodation for the full number of inspectors to be appointed. At that stage, the APML should reconsider how many additional staff are required beyond that number. The two current members of the APML team had received training within the three months previous to the evaluation team's visit to Serbia; they had also participated in a number of other training activities in the period under assessment. Notwithstanding the above, the evaluation team met with dedicated staff who had put in place a supervisory system which enables the maximum efficiency of use of its scarce resources. The evaluation team commends the APML's supervisory department on the maximum use of its resources.

Other DNFBPs

478. For differing reasons, other DNFBP sectors are not supervised in practice. The contradictory legislative provisions for the supervision of casinos leads to a lack of clarity with regard to which authority is competent to undertake supervision in practice. Whilst the Tax Administration acknowledges its role as a licensing authority of casinos, it does not consider itself as responsible for AML/CFT supervision. The APML has also not assumed this responsibility. Both authorities stated it should be the other which is the competent casino supervisor.

479. As stated above, notaries are not subject to the AML/CFT Law and are therefore not subject to AML/CFT supervision. The Bar Association has no resources with which to supervise the legal sector. It has no powers of investigation and does not take active steps to control lawyers.

Remedial actions and effective, proportionate, and dissuasive sanctions

480. First, it is important to reiterate the legislative framework for imposing sanctions for AML/CFT breaches. The authorities informed the evaluation team that supervisors of FIs can apply a broad range of sanctions for AML/CFT breaches pursuant to sectoral legislation. Nevertheless, such sanctions have not been applied in practice, except for one time in relation to one bank. The authorities indicated that the reason for this lies in the interpretation of a finding in the last MONEYVAL evaluation report. The AML/CFT Law empowers all supervisors to issue an order to remedy shortcomings or to file a motion for a fine with a court. Applications in respect of minor offences are made directly to the misdemeanour courts while applications for more serious offences (economic offences) are made via a prosecutor. Should the prosecutor consider the case to be substantiated, he/she would initiate proceedings for the fine to be imposed by the court. The level of the fine is in the exclusive competence of the court. The effectiveness of the sanctioning regime in practice is therefore affected by the full discretion given to the prosecutor. In addition, not all the supervisory authorities are informed of the outcomes of these proceedings or make themselves

aware of them. Despite the lack of comprehensive data, it can be observed from the table below on sanctioning of banks and entities under the supervision of the Securities Commission that a sanction is imposed by the court in about one third of referrals by the supervisors.

481. As a generality across the AML/CFT framework for all supervisory authorities, it appears to take about a year before prosecutors decide whether or not to make an application to the court for a fine to be applied. In addition, the evaluation team was informed that court proceedings last on average about two years.

482. The system for sanctions cannot be described as dissuasive or effective in practice.

NBS

483. The NBS systematically requires remedial action when a violation of AML/CFT obligations is encountered. In the period from January 2010 to March 2015 the NBS issued 29 letters of warning and two orders to banks for AML/CFT breaches. In addition, applications have been made to court for the imposition of fines to banks in 53 cases. All breaches found during the supervision of insurance companies were followed up by a referral to the court. There have been four breaches identified during inspections of pension fund management companies in the period under assessment. The NBS issued letters of warning in respect of these violations; no referrals were, however, made to initiate court proceedings. The NBS reported that every referral to the prosecutor with regard to banks also covers a motion for sanctioning against the person at the bank responsible for the breach. In the absence of any feedback, it is not clear whether any sanctions have been applied against directors or managers of FIs, except for banks, accountants and auditors.

484. The NBS has not noted any breaches of AML/CFT standards by leasing companies and justified this by stating that there are no on-site controls of leasing companies. This leads to doubt about the overall effectiveness of supervision of the sector.

485. In addition, the banking department of the NBS takes identified violations into consideration when establishing its supervision plan and would therefore consider either undertaking a follow-up inspection, as well as controlling compliance with the obligation in question.

486. Despite the rigorous efforts of the NBS, the effectiveness of the sanctioning framework has not been demonstrated. It can be observed from the table below that there is a conviction only in less than a third of the referrals made to the prosecutor. The evaluation team was not presented with the number of fines imposed as a result of court proceedings, their value, with the length of such proceedings, etc. In addition, the fact that the NBS does not have this information at its disposal leads to concerns with regard to its ability to fully inform its future actions.

Table 23: Outcomes of the NBS supervision of banks in the period under assessment

	2010	2011	2012	2013	2014	Jan -Sep 2015
Number of inspections	13	17	6	11	8	N/A
Number of inspections where AML/CFT breaches were identified	5	7	5	3	8	N/A
Number of written warnings issued by the NBS	9	1	9	3	7	N/A
Orders to remove irregularities issued by the NBS	0	0	0	1	1	N/A
Number of referrals to the court	5	16	17	6	12	3
Number of proceedings initiated by the prosecutor as a result of the referral by the NBS	5	12	10	4	8	0
Number of convictions issued by the court as a result of the referrals made by the NBS	5	9	7	4	5	0
Sanctions imposed by the court	3	5	5	1	0	0

Securities Commission

487. The Securities Commission has also followed up each identified breach either by issuing a letter of warning, an order to remedy shortcomings, or a referral to the court. Unlike the NBS, the Securities Commission advised that it was aware of most of the court judgements made in relation to sanctions. From the data provided, it appears that all of the referrals made by the Securities Commission were taken forward by the prosecutor, even though not all cases led to a conviction by the court.

Table 24: Outcomes of the supervisory activities of the Securities Commission in the period under assessment

	2010	2011	2012	2013	2014	Jan -Sep 2015
Number of inspections	33	22	7	4	16	1
Number of identified AML/CFT breaches	9	10	5	2	5	1
Number of written warnings issued by the NBS	0	0	0	2	1	0
Orders to remove irregularities issued by the NBS	9	10	5	0	4	1
Number of referrals to the court	7	8	5	0	5	1
Number of proceedings initiated by the prosecutor as a result of the referral by the NBS	7	8	5	0	5	1
Number of convictions issued by the court as a result of the referrals made by the NBS	3	3	5	0	4	N/A
Sanctions imposed by the court	3	3	5	0	4	N/A

Other supervisory authorities

488. The Tax Administration has not had direct powers to apply sanctions since 2010. As with other authorities, applications for potential fines are passed to prosecutors for consideration. There appears to have been a change in approach to sanctioning in 2014 with a significant increase in applications to the court, this being advised by the supervisor as the result of a change in internal policy with the view of strengthening supervision. All encountered breaches led to an application to the court. The identified infringements with regard to currency exchange bureaux were of a rather serious nature on a number of occasions, such as not having a compliance officer, not taking acceptable identification information, or not developing a risk profile of their customers. The Tax Administration does not have information on the outcomes of the court proceedings.

489. The Ministry of Trade has also identified a number of breaches during its inspections. Every breach noted is followed by an order to remediate the irregularities and/or a referral to the prosecutor. The significant differences in the number of inspections over the period under assessment also result in shifts in the number of breaches encountered and sanctions applied. As with most of the other authorities, it appears that the Ministry of Trade does not actively seek feedback on the outcomes of court proceedings.

490. With regard to accountants and auditors, the APML maintains full information on the outcomes of its supervisory activities. The evaluation team was provided with detailed statistics. The APML has followed up every breach with a referral to the court, both with regard to the company, as well as the responsible person. Since 2012, the APML has made 34 referrals to the prosecutor and fines were imposed in all the cases where a decision has been taken by the court. The average fine for an auditing company was EUR 4.000, whilst the average fine for an accounting company was EUR 5.300, with responsible persons in auditing companies subject to fines in the average of EUR 350 and in accounting companies of EUR 490. Out of the 34 referrals, there remain 19 cases where the court has not yet made a decision; in one case, the inspection took place in 2012 and in 9 cases in 2013.

491. No sanctions have been applied to lawyers, notaries and casinos as no supervision of these sectors is being undertaken.

Promoting a clear understanding of AML/CFT obligations and ML/FT risks and impact of supervisory actions on compliance

492. Regular training is being provided in particular for the banking sector and, since the APML assumed its role as supervisor, for accountants and auditors. Significant training efforts were undertaken under the MOI joint project of the EU and the Council of Europe. The APML in particular has received praise for its work in promoting understanding by reporting entities of their obligations and risks. It organises training seminars annually for compliance officers in the banking sector. The NBS and the Banking Association are closely involved with these seminars. The APML has promoted and administered events which include currency exchange bureaux; representatives of bureaux advised the evaluation team that the APML regularly publishes notices and is helpful. Since 2014, the Chamber of Commerce has also been an important facilitator in assisting supervisory authorities with the organisation of training and awareness raising activities for different sectors.

493. In some areas the evaluation team noted that supervisory authorities have been making a difference during the last few years (see below).

494. The NBS noted improved CDD standards in the banking sector. With regard to the banking sector, the APML also reported that a series of round-table discussions it had organised

495. In addition, the NBS informed the evaluation team that, recently, the main irregularities by insurers have been gaps in meeting their procedures; significant irregularities have not been found during inspections in the period under review. Given that, historically, there had been more significant failures such as failure to appoint a compliance officer, gaps in training and gaps in documentation, the insurance department of the NBS is content that compliance of the sector with AML/CFT obligations has improved.

496. The APML's supervision department for auditors and accountants has noted that the number of STRs by auditors is increasing and that they are good quality, suggesting improved understanding of AML/CFT obligations. The offsite questionnaire responses and contact with auditors indicates that they have good knowledge of the issues and possible risks and a good range of documentation on their customer relationships to inform their thinking. Roundtable discussions were organised around Serbia by the APML's supervision team in 2012 to increase knowledge by accountants about the AML/CFT Law. Guidelines have also been issued. The APML began work with auditors in 2013; all of them were sent a questionnaire to improve awareness. The responses suggested that not all auditors were aware of their obligations. Guidelines have been issued and the list of indicators was recently updated. The ML NRA has been circulated to both sectors. The analysis of the responses to the questionnaires by auditors and accountants is published on the APML's website.

497. In connection with accountants, the APML has improved the situation from when it began operations in 2012. At that stage some accountants were not aware they were reporting entities. In 2012, a significant number of accountants did not wish to recognise that they were subject to AML/CFT obligations, in particular given their small size, as well as their conviction that they were subject to professional secrecy similar to lawyers. The APML reported that the situation is improving significantly. Offsite questionnaires and onsite inspections, including reviews of the extent to which accountants understand ML/FT risk and their customer risk classification, demonstrate to the APML that the accountancy sector better accepts that it must comply with AML/CFT obligations (although there is still scope for improvement) and understands these obligations. The APML has seen progress in knowledge by supervised accountants and auditors year on year with a reduction in the number of clarifications requested. All entities required to complete the questionnaire do so.

498. The Tax Administration also noted that the annual reports it has required from currency exchange bureaux during the last two years have had a positive influence on awareness of obligations. Since 2012, the Tax Administration provides regular training to currency exchange bureaux. Training is obligatory for obtaining the currency exchange licence; it contains an element on AML/CFT obligations. Training is organised on a monthly basis. The Tax Administration places information on training for currency exchange bureaux on its website.

499. The Ministry of Trade noted that its work has resulted in positive progress by real estate agents in classifying their customers according to risk and fewer infringements have been identified over time. The Ministry provides training to agents. In the last two or three years at least six seminars have been organised jointly with the Chamber of Trade during meetings of associations or in response to changes in legislation. A list of issues is published on the website.

500. The Bar Association advised that it was not involved with the working group taking forward the recent changes to the AML/CFT Law and that no contact has been made with lawyers to inform them of recent changes to the law.

Overall Conclusions on Immediate Outcome 3

501. With the exception of accountants, all FIs and DNFBPs are required to obtain a licence in order to undertake their business. In addition, some measures to prevent criminals from controlling or holding a management function in reporting entities are applied by licensing authorities. These efforts are, however, to some extent negatively affected by some legislative shortcomings, which differ amongst the sectors, but generally do not fully cover the requirements of the FATF Standards. Outside the supervisors for bank, insurers and securities institutions, it appeared to the evaluation team that there was some over reliance on certificates of non-conviction on ascertaining potential lack of criminality.

502. With reference to FIs, the NBS's banking department has a very strong licensing approach in relation to banks. The other FIs and money remitters subject to supervision by the NBS and the Securities Commission are also subject to solid licensing controls by the NBS and the Securities Commission. In addition, the Tax Administration is undertaking its licensing role seriously in relation to currency exchange bureaux and obtains certificates of non-conviction.

503. With regard to DNFBPs other than accountants, checks to prevent criminality by real estate agents are not made by the Ministry of Trade before issuing a licence. A very large majority of real estate agents have been licensed, although there is a significant number of real estate agents which are not yet licensed. There are no checks undertaken by the Ministry of Justice in relation to notaries. Certificates of non-conviction are obtained by the Bar in relation to lawyers before a lawyer can join the Bar. The founders and owners of the casinos were subject to checks before being licensed; Measures have not been taken for the full range of beneficial owners or for the directors and management of the two existing casinos. It is not possible to be an auditor without providing the Ministry of Finance with a certificate of non-conviction.

504. The NBS's views on risk are dynamic and it maintains a substantial understanding of the risks of the banking sector as a whole and of individual banks. This is also the case for the insurance department. However, while the Securities Commission has some understanding, it is not in a position to understand fully the risks of the sector and of all licensees. The Tax Administration and the Ministry of Trade understand the risks of the sectors for which they are responsible; they are in a position to maintain an understanding of the risks of some but not all licensees; the APML is knowledgeable about sectoral risks, and has an understanding of individual audit practices and some accountancy practices. The Bar Association has a basic understanding of the risks in the legal sector.

505. Casinos, lawyers and notaries are not subject to AML/CFT supervision in practice. The latter two sectors are important in the context of their roles in relation to legal persons, real estate and construction.

506. Outside the AML/CFT supervision of banks, accountants and auditors, generally, AML/CFT compliance is controlled within overall supervision.

507. Offsite supervision is undertaken for the majority of supervised sectors. Such supervision undertaken by the NBS (for banks, leasing companies and pension fund managers), the Securities Commission, the APML, and the Tax Administration (for factoring and forfeiting businesses) includes the issue of questionnaires to entities subject to their supervision. The questionnaires used by the Securities Commission and the Tax Administration could be enhanced. The Tax Administration receives an annual return from some currency exchange bureaux by way of offsite supervision rather than a questionnaire but does not have statutory authority to compel provision of the questionnaire to it. Offsite supervision is

undertaken by the APML by the issue of questionnaires to all auditors and, based on risk, to some accountants. Offsite supervision is not undertaken in relation to insurers and real estate agents.

508. Onsite inspections are undertaken by the banking and insurance departments of the NBS, the Securities Commission, the Tax Administration in relation to currency exchange bureaux, the Ministry of Trade for real estate agents and the APML for accountants. Dedicated AML/CFT inspections are seldom undertaken by some supervisors (for example, the Securities Commission) but would usually be either a follow-up visit to verify whether a breach was remedied or on the basis of a motion by another state authority. More generally, the evaluation team is of the view that the intensity of the on-site inspection process by supervisors other than the NBS's banking department should be deepened and that this should include a review of the approach to the customer files sampled.

509. Overall, as a high level conclusion, supervisory authorities are not yet focussing the frequency and intensity of their supervision of sectors and individual licensees based on ML/FT risk. In particular, not all supervisory authorities appear to have explicitly linked AML/CFT compliance by licensed entities to the threats (i.e. the highest risk predicate offences) and their potential for laundering identified in the NRA. More specifically, the banking department of the NBS has robust onsite and offsite supervision of AML/CFT and is the best placed to undertake supervision on the basis of risk. Steps have already been taken and the department is working to introduce a methodology to introduce full risk based supervision. Other supervisors take ML/FT risks into consideration to a limited extent. Of these, with reference to DNFBPs, the APML continuously reassesses the risks to inform its supervisory approach and is not far from focussing the frequency and intensity of its supervision on risk.

510. The NBS, the NSC, the Tax Administration, the Ministry of Trade and the APML impose sanctions or apply through a court process for financial penalties to be applied when breaches of AML/CFT obligations are encountered. Most sanctions for AML/CFT breaches are applied through proceedings made directly to the court or indirectly to the court by application to a prosecutor. As a result, remedial action for encountered violations does not always lie with the discretion of the supervisor and the period before a sanction is imposed by the court is, on average, two years (although it can be much quicker). In addition, with the exception of the Securities Commission and the APML, the supervisory authorities have limited knowledge of the outcomes of their referrals to the prosecutor. Notwithstanding the approach taken of sanctioning all breaches, the framework for sanctions for reporting entities as a whole cannot be considered to be dissuasive and effective.

511. The NBS's banking department has recently dealt with its staff resource deficiency in a positive way by recruiting additional staff although the effectiveness of all of the new staff has yet to be proven. All other supervisory authorities have a significant shortfall in staff resources and, by extension, financial resources. The APML is additionally hampered by space constraints. These resource deficiencies have a negative impact on the thoroughness of supervision. With the exception of the supervisory department of the APML, the frequency of AML/CFT training by the supervisory authorities is not adequate. This too will require the application of additional financial resources in order for systematic training programmes to be put in place.

512. The APML has been particularly commended by industry representatives in relation to the training and awareness raising activities it provides to the private sector. A highly pro-active approach by the NBS in this respect has also been noted in respect of the banking sector. Both authorities demonstrated a clearly positive effect they have on awareness of and compliance by the entities under their supervision (and by the APML more widely). However, there are gaps in relation to lawyers, notaries and casinos which need to be addressed.

513. In forming a view of the rating, the evaluation team has paid particular attention to the risks in, and materiality and context of the various components of, the Serbian system. The banking sector is regarded as the highest risk FI sector and it is by far the most significant sector. **Overall, Serbia shows a moderate level of effectiveness for Immediate Outcome 3.**

CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings and Recommended Actions

Key findings

Serbia's ML NRA contains some information on legal persons but this does not comprise an overall assessment of the vulnerabilities posed by legal persons (and arrangements), particularly in relation to specific sectors and forms of predicate offending, or the action that the authorities should take as a result. Although some key authorities have a more developed understanding of the risks of misuse of legal persons and the adequacy of current mitigating measures than is reflected in the NRA, overall the authorities do not have a fully documented comprehensive assessment to inform their responses to risk sufficiently. Work to address this is expected to take place in 2016.

Information about the creation and types of legal person and arrangement under the law of Serbia is publicly available. All legal persons are required to be registered. Bearer instruments are not issued in the jurisdiction. Basic information is publicly available and, therefore, transparent and, in addition, there is no process for verifying the information that is provided to the SBRA or the Central Securities Depository or for checking whether it requires updating. While there is a legal requirement for changes of basic information in respect of all legal persons to be reported to the SBRA within 15 days, and there is a strong incentive to provide up to date information because changes to legal persons do not have legal effect until they are made to the SBRA's register, failure to comply is not subject to any penalty. Consequently, it is not enforceable. In addition, there is no requirement to report changes to information held by the Central Securities Depository. Nevertheless, in practice, the adequacy, accuracy and currency of information at the registries appears to be satisfactory.

Beneficial ownership information is available in a timely manner. Legal persons are required to have a bank account and in addition there are limitations on the use of cash for trading in goods and services which make it impractical for any trading entity not to have a bank account.

Banks therefore occupy a key role in the ability of the authorities to obtain beneficial ownership information. For virtually all legal persons that have bank accounts the identity of beneficial owners is established and verified. Banks retain the information under the AML/CFT Law. This information is adequate, accurate and current and authorities have timely access to it. In general, the position in respect of legal arrangements is weaker than for legal persons as the obligations to do with beneficial ownership are less well understood. Although there is no statutory requirement for trustees to disclose their status to FIs and DNFBPs, such disclosure happens in practice. There are a few gaps in the CDD on legal persons carried out by some other FIs.

With regard to DNFBPs, notaries are not subject to CDD obligations and there are significant gaps in CDD by notaries and lawyers (which are involved to a large extent with the creation of legal persons and also involved to a large extent in real estate transactions).

Information held by the SBRA, the Central Securities Depository and reporting entities is available to the authorities in a timely way.

Few sanctions appear to have been imposed for failure to comply with beneficial ownership requirements to date. As a generality, the available sanctions for breaches in relation to basic and beneficial ownership information are not effective, proportionate and dissuasive sanctions. In addition, concerns about the approach to sanctions taken by the authorities and the need for criminal rather than administrative procedures in relation to breaches of the AML/CFT Law are undermining the effective implementation of the sanctions that are applicable to reporting entities.

Recommended Actions

A number of the recommendations in Immediate Outcomes 3 and 4 are relevant to improving compliance with Immediate Outcome 5. They are not repeated here. It is also recommended that:

- In line with their current plan, the SCG should coordinate a review by the authorities to identify,

assess and understand the vulnerabilities of legal persons and legal arrangements and their misuse for ML/FT so as to focus resources and approaches by individual authorities;

- In line with their current plan, the Serbian authorities should introduce a registration system for beneficial owners of legal persons with appropriate penalties for non-compliance and the provision of false information. In addition, Serbia should introduce a framework enabling the registrars of basic and beneficial ownership information to be able to verify whether information provided to them is adequate, accurate and current; this framework should be actively implemented by the registrars;
- In addition to the review of sanctions proposed in Immediate Outcome 3, the Serbian authorities should review and revise the sanctions available in relation to the maintenance by legal persons (and legal arrangements) of basic information and introduce sanctions available to the two registries where changes to registered information are not provided to them in a timely manner.

The relevant Immediate Outcome considered and assessed in this chapter is IO5. The recommendations relevant for the assessment of effectiveness under this section are R24 & 25.

Immediate Outcome 5 (Legal Persons and Arrangements)

Public availability of information on the creation and types of legal persons and arrangements

514. Information on the creation of companies and on the types of legal person is provided in guidance issued by the Chambers of Commerce and Industry in Serbia and the Law on Companies, the Law on Enterprises, the Law on Public Enterprises, the Law on Cooperatives, the Law on the Procedure of Registration with the Serbian Business Registers Agency and the Rulebook on the Content of the Business Entities Register and Documents Required for Registration. All of this information is public and can be accessed on the Internet.

515. Legal arrangements cannot be formed in Serbia.

Identification, assessment and understanding of ML/FT risks and vulnerabilities of legal entities

516. The SBRA has advised that, of the legal persons it registers, there are 23,377 companies in which a foreign individual (15,606 companies) or legal entity (7,771 companies) is registered as the shareholder. This participation by foreign persons represents involvement in 11.11% of the 120,734 Serbian companies registered by the SBRA at the end of 2015. In addition, there are 195 foundations where legal persons are registered as founders; these founders originate from Greece, Austria, the UK, Bulgaria, Montenegro, Italy, Hungary, Macedonia and the Russian Federation. Serbia has provided limited contextual information outside these facts such as information on the purposes for which legal persons are used and the pattern of their ownership. The absence of this kind of information is consistent with the APML's confirmation that, although it undertook some analysis of the vulnerabilities of legal persons in 2014, the process for identification, assessment and understanding of vulnerabilities envisaged by Immediate Outcome 5 has not been undertaken. It is planned for this to take place in 2016. Discussions held by the evaluation team in Serbia demonstrated that there are some views already held by the authorities on vulnerabilities and that, in practice, a partial assessment of vulnerability has been undertaken albeit in relation to tax evasion.

517. Limited liability companies are seen by the authorities as presenting the most vulnerability as they are the most common structure within the corporate client base of banks, and a large proportion of STRs made by banks refer to such companies. These companies also comprise a large majority of the total number of legal persons.

518. The use by legitimate Serbian trading companies (trading mainly in scrap material, importing textiles from Asia, construction, marketing, trading in car parts and also providing services) of fake (i.e. phantom) trading companies is widespread and networked. Some companies

are used by their owners to evade tax by means of payments being made through phantom companies created by forged documents. In some cases trading firms have used as many as ten phantom companies. The Tax Administration sees this criminality as possibly the most significant risk in connection with tax evasion. In addition, the evaluation team was advised that companies appear to be used in a substantial number of the most valuable purchases in the real estate sector with change of ownership taking place by share transfer.

519. The specialised police for organised crime indicated that it is common for OCGs to use registered Serbian limited liability companies to seek to launder the proceeds of crime. In such cases the beneficial owner of the legal person is a member of the OCG or acting on its behalf.

520. The ML NRA contains some information relevant to these vulnerabilities. The evasion of taxes and other charges that generate public revenue is described as most often carried out by presenting false turnover through phantom companies, forging documents and bringing smuggled goods or illegally manufactured goods into legal tax flows through companies. This process is seen as linked to the grey economy. Tax evasion is noted in the NRA as one of the most widespread forms of financial non-compliance among legal persons in Serbia, as well as a large number of different forms of corruption linked with evasion of payment of taxes.

521. The NRA information is not brought together to form an overall view of the threat, vulnerability and impact of legal persons; their links to tax evasion, corruption, smuggling, the grey economy and wire transfers; and what actions should be taken as a result. In addition, the information in the NRA on legal persons has not been used by the Serbian authorities to inform their responses to the ML risk of legal persons except in a limited way – this is that the NBS focuses attention on legal persons, particularly corporate clients, during its onsite inspections of banks. The other information provided to the evaluation team in discussions while in Serbia also does not appear to have been used.

522. The evaluation team welcomes the partial assessment of legal persons which has been undertaken and the steps which will be taken to assess the vulnerabilities of legal persons fully in 2016 and encourages a comprehensive approach which includes assessment in relation to those sectors identified as presenting the highest vulnerability (banking and real estate – legal persons are used to purchase real estate) and also from the perspective of other aspects of the NRA, such as organised crime and corruption, where further assessment is also needed.

Mitigating measures to prevent the misuse of legal persons and arrangements

523. The Serbian authorities have taken a number of steps aimed at preventing and mitigating the misuse of legal persons. These include transparency of basic information through registration and a requirement to update the information at the SBRA within 15 days, CDD obligations for banks, providing for access to information by the authorities, limits on the use of cash for transactions and a requirement for legal persons to have bank accounts.

524. With regard to transparency, the information held by the SBRA and the Central Securities Depository is publicly available and transparent.

525. The SBRA checks that the information provided to it is complete but it should be borne in mind that it is not a supervisory authority and does not verify the accuracy, adequacy or currency of the information it receives or the authenticity of the documents submitted. It operates on the presumption that the data which has been provided is accurate because documents submitted to the registry must be original documents or a copy of the original certified by a notary and the submission of false data to the registry is a criminal offence. Where the prospective shareholders are foreign nationals, the SBRA obtains a copy of a passport or identification document or a copy of the registration entry where the shareholder is an entity. In practice, passport information is provided. In relation to a Serbian resident, an identification document (not necessarily a passport) for that person must be provided.

526. This is a significant concern to the evaluation team. Accordingly, there is no formal mechanism at the SBRA for checking whether changes to basic ownership information on legal

persons have been notified to it. The authorities advise that, notwithstanding the absence of a clear enforceable requirement for timely notification of changes, the fact that the changes are not legally in force until the SBRA's register has been changed, together with a number of other factors, mean that there are strong incentives for changes to be notified to the registrar in a timely way in order to ensure that contractual obligations, benefits and liabilities attach only to the appropriate parties. The relevant factors are: transfer of the company seat from one municipality to another needs to be reported to the competent tax authority of the municipality; failure to register a change of a company's core business activity might prevent the company from obtaining the necessary consent to conduct the business activity; the change of the company member(s) only has legal effect from the moment of registration; a change of the company's authorised representative needs to be reported to the SBRA in a timely manner as cancellation of the registration of the previous authorised representative with the Republic of Serbia Pension and Disability Insurance Fund and the Central Registry of Compulsory Social Insurance, as well as registration of the newly appointed authorised representative with these authorities, can be made only on the basis of registration with the SBRA.

527. The registry has not observed any failings in the adequacy, accuracy or currency of information it holds, and there have been no cases in the courts in relation to failures to provide information to the SBRA or the provision of inadequate information to the SBRA. The SBRA received 74,025 applications in 2015 for the establishment of new legal persons, striking off legal persons and changes to registered data (on average 6170 applications a month). 17,277 applications were rejected on grounds such as whether a person is authorised to act for the founders/legal person; whether the application has been made by an authorised person; and whether all information and documents required has been received. Changes in registered data take two or three days to be processed by the SBRA. The SBRA has advised that it has not noted any cases where information it holds is not accurate, adequate or current.

528. The Central Securities Depository registers the basic owners of joint stock companies but registered information is limited to the name of the shareholder, the number of shares held and the number of voting rights attached to them. The Central Securities Depository does not undertake its own checks. It is the responsibility of the banks and the broker dealers to ensure that the information they are providing the registry is adequate, accurate and current. The Depository has not observed any problems with the adequacy, accuracy or currency of the information it holds.

529. The registration of interests in legal persons means that bearer shares cannot be issued. Warrants must be registered with the Central Securities Depository. Based on the findings of onsite inspections, the contents of STRs and other intelligence information received, the authorities have not noted any use of bearer warrants in Serbia.

530. With regard to nominees, the registered owner of shares is the legal owner of the shares. The authorities consider that no company service providers exist in Serbia and that there are no other businesses offering nominee services. In addition, during on-site inspections and in the course of their intelligence, investigation and prosecution activities the authorities have not noted any use of nominee shareholders or directors except in relation to non-Serbian legal persons. The evaluation team did not note any use of nominees during the on-site element of the evaluation.

531. In connection with beneficial ownership information, only reporting entities hold beneficial ownership information where such information is different to basic ownership information, as they are subject to the beneficial ownership provisions of the AML/CFT Law. Therefore, beneficial ownership information is available only from reporting entities.

532. Since 2002 Serbian legal persons have had at least one bank account in Serbia (first required by the Law on Performing Payments by Legal Entities, Entrepreneurs and Natural Persons and, from 1 October 2015, by the Law on Payment Transactions). The existence of the account is made available on the SBRA's website (there is a requirement in the SBRA's Rulebook for the bank account number to be provided to it); this website information, which appeared to the evaluation team to be comprehensive, allows any person to identify the bank at which the account is held. This is a powerful measure for the authorities in combating misuse by being able to link legal persons and beneficial ownership information. Furthermore, every legal person is provided with a tax identification number and, within 30 days of the registration of a legal person, the Tax

Administration visits its registered office of the legal person to check that the legal person exists and that the registered office information is correct.

533. The restriction in the AML/CFT Law on persons selling goods or providing services from accepting cash to the value of EUR 15.000 or more means that it is impractical for legal persons which engage in trade not to have a bank account.

534. In relation to the gaps on beneficial ownership identified in criteria 10.4 and 10.5, during its onsite inspections the NBS has found that FIs very rarely take advantage of the risk based approach permitted in the AML/CFT Law not to verify the identity of beneficial owners of legal persons in low risk business relationships. Therefore, the identity of virtually all the beneficial owners of legal persons is verified. In addition, in practice, reporting entities verify that legal persons, as well as individuals, are acting on behalf of a customer.

535. Supervisors have an important role to play in helping to prevent misuse as they can monitor performance by reporting entities and require failings to be remediated. The effectiveness of the regimes applied by supervisors is considered in IO3. Information held by banks in Serbia and its accessibility is key in preventing misuse of legal persons in light of the requirement for legal persons to have bank accounts. The NBS conducts on-site inspections and sample testing; it ensures that CDD standards for legal persons and legal arrangements are included within the sample. On average, approximately 200 files with legal persons as customers are checked by the NBS at each onsite inspection of a bank (see below for the NBS's findings). Legal arrangements are rare but files with legal arrangements within the business relationship are also checked. With regard to DNFBPs, notaries and lawyers are not subject to any AML/CFT supervision in practice. Real estate agents are subject to onsite inspection by the Ministry of Trade although the evaluation team considers that supervision of real estate agents should be deepened and that the frequency and intensity of it should be subject to a risk based approach.

536. The Serbian authorities plan to establish a registry of beneficial owners of legal persons. There has been preliminary discussion within the SCG and a working group has been established. One of the next steps will be to identify the authority which will be appointed as the registrar.

Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons

537. Looking first at the quality of basic ownership information, neither the SBRA nor the Central Securities Depository verifies the accuracy, adequacy and currency of the information received and there are no explicit provisions requiring legal persons to maintain adequate, accurate and current basic ownership information. Data on legal persons subject to registration at the SBRA is described by the Serbian authorities as being up-to-date for the reasons identified above. However, these factors still do not ensure that data is adequate, accurate and current, and although neither the SBRA nor the Central Securities Depository has observed any problems with the adequacy, accuracy or currency of the information they hold, this information cannot be considered as wholly reliable in the absence of checking mechanisms or meaningful sanctions in relation to notification of changes to basic ownership information.

538. As to timely access to basic ownership information, the authorities have this because the information held by the SBRA and the Central Securities Depository is available online. This information is also available at the legal person.

539. With regard to the quality of beneficial ownership information, only reporting entities subject to CDD standards are required to obtain beneficial ownership information and to update changes to beneficial ownership IO 4 provides further information on CDD by reporting entities. Also as indicated in IO 4, it appears that financial institutions and, in most cases, DNFBPs apply record-keeping obligations well.

540. With reference to FIs as a whole, as indicated above beneficial ownership requirements are generally well understood. Banks are key in the ability of the Serbian authorities to have timely access to adequate, accurate and current information on beneficial ownership. There are only small

gaps, such as a missing place of birth, in 2% or 3% of the files sampled by the NBS during onsite inspections. Paragraph 368 contains information on the steps taken by banks to obtain beneficial ownership information. Representatives of banks were convincing in stating to the evaluation team that they would not enter into a business relationship unless the final natural person owning or controlling the customer would be identified. In light of the findings of its onsite inspections, the adequacy and timely availability of CDD by banks was confirmed by the NBS. Representatives of other sectors in meetings with the evaluation team also confirmed this. Most of the customers of non-bank FIs, including legal persons, are categorized as low risk, and consequently simplified CDD measures are applied. This, together with the other findings outside the banking sector, might mean that not all relevant CDD on beneficial owners is available. In addition, in light of the deficiency identified in relation to criterion 10.5 of Recommendation 10, there might be a difference in practice between meeting the risk based requirements for on-going monitoring in criterion 10.7 of Recommendation 10 and the requirements in criterion 24.7 of Recommendation 24 to keep beneficial ownership information as accurate as possible.

541. As legal persons are used to purchase real estate, DNFBPs also have a potential role to play in ensuring that beneficial ownership information is available in relation to the real estate sector (identified by the ML NRA as the riskiest sector amongst DNFBPs). It is not compulsory to use real estate agents but, when used, they do seek to verify the identity of beneficial owners and that information is available to the supervisor during on-site inspections. Notaries encountered during the onsite element of the evaluation demonstrated a substantive knowledge of AML/CFT obligations but do not identify the beneficial owner. There are also very significant AML/CFT weaknesses in the legal profession. In this context it should be noted that lawyers are involved to a large extent with the creation of legal persons and also involved to a large extent in real estate transactions.

542. As to timely access to beneficial ownership information, the information which is held by banks is available in a timely manner to supervisors, the APML and LEAs. It is clear that the competent authorities have been able to obtain basic and beneficial ownership information from banks in a timely way.

543. With regard to legal arrangements, these cannot be established in Serbian law and there are only a very small number of foreign legal arrangements operating in Serbia. Reporting entities are obliged to comply with all CDD requirements should they conduct transactions in relation to foreign trusts and other legal arrangements. No investigations, prosecutions or mutual legal assistance requests have involved legal arrangements. There appear to have been no cases involving trusts. Accordingly, the accuracy, adequacy and currency of information held by reporting entities on foreign trust and other legal arrangements has not been tested by use as evidence. However, banks have a few legal arrangements within their customer relationships. As indicated in Immediate Outcome 4, banks experience challenges about whom to treat as beneficial owners of trusts and which persons should be subject to CDD compared with legal persons. It appears that most but not all beneficial ownership information would be available if needed by LEAs and prosecutors. Trustees disclose their status to banks. However, as described in IO 4, the evaluation team concluded that understanding of the structure of trusts and the persons which would be considered as beneficial owners was uneven. Other reporting entities do not have trusts within their customer relationships and representatives of the other sectors are generally unaware of the characteristics of legal arrangements, their structure and what CDD information should be obtained.

Effectiveness, proportionality and dissuasiveness of sanctions

544. The sanctions applicable to legal persons are fines permitted under the Law on Companies for legal persons covered by that law of between circa EUR 830 and circa EUR 8,300 for not keeping bylaws and documents. Legal persons have not been tested as to whether they hold this information and no sanctions have been applied. In any case, the maximum level of fine would not be effective or dissuasive to a substantial legal person.

545. Under the Law on the Procedure of Registration the penalty for submitting false data to the SBRA is imprisonment of three months to five years. No penalty has been sought by the registrar (on

the basis that it has not noted any false data provided to it), although these sanctions would appear to be proportionate and dissuasive.

546. There are provisions under the Law on the Procedure of Registration for legal persons to inform the SBRA of any changes in registered data within 15 days. The law does not contain any penalty for failure to meet this deadline although the Serbian authorities advise that such failure would attract a standard increased registration fee of approximately EUR 45. No meaningful and enforceable sanctions are provided for. This mechanism is not sufficient to ensure that data at the SBRA is adequate, accurate and up to date, and the fee mechanism cannot be considered as effective, proportionate or dissuasive.

547. Supervisory authorities undertaking on-site inspections are attempting to ensure that sanctions are issued for infringements. Information on sanctions applied by the supervisory authorities can be found in IO 3. With regard to banks, in 2014, five out of eight inspections to banks by the NBS found minor irregularities to do with beneficial ownership information. These failings resulted in the issue by the NBS of two resolutions and three letters of warning and five applications were made to prosecutors for fines to be issued by the court. Other statistics on sanctions to do with beneficial ownership are not maintained by the supervisory authorities.

548. Interpretation of the statutory requirement so that all minor process issues, such as missing signatures, should be sanctioned is damaging the credibility of the authorities and the AML/CFT framework. In addition, the fact that sanctions for breaches of the AML/CFT Law depend on prosecutor and court processes, meaning gaps in some cases of a few years between an infringement being identified and the issue of a fine by the court (which is not certain) as opposed to use of administrative penalties. In addition, as a generality, supervisory authorities, including the NBS, are not aware of the finalisation of the court process and when the court has issued a sanction. As a result, the sanctions framework applicable to supervisory authorities is not effective, proportionate or dissuasive.

549. The APML uses Article 53 of the AML/CFT Law to obtain information from reporting entities on beneficial ownership while the Ministry of the Interior uses Article 286 of the CPC. The APML and the Ministry of the Interior have not needed to seek the application of a penalty by the court in practice for failure to provide them with beneficial ownership information.

Overall Conclusion on Immediate Outcome 5

550. Serbia's ML NRA contains some information on legal persons but this does not comprise an overall assessment of the vulnerabilities posed by legal persons (and arrangements), particularly in relation to specific sectors and forms of predicate offending, or the action that the authorities should take as a result. Although some key authorities have a more developed understanding of the risks of misuse of legal persons and the adequacy of current mitigating measures than is reflected in the NRA, overall the authorities do not have a fully documented comprehensive assessment to inform their responses to risk sufficiently. Work to address this is expected to take place in 2016.

551. Information about the creation and types of legal person and arrangement under the law of Serbia is publicly available. All legal persons are required to be registered. Bearer instruments are not issued in the jurisdiction. Basic information is publicly available and, therefore, transparent and, in addition, there is no process for verifying the information that is provided to the SBRA or the Central Securities Depository or for checking whether it requires updating. While there is a legal requirement for changes of basic information in respect of all legal persons to be reported to the SBRA within 15 days, and there is a strong incentive to provide up to date information because changes to legal persons do not have legal effect until they are made to the SBRA's register, failure to comply is not subject to any penalty. Consequently, it is not enforceable. In addition, there is no requirement to report changes to information held by the Central Securities Depository. Nevertheless, in practice, the adequacy, accuracy and currency of information at the registries appears to be satisfactory.

552. Beneficial ownership information is available in a timely manner. Legal persons are required to have a bank account and in addition there are limitations on the use of cash for trading in goods and services which make it impractical for any trading entity not to have a bank account.

553. Banks therefore occupy a key role in the ability of the authorities to obtain beneficial ownership information. For virtually all legal persons that have bank accounts the identity of beneficial owners is established and verified. Banks retain the information under the AML/CFT Law. This information is adequate, accurate and current and authorities have timely access to it. In general, the position in respect of legal arrangements is weaker than for legal persons as the obligations to do with beneficial ownership are less well understood. Although there is no statutory requirement for trustees to disclose their status to FIs and DNFBPs, such disclosure happens in practice. There are a few gaps in the CDD on legal persons carried out by some other FIs.

554. With regard to DNFBPs, notaries are not subject to CDD obligations and there are significant gaps in CDD by notaries and lawyers (which are involved to a large extent with the creation of legal persons and also involved to a large extent in real estate transactions).

555. Information held by the SBRA, the Central Securities Depository and reporting entities is available to the authorities in a timely way.

556. Few sanctions appear to have been imposed for failure to comply with beneficial ownership requirements to date. As a generality, the available sanctions for breaches in relation to basic and beneficial ownership information are not effective, proportionate and dissuasive sanctions. In addition, concerns about the approach to sanctions taken by the authorities and the need for criminal rather than administrative procedures in relation to breaches of the AML/CFT Law are undermining the effective implementation of the sanctions that are applicable to reporting entities.

557. **Serbia shows a moderate level of effectiveness for Immediate Outcome 5.**

CHAPTER 8. COOPERATION WITH OTHER JURISDICTIONS

Key Findings and Recommended Actions

Key Findings

Serbian authorities are able to provide a wide range of MLA and extradition in criminal cases. They have demonstrated that MLA has been successfully sought and provided with regard to investigations and prosecutions of predicate crimes and ML, as well as in connection to seizure of assets. However, from the statistics provided, it cannot be concluded that the authorities actively seek legal assistance within international cooperation. In addition, it appears that there is a significant backlog in processing incoming requests, negatively affecting the timeliness of the execution of the requests. This could be partially caused by the lack of resources of the MoJ.

There have not been any cases of confiscation of assets pursuant to a foreign request. As a result, doubts about the competency of Serbia to execute such requests, as well as the lack of clarity with regard to asset sharing in practice were not refuted.

The APML has broad powers to cooperate with foreign counterparts. It extensively exchanges information with its foreign counterparts and uses this data to inform its further work. The Police Directorate also actively cooperates with its foreign counterparts. It has been demonstrated that the NBS cooperates with foreign supervisors, no data was provided with regard to the other supervisory authorities.

Some measures have been put in place to ensure cooperation with the authorities of Kosovo*. Nevertheless, it was not demonstrated that these would be fully effective and proportionate to the corresponding risks.

Recommended Actions

- The remaining technical shortcomings related to provision of MLA should be remedied;
- The case management system should be fully implemented to ensure the timely prioritisation of all MLA requests;
- The authorities should review the MLA framework in order to identify the areas which are negatively impacting on the timeliness and overall effectiveness of provision of MLA and take steps to remedy these. In particular, sufficiency of the resources of the MoJ should be assessed. Consideration should be given to expanding the areas where direct co-operation, for example between prosecutors, can be done;
- The authorities should consider concluding formal bi-lateral treaties dealing with asset sharing;
- Effective cooperation mechanisms similar to those used for international cooperation should be implemented with regard to cooperation with authorities in Kosovo*.

The relevant Immediate Outcome considered and assessed in this chapter is IO2. The recommendations relevant for the assessment of effectiveness under this section are R.36-40.

Immediate Outcome 2 (Cooperation with other jurisdictions)

Providing constructive and timely MLA and extradition

558. International co-operation is important in the context of Serbia given its geographical position and the country's risk profile. As an example, drug trafficking is a high risk predicate offence for money laundering and an international element is said to exist at each stage i.e. Serbia is a vulnerable gateway for drugs destined for elsewhere, as well as for the corresponding proceeds. Furthermore, the prevalence of OCGs in the region adds a further international dimension to Serbia's

* See footnote on page 9, paragraph 5.

fight against crime. It was reported that the majority of ML prosecutions contain international elements.

559. Provision of MLA by Serbia is governed by international multi-lateral treaties⁴⁸, and, bilateral treaties⁴⁹, or, in the absence of any international treaty, the MLA Law. As noted in the TC annex there are some shortcomings in the implementation of the Palermo, Vienna, Merida and FT Conventions (see criterion 36.2 and the noted deficiencies in Recommendations 3, 4 and 5) and also some technical issues with regard to the MLA Law described under Recommendation 37, but the authorities confirmed that these have never posed an obstacle in practice, and none of the feedback received from other countries suggested otherwise. In specific situations related to international assistance connected to identification, seizure and confiscation of proceeds of crime, provisions of the Law on Recovery would be applied as *lex specialis*.

560. In the period from 2010 to 2014 only one MLA request was refused. The refusal was of an extradition request based on grounds of this person being a Serbian national. This person was arrested as part of a joint operation with a foreign country and the Serbian authorities expressed during the on-site visit their intention to prosecute that individual for ML in Serbia. It was not confirmed whether this has happened in practice. Nevertheless, in 2015, two MLA requests were refused and the evaluation team was not provided with any further information in this respect.

561. Within the scope of provision of legal assistance, either based on a letter rogatory (or the direct prosecutorial cooperation as described below), Serbian authorities may provide a broad range of assistance and undertake all the actions to which they are empowered under domestic criminal procedure. Co-operation may also comprise a domestic investigation with the Serbian authorities utilizing, with court permission, the special investigative techniques provided for in the CPC to obtain evidence which is then provided to the other country to be used in prosecutions. The authorities may also arrange for the counterparts to be present for parts of this process (where this is requested by the counterpart in the letter rogatory and approved by the preliminary investigative judge). This may be undertaken by the use of videoconferencing with the view to expedite the process.

562. Serbia provided an example of a case where investigative powers and international co-operation was used to establish the culprits and *modus operandi* of cross-border criminal activity and ML.

Case example: International cooperation

The illegal importation of goods was detected by the Service for Criminal Intelligence and it was discovered that this was being co-ordinated by an OCG, with collaboration by officials within the Customs Administration.

Methods and Special Investigative Techniques used to investigate the activity included the deployment of undercover officers, email interception, simulated business co-operation and secret surveillance, the search of facilities and vehicles and co-operation with liaison officers and customs authorities of Hungary and Romania.

It was established from, inter alia, seized counterfeit documents, mobile phones and computers that OCG members who were Serbian citizens controlled legal persons which were used for simulated business and which were used to launder the proceeds from the illicit importations, with the money being withdrawn in Hungary and Romania. The laundered proceeds were used to register new legal

⁴⁸ In particular the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS no. 141), Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS no. 198) and the Council of Europe Convention on Mutual Assistance in Criminal Matters and its two additional protocols.

⁴⁹ Serbia has concluded 52 bilateral agreements with 32 countries which regulate different forms of MLA in criminal matters. Whilst some are comprehensive, a number of these agreements regulate only extradition or transfer of proceedings. Of particular relevance in the context of Serbia are the agreements concluded with its neighbouring countries and other jurisdictions in the region.

persons for involvement in activities of construction, real estate and other business operations.

MLA and international police co-operation was incoming and outgoing and led to the discovery of documents and the establishment of the turnover and cash withdrawals on the accounts of the legal persons. Certain immovable property was seized in Serbia.

It was not confirmed if this investigation and the international co-operation which followed resulted in successful ML prosecutions or confiscations in Serbia or elsewhere.

563. The Ministry of Justice acts as the central authority for receiving and sending MLA requests. In practice, it verifies if the necessary criteria (e.g. as set out in Article 7 of the MLA Law) have been met and forwards the requests to the competent court. Consequently, according to its content, the request is executed either by the court or a prosecutor. Evaluators were shown the legal assistance case management system ("LURIS") which allows the MoJ to log MLA requests and search requests based on different filters including the relevant criminal offence. The system, which benefitted from financial aid from the Netherlands, is not yet finalised and the authorities acknowledged that this slows down, to a certain extent, MLA work. The evaluators were however told that a new version of LURIS is soon to be installed; where for example due dates will be included alongside each request to ensure the appropriate prioritization of requests. The Ministry of Justice provided statistics on ML and FT related MLA and extradition requests received by Serbia.

Table 25: Number of ML and FT related MLA and extradition requests received in the period under assessment

Year	MLA		Extradition	
	ML	FT	ML	FT
2010	0	0	0	0
2011	5	0	1	0
2012	7	0	1	0
2013	6	0	1	0
2014	17	1	5	0

564. The statistical data provided did not enable an assessment of the execution of received requests. Firstly, the numbers above of received MLA requests appear to contain requests received both under the MLA procedures, as well as through the direct prosecutor cooperation, as described below. The number of executed requests, as reported by the authorities, is two requests per year since 2012, suggesting a significant backlog.

565. The Serbian authorities assert that time priority for dealing with MLA depends on the type of assistance sought as well as on any deadlines which may have been set. They stated during the on-site visit that some requests can be satisfied within a matter of days whereas for more complicated forms of assistance (including extradition), the procedure may take up to several months. The Ministry of Justice noted that where cases involve organized crime or terrorism, these are treated as urgent, as are other cases where such designation is requested..

566. The average processing times for extradition in ML related cases were provided to the evaluators, and between 2011 and 2014, extradition requests were executed in periods ranging from 58 to 140 days, the average being a 92 days, which the evaluators consider to be reasonable in the circumstances. The maximum length for execution of a request in the period under assessment was 12 months, in case of a request executed in 2015, which the authorities justified by an extensive number of related additional requests.

567. Concerning ML related MLA requests, full comprehensive data on the duration of execution of MLA requests was not available to the evaluation team. The following information was however provided by the authorities:

- In the period from 2012 to 2014, two requests were executed annually.
- At the beginning of 2015, there were 50 unresolved requests.

- In the period from January to September 2015, six requests were executed. Whilst four of these requests were executed on an average of 10 months, two requests for obtaining evidence and seizure of assets were executed after a period of approximately three years⁵⁰;
- The average time for processing the requests with regard to which information was provided was over one and a half years (537,5 days).

568. From the above information it therefore appears that requests are not executed in a sufficiently timely manner, thus creating a significant backlog. It is not clear, however, whether the processing of MLA requests is delayed at the Ministry of Justice or when the competent prosecutor, on the authority of the court, is executing it.

569. The Public Prosecutor's Office commended the efficiency of the MoJ in processing incoming and outgoing MLA requests. The MoJ has a small team of six persons responsible for MLA and the Serbian authorities should monitor the ability of this team to cope with the reported total number of all incoming letters rogatory of around 10,000 per annum (it is acknowledged that the majority relate to minor matters or misdemeanours). The representatives of the MoJ stated during the interviews that they would benefit from additional human resources.

570. In the feedback received from other FATF/MONEYVAL countries⁵¹ one country raised issues with Serbia not responding on a matter despite having repeatedly followed up on the request in question. Otherwise, the feedback was on the whole positive both with regard to the timeliness and the quality of the legal assistance provided by Serbia.

571. No information was provided in relation to the other offences falling under the categories of designated predicate offences under the FATF Standards which would demonstrate the effectiveness in general of the MLA framework.

572. The evaluators were presented with examples of where Serbia has successfully assisted foreign counterparts in the pursuit of prosecuting predicate crimes and ML, and the seizure of assets. In particular, Serbia has provided assistance in seizing assets located in Serbia purchased with illicit funds arising from predicate crimes committed by Serbian nationals located in an EU Member State. This process is on-going and it is likely that the persons may face ML charges in the other jurisdiction; Serbia may therefore be required to provide assistance particularly in the confiscation of such assets. As concerns confiscation related MLA, no requests were made to Serbia during the evaluation period.

573. The Directorate for Management of Confiscated Assets is currently managing assets in three cases resulting from a MLA request. In all three cases, temporary seizure of assets was requested for proceedings conducted abroad (the Netherlands, Belgium and Bosnia and Herzegovina). Requests of these countries were fully met. In accordance with letters rogatory, the court issued rulings on temporary seizure of property on the basis of which the Directorate took over and has been managing the assets in question. These cases have not yet been legally finalized, so there were no cases of return of property to a requesting country or division of property with a requesting country.

574. The Directorate for Management of Confiscated Assets manages the property, which was seized on the basis of a decision of a body of a requesting country in the same manner as the property which was seized on the basis of a decision of a domestic body and which was entrusted to it until conclusion of the procedure for permanent confiscation of property.

575. There are no formal asset sharing agreements in place with other jurisdictions, however, the evaluators were informed that Serbia is in the process of formalizing bilateral asset sharing agreements with other countries, and that, currently, provisions in multilateral treaties (eg. Article 14 of the Palermo Convention) would be used for asset sharing. This has, however, not yet taken place in practice.

⁵⁰ According to the authorities this was due to a large number of additional requests from the requesting state.

⁵¹ Albania, Australia, Bermuda, Cyprus, France, Ghana, Guernsey, Jersey, Isle of Man, Malta, Monaco, Norway, Philippines, Romania, San Marino, Slovenia, Trinidad and Tobago, Turkey, Ukraine, United Kingdom, United States of America

576. In addition, the Republic Public Prosecutor's Office ("RPPO") explained that there are also channels of direct co-operation with prosecutorial counterparts. Co-operation with other competent prosecutors is undertaken pursuant to the Convention on Mutual Assistance in Criminal Matters, as well as based on additional 19 MoUs which have been concluded with other prosecutorial parties, including a multilateral MoU comprising prosecution offices of the region. The MoUs contain designated contact points in such offices. In addition, the RPPO has contact liaisons in several embassies as well as with EUROJUST, which helps facilitate co-operation, and electronic means of communication are increasingly being used. The RPPO reported that it monitors and supervises cases being handled by the competent public prosecutor, engaging in daily communication to ensure the case progresses expeditiously and offering any assistance as necessary. The scope of this assistance is, however, not clear. The authorities expressed their positive views on the effectiveness of this MLA.

577. Given the positive results reported by the authorities that have arisen by virtue of direct co-operation between prosecutors, consideration should be given to expanding the areas where this can be done without the need for the MoJ or other agencies to be involved and add another administrative step to a process which requires urgency, unless there is an obvious added value of such involvement.

578. The evaluation team was informed that there is no central electronic database for all MLA dealt with by Public Prosecutor Offices, but that a system has been introduced which currently covers 15 offices with an intention for it to cover all offices, and this will then allow the RPPO to have a better overview of MLA being dealt with by prosecutors' offices. As a result, separate statistics on cooperation undertaken directly between prosecutors are not available. In this respect, it is to be noted that the evaluation team was informed that steps are being taken for the Republic Public Prosecutor's Office to have direct access to the LURIS. These measures will clearly assist with the efficiency of the process and in particular, the RPPO being provided with direct access to LURIS shall enable further strengthening of the co-ordination between the MoJ and the RPPO in dealing with MLA.

Seeking timely legal assistance to pursue domestic ML, associated predicate and FT cases with transnational elements

579. The legislative and institutional framework for seeking assistance by Serbian authorities from foreign jurisdictions mirrors the system described above.

Table 26: Number of ML and FT related MLA and extradition requests sent in the period under assessment

Year	ML MLA	FT MLA	ML Extradition	FT Extradition
2010	N/A	N/A	N/A	N/A
2011	1	0	0	0
2012	3	0	0	0
2013	0	0	0	0
2014	1	0	0	0
Jan – Sep 2015	N/A	N/A	N/A	N/A

580. As mentioned above, cases involving organized crime and terrorism are said by the MoJ to be treated urgently. Completing the implementation of the LURIS will further improve timeliness in processing outgoing requests.

581. Other countries responded that the quality of MLA requests from Serbia was generally good, and that if further information was required it was provided. There were however one or two examples of Serbia not responding to requests for further information.

582. In order to illustrate the pro-active approach to seeking information in proceedings with international elements, the authorities referred to the proceedings related to the group of cases related to the OCG headed by Darko Saric, as discussed on a number of occasions above. The proceedings related to the group of cases related to the OCG headed by Darko Saric were in respect

of events which took place in a number of jurisdictions. Serbian authorities demonstrated their proactive approach and effectively cooperated with a large number of other jurisdictions in this respect. MLA took place between Serbia and 17 other jurisdictions. In several of the cooperating jurisdictions, proceedings for some of the predicate offences were taking place and the provision of MLA was therefore mutual, with requests being both sent and received. In addition, a broad range of types of assistance was provided within this case. Assistance was provided in the majority of cases in respect of obtaining, securing and providing evidence; including requests for the application of special investigative techniques. In addition, Serbia requested identification and securing of the illicit proceeds involved, as well as in respect of one country a request was made for a transfer of proceedings. Letters rogatory were also for example used in order to identify accounts held by the defendant in other jurisdictions and to obtain information on the turnover on these accounts. The MLA provided and sought in relation to the group of cases related to the OCG headed by Darko Saric has proved to be very useful and has yielded strong results in terms of convictions for predicate offences, third party ML and significant asset confiscation. The authorities should be commended for their efforts in this large case given that it proves the ability and willingness of Serbian authorities to seek assistance from foreign jurisdictions. However, the frequency of seeking assistance from foreign counterparts is on the whole relatively low. No data was provided with respect to other offences which would have enabled the evaluation team to have concluded otherwise. When taking into consideration the risk of international involvement in Serbian criminal cases, the evaluation team would encourage Serbia to be more active in seeking MLA as this can lead to the positive results as seen in the group of cases related to the OCG headed by Darko Saric.

Seeking and providing other forms of international cooperation for AML/CFT purposes

The APML

583. In accordance with AML/CFT Law, the APML can cooperate with foreign counterparts who have authority in prevention or repression of ML or FT, as well as with non-counterpart authorities. The APML is empowered both to request and disseminate information internationally. It can either request information for its own analysis or on behalf of other national authorities, mainly the LEAs, to support their activities. In addition, it is empowered to freeze the execution of a transaction on the basis of a written and grounded request of a state AML/CFT body of a foreign country. Although it is not required to do so in order to exchange information, the APML has entered into MoUs with 43 foreign FIUs.

584. In practice, the APML extensively cooperates with foreign counterparts in order to obtain intelligence information, including information on beneficial ownership and financial information that could be used by the law enforcement authorities in the pre-investigative phase and in order to assist the prosecution in preparation of MLA requests.

585. In addition, the APML is authorized to use the full range of powers under the AML/CFT law in order to obtain information requested by its foreign counterparts.

Table 27: FIU to FIU cooperation in the period under assessment

	2010	2011	2012	2013	2014	Jan-Sep 2015
Number of requests received by the APML from foreign FIUs	82	84	70	93	69	73
Spontaneous sharing of information received by the APML	3	13	16	9	14	6
Total (incoming requests and information)	85	97	86	102	83	79
Number of requests sent by the APML to foreign FIUs	185	91	116	147	163	84

Number of cases of spontaneous sharing of information sent by the APML	0	0	0	1	0	2
Total (<u>outgoing</u> requests and information)	185	91	116	148	163	86

586. The APML does not have any specific mechanisms in place to select, prioritise and make requests for assistance. The database used for processing foreign requests is the Case and Document Management System which is the general case management database used by the APML. There are no particular instructions or internal guidelines on prioritisation of received requests; the APML reported that they would usually give more attention to cases involving organised crime and predicate offences identified as higher risk in the NRA. Prioritization of foreign requests would also depend on the urgency specified by the foreign FIU. The average response time depends on the type of request. If the data requested can be obtained from the APML database or a database to which the APML has direct access, the APML stated that the response is given in the majority of cases within one working day. If additional data is requested (from reporting entities or other LEA), the APML would send data retrievable from its database immediately, and an additional response (containing all the requested data) would be send in 20-30 days. Overall, the APML reported that its internal policy is to reply within 30 days, but that in practice the average number of days is approximately 15.

587. As concerns incoming requests, the APML may refuse a request in cases when there are no reasons for suspicion of money laundering or terrorism financing or if the sending of such data would or could jeopardize the course of criminal proceedings in the Republic of Serbia. In that case, the APML is obliged to inform its foreign counterpart in writing of the refusal and reasoning of such decision. In the period under review, the APML has not refused any foreign requests. No significant problems were noted by APML's counterparts.

588. The effectiveness of providing assistance could, however, be limited by the time required to obtain information from other state authorities. This would concern in particular information on criminal records (up to three months, especially where operative information is sought) and the need to address other institutions in writing in order to obtain the most accurate information in certain cases (for example with regard to real estate ownership). The indirect access to the full information on the ownership especially of complex legal structures could also impede the timeliness of responding to such requests.

589. There were no cases of requests addressed by foreign supervisory authorities to the APML in the framework of diagonal cooperation. One request for such information was made by the APML to the Securities Commission and information was gathered from its counterpart.

590. Regarding outgoing requests, a significant part of the requests sent by the APML (about 40-50%) are based on requests by the law enforcement authorities and information obtained is used extensively by those authorities. When the APML requests information from foreign counter-parts following a request of another state authority, the representatives of the APML stated during the on-site visit that the APML would endeavour to include to the request also as much as possible of the information it is holding related to the request in question in order to facilitate the assessment by the requested authority. Comparing the number of requests sent by the APML to foreign FIUs on its own initiative with the cases analysed annually and involving persons previously unknown to the FIU, the APML seems to be using extensively its powers to collect information. Information collected from foreign counterparts is used by the APML in its further analysis and, in case of suspicion, the APML further disseminates the information it holds (subject to a prior consent of the foreign counterpart).

591. The APML reported that the information received from foreign authorities would be subject to the same protection of confidentiality as information acquired domestically. The evaluation team was, however, not provided with the exact legislative provisions on the basis of which is information classified and the criteria for attributing different levels of classification to information, as well as how this relates to the information held by the FIU. It has therefore not been demonstrated that all

information held by the APML is subject to sufficient confidentiality. In addition, it seems that not all the staff of the FIU was subject to a security clearance at the time of the on-site visit Pursuant to the AML/CFT Law, the APML is prohibited from disclosing information received or requested from foreign authorities to third parties without the prior consent of that foreign authority. In order to ensure that information exchanges are conducted in a secure manner, the APML cooperates with the Egmont Group member FIUs through the Egmont Secure Web. It appears that there are no specific foreseen channels for exchange of information with non-members of the Egmont Group although the APML explained to the evaluation team some examples of where it has done so in practice. Access to APML facilities and information is restricted, including IT systems.

Law enforcement agencies

592. The central unit responsible for international operational police cooperation in Serbia is the Department for International Operational Police Cooperation (DIOPC) within the Ministry of Interior. It consists of four divisions as follows: INTERPOL Affairs, EUROPOL Affairs, Information Management and Coordination of other Forms of International Cooperation. The Division for INTERPOL Affairs has a role of Serbian National Central Bureau of INTERPOL and Division for EUROPOL affairs has a role of Serbian EUROPOL National Unit. DIOPC uses INTERPOL, EUROPOL and SELEC secured communication channels for exchange of information and follows the rules set out by the respective organization with regard to the protection of exchanged information. Obtained information is further distributed to organizational units of the Police Directorate., depending on their set competencies. International police cooperation uses mainly the INTERPOL and EUROPOL channels while SELEC was reported to be useful but not used as frequently.

Table 28: Statistics on the overall cooperation of the DIOPC

	2010	2011	2012	2013	2014	2015
INTERPOL	32.124	21.841	49.303	65.903	145.080	148.621
EUROPOL	/	/	235	544	1.676	4.616
SELEC	351	308	2.008	2.388	2.570	2.232
TOTAL	32.475	22.149	51.546	68.835	149.326	155.469

593. Within the scope of financial investigations, the Financial Investigation Unit cooperates actively through the channels of INTERPOL, EUROPOL and SELEC. Cooperation also takes place through the assistance of liaison officers. In addition, since 2009, the Financial Investigation Unit is a member of CARIN and uses this platform for the provision of assistance with regard to identification of potential illicit property.

Table 29: Data on cooperation of the Financial Investigation Unit and the outcomes of this cooperation in the period under review

Year	Number of case files (incoming and outgoing correspondence)		Number of financial investigations into ML following requests received via:		Total number of financial investigations* following requests received via:		
	Money laundering	Terrorist financing	CARIN	INTERPOL	CARIN	INTERPOL	Liaison officers
2010	64	61	0	0	0	0	0
2011	11	36	0	0	2	9	0
2012	33	35	0	0	6	18	2
2013	48	26	0	1	7	8	2
2014	35	36	3	0	20	20	3
Jan-Sep 2015	14	0	3	2	15	6	0
TOTAL	205	194	6	3	50	61	7

* for all categories of offences (not only related to ML and FT)

594. The authorities reported that the assistance provided by the Financial Investigation Unit could in urgent cases, and subject to reciprocity, include an expedited execution of MLA request and the temporary seizure of assets or a ban on disposal with the assets in question. After the unit receives the request from abroad, through INTERPOL, it submits a request to the prosecutor's office and then once the court authorises the request, the provisional measure can be executed. These requests then have to be followed up by an official letter rogatory but the expedited process prevents delay pending use of the "diplomatic channel".

595. As concerns police cooperation in general, the authorities reported that all incoming requests have been replied to at the earliest convenience, although the evaluation team was not provided with more specific data or statistics in this respect. There is no special database for processing incoming and outgoing requests (apart from books to register official correspondence), the MoI prioritises the requests pursuant to the respective international standards depending on the channel used.. The evaluation team was informed that in the period subject to evaluation, no incoming replies were refused and the Serbian authorities have no information of any outgoing requests having officially been refused by foreign counterparts (although some requests remain unanswered). In the same time period, no spontaneous information exchange was reported to have taken place.

596. The involvement in the CARIN network was particularly commended by the evaluation team, as it provides a platform for informal international co-operation with foreign countries. In the context of Serbia's regional position and the international dimension which has been prevalent in a recent large confiscation case, such co-operation is important.

597. Further, Joint Investigative Teams have been formed to tackle organized crime in the region using the provisions in the MLA Law and the 2nd additional protocol to the MLA Convention.. The evaluators were informed of on-going investigations where joint teams had been formed with certain EU countries. Reference was made to a JIT initiated by the EUROJUST in the beginning of 2015 aimed at exchange of intelligence to detect and identify an illegal printing office for production of counterfeit banknotes, as well as all persons participating in the distribution chain. The contract on setting up the JIT was signed between the Ministry of Justice of Serbia and the EUROJUST, as a result of which representatives of the Serbian Police and prosecutors were also appointed as members of this team.

Customs

598. Serbian Customs Administration is a member of RILO (Regional Intelligence Liaison Offices) network under the auspices of the World Customs Organisation. This provides the Customs Administration with the possibility of an efficient and secure information exchange through e-mail, as well as access to CEN (Customs Enforcement Network) database on customs seizures. In addition, the Customs Administration signed two MOUs; with customs authorities at Roissy-Charles De Gaulles Airport and Vienna International Airport, concluded in May 2010 and April 2015, respectively. As an example for joint actions with foreign counterparts, the Customs Administration reported to have taken part in October 2012 in the operation "Athena III", organized under the auspices of the World Customs Organisation.

Supervisory authorities

599. The legislation empowers the NBS and the Securities Commission to exchange information with their counterparts, as well as other foreign state authorities. This exchange of information, however, has to be based on a further agreement concluded between the parties in question. Whilst the Securities Commission is party to the multilateral IOSCO MoU, the NBS has signed a number of bilateral MoUs with foreign supervisory authorities [Serbian authorities: Please provide further information in this respect, as requested in the TC Annex.] The Serbian authorities provided the evaluation team with a full text of one of the MoUs concluded by the NBS. This MoU, generally, addresses cooperation in the supervision of cross-border establishments (members of financial groups) and, in this respect, provides for exchange of information, as well as support and cooperation in undertaking inspections of cross-border establishments. More specifically, it also

envisages that the signatories shall cooperate closely when they identify suspected financial crime activities.

600. In practice, there have been no exchanges of information by supervisory authorities for AML/CFT purposes with the exception of the NBS. The NBS reported that it has been spontaneously providing information to its counterparts, as resulting from its responsibilities under the concluded MoUs. The evaluation team saw evidence of the NBS providing quite detailed information to banking supervisors in three other jurisdictions in 2014 and 2015 of the AML/CFT findings of on-site inspections. The NBS is addressing its responsibilities to provide information on AML/CFT seriously. In addition, the evaluation team was informed that the NBS Banking Supervision Department actively seeks information from foreign counterparts when deciding on an application for a banking license or acquisition of a significant share in a bank.

Table 30: Statistics on information exchanged by the Banking Supervision Department of the NBS in the period under review

	Letters received from foreign regulatory authorities		Letters sent to foreign regulatory authorities		
	Notification of business reputation of proposed senior management in banks	Related to MoUs and other agreements	Notifications on measures undertaken against banks	Letters regarding fitness and propriety of the bank's managing bodies	Related to MoUs and other agreements
2010	N/A	N/A	8	35	7
2011	N/A	N/A	12	25	4
2012	31	5	12	21	1
2013	14	3	5	21	4
2014	26	5	13	20	11
2015	21	3	14	27	3

601. It is to be noted that, as concerns the APML in its quality as supervisor, the AML/CFT Law does not differentiate between provision of assistance by the APML in its role as a FIU and as a supervisor. Given the legal requirement in the AML/CFT Law that requests for exchange of information should be substantiated by an ML/FT suspicion, it appears highly unlikely that the APML can legally provide information to its supervisory counterparts in this context.

602. No information has been made available to the evaluation team with regard to cooperation by other supervisors and from the on-site visit it appeared that no such cooperation takes place.

International exchange of basic and beneficial ownership information of legal persons and arrangements

603. The authorities involved in providing MLA or other types of international cooperation do not keep specific statistics on how many MLA requests are related to beneficial ownership on legal persons and arrangements. The MoJ and the APML reported that such requests are common, but usually included as part of a much broader request involving multiple elements. These requests are processed in the same way as other requests for assistance, as described above.

604. None of the supervisory authorities have received queries from counterparts in relation to basic or beneficial ownership information or considered that it had been appropriate to spontaneously provide such information to foreign counterparts, with the exception of the NBS's banking department. The NBS has not sent or received any requests to provide basic or beneficial ownership information, but it has spontaneously provided to foreign counterparts, on a number of occasions, information on beneficial ownership issues. As mentioned above, the evaluation team was provided with examples of spontaneous exchanges of information made by the NBS to supervisory authorities of group banking entities in 2014 and 2015 in relation to findings of the NBS's onsite inspections. The NBS advised group banking supervisors that irregularities found on-site included weaknesses in verification of identity of beneficial owners.

605. The APML reported that a request for beneficial ownership information has never been refused. In terms of obtaining the information, the authorities note that if the legal person is registered in Serbia then the data on the owner is requested from the SBRA or directly from the financial institution, whereas if a foreign legal person holds an account in a Serbian bank, the BO information is requested directly from the bank.

Other issues

606. The virulence of organized criminality (trafficking in goods, narcotics and human beings) as well as terrorism-related separatist/extremist movements along the boundary line between Serbia and Kosovo* call for the institution and implementation of means of communication and cooperation between authorities of the neighbouring jurisdictions, particularly as criminals and terrorists respect no boundaries. The evaluation team learnt with appreciation that some measures have already been put in place in this field under the auspice of the EU and the EULEX⁵², such as the adoption of general modalities for MLA through EULEX in 2013 (which however appears to be functioning rather intermittently⁵³) and some mechanism for indirect cooperation between law enforcement authorities (ILECUs) through the Interpol where Kosovo* authorities are represented through the EULEX⁵⁴. On the other hand, the Serbian authorities could not demonstrate that the formal and indirect mechanism so far implemented are effectively applicable and proportionate to the ML/FT threat emanating from the region in or close to Kosovo* (in fact the interlocutors which the evaluation team met declined disclosing any relevant information in this field). Some cooperation was also reported between custom authorities, also with the mediation of the EU. No information was provided to the evaluation team with regard to co-operation of supervisory authorities in this respect.

Overall Conclusions on Immediate Outcome 2

607. Serbia has a comprehensive legal framework enabling the authorities to provide and seek a wide possible range of MLA in relation to investigations, prosecutions and related proceedings for ML, FT and predicate offences. The authorities demonstrated that MLA has been provided effectively in practice but there are concerns over the timeliness of the execution of requests.

608. Given Serbia's risk profile, and in particular the international character of proceeds generating crimes committed in Serbia, it does not appear in the circumstances that Serbia is effectively seeking MLA. The authorities demonstrated that successful seeking of MLA took place in a very large-scale case where cooperation was established with a large number of foreign jurisdictions. It does not, however, appear that MLA would be sought regularly when the case so requires.

609. There is a sufficient legal basis for international cooperation of the FIU, law enforcement authorities and supervisors. The APML, the Police and the Customs Administration extensively exchange information with their foreign counterparts. Law enforcement authorities also reported a number of occasions when they participated on joint international operations.

610. As concerns supervisory authorities, whilst the NBS is active in seeking and providing information internationally, no information was provided in this respect with regard to the other supervisors and from the on-site visit it appeared that no cooperation takes place.

611. Some measures have been put in place to ensure cooperation with the authorities of Kosovo*. The evaluation team did not consider, however, that it was demonstrated that these would be fully proportionate to the corresponding risks.

612. **Serbia has achieved a moderate level of effectiveness with Immediate Outcome 2.**

* See footnote on page 9, paragraph 5.

⁵² European Union Rule of Law Mission in Kosovo*

⁵³ see in the 2015 European Commission report referred to under IO.1

⁵⁴ see in the 2015 European Commission report and the 2014 PECK report (CoE/EU), referred to under IO.1

TECHNICAL COMPLIANCE ANNEX

1. This annex provides detailed analysis of the level of compliance with the FATF 40 Recommendations in their numerical order. It does not include descriptive text on the country situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

2. Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in 2009. This report is available from:

http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL%282009%2929Rep_SER3_en.pdf

Recommendation 1 - Assessing Risks and applying a Risk-Based Approach

3. This is a new requirement that was not part of the previous assessment. Serbia has undertaken a national ML risk assessment in 2012 (published in 2013). A FT NRA was conducted and concluded in 2014.

Risk assessment

4. **Criterion 1.1.** Serbia conducted two separate NRAs, one for the risk of ML (conducted in 2012) and the second for the risk of FT (conducted in 2014). As noted under Immediate Outcome 1, some of the threats and vulnerabilities in both NRAs have not been assessed to an appropriate extent and therefore certain conclusions do not appear to be reasonable. However, the identification and assessment of ML/FT risks has not been limited to the NRA. For instance, the APML conducts strategic analysis on a regular basis, the results of which are shared with other competent authorities and discussed in meetings of the SCG. A multi-agency working group was established in January 2015, which meets weekly, to identify and assess emerging FT threats and vulnerabilities. There are certain threats and vulnerabilities, which still appear not to have been assessed properly, such as cross-border ML/FT risks, especially those posed by wire transfers and cross-border cash movements, the ML threats emanating from certain predicate offences, the impact of the shadow economy on ML/FT, the risk posed by legal persons and NPOs, in the context of FT, and the vulnerability of the DNFBP sector to ML/FT

5. **Criterion 1.2.** The SCG is the body responsible for conducting assessments of ML and FT risks (for further information on the SCG, the reader is referred to the analysis under c.2.2). Pursuant to a 2011 decision of the SCG, five task forces were established under the coordination of the APML, with the participation of the main AML stakeholders and the involvement of the reporting entities. In 2014, the director of the APML formed a project group to conduct a FT NRA. The group comprised the main CFT stakeholders and involved EU experts. Conduct of ML and FT risk assessments remains amongst the duties of the SCG, which should, accordingly, be responsible for undertaking further reviews and updating the NRAs.

6. **Criterion 1.3.** The ML NRA was conducted in 2012, while the FT NRA was conducted in 2014. The AML/CFT Strategy envisages a second iteration of both NRAs in 2016. In the meantime, the APML, as well as other state authorities, conducts on-going strategic analysis, including typologies and trends.

7. **Criterion 1.4.** The results of the ML NRA were published in 2012 and made available to all the relevant public authorities. The complete ML NRA was shared with all reporting entities and published on the APML website. The full FT NRA was distributed to the following reporting entities: banks, insurance companies, accountants, auditors, law chamber, broker-dealer companies, investment fund management companies and money transfer remittances. The other reporting entities received a version of the NRA which did not contain confidential information through their supervisory authorities.

Risk mitigation

8. **Criterion 1.5.** The ML NRA contains an action plan setting out a number of policy measures to mitigate the ML risk⁵⁵. The risks identified in the NRA were also taken into consideration when formulating the National AML/CFT Strategy for the period 2015 – 2019 and the corresponding Action Plan. Following the adoption of the FT NRA an action plan was drafted (and incorporated in the AML/CFT Action Plan.

9. Whilst the Action Plans do not contain any general policy provisions requiring that AML/CFT stakeholders should apply a RBA to allocating resources and implementing measures to prevent or mitigate ML/FT, the outcomes of the NRAs were taken into consideration when the Action Plans were formulated and risk-based approach is implicitly contained in the formulation of the foreseen activities. In addition, some state authorities take the conclusions of the NRAs into consideration when undertaking their duties. For instance, it was stated that the Ministry of Interior Work Plan for 2015 focuses significantly on enhancing the effectiveness of financial investigations, amongst others also by increasing the resources of the Financial Investigations Unit of the Ministry of Interior. However, significant measures still need to be applied by all law enforcement authorities to prevent and mitigate ML/FT. It has not been demonstrated that the resources of law enforcement authorities have been allocated to target ML in relation to predicate offences which pose the highest threat. As concerns the undertaking of AML/CFT supervision, the NBS is in the process of introducing ML/FT risk-based approach to its supervisory activities; consideration of risk is limited with regard to the other sectors.

10. **Criterion 1.6.** Art.12 of the AML/FT Law provides for exemptions from CDD requirements for certain types of life insurance transactions and services related to voluntary pension funds and Article 12C for certain categories of wire transfers. These exemptions are not based on an observed low risk of ML/FT resulting from the NRA or any other assessment of risk (as particularly wire transfers are identified by the NRA as posing a high vulnerability for ML/FT), but on a presumption of low risk. Article 4(3) of the AML/CFT Law allows for reporting entities to be exempt from applying the requirements of the AML/CFT Law when their business activities are carried out on an occasional or very limited basis and the ML/FT risks are low. This provision may be applied only in circumstances prescribed by the Minister of Finance. Up to date, no such exemptions were formulated.

11. **Criterion 1.7.** The AML/CFT Law provides for enhanced due diligence (EDD) measures in high-risk situations, and cites in particular those situations identified on the basis of the 2003 FATF Recommendations (when the client is not physically present at identification/verification, PEPs, correspondent banking). There is also a general provision that requires FIs and DNFBPs to apply EDD when, on the basis of a risk assessment of the business relationship, form or manner of execution of a transaction, customer's business profile or other circumstances related to a customer, they identify a high level of ML or FT risk. However, there is a disconnect with the findings of the NRA and other risk-related reviews carried on in the country, in particular as the conditions for the application of EDD are not tailored to the particular situation in Serbia. In addition, some shortcomings in the legal framework may also seriously affect the implementation of this requirement. Corruption is also identified by the NRA among the threats, yet there are no requirements for domestic PEPs. Also FIs and DNFBPs are required to undertake a risk assessment based on guidelines issued by supervisors. However, guidelines have not been issued for currency exchange offices, casinos and lawyers. Finally, the discretion left to reporting entities in the

⁵⁵These are: Present relevant parts of the ML NRA reports, in appropriate formats, to all AML/CFT stakeholders; Regular mutual information sharing between the SCG members about action they have undertaken to mitigate risks found in the NRA; Regularly check, in offsite and onsite inspections of reporting entities, or in any other appropriate manner, if the reporting entity has taken into consideration the NRA findings; Initiate amendments to the AML/CFT Law by introducing, in the area governing supervision, a requirement to use the risk-based approach in supervision; Pass supervision guidelines based on risk assessment; Develop a strategic analysis (trends and typologies), focusing in particular on the crimes identified as high-risk in the NRA

determination of additional circumstances when EDD can be applied, although it should be underpinned by their own assessment of risk, is not premised on any requirement that it be consistent with the country's assessment of the ML/FT risks.

12. **Criterion 1.8.** Simplified due diligence is allowed in specific circumstances set forth by the AML/CFT Law (see analysis of Recommendation 10) as well as by the FIs and DNFBPs based on their own risk assessment. However, the circumstances established by the Law are based on a presumption of relatively low risk, without it being supported by the previous risk assessment. The discretion left to reporting entities in the determination of additional circumstances when simplified CDD can be applied, although it should be underpinned by their own assessment of risk, is not premised on any requirement that it be consistent with the country's assessment of the ML/FT risks. Reporting entities are prohibited from applying simplified due diligence when there is a suspicion of ML or FT in relation to a customer or transaction, but that is a different standard (and specific to a customer or transaction) than the one envisaged by FATF (identified low risk, consistent with country's assessment). The legal framework for the implementation of simplified CDD is not completed by the required bylaws (see analysis of Recommendation 10).

13. **Criterion 1.9.** The AML/CFT Law establishes a comprehensive supervisory framework for supervision of compliance with all its requirements. This includes therefore also supervision of the implementation by all reporting entities of the risk related requirements set out by the AML/CFT Law, including the obligations for reporting entities to undertake individual risk assessments and apply preventive measures on a risk sensitive basis. In addition, one of the items of the action plan for the ML NRA specifically provides for regular checks, in offsite and onsite inspections of reporting entities, or in any other appropriate manner, whether the reporting entity has taken into consideration the NRA findings. However, as noted under Recommendations 28, there are some deficiencies in relation to the supervision of DNFBPs, which has an impact on this criterion.

14. **Criterion 1.10.** The AML/CFT Law (Art. 7) requires all reporting entities to conduct a risk assessment, based on the guidelines issued by the competent supervisor, for each group or type of customer, business relationship, service offered by the reporting entities within its business, or transaction, with sanctions for non-compliance (including non-compliance with the guidelines). The Guidelines specify that risk must include geographic, client, transaction and product (which also includes services and delivery channels) risks and provides for examples of risk factors that need to be taken into account for the purpose of risk classification. There is no specific requirement that the assessment should be kept up-to-date, but the Guidelines require reporting entities to consider potential changes of risk categorisation of business and clients throughout the relationship. It is to be noted that guidelines in this respect have been issued only by the NBS, Securities Commission and the APML and do not therefore apply to all reporting entities (such as foreign exchange offices or DNFBPs other than accountants and auditors). All AML/CFT measures shall be applied by the reporting entities following the risk assessment undertaken and reflecting its conclusions.

15. There is no explicit requirement to document the risk assessment (but this can be implied, given that a sanction is provided for not undertaking the risk assessment). Supervisors are provided with risk assessment information from the private sector on an annual basis through questionnaires.

16. **Criterion 1.11.** There are no general provisions applicable to all reporting entities to have policies, controls and procedures, approved by senior management, to manage and mitigate the identified risks. Nevertheless, the AML/CFT Law and the Guidelines issued by the supervisors refer to internal procedures on a number of occasions (for example internal procedures shall be put in place for identifying PEPs, as well as procedures and additional measures shall be implemented by the reporting entities in order to mitigate the identified risks posed by new technologies). The AML/CFT Law requires reporting entities to have in place internal controls of the implementation of obligations set out by the Law. This would also apply to the provisions, which require the reporting entities to assess their risks and the application of measures to mitigate these risks. Article 28 of the AML/CFT Law also requires reporting entities to apply EDD in circumstances, where higher risks are identified.

17. **Criterion 1.12.** Pursuant to Article 32(3) of the AML/CFT Law, reporting entities may apply simplified CDD measures also in cases when lower risks have been identified by the entity with

regard to the particular situation, in absence of any suspicion of ML or FT. Whilst the discretion of the reporting entities is required to be based on their individual risk assessment, there is no requirement for this to be consistent with the outcomes of the NRA. In addition, concerns remain about the propriety of the conditions for application of simplified CDD measures foreseen explicitly by the AML/CFT Law. As elaborated above, not all of the requirements of criteria 1.9 to 1.11 have been met.

Weighting and Conclusion

18. Serbia has undertaken two NRAs, one in relation to ML and the other on FT risks. Certain conclusions do not appear to be reasonable. The ML risk assessment was undertaken under the auspices of the SCG, which is a body responsible for the coordination of AML/CFT initiatives in the country, as well as for the monitoring of the implementation of the National AML/CFT Strategy. Both NRAs were communicated to the relevant state authorities. Reporting entities were provided with the ML NRA and some sectors also with a version of the FT NRA from which confidential information was removed. The application of a risk-based approach by state authorities has been demonstrated to a certain extent, this is however not based on any general policy requirement. Financial institutions are required to assess the risk they are facing and the legislation foresees the application of preventive measures on a risk sensitive basis. Nevertheless, the requirements of the Law in this respect are not based on the outcomes of the NRA and are sometimes even to its contrary. There is no clear requirement for reporting entities to have in place internal policies and procedures for the mitigation of identified risks. The supervisory authorities are required to control compliance with all the requirements of the AML/CFT framework, comprising the obligations related to the consideration of risk by reporting entities (subject to the shortcomings described above).

19. **Recommendation 1 is rated Partially Compliant.**

Recommendation 2 - National Cooperation and Coordination

20. Serbia was rated Largely Compliant with the previous Recommendation 31. The report concluded that the co-operation mechanisms on operational level in place between competent state bodies and agencies needed improving and recommended Serbia to speedily implement the related recommendations under the National Strategy against ML and FT. Also, while taking into account the recent establishment of the Standing Coordination Group, given the absence of any results of its work (policy or legal proposals) at the time of the visit and the lack of any secondary norms regarding the functioning of the Group, it recommended the authorities to ensure the group's effective functioning and to measure its work.

21. **Criterion 2.1.** The National Strategy against Money Laundering and Terrorism Financing for the period 2015-2019 was adopted by the Government on 31 December 2014⁵⁶. This policy builds up on the 2008 National Strategy against Money Laundering and Terrorism Financing (covering the period 2009-2013)⁵⁷. The Action Plans for the Implementation of the National Strategies against Money Laundering and the Financing of Terrorism for the periods 2009-2013 and 2015-2019⁵⁸ were adopted on 16 October 2009 and 31 December 2014, respectively. The Action Plans set out specific activities, timeframes, responsible institutions, and the resources required for the implementation of the Strategies. The 2014 Strategy and Action Plan are informed by the findings of the NRAs and the strategy requires a regular review of the action plan's implementation. In addition, on 14 May 2015, the Serbian government adopted a Financial Investigations Strategy for the period 2015-2016.

22. **Criterion 2.2.** The SCG is the authority responsible for monitoring and coordinating the implementation of the National Strategy and Action Plan against ML and FT. The first SCG was established in April 2009 and was in place until 2013 with the purpose of ensuring the

⁵⁶See *Official Gazette of the RS*, No. 03/15, published in January 2015

⁵⁷See *Official Gazette of the RS*, No. 89/08

⁵⁸See *Official Gazette of the RS*, No. 3/2015, published on 15 January 2015

implementation of the first AML/CFT Strategy (the last meeting of the first SCG was held on 6 June 2013). After the adoption of the new AML/CFT Strategy, in December 2014, the new SCG was established in April 2015 and met twice in the course of 2015. The new SCG was established in the same composition as the first SCG at the end of its term. It is made up of the following state authorities and agencies: the Ministry of Justice, Prosecutor's Office for Organised Crime, Supreme Court of Serbia, Ministry of the Interior, Security Information Agency, Military Security Agency, Military Intelligence Agency, Customs Administration, NBS, Securities Commission, Tax Administration, the APML, Ministry of Foreign Affairs, Ministry of Trade, Tourism and Telecommunications (Trade Inspectorate), Ministry of Defence, Serbian Business Registers Agency and the Anti-Corruption Agency. The inclusion of the Anti-Corruption Agency was the last step in the enlargement of the SCG; its representative was appointed during the last meeting of the first SCG, in June 2013. The work of the SCGs is assisted by the staff of the APML. In addition to its work related to the implementation of the National AML/CFT Strategy, pursuant to the Decision on the Establishment of the new SCG⁵⁹, the SCG shall also propose measures to relevant authorities for the strengthening of the AML/CFT regime, improve cooperation and information exchange among relevant authorities and conduct the ML and FT NRAs and their reviews.

23. **Criterion 2.3.** Serbia has established mechanisms to ensure that supervisors, LEAs and the FIU cooperate and coordinate domestically on the development and implementation of AML/CFT policies and activities. Cooperation on policy level is carried out through the SCG, as described above. As concerns cooperation at operational level, Article 64 of the Law of State Administration⁶⁰ sets out that State authorities are obliged to cooperate regarding all issues of common interests and to exchange information and notices relevant to their work. In practice, state authorities have concluded a number of cooperation agreements. The APML cooperates on operational level on the basis of MOUs signed with: the NBS, Customs Administration, Tax Administration, State Prosecutor Office, Securities Commission, National Security Authority, Anticorruption Agency, and Business Register Agency. Agreement on Cooperation was also signed between the Ministry of Finance, the Customs Administration and the Ministry of Interior, as well as between the Ministry of Interior and the Business Registers Agency. Furthermore, LEAs cooperate on an ad hoc basis through joint task forces and cooperation has been demonstrated also between the supervisory authorities and between the supervisors and the Tax Administration.

24. **Criterion 2.4.** There are no co-operation and coordination mechanisms in place to combat the financing of proliferation of WMD.

Weighting and Conclusion

25. National AML/CFT policies are formulated in the National Strategy against ML and FT, adopted in December 2014, and are developed in a corresponding Action Plan. On policy level, cooperation amongst relevant state authorities is undertaken within the SCG, which is responsible for overseeing the implementation of the National AML/CFT Strategy, coordination of competent state authorities, conducting the ML and FT NRAs and proposing other measures to enhance the AML/CFT framework. Competent authorities cooperate extensively on operational level, both systematically on the basis of signed cooperation agreements or on an *ad hoc* basis. There are no cooperation mechanisms with regard to financing of proliferation of WMD. **Recommendation 2 is rated Largely Compliant.**

Recommendation 3 - Money laundering offence

26. Serbia was rated LC on the previous Recommendation 1 and Recommendation 2 (money laundering offence). Technical deficiencies identified in Recommendation 1 concerned the scope of property and the predicate offences.

⁵⁹See "Official Gazette of RS", no.37/2015

⁶⁰See "Official Gazette of the RS", No. 79/05, 101/07, 95/10 and 99/14.

27. **Criterion 3.1.** Money Laundering is criminalised by Article 231 of the Criminal (“CC”)⁶¹. The offence incorporates on the whole the elements from Article 6(1) of the Palermo Convention and Article 3(1) (b) & (c) of the Vienna Convention. However, the purpose requirement for the conversion and transfer of property offence in Article 231(1) is limited to concealing or disguising the illicit origin of the property. It does not extend to the purpose of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action. This, although a relatively minor shortcoming, is inconsistent with Article 6(1)(a)(i) of the Palermo Convention and Article 3(1)(b)(i) of the Vienna Convention.

28. **Criterion 3.2.** Article 231 CC criminalises money laundering the proceeds from “a criminal offence” and this is not limited elsewhere in the CC by a definition. Therefore, Serbia designates all criminal offences as potential predicate offences for ML. Since 17th November 2011, Serbia has introduced predicate offences of market manipulation and using, revealing and recommending inside information (both under the Law on the Capital Market) and thus the designated predicate offences in the Glossary are now all criminal offences in Serbian law, and in turn predicate offences for the ML offence in Art 231 CC.

29. **Criterion 3.3.** This criterion is not applicable because all criminal offences may be predicate offences for ML.

30. **Criterion 3.4.** The ML offence in Article 231 CC appears to cover all types of property, subject to such property originating from a criminal offence. Concern was expressed in the previous report at the lack of definition of “property” but this is now comprehensively defined in Article 112(36) of the CC. As was already the case at the time of the 3rd round report on Serbia, Article 231 paragraph 2 of the CC employs the term “money” alongside the term “property”. This is not considered as having an impact on compliance with the criterion as it is deemed to be merely an error in legislative drafting and judicial authorities at the time of the 3rd round report had confirmed that there was no impact on the judicial application of Article 231 of the CC.

31. **Criterion 3.5.** As a matter of law, the conviction of a defendant for a predicate offence is not a requirement for proving that property originates from a criminal offence (Article 231 CC).

32. **Criterion 3.6.** Serbia applies an all crimes approach for ML and there is no provision which otherwise excludes the applicability of the ML offence to foreign predicate criminality. This interpretation is supported by case law.

33. **Criterion 3.7.** Article 231(3) CC explicitly provides that the ML offence may be committed by the person who commits the predicate offence.

34. **Criterion 3.8.** There is nothing explicit in the legislation but as a general rule of evidence, the mental element of criminal offences may be proved based on objective factual circumstances.

35. **Criterion 3.9.** The sanctions vary but appear to be proportionate and dissuasive, particularly where the property is above a certain threshold or the ML offence is committed as part of a group:

- a) Standard ML offence (including self-launderers): 6 months’ to 5 years’ imprisonment and a fine;
- b) Property exceeding 1,500,000 RSD⁶² (including self-launderers): 1 to 10 years’ imprisonment and a fine;
- c) Committing offence in (a) or (b) in a group: 2 to 12 years’ imprisonment and a fine;
- d) Negligently committing offence in (a) or (b): up to 3 years’ imprisonment;
- e) Responsible officer in a legal entity who commits the offence specified in (a), (b) or (d), and officer aware or who should have been aware of the ML: is punishable for the penalty stipulated in the specific offence.

⁶¹ CC (Official Gazette of RS, 85/2005, 88/2005, 107/2005) with added amendments from 31 August and 29 December 2009 and 24 December 2012

⁶² 1 euro was approximately 122.5 RSD (at the time of the on-site visit).

36. Under Article 50 CC, the general minimum fine is 10,000 RSD whereas the general maximum fine is 1,000,000 RSD. However, if a crime is committed for gain⁶³, the maximum fine is 10,000,000 RSD.

37. **Criterion 3.10.** Article 2 of the Law on the Liability of Legal Entities for Criminal Offences (“**LLLE Law**”) provides that a legal entity may be accountable for all the criminal offences prescribed by the CC if the conditions of Article 6 of the LLLE Law are fulfilled. Article 6 provides that a legal person 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. Such liability shall also exist where the lack of supervision or control by the responsible person allowed the commission of crime for the benefit of the legal person by a natural person operating under the responsible person’s supervision and control. Article 7 provides further that the liability of legal entities shall be based upon the culpability of the responsible person; however, a guilty verdict in respect of such person is not necessary. In this respect, Article 7 of the LLLE Law implicitly provides that criminal liability and sanctions of legal persons are without prejudice to criminal liability of the responsible person⁶⁴.

38. There is no obstacle to parallel criminal, civil, or administrative proceedings with respect to legal persons.

39. The sanctions appear to be proportionate and dissuasive. Article 12 of the LLLE Law provides that a sentence, a suspended sentence or security measures (prohibition to practice certain registered activities or operations, confiscation of instrumentalities or the publicising of the judgment) may be imposed on legal persons for the commission of criminal offences. Article 13 provides that legal persons may have a fine imposed and/or have their legal status terminated. Article 14 of the LLLE Law provides for the fines which may be imposed which may be between 100,000 RSD (approx. 816 Euros)) and 500 million RSD (approx. 4 081 637 Euros). The following demonstrates the fines available for legal persons for Article 231 CC ML offences:

- Standard ML offence: 2 million RSD to 5 million RSD
- Property exceeding 1,500,000D (including self-launderers): 10 million RSD to 20 million RSD

40. The sentence of termination of the status of a legal entity may be imposed if the activity of the legal entity concerned was for the purposes of the commission of criminal offences, in its entirety or to a considerable extent (Article 18, LLLE Law).

41. **Criterion 3.11.** The CC contains the appropriate ancillary offences for the purposes of 3.11 (and the conventions). These are provided in Article 30 (Attempting offence punishable by 5 years imprisonment or more), Article 33 (“Co-perpetration”), Article 34 (Inciting), Article 35 (Aiding and Abetting) and Article 345 (Conspiracy to commit crime punishable by 5 or more years) and Article 346 (Forming a group for the purpose of committing criminal offences punishable by imprisonment of 3 years or more).

Weighting and Conclusion

42. The majority of the criteria are fully met. However, the scope of the ML offence and its purpose requirements are not fully consistent with the conventions. **Recommendation 3 is rated Largely Compliant.**

⁶³ The Serbian authorities explained that this is not specifically defined but the concept of gain should be understood in the broadest sense i.e. as an inclination to achieve material gain.

⁶⁴ More specifically, Article 7 provides that “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”.

Recommendation 4 - Confiscation and provisional measures

43. Serbia was rated PC on the former Recommendation 3 (confiscation and provisional measures). The identified technical deficiencies concerned the definition of property under the CC, confiscation and value confiscation of instrumentalities and the power to void actions where the authorities may be prejudiced in ability to recover property subject to confiscation.

44. **Criterion 4.1.** The CC provides for the confiscation of the following:

- a. **Property Laundered:** Article 231(7) of the CC provides that the money or property specified in Article 231(1)-(6) of the CC shall be permanently confiscated thus mandating the authorities to confiscate laundered property, whether it is held by the defendant or a 3rd party.
- b. **Proceeds of or instrumentalities used/intended for us in ML or predicate offence:** Article 92 CC provides that money, items of value and all other material gains obtained by a criminal offence shall be confiscated from the offender, or from the legal entity or natural person it has been transferred without compensation or obviously inadequate compensation. If material gain is obtained through an offence for another person, such gain shall also be confiscated. Furthermore, as noted, Article 231 CC provides for the mandatory confiscation of money or property specified under that article i.e. proceeds not instrumentalities. Article 87 CC enables the confiscation of “objects” or instrumentalities which were intended for or used in the commission of a criminal offence or which resulted therefrom. However, there is an additional purpose requirement which is not in line with criterion 4.1(b) i.e. to confiscate such object, it must be established that (i) there is a danger that a certain object may be reused to commit a criminal offence, or (ii) it is so required for the purpose of ensuring public safety or for moral reasons. Article 87 also allows the law to provide for cases of mandatory confiscation of objects. Article 535 of the CPC provides for the confiscation of “objects” even in the absence of a conviction if necessary for protecting the interests of general security or for reasons of morality. It is considered that the additional conditions in the legislation could negatively impact on the ability of the authorities to confiscate instrumentalities in particular in ML cases.
- c. **Property which is proceeds or used in/intended or allocated for use in the financing of terrorism, terrorist acts or organisations:** Article 393(2) provides that funds given or collected with the intention to use them or knowing that they will be used, fully or partially, for the commission of terrorist predicate offences in Article 391 to 392 or for the financing of persons, a group or an organised crime group who intend to commit such acts, shall be confiscated. As regards the proceeds of terrorism, terrorist financing or organisations, such proceeds would qualify as material gain obtained by a criminal offence which under Article 91 CC cannot be retained and would be seized under the provisions of Article 92 CC.
Property of corresponding value: Article 92 CC provides for confiscation of property of corresponding value for proceeds of crime. There does not appear to be the ability to confiscate assets of equivalent value to instrumentalities used or intended for use in ML or predicate offences or for property that is intended or allocated for use in FT.

45. The procedure for confiscation of assets is set out in Articles 538 to 543 of the CPC. Further to its entry into force on 16 April 2013, the Law on the Recovery of the Proceeds from Crime (“**Law on the Recovery**”),⁶⁵ also sets out the procedure for the confiscation of assets under its Articles 38-48 and provides for the reversal of the burden of proof where a disproportion is found between the property owned by the defendant and its income. By virtue of its Article 2, the law on Recovery only applies to the confiscation of proceeds of money laundering and certain other predicate offences where the money laundered or the proceeds exceed 1.5 Million RSD, otherwise the provisions of the CPC apply, and such provisions also apply for the confiscation of objects or proceeds of minor offences (Article 99, Law on Minor Offences).

⁶⁵ Also known as the Law on the Seizure and Confiscation of the Proceeds from Crime.

46. **Criterion 4.2.** Serbia has measures enabling its authorities to identify, trace and evaluate property subject to confiscation using evidence collecting procedures in the CPC and special investigative powers contained in Part III of the Law on the Recovery.

47. Regarding provisional measures, Article 146 of the CPC provides for the temporary suspension of suspicious transactions and Article 147 requires the authority conducting proceedings to seize objects which must be seized under the CC or which may serve as evidence. Further, the APML may order a reporting entity to temporarily suspend a transaction for 72 hours, and it may do so on request of a foreign competent authority (AML/CFT Law). Temporary seizure of assets is available under the Law on the Recovery and Article 87 CC allows for the temporary seizure of objects used or intended for use in the commission of a criminal offence, or which have resulted from the commission of an offence, if there is a danger of the object being re-used to commit an offence or if required by the interests of general reasons or morality.

48. Regarding steps to prevent actions which may prejudice Serbia's abilities to recover assets, Articles 21 and 22 of the Law on Recovery require State and other authorities, services and organisations to assist and allow access to the FIU, and empower the prosecutor to order a bank or financial institution to serve the FIU information pertaining to a customer's business and private accounts and safety deposit boxes. There do not appear to be measures in place, including legislative measures, to void actions that prejudice the ability to freeze/seize or recover property that is subject to confiscation. Appropriate investigative measures are available in Articles 17-22 of the Law on Recovery.

49. **Criterion 4.3.** Article 92(2) CC provides that property shall only be seized from 3rd parties if the property had been transferred to them without any compensation in return or compensation which is obviously inadequate to the actual value of the property transferred. Article 43 of the Law on Recovery enables third parties to challenge the contentions of the public prosecutor as to the nature of the transfer of the assets. Further, Article 93 provides injured parties with the right to make a property claim. If it is accepted, the court shall order seizure of material gain with respect to the amount which exceeds the adjudicated amount of the property claim. An injured party may also request compensation from seized material gain, subject to complying with prescribed time limits. Article 60 CC provides that if temporarily seized property is found not to be proceeds of crime, it shall be reinstated to the owner without delay and augmented by interest.

50. **Criterion 4.4.** The Directorate for Management of Seized and Confiscated Assets within the Ministry of Justice has responsibilities for managing (which implicitly includes disposal) of seized and confiscated proceeds derived from a criminal offence. The responsibilities of the Directorate are comprehensively set out in Article 9 of the Law on Recovery. Detailed provisions on the proper management of a wide array of seized, frozen or confiscated property are also included in the Law on Recovery in Articles 49 to 63.

Weighting and Conclusion

51. While the legal framework on confiscation and provisional measures complies with criteria 4.2-4.4, concerns remain with respect to the ability to confiscate instrumentalities, in line with criterion 4.1(b) and also the ability or lack thereof, for value confiscation of instrumentalities and FT funds. It is also unclear to what extent it is possible to void actions where the authorities may be prejudiced in ability to recover property subject to confiscation. **Recommendation 4 is rated Largely Compliant.**

Recommendation 5 - Terrorist financing offence

52. Serbia was rated PC on the former Special Recommendation II (criminalisation of terrorism financing) as the FT offence did not cover the whole range of activities envisaged by Article 2(1) (a) and (b) of the FT Convention and did not criminalise the financing of a terrorist organisation or individual terrorist. Furthermore, "property" or "funds" were not adequately defined and the FT offence required funds to be linked to a specific terrorist act. Some of these shortcomings have been

addressed; concerns remain, however, over the scope of the FT offence in relation to the offences included in the Annex Conventions to the FT Convention.

53. **Criteria 5.1.** The FT offence as criminalised under Article 393(1) of the CC only partially complies with Article 2(1) of the Terrorist Financing Convention. Under this article the following are terrorism acts, the financing of which constitutes an offence:

- a. **Article 391 CC:** Terrorism i.e. attacking life or limb of another person, kidnapping or taking hostages, destroying facilities, property etc., hijacking public transport, dealing with nuclear, biological or chemical or other weapons, releasing contaminating material or causing risky actions or preventing the supply of resources. All the above carry a purpose requirement i.e. for there to be an offence the perpetrator must intend to seriously threaten the citizens or force Serbia, a foreign country or international organisation to do or refrain from an act or to seriously threaten/violate the fundamental constitutional, political, economic or social structures of a country or international organisation.
- b. **Article 391a CC:** publicly expressing or disseminating ideas that in/directly instigate an act referred to in 391
- c. **Article 391b CC:** recruiting a person to commit/take part in commission of an offence in 391 or to join the conspiracy, or giving instructions/training a person to commit or take part in such a criminal act
- d. **Article 391c CC:** with the intention to kill, inflict severe bodily harm or destroy or seriously damage a facility/transport system, it is an offence to do a prescribed act in relation to a deadly device in a public place, facility or near a facility
- e. **Article 391d CC:** with the intention to kill, inflict severe bodily harm, threaten the environment or cause significant damage to property, it is an offence to destroy/damage a nuclear facility in a manner which release or may release radioactive substances
- f. **Article 392 CC:** kidnapping or using another form of violence against a person under international protection, or attacking or seriously threatening to attack the person or such person's official premises, private home or means of transportation

54. The above-mentioned acts, which are considered as terrorist offences for the purposes of the FT offence do not adequately capture all of the offences in the treaties listed in the Annex to the FT Convention as required by its Article 2(1)(a)⁶⁶. In addition, in the case of some of the terrorist acts which are criminalised, these are not specified as being acts for which financing is an offence because Article 393 CC refers to Articles 391 through 392.⁶⁷ As a result, Article 2(1)(a) FT Convention is not fully implemented.

55. It should also be noted that to commit any of the terrorist acts in Article 391, the perpetrator must also have intended to seriously threaten the citizens, or force Serbia, a foreign country or international organisation to do or refrain from an act or to seriously threaten/violate the fundamental constitutional, political, economic or social structures of a country or international organisation. The inclusion of this language satisfies the requirement to implement Article 2(1)(b) FT Convention but as it is framed as a purpose requirement for the acts in Article 391, this results in a minor shortcoming in terms of implementing Article 2(1)(a) FT Convention because not all the offences in the treaties have a purpose requirement in these terms.

56. **Criterion 5.2.** Article 393(1) is discussed in 5.1 above and provides that it is an offence to provide or collect funds with intention or knowledge for use in the commission of acts in Articles

⁶⁶ With the exception of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents, the International Convention for the Suppression of Terrorist Bombings and the International Convention against the Taking of Hostages, the other offences as defined in the treaties listed in the Annex to the FT Convention are only partly covered.

⁶⁷ For example, whilst certain of the offences under the Civil Aviation Convention and the Nuclear Material Convention are criminalized in the CC under Articles 287, 291, and 293, as no reference is made to these articles in Article 393, the financing of these acts is not criminalised.

391 to 392 or for financing of persons, a group or organized crime group who intend to commit these terrorist acts".

57. **Criterion 5.3.** The term "funds" is not defined in the CC, however, under the law on the Freezing of Assets with the aim of Preventing Terrorism, it is defined in line with the FT Convention and encompasses funds whether from a legitimate or illegitimate source.

58. **Criterion 5.4.** Under Article 393 CC, giving or collecting funds with the intention to use them or knowing that they will be used for terrorist offences or for financing of individual terrorists or terrorist organizations is sufficient and there is no requirement for the funds to actually have been used to carry out/attempt terrorist act(s) or be linked to a specific terrorist act.

59. **Criterion 5.5.** There is nothing explicit in the legislation but as a general rule of evidence, the mental element of criminal offences may be proved based on objective factual circumstances.

60. **Criterion 5.6.** A person convicted of FT is liable under Article 393 CC to imprisonment between one and ten years. The maximum sanction available can therefore be regarded as proportionate and dissuasive from a technical point of view.

61. **Criterion 5.7.** As mentioned above for Criterion 3.10, Article 2 of the LLE Law provides that a legal entity may be accountable for all the criminal offences prescribed by the CC if the conditions of Article 6 of the LLE Law are fulfilled. For FT offences, there is also no preclusion to parallel civil proceedings and the sanctions are also proportionate and dissuasive.

62. **Criterion 5.8.** The ancillary FT offences are covered in the CC by way of Article 30 (attempt), Article 33 (co-perpetration), Article 34 (Incitement), Article 35 (Aiding and Abetting), Article 345 (conspiracy) and Article 346 (forming a group to commit a crime).

63. **Criterion 5.9.** By virtue of Article 231 CC, all criminal offences in the CC are predicate offences for ML, and *ipso facto* this shall include the FT offence under Article 393 CC. The deficiencies noted under criterion 5.1, however, have a relative cascading effect on the fulfilment of this criterion as the FT offence is not fully implemented in line with the FT Convention.

64. **Criterion 5.10.** The FT offence in Article 393 does not require the organisation or act to be located/occur in the same country.

Weighting and Conclusion

65. Serbia has addressed many of the concerns expressed in the previous report. However, there are still issues regarding the proper implementation of Article 2 of the FT Convention. Notably, the authorities should introduce criminal offences which fully implement the FT Annex offences, and ensure that these are all fully captured by the FT offence in Article 393. Furthermore, the language in Article 391 should be framed as a separate offence and not a general purpose requirement for all the terrorist acts in that Article. **Recommendation 5 is rated Largely Compliant.**

Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing

66. Serbia was rated NC on the former Special Recommendation III (freezing of terrorist assets). The identified technical deficiencies pertained to all essential criteria and ranged from lack of effective laws and procedures to freeze terrorist funds or other assets of designated entities; absence of a designation authority for UNSCR 1373; and lack of procedures for considering de-listing and unfreezing requests or to authorize access to frozen assets. The Law on the Freezing of Assets with the Aim of Preventing Terrorism (Official Gazette of RS No. 29/2015) (hereinafter: LFA) came into force on 29th March 2015 and has addressed a number of deficiencies identified in the previous round of evaluation. Secondary legislation has also been issued to assist the implementation of the new legislation (Ministry of Finance Regulation on the method of submitting information on the designated persons and their assets – Official Gazette of RS No. 53/2015 issued on 15th June 2015).

67. Under the LFA, the Government establishes a single list of designated persons and entities, based on the lists of designations made by the UN “and other international organisations of which the Republic of Serbia is a member”⁶⁸ as well as on proposals of competent state authorities and requests of foreign countries (pursuant to UNSCR 1373). On 16 July 2015 the Government adopted a Decision establishing the list of designated persons, in line with UN resolutions 1267(1999) and its successor resolution 1989(2011). The Decision was published in the Official Gazette and on the official web pages of the Government and of the APML. It must be noted that the Governmental Decision does not transpose into the Serbian legal order the designations stemming from UNSCR 1988(2011) in relation to the Taliban.

68. As concerns the procedure envisaged for designations pursuant to UNSCR 1373 based on the proposal of competent domestic authorities, such proposals to the Government are made by the Ministry of Interior, a state authority in charge of security and intelligence and the APML. No precise deadline is given to the Government to decide whether to include the person into the list of designated persons. As concerns designations pursuant to UNSCR 1373 made upon request of foreign authorities, these requests are received by the MFA, which then proposes the inclusion of the person in the list of designated persons/entities to the Government. The Government, within three working days from receipt of the request decides on the proposal of the MFA on the inclusion of the person in the list. No national designation under UNSCR 1373 has been made in Serbia.

69. In relation to designations made further to UN lists and relative updates to these lists, these are received by the MFA. Any update is translated into Serbian and an opinion on the amendments must be received from various Ministries before the MFA can recommend the Government to adopt the updated list.

70. **Criterion 6.1. Letter a).** According to the Law on the Ministries and the Law on Foreign Affairs, the MFA communicates and cooperates with the relevant UN Security Council Committees. Apart from this generic authorisation, however, there is no mechanism in place, either in law, regulation or administrative arrangements, empowering any authority to propose persons or entities for designation to the respective UN Committees.

71. Letters b) to e). As far as designations by the relevant UN Committees are concerned, Serbia implements the UN designations without instituting any mechanism to propose further designations to the UN Committees.

72. **Criterion 6.2. Letter a).** In relation to designations made pursuant to UNSCR 1373, according to Article 3 LFA, the Government adopts the list of designated persons (which includes natural persons as well as other entities) based either on the proposal of the competent state authorities⁶⁹ upon their own motion (Article 5 LFA) or the justified request of another country (Article 6 LFA).

73. Letter b). No specific mechanism for identifying targets of domestic designations is provided for, apart from the requirement that a proposal for designation must be submitted in case the aforementioned State bodies become aware of facts that indicate the justifiability to believe that a person or entity is a terrorist or a terrorism financier, involved in activities of a terrorist group or in the commission of a terrorist act and that there are assets that may be subject to freezing.

74. Letter c). According to Article 6(2) of the LFA a request from another country for designation with a view to freezing of assets or funds shall be sent through diplomatic channels to the MFA, which then proposes to the Government the inclusion of the person in the list of designated persons/entities. The Government, within three working days from *receipt* of the request, based on the reasonable belief that the person is a terrorist, terrorism financier, involved in activities of a terrorist group or in the commission of a terrorist act, decides on the proposal of the MFA on the inclusion of the person in the list. The three working days deadline, in practice, translates into a

⁶⁸ The reference to “other international organisations of which the Republic of Serbia is a member” has been included in the law in order enable the Government to develop the list of designated persons also on the basis of lists of designated persons issued by the EU once Serbia will become a member State of the EU.

⁶⁹ Notably, the Ministry of Interior, a state authority in charge of security and intelligence and the APML as per Article 5(1) LFA.

longer time-frame given the involvement and the opinion that must be received from the MFA. This does not appear to meet the requirement of “prompt determination”.

75. Letter d). Irrespective of whether the proposed designation is being put forward on the motion of the competent governmental bodies or at the request of another country, the Government shall make its decision on the grounds of reasonable belief based on the reasons contained in the respective proposal (see Articles 5(3) and 6(2) LFA) where “reasonable belief” is the level of conviction that a sensible person of average intellectual capabilities can gain based on evidence (Article 2(8) LFA). The existence of a criminal proceeding is not a precondition.

76. Letter e). Not applicable since Serbia has never made a request.

77. **Criterion 6.3.** There is no specific legislation to provide for procedures or mechanisms for collecting information to identify persons or entities with a view to their subsequent designation. However, the governmental bodies obliged and expected to propose domestic designations under Art. 5(1) LFA do have their respective powers to obtain and collect information on potential targets of designation.

78. **Criterion 6.4.** Targeted financial sanctions are clearly not implemented without delay. As concerns domestic designations pursuant to UNSCR 1373 based on the proposal of competent domestic authorities, no precise deadline is given to the Government to decide whether to include the person into the list of designated persons (Article 5 LFA). In relation to domestic designations further to the request of another country, the procedure provided under Article 6(2) of the LFA does not allow the authorities to make a prompt determination on whether the designee meets the criteria for designation as the three working days deadline translates into a longer timeframe (see the procedure described in criterion 6.2).

79. The procedure for transposing designations and updates pursuant to UNSCR 1267/1989 into the governmental list also causes unavoidable delay. Although under Articles 3 and 4 of the LFA such updates should be made without delay or immediately, the transposition of any update to the UN lists into domestic law requires a two-level procedure (ministerial proposal and governmental decision) without any strict deadline. Once the amendments are received by the MFA they must be translated into Serbian in accordance with the Law on Official Use of Languages and Scripts, and the Law on Publishing the Laws and Regulations and other documents. Subsequently, in accordance with the Rules of Procedure of the Government and the Decision on Amending the Rules of Procedure, an opinion on the amendments needs to be received from various Ministries and only at this time can the MFA recommend the Government to adopt the updated list. The evaluation team notes that by the time of the on-site visit, the relevant UNSCR 1989(2011) list had already been amended 8 times since the adoption of the Government Decision establishing the list of designated persons (i.e. within the period between 16.07.2015 and 28.09.2015) neither of these updates had yet been adopted by the Government due to the lengthiness of the procedure. In case of the earliest of these updates (e.g. SC/11976 and SC/11977 of 20.07.2015 or SC/11998 of 06.08.2015) this delay amounted to two months at the time of the visit⁷⁰.

80. **Criterion 6.5.** Letter a). Pursuant to the freezing mechanism provided under Article 8 to 10 LFA, the decision on freezing the funds of a designated person or entity (which, as noted above, does not refer those designated under UNSCR 1988) is to be carried out by the Minister of Finance and not by the respective natural or legal person. Natural and legal persons are only required to examine, on a continuous basis, whether they are in any business with a designated person, if so, to suspend any related activity and to inform the APML. The APML may then request state bodies or organizations data on the designated person and on his/her assets and subsequently report to the Minister of Finance. If the minister agrees with the APML’s findings, a decision ordering the freezing of the funds of the designated person is issued. Suspension and freezing takes place *ex parte* (the designated person is served a copy of the final freezing decision only). The evaluation team considers that the suspension of business activities related to the designated person, as it is set out in Art.8 and underpinned by a sanctioning regime in Art.19 to 20 LFA, is intended to have the same effect as freezing of any assets of that person deposited or managed by the reporting entity

⁷⁰ See all respective updates at <https://www.un.org/sc/suborg/en/sanctions/1267/press-releases>

81. Letter b). The definition of “assets and funds” under Article 2(2) LFA is in line with the respective definition in the Glossary to the FATF Methodology. Whereas the LFA is clearly not restricted to funds that can be tied to a particular terrorist act, plot or threat it remains silent on whether and how the freezing mechanism would extend to funds that are not owned but controlled by the designated person as well as to funds specifically referred to under Criteria 6.5(b)ii to 6.5(b)iv. As a result, these aspects appear not to be covered by the Law.
82. Letter c). There is no specific legislation apart from the freezing mechanism described above under Criterion 6.5.(a).
83. Letter d). Pursuant to Article 3(2) LFA, the governmental act establishing the list of designated persons is published in the Official Gazette and on the official websites of the Government and the APLM. The authorities have also informed the evaluators that the MFA sends a copy of the list of designations and any amendments thereof to the Central Bank, which transmits it to financial institutions. The evaluators have no information on any other more proactive mechanism of communication in relation to DNFBPs, or of any provision of guidance to FIs and DNFBPs on their obligations in taking actions under freezing mechanisms. It is also to be noted that on the APLM website reporting entities are left with incomplete or out-dated information⁷¹.
84. Letter e). As a result of the 2-stage freezing mechanism described above (suspend then freeze) any assets in relation to which business activities are suspended are to be reported to the APLM for the consideration of further freezing measures. The LFA is silent on attempted transactions. This notwithstanding, the FT reporting obligation and the FT indicators issued by the APLM (which specifically refer to persons subject to TFS), would appear to cover this requirement to some extent.
85. Letter f). Assets and funds frozen in compliance with the LFA may be subject to enforcement upon a final court decision, with the aim of protecting bona fide third parties (Art.16).
86. **Criterion 6.6. Letter a).** There are no procedures to submit de-listing requests to the relevant UN sanctions Committee as required by Criterion 6.6(a). It is to be noted however that Serbia has never submitted a designation to the UN sanctions Committee and therefore the weighting given to this sub-criterion is minimal.
87. Letter b). Pursuant to Article 3(4) LFA, the Government is obliged to review, at the request of the minister of finance and upon receiving opinions from the governmental bodies that are authorized by Article 5(1) LFA to initiate the designation of a person or entity, the justifiability of the listing of designated persons and entities. Such a review shall take place at least once a year. Article 3(3) provides that amendments to the list of designated persons shall be made immediately after knowing of the existence of facts that are relevant for its amendment, which implies that in such a case a decision on de-listing of the respective person or entity would be made.
88. If the minister of finance finds that the reasons for rendering a decision on freezing have ceased to exist, s/he shall revoke that decision by virtue of Article 17 LFA. Revocation of a decision is carried out pursuant to the rules of general administrative procedure.
89. Letter c). Article 7 LFA provides that the decision on inclusion in the list of designated persons and entities can be challenged before the administrative court by instituting proceedings under the Law on Administrative Dispute. A designated person may institute such proceedings on the grounds of his erroneous identification or the non-existence of the reasons for inclusion in the list. In case of erroneous identification, the court shall render its decision within 30 days. It is not clear within which period a decision on the non-existence of the reasons for including the person on the list should be rendered.

⁷¹ Notably, with links to the un-updated Governmental Decision establishing the list of designated persons (in relation to UNSCR 1267 and 1989); the UN website with the Al-Qaida list (UNSCR 1267 and 1989) but not the UN Taliban list (UNSCR 1988); the PDF version of the EU list issued pursuant to 2001/931/CFSP including EU nationals (although this list is not legally binding in Serbia and is not referred to by the LFA, the PDF version referred to dates to 2001 and does not take into account amendments which have been adopted in the meantime - with the exception of a 2005 update to the list mentioned above (2005/847/CFSP)).

90. Letters d) and e). There are no procedures in place as required under Criteria 6.6(d) and 6.6(e).
91. Letter f). Persons inadvertently affected by a freezing mechanism may initiate court proceedings against the decision ordering freezing of their assets and funds according to Article 14 LFA (see above under Criterion 6.6[c]).
92. Letter g). Under Article 3(2) of the LFA the act establishing the list of designated persons is subject to publication in the Official Gazette of the Republic of Serbia and on the official web pages of the Government and the APML. Article 3(3) further provides that any amendment to that list shall be made immediately. The authorities have confirmed that amendments to the list are to be published in a similar manner as the original list, even though this is not provided explicitly in the law. The observations and the shortcomings identified under criterion 6.5(d) apply also in this context, notably the current length of the proceedings in transposing in the Serbian legal order amendments to the UN lists do not ensure the timely communication of de-listings to financial institutions and DNFBPs.
93. As concerns decisions on unfreezing assets, these are not published but served to the affected parties (the legal or natural person who holds the assets, the designated person, the Directorate for Administration of Seized Assets, the APML, competent public prosecutor's office, body competent for security and intelligence, the Ministry of Foreign Affairs, and the other state authorities to whom the decision ordering freezing of assets and funds has been served), according to the rules of general administrative procedure.
94. No specific guidance has been provided to financial institutions and DNFBPs on their obligations to respect de-listing or unfreezing actions.
95. **Criterion 6.7.** Designated persons whose assets and funds have been frozen are authorised by Article 15 LFA to institute proceedings before a court in order to have access to a part of the frozen assets that are necessary for basic costs of living, for the payment of certain types of fees, expenses and service charges, in line with UNSCR 1452. Rules of competence are provided for and the proceedings are to be deemed urgent. The proceedings with the aim of excluding a part of the assets or funds are led according to the rules of extra judiciary procedure. Under this type of procedure rulings are issued in the form of decisions, they can be appealed within 15 days and stay of proceedings is not possible.

Weighting and Conclusion

96. Despite the unquestionable development in legislation, there remain important gaps in the legislative framework governing targeted financial sanctions related to terrorism and terrorist financing. The designation and freezing mechanisms fall short of ensuring that the necessary measures can be made without delay particularly in cases of urgency. **Recommendation 6 is rated Partially Compliant.**

Recommendation 7 – Targeted financial sanctions related to proliferation

97. **Criterion 7.1.** This is a new requirement that was not addressed in the previous assessment. There is no law regulating targeted financial sanctions related to proliferation of WMD and the obligations stemming from UNSCR 1718 (concerning the DPRK) and UNSCR 1737 (concerning the Islamic Republic of Iran). Although these lists are de facto forwarded, through the Government and the NBS, to some of the reporting entities⁷², the latter are left without instructions or guidance as to

⁷² The authorities have informed the delegation that in order to transpose UNSCR 1718 and UNSCR 1737 into Serbian law and any subsequent amendment or successor resolutions, the following procedure applies in practice: the UNSCR, including listed persons and the measures to adopt in their respect, is translated into Serbian by the Ministry of Foreign Affairs (MFA). Subsequently, the MFA consults other relevant Ministries and obtains their comments. The UNSCR/amendments along with the official translation and the proposed measures that the relevant institutions should undertake are then sent to the Government as a proposed draft

their obligations in case of a match. Thus there is no mechanism in place to identify and freeze funds or other assets of persons and entities designated by the respective UNSCRs. The evaluation team was informed that a draft law has been presented to address this matter.

98. **Criterion 7.2.** There are neither provisions nor measures implementing this criterion.

99. **Criterion 7.3.** The authorities have explained that in case of non-compliance by reporting entities with obligations stemming from the UNSCRs, Article 384a of the CC on Violation of Sanctions Imposed by International Organisations would apply, providing for a term of imprisonment ranging from 3 months to three years and a fine. It is unclear, however, to what extent these sanctions would be enforceable given that Government decisions transposing the relevant UNSCR lists are not published.

100. **Criterion 7.4.** There are no provisions or measures implementing this criterion.

101. **Criterion 7.5.** There are no provisions or measures implementing this criterion.

Weighting and Conclusion

102. Serbia has not adopted legislation or satisfactory measures and procedures to implement targeted financial sanctions to comply with UNSCR relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing. **Recommendation 7 is rated Non-Compliant.**

Recommendation 8 – Non-profit organisations

103. Serbia was rated NC on the former Special Recommendation VIII (NPOs) as almost none of the essential criteria under this recommendation were considered to be met due to serious deficiencies of the NPO regime and policies. The evaluators had urged to review and re-regulate the sector and since the 3rd round MER new legislation has been adopted.

104. In Serbia, the NPO sector, as defined in the Glossary to the FATF Methodology, includes associations (voluntary and nongovernmental NPOs) and foreign associations, as defined by Article 2 and Article 58 of the Law on Associations (“Official Gazette of RS” No. 51/2009) as well as endowments and foundations, both domestic and foreign, as defined respectively under Article 2 and Article 56 of the Law on Endowments and Foundations (“Official Gazette of RS” No. 88/2010). These laws establish, on the one hand, the Register of Associations and the Register of Foreign Associations and, on the other hand, the Register of Endowments and Foundations and the Register of the Representative Offices of Foreign Endowments and Foundations, which are kept by the Serbian Business Registers Agency (SBRA).

105. **Criterion 8.1.** Since the last round of evaluation, Serbia has not conducted any review of the adequacy of the legal framework relevant to the NPO sector, nor has any domestic review of this sector undertaken with regard to its activities, size and vulnerability to FT. Some steps have been taken in this respect within the scope of the MOLI project, as described below.

106. **Criterion 8.2.** In the framework of the MOLI Serbia project⁷³ a workshop on the potential for abuse of NPO sector for FT purposes was held in Belgrade in June 2012 with the participation of representatives of the NPO sector in Serbia. In the same project, a series of professional consultation meetings were organised for organizations and entities involved, including the Office for Co-operation with Civil Society, Centre for Development of Non-Profit Sector, the SBRA and the APML

decision, and is subsequently adopted. These Governmental decisions are not published in the official Gazette and are informally sent to reporting entities by the Central Bank and the Ministry of Finance. The authorities have explained that the procedure takes on average one month. It is to be noted that such delay would not comply with criterion 7.1 requiring that targeted financial sanctions should be implemented without delay.

⁷³ Project against Money Laundering and Terrorist Financing in Serbia (funded by the EU and implemented by the CoE)

(FIU). Finally, the representatives of the UK Charity Commission were invited to Belgrade in February 2014 to discuss, with various government departments and agencies as well as the NPO sector itself, the regulation of the sector and whether sufficient policies and procedures were in place to prevent its abuse for FT and ML. No other systemic outreach activities to the NPO sector have been carried in relation to FT issues.

107. **Criterion 8.3.** Transparency is promoted by provisions that stipulate public accessibility of all data that is registered by the SBRA on NPOs, including the founding documents and the annual financial statements submitted by these entities. This data, however, does not encompass updated information on the composition of the internal organs (management) of an NPO and generally does not refer to associations without legal personality. Specific rules of transparency and accountability refer to associations that realize programs of public interest or enjoy exemption from customs or taxation (see below).

108. **Criterion 8.4.** The obligations described in this section apply, respectively, to all associations, endowments and foundations, whether domestic or foreign, as the NPO regime does not differentiate according to the size and sector-specific dominance of the respective NPOs.

109. Information on the purpose and objectives of an association or an endowment/foundation is among the basic data to be included in the founding act and statute of an association or the founding act of an endowment or foundation. This information is also entered into the respective Registers and, as such, it is publicly available on the website of the SBRA. This, however, does not apply to representative offices of foreign associations⁷⁴ and associations which opt for not being registered (see Article 4 of the Law on Associations), which represents a gap.

110. Information on the identity of person(s) who own, control or direct the NPO's activities: As concerns endowments and foundations, detailed information on the members of the Board of Directors, of the founder and on the representative authorized to act on the endowment or foundation's behalf is part of the registered data and thus publicly available⁷⁵. This is not the case for foreign endowments and foundations, as well as for foreign associations, in respect of which only registration of the authorized representative is required. As concerns associations (both domestic and foreign), the composition of internal organs can be found in the founding documents that are submitted together with the application for registration and thus kept by the SBRA but this information is not to be registered in itself (and thus is not publicly available) and therefore it is not prescribed by law that changes to such data be reported to the SBRA. The law is silent on whether and what record keeping obligations NPOs have in this respect and whether this information is publicly available.

111. Requirement to file annual financial statements: NPOs with legal personality are required to file annual financial statements with the Registry of Financial Statements pursuant to the Law on Accounting. This obligation applies to entities with legal personality and therefore not to associations that opted for not being registered.

112. Controls in place in relation to the use of funds: Assets of NPOs can only be used for the achievement of the objects stipulated in the founding documents and any disposal of the assets in violation of the provisions of the respective Laws shall be null and void. This specific provision does not seem to apply to endowments and foundations, as Article 63 of the Law on Endowments and Foundations only provides for the application of a pecuniary fine in case assets are used for purposes other than the achievement of its goals.

113. All NPOs are equally required to keep business books, make financial reports and have them audited in accordance with the regulations on accounting and audit which however, as noted above, only apply to entities with legal personality. Generally, it is to be noted that there are no controls in place to ensure that funds are spent in a manner that is consistent with the purpose and objectives of

⁷⁴ Article 2 of the Rulebook on the Content, the Procedure for Registration and Administration of the Register of Associations (RS Official Gazette, No. 51/09) does not require the registration of information on the goal and purpose of representative offices of foreign associations.

⁷⁵ Article 30 of the Law on Endowments and Foundations.

NPOs. However, associations realizing programs that serve public interest and that receive funds from the state budget must submit reports proving that the assets are used for the realization of the authorized programs. The same applies to associations that were granted tax or customs exemptions.

114. Licensing or registration requirement: Endowments and foundations require legal personality; therefore they can come into existence only by registration. Branches of foreign associations can only act in the territory of Serbia after their registration into the respective Register. Domestic associations, however, may opt for not being registered as registration into the Register of Associations is voluntary (Article 4 of the Law on Associations). Registered data is publicly available.

115. Identification of the ultimate beneficiary: There is no legal requirement regarding the identification of the effective beneficiaries of NPOs.

116. Maintaining of records: NPOs with legal personality are required to retain official documents on the basis of which data was entered into business ledgers for five years (Article 24 Law on Accounting). These documents are available to the competent authorities.

117. **Criterion 8.5.** There is no central, dedicated governmental body with responsibility for monitoring NPOs and identifying abuses. While registration requirements and those pertaining to the submission of annual financial statements are routinely checked by the SBRA, the registration procedure does not involve the verification of the data submitted and the document attached by the applicants, nor is any monitoring performed as regards the adequacy of the financial statements. The Tax Administration conducts audits and/or onsite inspections on NPOs but solely for taxation purposes. In case of ML/FT concerns, the Tax Administration would make a formal report to the APML but no similar mechanism exists for cases when the expenditures are not in line with the purpose and objectives of the NPO.

118. Under the Law on Associations, NPOs can primarily be sanctioned by pecuniary penalties. The law stipulates penal provisions for various breaches of the rules described under criterion 8.4, including for failure to report changes to registered data, carrying out economic or other activities in larger scope than it is required for the accomplishment of the statutory goals of the NPO as well as using the NPO's property not only for the accomplishment of its statutory goals. These offences are punishable with a fine from 50.000 to 500.000 RSD and from 5.000 to 50.000 RSD for representatives of the NPO. There are similar offences provided under the Law on Endowments and Foundations with a different, more severe but also more proportionate regime of sanctions. It is not clear in either case which authority is responsible for detecting such offences and on what legal basis.

119. In addition, NPOs can also be sanctioned with prohibition from work in case their goals or actions are contrary to the Law on Associations. This sanction may also be imposed on NPOs without legal personality. In case of endowments and foundations, the revocation of operating license can be applied accordingly. The Constitutional Court takes a decision in this respect upon the motion of the Government and various governmental bodies although there are no clear procedures and judicial or prosecutorial authorities are not among the bodies to initiate such proceedings.

120. **Criterion 8.6.** (a) There are several different government bodies that hold information on the NPO sector. The APML has the power to share information with law enforcement agencies if an STR concerning an NPO is submitted and law enforcement agencies can also make formal reports to the APML related to potential FT abuse. Likewise, if the Tax Administration identifies any FT concern they can make a formal report to the APML. Having said that, the evaluators are not aware of any specific mechanisms to further promote co-operation, co-ordination and information sharing between these authorities.

121. (b) All data provided and documents submitted by the NPOs to the SBRA, either during the registration procedure or when updating the registered data, are kept by this Agency and are available to competent authorities. Registered data is publicly accessible on the Agency's website. NPOs with legal personality are required to produce financial statements and submit them annually to the SBRA. As for the existence and availability of data and/or documents related to the administration and management of the NPOs reference is made to Criterion 8.4(a) above.

122. (c) As noted above under (a) the evaluators are not aware of any established mechanisms in this field, apart from the general authorization of the respective governmental agencies to share and request information relevant to NPOs.

123. **Criterion 8.7.** In case of MLA requests, Serbia uses the traditional procedures and mechanisms for international co-operation. In any other (law enforcement / intelligence) cases, the primary point of contact for terrorism-related matters is the Ministry of Interior, Criminal Police Directorate, Department for Monitoring and Investigating Phenomena of Terrorism. In case of necessity, this agency can be assisted by military intelligence agencies by providing relevant intelligence and information.

Weighting and Conclusion

124. Considering that Serbia has not conducted any review of the NPO sector with regard to its size, relevance, activities and its vulnerability to FT threats or that of the adequacy of the domestic legal framework in this field, the authorities cannot be in a position to assess the FT risk pertaining to the NPO sector. Outreach activities appear to depend on external initiatives and are insufficient. Shortcomings can be found in the monitoring of the activities of NPOs and particularly those without legal responsibility. **Recommendation 8 is rated Partially Compliant.**

Recommendation 9 – Financial institution secrecy laws

125. Serbia was rated LC with the previous Recommendation 4. The MER noted that financial institutions were unable to share information with foreign FIs where required by previous Recommendations 7 and 9 without violating secrecy laws, and it pointed to inconsistencies of the provisions governing the powers of law enforcement bodies to obtain confidential data from FIs. The relevant provisions of the AML/CFT Law in this respect were amended since the 3rd round evaluation.

126. **Criterion 9.1.** FIs are required to maintain customer confidentiality, and are subject to data protection provisions. However, the AML/CFT Law and sectoral legislation which establish financial secrecy and data protection requirements include a range of provisions to prevent these obligations from inhibiting the implementation of the FATF Recommendations. Secrecy and data protection provisions do not affect the ability of competent authorities to access information they require to perform their AML/CFT functions and to share information among competent authorities, domestically and internationally.

127. There appears to be an inconsistency between the AML/CFT Law and the sector-specific laws concerning the sharing of information among FIs. The sectoral legislation provides very specifically when confidential data can be shared, and the circumstances for Recommendations 13, 16 and 17 are not listed as grounds for exception. The AML/CFT Law specifically states that providing information and documents by the reporting entity to a correspondent bank or a third party (in the case of reliance on third parties for CDD) does not constitute a breach of business, banking or professional secret (Art. 74). The authorities maintain that the AML/CFT Law is to be considered "*lex specialis*" and its application would therefore prevail. It is to be reiterated that, regardless of the explanation by the authorities, concerns remain regarding the sharing of information concerning wire transfers, as this area is not included in the aforementioned Art. 74 of the AML/CFT Law.

Weighting and Conclusion

128. Financial institution secrecy laws do not appear to inhibit the implementation of the FATF Recommendations except in the case of sharing of information between FIs on wire transfers. The unclear relation between the AML/CFT Law and sectoral legislation concerning the sharing among FIs of information covered by secrecy could also be an issue. **Recommendation 9 is rated Largely Compliant.**

Recommendation 10 – Customer due diligence

129. Serbia was rated PC with the previous Recommendation 5. The MER noted that no guidance on the risk-based approach had been provided for financial institutions regulated by the Securities Commission; that there was no explicit requirement for reporting entities 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; and it has not been adequately demonstrated that all financial institutions have implemented the standards of Recommendation 5, including the application of risk based approach. Some amendments were introduced to the AML/CFT Law since the previous mutual evaluation.

130. **Criterion 10.1.** Art. 34 of the AML/CFT Law clearly prohibits all reporting entities from opening or maintaining anonymous accounts for customers, issuing coded or bearer savings books or providing any other services that directly or indirectly allow for concealing customer's identity.

131. **Criterion 10.2.** With the exception of wire transfers, Art. 9 of the AML/CFT Law fully covers all the cases in which CDD is required by the FATF. For wire transfers, the full set of CDD requirements envisaged by Art. 8 of the AML/CFT Law would be applicable only if there is a suspicion of ML/FT or when the FI has doubts about the veracity or credibility of previously obtained data about a customer or beneficial owner (pursuant to Article 9). In addition, all wire transfers are covered by Art. 12B which requires FIs to identify and verify the identity of the wire transfer originator. This provision does not however cover the full set of CDD measures (such as gathering information on beneficial ownership), as well as it does not apply at all to the beneficiary of the wire transfer.

132. **Criterion 10.3.** Art. 8 of the AML/CFT Law requires reporting entities to identify and verify the identity of the customer. The definition of customer, however, does not include legal arrangements. Accordingly, legal arrangements are not covered for the purposes of all the following criteria of Recommendation 10. The requirement to use reliable and independent verification data applies to the verification of the customer's identity, and, albeit not explicitly, to the identification of the customer.

133. **Criterion 10.4.** Art. 13, Para. 4 sets a specific requirement to verify that a person acting on behalf of a customer as an empowered representative or a legal representative, both in the case of establishing a business relationship or carrying out a transaction, is so authorized and to identify and verify the identity of the representative. However this requirement applies only to customer's representatives who are natural persons (leaving out cases when a legal person would act as the client's representative).

134. **Criterion 10.5.** The requirement to identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner of a customer that is a natural or legal person is covered by a combination of provisions in the AML/CFT Law (Article 8(1)(3), Article 10(1) and Article 20). There is however no requirement (1) to verify the identity of the beneficial owner using the relevant information from a reliable source, (2) to identify (and verify the identity) of the beneficial owner of a customer that is a legal arrangement and (3) the requirement to verify the beneficial owner under Article 20 seems to be linked to the assessment of risk (Art. 20, Para 4 and Art. 88, Para 1, Item 16), which is not in line with the standard.

135. **Criterion 10.6.** The AML/CFT Law requires reporting entities to obtain information on the purpose and intended nature of a business relationship or transaction (Article 8 Para 1, Item 4), but not explicitly to understand the intended nature of a business relationship or transaction. However, this is implied by the requirement on on-going due diligence, which refers to the established purpose and intended nature of the business relationship (see below).

136. **Criterion 10.7.** a) The AML/CFT Law (Art. 8 Para. 1, Item 5, in combination with Articles 22 and 7) requires all reporting entities to monitor regularly business transactions of the customer, and check the consistency of the customer's activities with the nature of the business relationship and the usual scope and type of the customer's business transactions. This includes collecting information on the source of property involved in the business transactions; ensuring that

transactions are consistent with the established purpose and intended nature of the business relationship that the customer established with the reporting entity; conducting monitoring and ensuring that the business transactions of a customer are consistent with its normal scope of business and that the documents and customer data held by the reporting entity are up-to-date. These measures are required to be based on ML/FT risk of the client/business relationship/service offered.

137. b) Reporting entities are obliged to undertake on-going monitoring pursuant to Article 22(2)3 of the AML/CFT Law, which requires reporting entities to ensure that documents and data held about a customer are up-to-date. This provision is included as part of the requirement to monitor business transactions of the customer and it is not clear whether this would impact on the scope of its application. Whilst the definition of transaction in the AML/CFT Law is broad, it is not clear whether the requirement to ensure that data and documents are up-to-date is fully dependent on the monitoring of business transactions. It is therefore considered that, whilst this provision does not present a shortcoming with regard to the standards, a clearer wording of the requirement for on-going monitoring would be beneficial.

138. **Criterion 10.8.** The detailed requirements to identify beneficial owners of legal persons and arrangements, set an implicit obligation for FIs to understand to a certain extent the ownership and control structure of the legal person or arrangements in question. In addition, there is a general requirement in the AML/CFT Law (Art. 20, Para. 4) to identify the ownership and control structure of legal persons and arrangements, it is however linked to (and limited by) the risk assessment of the customer, which is not in line with the standard. There is therefore no explicit requirement to understand the control and ownership structure of legal persons or legal arrangements or to understand the nature of their business.

139. **Criterion 10.9.** Articles 15 and 81(1) of the AML/CFT Law require FIs to obtain business name, address, seat, registry number and tax identification number of legal persons. Nevertheless, the AML/CFT Law does not explicitly oblige FIs to obtain information on the type of legal entity, information on the powers that regulate and bind the legal person and the names of the persons having senior management positions. Identification is required of the legal and empowered representative of the legal person, as well as proof of the empowerment, however, this applies only in relation to the person establishing the business relationship or executing the transaction in question. The requirements do not seem to encompass legal arrangements.

140. **Criterion 10.10.** This requirement is implemented as part of the definition of a beneficial owner in article 3 (1) (11-13) of the AML/CFT Law, as described in criterion 10.5. Where these do not lead to the identification of the beneficial owner, the AML/CFT Law requires the FI not to enter into a business relationship or execute the transaction (Art. 8, Para. 2).

141. **Criterion 10.11.** As legal arrangements are not covered by the definition of customer, there is no requirement to identify beneficial owners of customers who are legal arrangements.

142. **Criterion 10.12.** Beneficiaries of insurance policies are considered under the AML/CFT Law as customers and, therefore, the general CDD requirements also apply to them. The sole specificity is set out in Article 10 of the AML/CFT Law, which provides for the possibility to verify the identity of a beneficiary of a life insurance after the conclusion of the contract, but requires that the verification occurs, at the latest, prior to the pay-out of the benefits. Nevertheless, apart from this provision, there is no requirement to identify the beneficiary of insurance policies as soon as designated, as required by c.10.12(a, b).

143. **Criterion 10.13.** There is no specific provision requiring financial institutions to consider the beneficiary of a life-insurance policy as a relevant risk factor.

144. **Criterion 10.14.** Identification and verification of the customers and beneficial owners are required before the establishment of a business relationship (art. 10, Para. 1) and the execution of a transaction exceeding EUR 15,000.

145. **Criterion 10.15.** This criterion is not applicable.

146. **Criterion 10.16.** The AML/CFT Law in Article 92 required reporting entities to apply the “actions and measures referred to in Article 6” with respect to customers with which it established business relationship before the entry into force of the Law within one year of the date of the entry into force of the Law. The general reference to “customer due diligence” refers to the application of the CDD requirements as set out in Articles 13 to 21 of the AML/CFT Law and therefore covers the full set of CDD measures. There is no reference that the application of these actions and measures should be done on the basis of materiality and risk, the rule-based approach requiring all customers to have been subject to CDD measures within one year of the entry into force of the Law is, however, considered as sufficient to ensure that the information held by the private sector was in accordance to the requirements of the new AML/CFT Law. The Serbian authorities maintain in this respect that the requirement applies to all customers.

147. **Criterion 10.17.** Financial institutions are required to apply EDD in higher risk situations specified in the AML/CFT Law. These are:

- 1) when establishing a LORO correspondent relationship with a bank or a similar institution having its seat in a foreign country which is not on the list of countries that apply the international standards against money laundering and terrorism financing at the level of European Union standards or higher, as per a list established by the Minister⁷⁶;
- 2) when establishing a business relationship or carrying out a transaction equal to or more than EUR 15,000 with a customer who is a foreign official;
- 3) when the customer is not physically present at the identification and verification of the identity.

148. In addition to these circumstances, reporting entities are required to apply EDD also when they assess that, due to the nature of the business relationship, form or manner of execution of a transaction, customer’s business profile or other circumstances related to a customer, there exist or there may exist a high level of ML or FT risk. The NBS has issued guidelines for FIs for assessing the risk (geographic, client, transaction and product). EDD measures for these additional circumstances are not defined, the Guidelines state that the nature of additional measures to be implemented by the reporting entity in the situation where a certain client is classified as high risk according to reporting entity’s risk assessment shall be defined in its internal procedures and applied by the reporting entity according to the concrete circumstances.

149. **Criterion 10.18.** Article 32 provides that, except when there are suspicions of ML or FT, reporting entities may apply simplified due diligence when establishing a business relationship or carrying out transactions equal or above EUR 15,000 in certain circumstances⁷⁷, as well as also in the cases when they assess that the nature of the business relationship, form or manner of the transaction, customer business profile, or other circumstances related to the client, poses slight or low level of ML or FT risk, in accordance with a regulation to be adopted by the Minister of Finance on the basis of Article 7, paragraph 3 of the Law. No such Regulation has been adopted; the Guidelines issued by the CBS for FIs do not include simplified due diligence measures. The circumstances established by the Law are based on a presumption of relatively low risk, without a

⁷⁶The list is included in Art. 22 of the Rulebook on Methodology for Implementation of the AML/CFT Law (“Official Gazette of RS”, nos. 7/210 & 41/2011), and includes European Union member states, Argentina, Australia, Brazil, Japan, South Africa, Canada, Mexico, New Zealand, Russia, Singapore, Hong Kong, Switzerland, and the United States.

⁷⁷1) financial institutions, except for insurance brokers and insurance agents;

2) financial institutions, except for insurance brokers and agents, from a foreign country on the list of countries that apply 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.

national or supranational analysis of risks associated with each category being produced, which would establish the lowest ML/FT risk. There are also blanket exceptions from conducting CDD (Art. 12 of the AML/CFT Law) which are also based on presumptions and do not appear to be underpinned by a specific evaluation of risk.

150. **Criterion 10.19.** Art. 8 of the AML/CFT Law states that where the reporting entity is unable to comply with CDD requirements it shall refuse to establish a business relationship, as well as the carrying-out of a transaction, and it shall terminate the business relationship if a business relationship has already been established. In addition, the reporting entity shall consider whether there is suspicion of ML/FT. Although there is not an explicit requirement to consider filing a STR, this can be inferred from the specific requirement to consider whether there is suspicion of ML or FT, together with the reporting obligation, which requires filing an SAR in every case of identified suspicion.

151. **Criterion 10.20.** No requirement concerning this criterion.

Weighting and Conclusion

152. In terms of scope, all the required sectors and activities are covered. There are some deficiencies, most of them of minor relevance. Some of them are, however, of more substantive nature, such as the incomplete requirements to undertake CDD with regard to wire transfers in all instances required by the standard, the lack of reference to legal arrangements in the definition of the customer, the limited definition of beneficial owner, which does not include the beneficial owner of a natural person; the verification measures for the beneficial owner, which are linked to risk; and the provisions providing for the simplified due diligence regime, which is not based on specific risk findings and includes blanket exemptions. **Recommendation 10 is rated Partially Compliant.**

Recommendation 11 – Record-keeping

153. Serbia was rated LC with the previous Recommendation 10. The MER noted the lack of 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), and concerns were raised with regard to the effectiveness of the implementation of this recommendation. The record-keeping requirements have not changed since the 3rd round evaluation. The requirements of the AML/CFT Law in this respect were implemented by the adoption of the Rulebook on Methodology for Implementing Requirements in Compliance with the AML/CFT Law (Official Gazette of RS no. 7/2010 and 41/2011).

154. **Criterion 11.1.** Article 77 of the AML/CFT Law requires reporting entities to keep data on executed transactions for 10 years following the execution of the transaction. Article 80, however, limits the scope of the record keeping obligation in the case of transactions, as, by virtue of a specific cross-reference to Article 9, the requirement applies only to transactions to which CDD measures would be applied (exceeding designated thresholds and in case of ML/FT suspicion), and to transactions reported to the FIU. In addition to the AML/CFT Law, all FIs are subject to comply with obligations set out by the Law on Accounting (Official Gazette of RS no. 62/2013), which requires records to be kept on all transactions (Article 24) and would, therefore, comprise also the transactions not covered by the AML/CFT Law.

155. **Criterion 11.2.** Article 77 of the AML/CFT Law requires reporting entities to keep the data and documentation that are obtained under the same Law concerning a customer, an established business relationship with a customer and an executed transaction for 10 years following termination of the business relationship or execution of the transaction. The content of this data and documentation are defined by Art. 81 and they amount to records obtained through CDD. The Rulebook on Methodology for Implementing Requirements in Compliance with the AML/CFT Law further requires in Article 12 that reporting entities keep records of data and information obtained pursuant to the AML/CFT Law, as well as documentation relating to such data and information. The

authorities stated that this general obligation would apply to all the requirements of criterion 11.2, it is however to be stressed that there is no explicit reference to “account files” or “business correspondence”, or an explicit requirement to keep records of any analysis undertaken (except for the case of failure to complete CDD). It cannot be therefore assured that these records would be kept in every case and that the authorities would have the power to impose sanctions if they were not kept.

156. **Criterion 11.3.** The content of records is set out in Article 81 of the AML/CFT Law, which is considered sufficiently detailed to permit reconstruction of individual transactions. In addition, Article 12 paragraph 1 of the Rulebook on Methodology for Implementing Requirements in Compliance with the AML/CFT Law requires reporting entities to keep electronic records of data and information obtained according to the AML/CFT Law and the Rulebook, as well as of documentation relating to such data and information, chronologically and in a manner which allows for adequate access to such data, information and documentation. As concerns the transactions not covered by the aforementioned provisions, the requirements set by the Law on Accounting are also sufficient to comply with c.11.3.

157. **Criterion 11.4.** Whilst there is no general requirement in this respect, this criterion appears to be covered by the different provisions of Serbian legislation. Pursuant to Article 53 of the AML/CFT Law, reporting entities shall send data contained in their records without delay to the APML, corresponding obligations for reporting entities to provide information in a timely manner is also in place in respect of supervisors (in the respective sectoral legislation) and law enforcement authorities (CPC) (for further detail, the reader is referred to the analysis under Recommendations 27 and 31). It is considered that this set of obligations implicitly requires FIs to ensure the timely availability of the data contained in the records held by them.

Weighting and Conclusion

158. The provisions of the AML/CFT Law, together with the Law on Accounting cover to a large extent the requirements of the record-keeping obligation, as required by the FATF Standards. It is to be noted that there is no express reference to “account files” or “business correspondence”, nor an explicit requirement to keep records of any analysis undertaken (except for the case of failure to complete CDD). The requirement to ensure that all CDD information and transaction records is available swiftly to domestic competent authorities is covered implicitly by the set of relevant legislation. **Recommendation 11 is rated Largely Compliant.**

Recommendation 12 – Politically exposed persons

159. Serbia was rated LC with the previous Recommendation 6. The MER noted that effective implementation was not demonstrated for this recommendation, stressing in particular the uneven implementation across sectors and FIs and the absence of guidance issued by the authorities in this respect. The FATF Standards have changed, but the Serbian legal framework has remained the same.

160. The AML/CFT Law contains requirements with regard to PEPs in relation to “foreign officials”, their family members and close associates. Foreign officials are defined as a natural person who holds or held in the past year a public office in a foreign country or international organisation. The definition further specifies by virtue of a demonstrative list who would be considered as such, however, none of these cases would be applicable to a prominent function in an international organization. In addition, the requirements do not apply to domestic PEPs and senior politicians. Also, it is considered that the one year time limit is not commensurate to the risk of corruption as predicate offence to ML noted by the NRA.

161. **Criterion 12.1.** Pursuant to Article 30 of the AML/CFT Law, reporting entities shall adopt internal procedures for determining whether a customer or the beneficial owner is a PEP, in line with guidelines issued by competent supervisors. It is to be noted that guidelines in this respect were issued only for the reporting entities subject to supervision of the NBS and Securities

Commission⁷⁸. Article 30 further sets out the enhanced CDD measures that should be applied to PEPs, these include all requirements of c.12.1, except for the requirement to establish the source of wealth. Also, in order to establish the origin of the property, reporting entities can rely on documents provided by the customer, or, if obtaining documents is not possible, on a written statement of the customer on the origin of the property.

162. **Criterion 12.2.** The definition above of “foreign official” also refers to persons who hold or held in the past year a public office in an international organisation. Whilst a demonstrative list is provided with regard to foreign state officials, no further specification or guidance is provided as to what should be understood as “holder of a public office in an international organisation”. It therefore appears that this provision is not sufficient to be considered as a clear directly applicable requirement in this respect. There are no requirements concerning domestic PEPs.

163. **Criterion 12.3.** The EDD measures described under criterion 12.1. apply also to family members and close associates of foreign PEPs, as they are considered as foreign PEPs for the purposes of the AML/CFT Law. As domestic PEPs and persons entrusted with a prominent function by an international organisation are not covered by the AML/CFT Law, no requirements are in place for their family members or close associates.

164. **Criterion 12.4.** Beneficiaries of insurance policies are considered under the AML/CFT Law as customers and therefore the same requirements apply to them as described above.

Weighting and Conclusion

165. Additional requirements are foreseen by the AML/CFT Law to be applied with regard to foreign PEPs. Several shortcomings can be noted with regard to the requirements of Recommendation 12: the PEPs definition in the law does not include senior politicians, domestic PEPs are not covered; the lack of a definition of persons who are or have been entrusted with prominent functions in an international organization makes the requirement difficult to apply in the case of PEPs of international organization; no requirement to establish the source of wealth; guidelines were not issued for all FIs to determine whether a customer or beneficial owner is a PEP. The one year timeframe further restricts the applications of EDD and is not commensurate to the risk identified by the NRA or underpinned by RBA. **Recommendation 12 is rated Partially Compliant.**

Recommendation 13 – Correspondent banking

166. Serbia was rated PC with the previous Recommendation 7. The MER noted that FIs were not required to document AML/CFT responsibilities between correspondent institutions and it pointed to the lack of implementation of controls by FIs, except, to a certain extent, by the banking sector. The FATF Standards have changed, but the Serbian legal framework has remained unchanged since the previous MER.

167. The AML/CFT Law distinguishes between “LORO” and “NOSTRO” correspondent relationships. The distinction is based on which institution commences the opening of the corresponding account⁷⁹. EDD requirements apply only to the “LORO” correspondent relationships.

⁷⁸ NBS Decision on the Guidelines for Assessing the Risk of ML and FT and Securities Commission Guidelines on the Application of the AML/CFT Law for Entities Supervised by the Securities Commission

⁷⁹ Art. 3, 15) *Loro correspondent relationship* means 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.

Art. 3, 16) *Nostro correspondent relationship* means 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.

Pursuant to the AML/CFT Law, EDD requirements apply only to relationships with FIs that are not on the list of countries that apply the international AML/CFT standards at European Union level or higher. This is not in line with the FATF standards, which requires EDD for cross-border correspondent banking in all cases (and not based on risk, as the risk for this service is automatically presumed to be higher).

168. **Criterion 13.1.** Pursuant to Article 29 of the AML/CFT Law, reporting entities are required to apply the majority of the measures prescribed by c.13.1. However, these measures do not require the understanding of the nature of respondent's business and they do not amount to determine the quality of supervision (the requirement is to obtain a written statement that the bank is under supervision by the competent state body) or the reputation, including whether the FI has been subject to a ML/FT investigation or regulatory action. Information shall be gathered on the AML/CFT measures applied by the respondent, the Law does not however require an assessment thereof.

169. **Criterion 13.2.** Article 29(6) of the AML/CFT Law prohibits reporting entities to establish LORO correspondent relationships with foreign FIs, based on which clients of the foreign FI would be able to directly use the account with the reporting entity.

170. **Criterion 13.3.** Article 29(4 and 5) of the AML/CFT Law prohibits FIs to establish or continue a correspondent relationship if the respondent operates as a shell bank, or if it establishes correspondent or other business relationships or carries out transactions with shell banks.

Weighting and Conclusion

171. The AML/CFT Law requires FIs to apply a number of EDD measures to correspondent relationships, however, these do not amount to the full scope of the FATF requirements. In addition, application of the provisions is limited only to correspondent relationships with FIs that are not included on a list of countries that are deemed to apply AML/CFT standards at EU level or higher. Measures in place in respect of payable-through accounts and shell banks are compliant with the FATF Standards. **Recommendation 13 is rated Partially Compliant.**

Recommendation 14 – Money or value transfer services

172. Serbia was rated PC with the previous Special Recommendation VI. The MER pointed to issues of technical compliance cascading from several other recommendations; to the fact that Post Office branches were not subject to AML/CFT supervision in practice and that no specific requirement was in place for money transfer service providers to maintain a current list of agents, which must be available to the designated competent authority. The FATF Standards have changed since the adoption of the previous MER, and a new LPS has entered into force.

173. **Criterion 14.1.** Art. 82 of the LPS requires an undertaking that intends to provide MVTS to obtain a license from the NBS in order to undertake such activities.

174. **Criterion 14.2.** Art. 182 of the LPS provides that if there are doubts as to whether a natural or legal person is providing MVTS without a licence, the NBS may verify whether that person is acting in contravention of the law. In such instance, the NBS issues a cease and desist order, and a fine ranging from RSD 100,000 (appr. EUR 829) to 5,000,000 (appr. EUR 41,480) for legal persons and from RSD 30,000 (appr. EUR 248) to 1,000,000 (appr. EUR 8,290) for the responsible persons in that legal person or for natural persons. If the cease and desist order is not complied with the NBS can initiate a court-ordered winding up of the entity. The minimum pecuniary fines do not appear to be dissuasive or proportionate, particularly in the case of legal persons.

175. **Criterion 14.3.** Pursuant to Article 84 of the AML/CFT Law, payment institutions are subject to AML/CFT monitoring by NBS and the Post Office by the Foreign Currency Inspectorate of the Tax Administration.

176. **Criterion 14.4.** Art. 102 of the LPS requires agents of MVTS providers to be included in a register of payment institutions, which is maintained by the NBS.

177. **Criterion 14.5.** There is no such legislative requirement. It is to be noted in this respect that the only entities operating in Serbia as agents of MVTSPs are banks and the Post Office.

Weighting and Conclusion

178. The newly adopted LPS significantly increased the level of compliance of the framework with regard to MVTSPs in Serbia. Only some remaining shortcomings can be noted, the most relevant of which is the fact that the full set of obligations for MVTSPs in respect of their agents is not covered. **Recommendation 14 is rated Largely Compliant.**

Recommendation 15 – New technologies

179. Serbia was rated LC with the previous Recommendation 8. The MER noted that the requirements to consider new technologies do not apply to all FIs and that, having recently been introduced; further guidance and monitoring were needed before the requirements could be assessed as fully implemented.

180. **Criterion 15.1.** Art. 29A of the AML/CFT Law requires reporting entities to pay special attention to the ML or FT risk arising from the application of new technologies that may allow for client anonymity (e.g. e-banking, use of ATMs, telephone banking, etc.). This requirement is reiterated in the Securities Commission Guidelines on the Application of the AML/CFT Law (applicable to FIs supervised by the Securities Commission). The NBS Decision on Minimum Contents of the “Know Your Client” Procedure (applicable for FIs subject to supervision of the NBS) requires FIs to undertake a risk assessment, which inter alia, shall also encompass the type of products and services offered by the reporting entity with a special focus on the introduction and application of new technologies and to take into consideration in particular the possible related ML/FT risks. Detailed requirements for the assessment of risk connected to new products are set out in the NBS Decision on Risk Management by Banks, this Decision is however applicable only to banks. It is not clear whether the requirement applicable to the financial institutions supervised by the NBS applies to a full extent to new business practices. As concerns other financial institutions, the requirements do not require assessment of new products and business practices.

181. **Criterion 15.2.** There is no explicit requirement that the risk assessment should be undertaken prior to the launch of the new products, with the exception of the banking sector⁸⁰. This may be inferred, though, from the NBS Decision on KYC Procedure, which requires that the risk assessment should have a special focus “on the introduction” of new technologies. This Decision is, however, applicable only to entities supervised by the NBS and no similar requirements are in place for other FIs. It is important to note in this respect that other FIs and DNFBBs on the Serbian market generally do not offer complex products. Article 29 of the AML/CFT Law requires all the reporting entities to introduce procedures and take additional measures to eliminate the risks posed by and to prevent the misuse of new technologies for the purposes of money laundering or financing of terrorism.

Weighting and Conclusion

182. The AML/CFT Law requires special attention to be paid to the use of new technologies and the potential ML/FT risks associated with them. Detailed obligations to undertake risks assessments prior to introducing new products and to adopt measures to manage and mitigate the identified risks are in place for banks. With regard to other FIs under the supervision of the NBS and FIs under the supervision of the Securities Commission, bylaws issued by the authorities are more general and

⁸⁰Explicit detailed requirements in this respect are foreseen only in respect of banks in the Decision on Risk Management by Banks in Item 73 which states that before introducing a new product or service a bank must assess all risks that may arise as a consequence of the introduction of that product or service, including the risk of ML and TF. Before making a decision to launch the new product/service, the bank must take into consideration the results of that assessment.

similar requirements are included therein only implicitly. No bylaws were issued for other FIs. **Recommendation 15 is rated Largely Compliant.**

Recommendation 16 – Wire transfers

183. Serbia was rated PC with the previous Special Recommendation VII. The MER noted a number of deficiencies: no requirements for financial institutions to adopt effective risk-based procedures for identifying and handling wire transfers not accompanied by complete originator information and to verify the identity of the originator; full originator information was not obtained in the case of domestic payment transactions and was not included in the message or payment order accompanying the transfer; lack of sanctions and of mechanisms to ensure compliance of MVTS. Significant changes were made to the requirements in this area during the revision of the FATF Standards. The Serbian legislation was also amended in this respect since the previous MER.

184. The AML/CFT Law (Art. 12C) provides exceptions to the application of wire transfers requirements that are not in line with the standard, such as in the case of paying taxes, fines and other public payments or in the case in which the originator withdraws the funds from his own account. Also, in the case of credit card payments, which are exempted in line with the standard, it is not clear that the credit card number should accompany all transfers flowing from the transactions.

185. **Criterion 16.1.** FIs are required (Art. 12A of the AML/CFT Law) to collect accurate and complete data on the originator and include it in the form or message accompanying the incoming or outgoing wire transfer, regardless of a threshold and of whether the transfer is cross border or domestic. The originator data includes name and surname of the wire transfer originator; address of the wire transfer originator, account number of the wire transfer originator or the unique identifier⁸¹. If the address of the originator cannot be obtained, it can be replaced by place and date of birth of the wire transfer originator; national ID number of the wire transfer originator and unique identifier. The information collected on the originator shall be verified pursuant to Article 12B. There is no requirement concerning beneficiary information.

186. **Criterion 16.2.** As described above, full originator information shall accompany the wire transfer throughout the entire payment chain. There are no requirements related to beneficiary information. No provisions specifically in relation to batch files.

187. **Criterion 16.3.** The requirements apply to both domestic and cross border, there is no *de minimis* threshold, except when wire transfers are done outside a bank account relationship (threshold is 1000 EUR); however no requirements concerning beneficiary information.

188. **Criterion 16.4.** Art. 12B (3) requires FIs to fulfil wire transfers requirements always when there are reasons for suspicion on ML or FT, regardless of the amount of the wire transfer, however the verification requirements concern only the identity of the originator.

189. **Criterion 16.5.** The wire transfers requirements apply equally to domestic and cross border wire transfers. The required originator information must always accompany the wire transfer throughout the entire payment chain.

190. **Criterion 16.6.** The required originator information must always accompany the wire transfer throughout the entire payment chain.

191. **Criterion 16.7.** FIs are required to maintain the originator information as part of the general record keeping requirement, which applies to all information obtained by reporting entities pursuant to the AML/CFT Law. However, the criterion is not met as regards beneficiary information.

⁸¹ Art. 3(34) “*Unique identifier* means a combination of letters, numbers and signs determined by the payment and collection service provider in accordance with the payment and collection system protocols or system of messages used in money transfers”.

192. **Criterion 16.8.** Art. 12B (4) of the AML/CFT Law prohibits FIs to execute the wire transfer if the wire transfer does not contain accurate and complete data, as required by the AML/CFT Law, this does not however include information on the beneficiary.
193. **Criterion 16.9.** The wire transfers requirements apply equally to domestic and cross border wire transfers. The required originator information (but not the beneficiary's) must always accompany the wire transfer throughout the entire payment chain, including for intermediary FIs.
194. **Criterion 16.10.** The required originator information (but not the beneficiary's) must always accompany the wire transfer throughout the entire payment chain, irrespective of whether it is a domestic or cross-border transfer. Should this not be possible, the FI cannot execute the transfer. The information connected to the transfer is subject to the general record-keeping period of 10 years.
195. **Criterion 16.11.** The requirement is indirectly met by the requirement for FIs to obtain missing data about the originator pursuant to Article 12B(4) and, if they cannot and the wire transfer does not contain accurate and complete data, not to execute it. However, this does not include beneficiary information.
196. **Criterion 16.12.** There are no specific provisions requiring an intermediary financial institution to implement a risk-based approach to define the steps to be taken if the required information is not sent with the transfer, but here is a general prohibition to execute wire transfers if the originator information is not accurate or complete (Art 12B (4) of the AML/CFT Law). They are also required to take appropriate follow-up action (termination of business relationship with the other payment and service provider) in cases where this is repeated. This requirement does not include beneficiary information.
197. **Criterion 16.13.** Article 12B(4) applies equally to intermediary institutions. See above analysis under Criterion 16.11.
198. **Criterion 16.14.** No requirement to identify and verify the identity of the beneficiary.
199. **Criterion 16.15.** FIs are required in all cases to obtain missing data about the originator and, if they cannot and the wire transfer does not contain accurate and complete data, they are prohibited to execute it. They are also required to take appropriate follow-up action (termination of business relationship with the other payment and service provider) in cases where this is repeated. This does not include beneficiary information.
200. **Criterion 16.16.** MVTS are subject to the AML/CFT law, including provisions on wire transfers. No specific provision indicates that agents of MVTS are subject to these requirements.
201. **Criterion 16.17.** Firstly, FIs are required to consider all available information in order to establish whether there is a suspicion of ML/FT and should this be the case, to file an SAR. In addition, all FIs are required to consider whether the lack of accurate and complete data on the wire transfer originator constitutes reasons for suspicion of ML or FT, and to maintain a record thereof (Art. 12B (6)). This requirement, read together with the reporting obligation, obliges the FI to file an STR in case of identified suspicion. In cases where the MVTS operator controls both the sending and receiving end of the transfer, there is no specific obligation in Serbian law or regulation to file an STR in any other country. If the MTVS in the other country is a branch or subsidiary of a MTVS subject to Serbian legislation, Art. 38 of the AML/CFT Law on branches and subsidiaries in foreign countries apply.
202. **Criterion 16.18.** MVTS are subject to the requirements of the Law on Freezing Assets with the Aim of Preventing Terrorism. It is to be noted that the shortcomings identified under the general framework put in place for the implementation of UN targeted sanctions regime, however, consequently impact on the compliance of c.16.18. For further information in this respect, the reader is referred to the analysis under Recommendation 6.

Weighting and Conclusion

203. The AML/CFT Law contains a comprehensive framework regulating the execution of wire transfers. Its overall compliance with the FATF Standards is, however, significantly affected by the complete lack of requirements related to beneficiary information. **Recommendation 16 is rated Partially Compliant.**

Recommendation 17 – Reliance on third parties

204. Serbia was rated LC with the previous Recommendation 9. The only issue noted by the MER is that authorities had not yet determined the countries where foreign third parties could be based, on which reliance could be placed. The revised FATF requirements emphasize the importance of third party's country risk. The Serbian legal regime has not changed, and reference can be made to the analysis of the previous MER.

205. **Criterion 17.1.** Pursuant to Article 23 of the AML/CFT Law, reporting entities can rely on certain types of financial institutions to perform some elements of CDD measures when establishing a business relationship. Article 23(5) stipulates that relying on a third party to perform CDD measures does not exempt the reporting entity from responsibility for the proper application of CDD measures. As concerns the requirements stipulated by c.17.1 (a) and (b), Article 26 prohibits the reporting entity to establish the relationship without having previously obtained CDD data on the customer, as well as copies of the relevant documentation.

206. As regards 17.1 (c), the AML/CFT Law requires reporting entities to ensure beforehand that the third party that is being relied on meets all the conditions laid down in the AML/CFT Law, and Article 23(2)3 specifically requires that CDD measures are applied and records kept. The Law also requires that the third party has to be regulated and supervised for compliance with the aforementioned.

207. **Criterion 17.2.** Article 24(2) prohibits reporting entities to rely on a third party to perform certain CDD measures if the third party is from a country which is on a list of countries that do not apply standards against ML and FT. Currently the list includes Iran and North Korea.

208. **Criterion 17.3.** The third party reliance requirements apply to all reporting entities and do not contemplate a different regime in the case in which the reporting entity relies on a third party that is part of the same financial group.

Weighting and Conclusion

209. The main deficiencies concern the requirements to obtain CDD-related information and documents without delay, which rely in certain situations primarily on the third party rather than on the relying party, as required by the standard. **Recommendation 17 is rated Compliant.**

Recommendation 18 – Internal controls and foreign branches and subsidiaries

210. Serbia was rated PC with the previous Recommendation 15 and LC with the previous Recommendation 22. As regards former Recommendation 15, the MER noted the exemption from the requirement to designate a compliance officer for FIs with less than 4 employees; the lack of a requirement to have in place screening procedures for employees and a number of issues of effectiveness; as regards former Recommendation 22 the MER noted an issue of implementation of AML/CFT requirements in the case of foreign branches and subsidiaries. Changes to the Law were introduced to address these shortcomings. In addition, the Rulebook on Methodology for Implementing Requirements in Compliance with the AML/CFT Law, issued in 2011, provides further details on the obligations in this respect.

211. **Criterion 18.1.** Reporting entities are required to adopt internal policies and procedures for CDD, record-keeping, and other AML/CFT obligations, including undertaking a risk assessment. On the specific elements set out in the criterion:

- a) The AML/CFT Law (Art. 39-41) requires reporting entities to have compliance arrangements, including a compliance officer. Although there is no specific reference that the compliance officer be at the management level, this can be implied by the requirement that s/he be employed in a position with powers allowing for an effective, efficient and quality performance of all tasks laid down in the Law and by the requirement to report directly to the top management of the institution.
- b) Art. 44A requires reporting entities to have screening procedures in place when hiring employees to ensure lack of criminal convictions and high professional and moral qualities.
- c) Art. 43 requires reporting entities to have on-going employee training programs;
- d) Art. 44 requires reporting entities to provide for a regular internal control of execution of tasks for the prevention and detection of ML and FT.

212. **Criterion 18.2.** Pursuant to Article 127 of the Law on Banks, banking groups are required to have procedures for internal audit and internal controls, as well as risk management procedures. It is however not clear whether the latter would also extend to AML/CFT risk. Apart from these provisions applicable only to banks, there is no requirement for FIs to implement group-wide programs, or provisions to address (a), (b) and (c) of this criterion on a group-wide level.

213. **Criterion 18.3.** Art. 38 of the AML/CFT Law requires reporting entities to ensure that the actions and measures for the prevention and detection of ML and FT envisaged by the Law are applied to the same extent in its branches and majority-owned subsidiaries located in a foreign country, unless this is explicitly contrary to the regulations of such country. If the foreign country does not permit so, the reporting entity is required to inform immediately the FIU, and adopt appropriate measures to eliminate the risk of ML and FT.

Weighting and Conclusion

214. Serbian legislation requires FIs to implement a comprehensive range of AML/CFT programmes, as well as it obliges them to ensure that their foreign branches and subsidiaries apply sufficient AML/CFT measures. Nevertheless, no provision is in place requiring an application of AML/CFT programmes on a group-wide basis. **Recommendation 18 is rated Partially Compliant.**

Recommendation 19 – Higher-risk countries

215. Serbia was rated LC with the previous Recommendation 21. The evaluators noted that, at the time of the 3rd round evaluation, the implementation of new requirements of the AML/CFT Law concerning high-risk countries was not demonstrated.

216. The AML/CFT Law foresees the existence of two lists in this respect: a) a list of countries, which do not apply standards against ML and FT (“black list”)⁸², and b) a list of countries that apply the international standards against ML and FT at the level of EU standards or higher (“white list”)⁸³. Both lists shall be established by the minister competent for finance. In practice, the lists are contained in the Rulebook on Methodology for Implementing Requirements in Compliance with the AML/CFT Law⁸⁴. It is to be noted that the establishment of the lists within the Rulebook, adopted by the Minister of Finance, leads to concerns on the timeliness of the procedure to update the list in case of new international developments. The last time the Rulebook was amended was in 2011.

⁸² Articles 24(2), 32(1)2 and 88(1)18 of the AML/CFT Law

⁸³ Articles 28(1)1, 29(1) and 88(1)20 of the AML/CFT Law

⁸⁴ Official Gazette of RS no. 7/2010 and 41/2011

217. **Criterion 19.1.** There is no specific requirement in the AML/CFT Law to apply enhanced CDD to business relationships or transactions with persons from countries for which this called for by the FATF. There is, however, a general requirement to apply enhanced CDD where the reporting entity, at its own discretion, determines that a business relationship or transactions poses (or may pose) a higher ML/FT risk. Guidelines for all financial institutions (except for currency exchange offices), specify that higher risk may be posed by customers from countries identified by credible institutions (FATF, Council of Europe, etc.) as not implementing adequate measures for combating money laundering and terrorism financing. This partly covers the requirement under this criterion, since it is left up to the discretion of the financial institution rather than imposing a mandatory requirement.

218. **Criterion 19.2.** There are no provisions enabling the application of countermeasures when decided so by the state authorities or to transpose a call for such measures by international organisation. This could be done only by amending the legislation.

219. **Criterion 19.3.** The APML publishes public statements issued by the FATF and MONEYVAL on its website and circulates these statements to the reporting entities via email . The APML also publishes overviews of its strategic analysis, which would include typologies connected with higher-risk countries, and it also includes information on higher-risk countries in the trainings and awareness raising activities provided to the private sector.

Weighting and Conclusion

220. Business with a person from a jurisdiction included on international lists of high-risk countries is stipulated in the relevant bylaws as a factor FIs should consider when assessing risk. When a FI considers risk to be high, it shall apply EDD measures. It is however to be stressed that the application of EDD measures fully depends on the assessment of risk undertaken by the FI and its discretion. In addition, no countermeasures are foreseen by the legislation to be applied when deemed necessary and this could be done only by amending the legislation. **Recommendation 19 is rated Partially Compliant.**

Recommendation 20 – Reporting of suspicious transaction

221. Serbia was rated LC with the previous Recommendation 13 and Special Recommendation IV due to the lack of adopted indicators by certain reporting entities both for money laundering and terrorist financing, lack of clarity for the adoption of criteria for reporting suspicious operations (insufficient guidelines and no significant input from the reporting entities) and lack of understanding of the reporting requirements and low level of reporting by the non-banking financial sector.

222. **Criterion 20.1.** The reporting requirement under Article 37 of the Serbian AML/CFT Law requires reporting entities to file an SAR when there are reasons for suspicion of money laundering and terrorist financing. At the same time the law provides for a separate definition of the money laundering for the purposes of the preventive measures, which is broader than the ML definition in the CC, and includes (amongst others) possession of funds that are proceeds of a criminal offence (without any knowledge required by the person). The requirement to file promptly the report is fulfilled through the specific requirements of the law (the report shall be filed before the transaction and immediately after learning of the reasons for suspicion, justification shall be provided should the report be filed after the transaction).

223. **Criterion 20.2.** No threshold is specified either in the law or the indicators published at the APML web site. Article 37, Paragraph 3 also explicitly extends the reporting obligation to planned transactions, irrespective of whether or not they have been carried out.

Weighting and Conclusion

224. All financial institutions are required to report to the APML when suspecting ML or FT, including in cases of attempted transactions. **Recommendation 20 is rated Compliant.**

Recommendation 21 – Tipping-off and confidentiality

225. Serbia was rated PC with the previous Recommendation 14 based on the lack of protection of financial institutions from criminal liability, the lack of prohibition for tipping-off when preparing to report a suspicion and the insufficient sanctions for tipping-off. This situation has been remedied through subsequent amendments of the legislation.

226. **Criterion 21.1.** Article 75 of the AML/CFT Law provides for protection from liability for any damage to customers or third parties as well as protection from disciplinary or criminal liability for breach of the obligation to keep the business, banking or professional secrets when applying the required measures under the AML/CFT Law. The law does not provide explicit protection regardless of whether the reporting entity and its employees knew precisely what the underlying criminal activity had been, and regardless of whether illegal activity had actually occurred. Nevertheless, the protection covers all instances of sending data, information and documentation in accordance with the AML/CFT Law and the requirement therefore appears to be covered. There are no legal provisions to protect the anonymity of the person submitting the STR when disclosing information to the competent body under Article 59 of the AML/CFT Law.

227. **Criterion 21.2.** The prohibition required by this criterion is introduced through Article 73 of the Law. Sanctions for cases of violation are provided in Art. 88 of the AML/CFT Law.

Weighting and Conclusion

228. **Recommendation 21 is rated Compliant.**

Recommendation 22 – DNFBPs: Customer due diligence

229. Serbia was rated NC with the previous Recommendation 12. Some deficiencies were identified in relation to the specific CDD regime applied to DNFBPs and significant concerns were formulated above all about the implementation and effectiveness of the framework by the DNFBP sectors. Some amendments were introduced to the AML/CFT Law since the previous MER.

230. **Criterion 22.1.** With the exception of notaries and TCSPs, all other categories of DNFBPs are covered by the AML/CFT Law. The types of DNFBPs and the activities subject to CDD requirements include casinos (including internet casinos), natural and legal persons providing on a professional basis intermediation in real estate transactions, accounting services and tax advising (Art. 4 of the AML/CFT Law). Lawyers (individual lawyers and lawyers partnerships) are subject to the AML/CFT requirements when: i) assisting in planning or executing transactions for a customer concerning the buying or selling of real estate or a company, managing customer assets, opening or disposing of⁸⁵ a bank account, collecting contributions necessary for the creation, operation or management of companies, or creating, operating or managing a person under foreign law; and ii) carrying out, on behalf of or for a customer, any financial or real estate transaction (Art. 48 of the AML/CFT Law).

231. Art. 36 of the AML/CFT Law prohibits any person selling goods or services in Serbia from accepting cash payments of EUR 15.000 or more, making dealers in precious metals and stones legitimately not subject to the AML/CFT Law. Notaries public were introduced in the Serbian framework in practice in 2014 by the Law on Public Notary (RS Official Gazette No 31/2011, 85/2012, 19/2013, 55/2014 – other law, 93/2014 – other law, 121/2014, 6/2015 and 106/2015) which regulates the organisation, operations, manner and conditions for work and other issues of relevance for this sector. At the time of the on-site visit, the AML/CFT Law did not apply to notaries⁸⁶. Finally, the AML/CFT framework does not apply to trust and company service providers.

⁸⁵The authorities clarified that this includes both the managing and the closing, depending on the authority given to the lawyer by the client.

⁸⁶ The evaluation team was presented with draft amendments to the AML/CFT law which include notaries public in Article 4 of the AML/CFT Law as reporting entities. These amendments were not adopted at the time of the on-site visit.

The authorities explained that trust and company service providers are not recognized by the legislation as a separate business; however, one of the services provided by lawyers and subject to the AML/CFT law is “creation, operation and management of a person under foreign law”, which could include trusts and other legal arrangements.

232. CDD requirements prescribed by the AML/CFT Law apply equally to all reporting entities, including DNFBPs and the analysis under Recommendation 10 applies therefore also to the CDD requirements in respect of DNFBPs. Apart from the general requirements, there is a special provision for casinos (Art. 19 of the AML/CFT Law) which requires identification and verification of a customer upon entry to the casino. Overall, the shortcomings identified under Recommendation 10 are also relevant for compliance with Recommendation 22, in particular the lack of obligation to identify beneficial owners of natural persons.

233. The requirement in Article 19 applies to the customer, but there is no reference to beneficial owner. No additional requirements are in place which would ensure that casinos are able to link CDD information for a particular customer to the transactions that the customer conducts in the casino, as required by the FATF Standard.

234. The AML/CFT Law foresees a special regime for application of preventive measures by lawyers. The conditions for the application of CDD measures are set out in Article 47 and they broadly mirror the general CDD requirements. The obligation to identify and verify the identity of beneficial owners also applies only in the case of legal persons and arrangements, but not in the case of beneficial owner of clients who are natural persons, which is not in line with the standard.

235. **Criterion 22.2.** See Recommendation 11 for a description of record keeping requirements and deficiencies noted by the analysis.

236. **Criterion 22.3.** See Recommendation 12 for a description of PEP-related requirements and deficiencies noted by the analysis.

237. **Criterion 22.4.** See Recommendation 15 for a description of requirements concerning new technologies and deficiencies noted by the analysis. **It appears that no guidance has been issued for DNFBPs concerning risks arising from new technologies.**

238. **Criterion 22.5.** See Recommendation 17 for a description of requirements concerning reliance on third parties and deficiencies noted by the analysis.

Weighting and Conclusion

239. The preventive measures foreseen by the AML/CFT Law apply equally to FIs and DNFBPs, with some additional specific provisions applicable to lawyers and casinos. With the exception of notaries and TCSPs, all DNFBP sectors, as required by the FATF Standards, are covered as reporting entities by the AML/CFT Law. The deficiencies identified under Recommendations 10, 11, 12, 15 and 17 are therefore also relevant for compliance with Recommendation 22. **Recommendation 22 is rated Partially Compliant.**

Recommendation 23 – DNFBPs: Other measures

240. Serbia was rated NC with the previous Recommendation 16. The MER noted a number of issues of technical compliance (mainly cascaded from other recommendations), as well as concerns related to implementation and effectiveness. Some provisions have changed since the adoption of the previous MER.

241. **Criterion 23.1.** DNFBPs are required to report suspicious transactions (STR) based on the same provisions of the AML/CFT Law as FIs. The analysis under Recommendation 20 is therefore equally applicable in the context of Recommendation 23. It is to be noted that the obligation does not apply to notaries and TCSP, which are not covered by the AML/CFT Law as reporting entities. There is a special reporting regime for lawyers set out in Article 48 of the AML/CFT Law, which broadly mirrors the general reporting obligation. Article 49 contains a legal privilege-based exemption to the reporting obligation by lawyers, which is in line with the FATF standards.

242. **Criterion 23.2.** See Recommendation 18 (internal controls and foreign branches and subsidiaries) for a description of these requirements. The internal controls requirements applied to DNFBPs are the same as those for financial institution.

243. **Criterion 23.3.** See Recommendation 19 (higher risk countries) for a description of these requirements.

244. **Criterion 23.4.** See Recommendation 21 (tipping off and confidentiality) for a description of these requirement and noted deficiencies. There is one additional element that clarifies that the tipping off prohibition does not apply where the lawyer, auditing company, licensed auditor, legal or natural person offering accounting services or the services of tax advice attempt to dissuade a customer from illegal activities (Art. 73 (2) (3) of the AML/CFT Law). This is consistent with footnote no. 48 of the Methodology.

Weighting and Conclusion

245. The obligations prescribed by the AML/CFT Law applicable to DNFBP sectors are identical with the obligations to which are subject FIs, with some specific provisions concerning lawyers. The analysis under Recommendations 18 to 20 is therefore applicable, and the shortcomings identified therein also negatively impact on compliance of Recommendation 23. It is to be noted that notaries and TCSPs are not covered by the AML/CFT Law as reporting entities and are therefore not subject to any of the requirements described above. **Recommendation 23 is rated Partially Compliant.**

Recommendation 24 – Transparency and beneficial ownership of legal persons

246. In its 3rd round report Serbia was rated partially compliant for Recommendation 33. The existing system did not achieve adequate transparency regarding the beneficial ownership and control of all legal persons.

247. **Criterion 24.1.** The main types of legal (and business) entities in Serbia are general partnerships, limited partnerships, limited liability companies, joint-stock companies, branches, representative offices of foreign companies, business associations, socially owned companies, public companies, cooperatives and cooperative federations. Business associations and socially owned companies can no longer be formed. An overview of different types and forms of business entities, as well as guidance on setting up a business entity structured as a legal person and on registering basic information has been issued by the Chambers of Commerce and Industry of Serbia through a publication available on the Internet⁸⁷. The process for the creation of legal persons and for obtaining and recording basic ownership information is provided under the Law on Companies (which also includes partnership structures as companies), the Law on Enterprises, the Law on Public Enterprises, the Law on Cooperatives, the Law on the Procedure of Registration with the Serbian Business Registers Agency and the Rulebook on the Content of the Business Entities Register and Documents Required for Registration. Under Article 3 of the Law on Companies, a company acquires legal personality by registering with the Register of Business Entities administered by the Serbian Business Registers Agency (SBRA), which is a centralized, electronic database. All registered data held by the SBRA is public and can be accessed on the Internet.

248. The AML/CFT Law sets out the requirements for obtaining and recording beneficial ownership information.

249. **Criterion 24.2.** The 2013 National Risk Assessment on ML assessed vulnerabilities of the financial and non-financial sectors. The NRA contains a partial assessment of legal persons, particularly in relation to tax evasion, which is noted as one of the most widespread forms of financial non-compliance among legal persons. There has not been a comprehensive assessment of the ML/FT risks associated with all types of legal persons.

⁸⁷Guide for Establishing a Company in Serbia, Legal Framework - Sectoral Licenses - Procedure <http://www.pks.rs/SADRZAJ/Files/CMIP/vodiceng%20maj%202014.pdf>

250. **Criterion 24.3.** Registration provisions are included in Article 3 of the Company Law. Under Article 6 of the Law of the Procedure of Registration with the SBRA and Article 4 and subsequent Articles of the Rule Book on the Content of the Business Entities Register and Documents Required for Registration, the basic information specified in criterion 24.3 is required by the SBRA and made public. In relation to joint stock companies, Article 248 of the Law on Companies and Article 228 of the Law on Capital Market establish that the Central Securities Depository maintains public information on the shareholders of such companies. The Tax Administration also publishes the names of members of legal persons on its website.

251. **Criterion 24.4.** Articles 5, 8, 11, 19, 22, 94, 110, 127, 143, 144, 240 and 464 of the Law on Companies provide for the maintenance of basic information by companies (including partnership structures) and registration. In addition, Articles 18, 19, 32, 74, 77 and 78 of the Law on Cooperatives (cooperatives and cooperative federations) and Articles 11, 13, 17 and 28 are relevant to and cover the basic ownership information maintained by these legal persons.

252. As concerns the requirement to keep a register of members/shareholders, limited liability companies (Article 240) keep a list of members and their place of residence, as well as the number of shares held. As with joint stock companies (Article 265), categories of shares and the related voting rights are not explicitly specified as there is no variation of them (meaning the category of share and voting rights are known). The position for general partnerships (Article 94) and limited partnerships (Article 127) is the same. Cooperatives and cooperative foundations maintain a register of their members which includes the type and amount of subscribed share capital.

253. **Criterion 24.5.** With reference to information recorded by the SBRA, under Article 10 of the Law on Procedure of Registration with the SBRA, legal persons are required to inform the registry of any changes in registered data within 15 days although no penalty attaches to failure to provide this updated information. Breach of this provision entails the payment of a higher registration fee. With regard to accuracy, documents submitted to the registry must be certified by competent authorities (court, municipal administrative authority or notary) and the submission of false data to the SBRA in the registration and recording procedure is a criminal offence. Although the 15 day deadline is not enforceable, the Serbian authorities consider that the fact that changes do not have legal effect until they are registered is an important mechanism in ensuring that information in the SBRA's register (and also the register maintained by the Central Securities Depository) is accurate and updated on a timely basis. This lack of enforceability (even though the information appears to be updated in practice) means that the criterion is not fully satisfied.

254. As concerns information maintained by the legal person, the accurate and up to date nature of this is envisaged as being required by the legal provisions mentioned in criterion 24.4 and the need for legal persons to have information to update the register at the SBRA when changes to registered information have taken place. Breaches of the requirements on shareholder information under the Company Law and the Law on Cooperatives are subject to sanction.

255. **Criteria 24.6 and 24.7.** There is no requirement under the Law on Companies or the registry to obtain and hold up-to-date information on beneficial ownership of the company. However, under the Law on Payment Transactions, all legal persons are required to have a bank account in Serbia. This law is complemented by article 36 of the AML/CFT Law which provides that legal persons selling goods and services in Serbia may not accept cash in the amount of EUR 15.000 or more, which means that it is impractical for legal persons not to have bank accounts.

256. Under Article 8 of the AML/CFT Law, FIs and DNFBPs are required to identify the beneficial owner of a legal person before entering into a business relationship with the customer. Under Article 20 of the AML/CFT Law, the beneficial owner is identified by inspecting the original or the certified copy of the relevant documents from the public register (which must not be older than three months). This is of relevance to these criteria where the beneficial owner of a legal person is the same person as the legal owner. If this information is considered insufficient, the reporting entity may also request additional documents, and, as a last resort may require the identification of the beneficial owner by means of a written statement of the representative of the company. The AML/CFT Law also requires FIs and DNFBPs to identify any changes in the beneficial ownership of

their customers. The gaps identified in Recommendation 10 mean that all beneficial ownership information is not required to be as up to date and accurate as possible.

257. **Criterion 24.8.** The legal representative of a company, who must be a resident of Serbia, is responsible for maintaining basic ownership information and is accountable to the authorities (the legal representative is not required to obtain and retain beneficial ownership information). The availability of information on beneficial ownership is outlined above for criteria 24.6 and 24.7. There are general obligations on all persons to respond to requests for information made by competent authorities in the exercise of their functions (see article 55 of the AML/CFT Law and article 286 of the CPC). The provision of false information is an offence. There is no impediment to cooperation by FIs and DNFBPs with the competent authorities.

258. **Criterion 24.9.** As indicated under Criteria 24.6 and 24.7, there is no requirement under the law for companies or the registry to obtain and hold up-to-date information on beneficial ownership of the company. There are also no requirements placed on administrators, liquidators or other persons involved in the dissolution of a legal person to maintain information. FIs/DNFBPs must keep records of the legal person for a period of 10 years from the date of termination of the business relationship or executed transaction. All legal persons are required to have bank accounts but there is a small potential gap where the bank itself might go into liquidation. Should a bank go into liquidation its records are taken over by the successor bank or, in the absence of this, must be provided to and retained by the bankruptcy administrator for banks under Article 8 of the Law on Liquidation and Bankruptcy of Banks and Insurance Companies.

259. **Criterion 24.10.** As indicated above, basic information of companies is public and can be accessed by anyone through the register of business entities held by the SBRA. As concerns information on beneficial ownership, its collection is mandatory for FIs and DNFBPs. This information can be accessed by the APML under Article 81 of the AML/CFT Law. It can also be obtained by LEAs under Article 286 of the CPC, which authorizes the latter to inspect the relevant premises and documentation in the presence of a responsible person (and seize it), if need be, if there are grounds for suspicion that a criminal offence which is prosecutable ex officio has been committed.

260. **Criterion 24.11.** Bearer shares cannot be issued as all shares must be registered. Warrants may be issued under the Company Law. Under Article 228 of the Law on Capital Market there is a requirement for the warrants to be registered to be registered by the Central Securities Depository.

261. **Criterion 24.12.** Nominees are not expressly allowed under Serbian law but neither are they expressly prohibited or controlled. Nominee shareholders and nominee directors are not a feature of Serbian law. FIs and DNFBPs do not offer nominee services and there are no company service providers. Registered owners of shares are the legal owners. The CDD requirements of the AML/CFT Law include verification of the identity of the customer and the person acting on their behalf when they undertake business with an reporting entity but there are technical gaps (see criteria 10.3 and 10.4), including when a legal person might act as the client's representative.

262. **Criterion 24.13.** Under Article 45 of the Law on the Procedure of Registration with the SBRA, providing false information in the application for registration and submitting a false or fraudulent document to the Register is punishable with imprisonment from three months to five years. Under Article 10 of the same law, legal persons are required to inform the SBRA of any changes in registered data within 15 days albeit that no penalty attaches to non-compliance. Breach of this provision would entail the payment, in most but not all cases, of a higher registration fee (approximately 45 Euro) by the SBRA; no other sanctions are provided for. Under Article 88 of the AML/CFT law, failure for regulated entities to comply with the obligation to identify the beneficial owner is sanctioned with a fine ranging from RSD 500,000 (4,161 Euro) to RSD 3,000,000 (24,965 Euro). Under Articles 240 and 464 of the Law on Companies, limited liability companies and joint-stock companies are under an obligation to maintain and store information (including the list of members and their place of residence) and breach of these provisions can be sanctioned with a fine. No sanctions, however, are provided to ensure that such information is accurate and updated timely. As for cooperatives, the register of members must be regularly updated and violation is subject to a sanction. Also see Recommendations 27 and 28.

263. **Criterion 24.14.** Basic information held in the SBRA and the Securities Central Depository is publicly available and is thus easily available to foreign competent authorities.

264. As indicated under Recommendation 37, powers to use compulsory measures and the application of special investigative techniques provided under the CPC are available for MLA. The Investigative powers of LEAs are available to obtain beneficial ownership information on behalf of foreign counterparts. In order to share beneficial ownership information the following channels are used: Interpol for international police cooperation, EUROPOL to exchange information with EU Member States, SELEC to cooperate and exchange information with SELEC Member States and with those countries with which Serbia has signed bilateral and multilateral agreements on police cooperation. No specific internal procedures for LEAs or the Ministry of Justice have been established for the exchange of information. There are some gaps in compliance with Recommendations 37 and 40.

265. **Criterion 24.15.** The APML, the Ministry of the Interior and other LEAs and other authorities monitor the timing and quality of assistance received from other jurisdictions.

Weighting and conclusion

266. Of the 15 criteria, 7 are rated as Met, 5 are rated as Mostly Met and 3 are rated as Partly Met. In rating the Recommendation as a whole, the evaluation team has given particular weight to limited liability companies in light of their materiality and risk; the framework for recording basic information and its transparency established in Company Law; the AML/CFT Law, which sets out the requirement for obtaining and recording beneficial ownership information; and the requirement for all legal persons to establish a bank account and the powers to obtain and disclose information. Bearer instruments and nominees are not a feature of the system. However, Serbia has partially but not fully not assessed the threats posed by different types of legal persons and there are gaps in relation to the ability to apply proportionate sanctions.

267. **Recommendation 24 is rated Largely Compliant.**

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

268. In the 3rd round report on Serbia, Recommendation 34 was considered as not being applicable as trusts could not be established in Serbia. The FATF Recommendations have been revised in the meantime and now clarify that R.25 does apply to countries even when the legal concept of trusts is not provided for by domestic legislation.

269. The authorities have indicated that there is no statute governing the formation and operation of trusts or other legal arrangements in Serbia. Thus, trusts cannot be established in Serbia. There is nothing in Serbian law precluding foreign trustees to contract a business relationship with a financial institution or DNFBP in Serbia. The authorities have informed the assessment team that amendments to the AML/CFT law which will address some of the requirements of recommendation 25 are foreseen.

270. **Criterion 25.1.** As indicated above, there is no trust law in Serbia and the criterion is not applicable.

271. **Criterion 25.2.** See the analysis of R.10, criterion 10.9. The requirements in the AML/CFT Law for the identification and verification of beneficial owners do not apply to legal arrangements. The requirement to keep CDD data updated and relevant as per Article 22 of the AML/CFT Law is applicable for any beneficial ownership information held in practice (see the analysis of R.10, criterion 10.7).

272. **Criterion 25.3.** There is no requirement for trustees to disclose their status to reporting entities when forming a business relationship or carrying out a transaction above the threshold. In addition, there does not appear to be an obligation for reporting entities to determine whether the customer is acting on behalf and (or) for the benefit of another person. Also see the analysis for criterion 25.2 above which indicates that the requirements for the identification and verification of

beneficial owners in the AML/CFT Law do not apply to legal arrangements. The authorities have informed the evaluation team that the requirements under criterion 25.3 will be addressed in the near future in the amendments to the AML/CFT Law. If, when conducting CDD requirements, the reporting entity discovers that the client is a trustee, the latter has an obligation to provide all necessary information to the reporting entity. Should she/he refuse, the reporting entity would refuse to establish a business relationship or terminate the business relationship if a business relationship has already been established (Article 8 AML/CFT law). Also see the gap and rating at criterion 10.4 of Recommendation 10.

273. **Criterion 25.4.** There appear to be no provisions in law or enforceable means which would prevent trustees from providing information to the competent authorities.

274. **Criterion 25.5.** Beneficial ownership information on trusts collected by FIs and DNFBPs can be accessed by LEA's under Article 286 of the CPC, which authorizes the latter to inspect the relevant premises and documentation in the presence of a responsible person (and seize it), if need be, if there are grounds for suspicion that a criminal offence which is prosecutable ex officio has been committed.

275. **Criterion 25.6.** The general provisions for cooperation with competent authorities in other countries apply to requests on BO information on trusts and other legal arrangements. Also see the analysis for Recommendations 37 and 40 and the shortcomings identified in that context.

276. **Criterion 25.7.** Given the absence of legislation governing trusts and legal arrangements, there are no provisions in place on liability for failure to perform duties or proportionate or dissuasive sanctions.

277. **Criterion 25.8.** The power to require information relevant for criminal proceedings by LEAs from any person under the criminal procedure would apply also in this respect, subject to punishment for lack of compliance with the request. Should the information on a trust be held by a reporting entity, provisions of the AML/CFT Law would be applicable. There is no provision covering other than the aforementioned situations.

Weighting and Conclusion

278. The criteria which apply in Serbia have been met to a limited extent. The system would benefit from amendments to the law which would address directly measures to prevent the misuse of trusts/legal arrangements. In particular, measures should be taken to introduce a legal requirement for a trustee to disclose his/her status to FIs and DNFBPs when forming a business relationship.

279. **Recommendation 25 is rated Partially Compliant.**

Recommendation 26 – Regulation and supervision of financial institutions

280. Serbia was rated PC with the previous Recommendation 23. The rating was based on the fact that a number of sectors on the financial market were not subject to a licensing or registration requirement and some authorities lacked clear empowerment to undertake supervision of compliance of AML/CFT requirements. The evaluators also pointed out the lack of risk-based approach with regard to supervision of non-banking sectors and the overall insufficient frequency of on-site inspections involving AML/CFT matters. Serbia was rated C with respect to the requirements concerning shell banks.

281. **Criterion 26.1.** As at the time of the 3rd round evaluation, authorities responsible for supervision of compliance with AML/CFT requirements are enumerated in Article 82 of the AML/CFT Law. Article 84 then attributes supervisory competencies in respect of the different sectors. Pursuant to the amendments of the AML/CFT Law in 2010, direct supervisory powers were attributed to the APML with regard to a number of sectors. A lack of clarity remains with regard to AML/CFT supervision of the Post Office. The AML/CFT Law attributes supervisory powers in its respect to the APML (in respect of domestic transfers) and the Foreign Currency Inspectorate

(international transfers). Following the adoption of the Law on Payment Institutions which includes the Post Office as a payment service provider it is under the supervision of the NBS.

282. Pursuant to Article 18 of the LFA, the competent authority to supervise implementation of the requirements of the UN sanctions regime by reporting entities is the APML.

283. **Criterion 26.2.** All financial institutions shall obtain a license in order to exercise the respective activities. The authorities competent to approve the application for a license and the requirements for licensing are set out in respective sectoral legislation. The same laws also criminalise the undertaking of activities in the financial sector without having the relevant license.⁸⁸

284. As at the time of the 3rd round assessment, there is no explicit prohibition of establishing a shell bank in Serbia. Nevertheless, it is considered that the extensive requirements of the Law on Banks for the establishment of a bank (including a number of conditions connected to the premises and the operational business of the institution) eliminate this possibility in practice. Article 35 of the AML/CFT Law prohibits the establishment or continuation of correspondent relationships with shell banks or banks, where there are concerns that they might allow shell banks to use their accounts.

285. **Criterion 26.3.** All sectoral legislation requires financial institutions to request approval for the appointment of a person in a management position, as well as for the purposes of acquiring a significant share in the financial institution (the respective sectoral laws also define when the provisions on significant share and qualifying holding would apply). This approval shall be granted on the basis of an assessment of compliance of the applicant with requirements set by the legislation, which include lack of previous convictions for criminal offences. It is to be noted that for a number of sectors, the requirement of a clean criminal record with regard to persons holding a managerial position⁸⁹ or owners of a significant share⁹⁰ is somewhat restrictive and does not fully comply with

⁸⁸ Articles 5 and 135 of the Law on Banks, Articles 45, 147 and 283 of the Law on Capital Market, Articles 9 and 72a of the Law on Voluntary Pension Funds and Pension Schemes, Articles 3, 4 and 222 of the Law on Insurance (RS Official Gazette no. 55/2004, as amended, "old Law on Insurance"), Articles 3, 20 and 256 of the Law on Insurance (RS Official Gazette no. 139/2014, "new Insurance Law"), Articles 10, 78, 106, 116 and 182 of the LPS, Articles 13a and 51g of the Law on Financial Leasing, Articles 39 and 57 of the Law on Foreign Exchange Operations, Articles 25, 81 and 87 of the Law on Investment Funds, Articles 5 and 34 of the Law on Factoring

⁸⁹ Articles 72 and 75 of the Law on Banks, Articles 28 and 29 of the NBS Decision on Approvals and Consents with Regard to Banks, Articles 10 and 15 of the Law on Voluntary Pension Funds and Pension Schemes, Article 13c of the Law on Financial Leasing, Articles 39, 48, 49, 78 and 93 of the "old Law on Insurance", Articles 62 and following of the "new Law on Insurance", Articles 15 and 25 of the NBS Decision on Implementing Provisions of the Insurance Law relating to the Issuance of License to Carry On Insurance/Reinsurance Activities and Specific Approvals of the NBS (55/2015 and 69/2015), Articles 154, 155 and 248 of the Law on Capital Market, Articles 80 and 117 of the LPS, Articles 39 and 39a of the Law on Foreign Exchange Operations, Articles 12 and 14 of the Law on Investment Funds, Article 7 of the Law on Factoring; and Articles 16, 20 and 22 of the Law on Public Enterprises (with regard to the Post Office)

Banks: The requirement for a clean criminal record applies only to convictions for "a criminal offence by a final judgment with an unconditional imprisonment or convicted of a criminal offence, which makes the person unsuitable for exercising the function". As a result, a person convicted for an unconditional imprisonment cannot become a manager of a bank. As concerns convictions which did not result in an unconditional sentence, the NBS shall take these into account. The final decision is therefore left to the discretion of the NBS and is made on a case-by-case basis. This extensive discretion of the NBS does not appear to be fully in line with the standards.

Insurance sector: The restriction was limited only to persons having been unconditionally sentenced to imprisonment for more than 3 months (under the "old Law on Insurance"). Pursuant to the "new Law on Insurance", the same restriction applies as described above with regard to banks.

Payment and electronic money institutions: The same restriction applies as described above with regard to banks.

the FATF Standards. In addition, a clean criminal record is not required from beneficial owners of shareholders and, with the exception of broker-dealer and investment fund management companies, the measures foreseen by the legislation only refer to criminals, but not to persons associated with criminals. None of the supervisory authorities is empowered to take steps with regard to holders of significant shares, which are convicted of criminal offences after having acquired such shares.

286. **Criterion 26.4.** Serbia was subject to an assessment by the IMF of compliance with the Basel Core Principles in 2010. The evaluators considered that compliance with the Core Principles is largely satisfactory, with the majority of the Core Principles being rated either compliant or largely compliant. In particular, Core Principle 18 (Abuse of financial services) was rated as compliant, with a remark that the legal framework for AML/CFT is much improved and broadly adequate, but that there is scope to further tighten screenings of new staff. Also, the IMF evaluators considered that the power of the NBS to exchange information with foreign counterparts was negatively affected by

Exchange bureaux: The obligation of a clean criminal record applies only to “directors and employees directly engaged in the performance of exchange operations”. It appears, therefore, that this would not cover all the possible managerial positions, as required by the FATF Standards. In this respect, it is to be noted that the majority of exchange offices in Serbia are sole entrepreneurs or small firms without a complex structure.

Companies providing factoring: Measures against criminals controlling companies providing factoring only refer to provision of proof that “no criminal charges have been brought against the authorised officer”. The authorities did not, however, provide explanations as to the scope of this provision. The restriction applies only to “authorised officers” and not to all holders of management positions. The Law does not provide the competent authorities with powers to assess the suitability of persons applying for a management position after the establishment of the factoring company and in consequence, no measures are available with regard to holders of managerial positions, which would be convicted of a criminal offence after having acquired such a position in the factoring company.

⁹⁰ Articles 94, 95 and 98 of the Law on Banks, Article 4 of the NBS Decision on Approvals and Consents with Regard to Banks, Articles 10 and 14 of the Law on Voluntary Pension Funds and Pension Schemes and Article 6 of the Decision on More Detailed Conditions for Issuing Certain Licenses and Approvals to a Voluntary Pension Funds Management Company, Articles 13a and 13b of the Law on Financial Leasing, Articles 3-7 of the NBS Decision on Implementation of the Provisions of the Law on Financial Leasing Pertaining to Licensing and Consents of the NBS, Articles 32, 37, 39, 78, 93 and 94 of the “old Law on Insurance”, Articles 32 and 41 of the “new Law on Insurance” and Articles 10 to 13 of the NBS Decision on Implementing Provisions of the Insurance Law relating to the Issuance of License to Carry On Insurance/Reinsurance Activities and Specific Approvals of the NBS (55/2015 and 69/2015), Articles 102, 105 and 150 of the Law on Capital Market, Article 5 of the Rulebook on Approvals for Acquisition of Qualified Holdings in a Stock Exchange, Broker-Dealer Company and Central Securities Depository and Clearing House (35/2015), Articles 81 and 118 of the LPS, Articles 39 and 39a of the Law on Foreign Exchange Operations, Article 11 of the Law on Investment Funds, and Article 7 of the Law on Factoring.

Banks: The restriction for natural persons is limited to “convictions for a criminal offence by a final judgment with an unconditional imprisonment or convicted of a criminal offence, which makes the person unsuitable for exercising the function”. The final decision on which offences are considered as such is left to the discretion of the NBS and is made on a case-by-case basis. The requirement for a clean criminal record does not apply to shareholders who are legal persons.

Voluntary Pension Funds: The requirement of a clean criminal record does not apply to shareholders who are legal persons.

Financial leasing companies: The requirement for a clean criminal record does not apply to shareholders who are legal persons.

Payment and electronic money institutions: An acquisition of a significant share is conditioned only by the requirement that the “activities or business of the person are not linked to ML or TF”. This provision is not further defined in the LPS and it clearly does not amount to a requirement of a clean criminal record. Further conditions may be prescribed by the NBS.

Companies providing factoring: Measures against criminals controlling companies providing factoring only refer to provision of proof that “no criminal charges have been brought against the founder”. The Law does not provide the competent authorities with any powers to assess the suitability of persons acquiring a significant share after the establishment of the factoring company, as well as no measures are available with regard to holders of significant shares, which would be convicted of a criminal offence after having acquired the holding in the factoring company. In addition, the requirement for a clean criminal record does not apply to shareholders who are legal persons.

legislative provisions in place at the time. This has been remedied since and MoUs have been signed by the NBS with a number of foreign counterparts. In addition, the authorities were advised that resources of the supervisors should be reinforced, both in matter of number of staff, as well as their expertise. There was a further recommendation that the frequency of on-site inspections should be enhanced. There was no evaluation in the period under assessment of compliance of Serbia with Core Principles for insurance and capital market sectors and no information was provided by the authorities in this respect.

287. Overall, AML/CFT supervision is generally carried out within the framework of global oversight of financial institutions. Targeted AML/CFT inspections may be however undertaken when deemed necessary, such as when required by other state authorities or when follow-up is needed following an identification of violations. The NBS undertakes supervision of banks on a rule-based approach with regard to off-site supervision. The results of off-site supervision, together with additional factors set forth in particular in the Methodology for Ranking Banks (adopted in 2013) are used in order to establish the Annual Supervision Plan. Supervision is then undertaken on the basis of the Manual for Performing On-Site Supervision of AML/CFT Risk Management in Banks. The undertaking of on-site inspections is therefore based on the risks pertinent to the individual institutions. The Manual for Performing On-Site Supervision of the Insurance Sector merely repeats some requirements from the AML/CFT Law, compliance with which shall be checked when inspections are undertaken. The added value of this document as well as the application of the risk-based approach with regard to the supervision of the insurance sector were therefore not demonstrated. The Securities Commission adopted a similar approach as the NBS combining rule-based off-site supervision, together with on-site inspections based on the risk established from a number of factors, which are however based almost exclusively on prudential risks. The Securities Commission also considers AML/CFT aspects within the general supervision, with the possibility to conduct targeted AML/CFT visits when necessary. Risk-based approach to supervision with regard to other financial institutions is yet to be introduced.

288. **Criterion 26.5.** Supervision of banks is undertaken pursuant to a risk-based approach, taking into consideration the size and other characteristics of the sector and individual institutions. ML/FT risk is taken into consideration by the supervisor when planning inspections. Whilst other FIs are also supervised based on the characteristics of the sector and to some extent individual institutions, this risk-based approach is however based predominantly on prudential risks and does not necessarily reflect AML/CFT risks to a full extent.

289. **Criterion 26.6.** With the exception of the NBS Banking Supervision Department, supervisors do not have individual ML/FT risk profiles for institutions/groups. During on-site inspections, the NBS Banking Supervision Department reviews the risk assessments prepared by the individual financial institutions. In addition, for the purposes of planning its supervisory activities, it takes into consideration the information available to it as a result of off-site supervision.

Weighting and Conclusion

290. All entities are required to be licensed in order to undertake activities on the financial market in Serbia. The AML/CFT Law designates a number of different supervisors responsible for supervision of AML/CFT compliance. Measures are in place to prevent criminals from controlling FIs, in some sectors the requirements are however more restrictive than required by the FATF Standards (in particular a clean criminal record is not required from beneficial owners and, except for participants on the capital market, the provisions do not extend to cover associates of criminals). The NBS undertakes AML/CFT supervision of banks following a risk-based approach, nevertheless, the evaluation is based on prudential risks and AML/CFT issues form solely a part of general oversight. Risk-based approach to supervision is yet to be introduced in the other sectors. ML/FT risk profile of the individual institutions is not taken into consideration to a sufficient level. **Recommendation 26 is rated Partially Compliant.**

Recommendation 27 – Powers of supervisors

291. Serbia was rated LC with the previous Recommendation 29. The rating was based on the lack of clarity on the empowerment of the respective authorities to supervise certain sectors with regard to AML/CFT issues, as well as the power of the Securities Commission to sanction directors and senior management of broker-dealer companies.

292. **Criterion 27.1.** Powers to supervise compliance with requirements of the AML/CFT Law are attributed in Article 82 of the same law. Concrete distribution of powers with regard to the individual sectors of the financial market is stipulated in Article 84 of the AML/CFT Law. In addition, Article 4 of the Law on NBS gives the NBS a general power to undertake supervision with regard to a number of financial institutions, and Article 262(18) of the Law on Capital Market gives a direct power to the Securities Commission to supervise compliance with AML/CFT legislation in respect of entities subject to its supervision. Further concrete powers of supervisors for the purposes of undertaking supervision in practice are set out in sectoral legislation.

293. **Criterion 27.2.** All the supervisors, as defined by the AML/CFT Law, are empowered to conduct inspections of the respective financial institutions subject to their supervision on the basis of the respective sectoral legislation⁹¹.

294. **Criterion 27.3.** The power for supervisors to request information necessary for the purposes of undertaking supervision of the respective financial institutions subject to their supervision is embedded in the respective sectoral legislation and in the Law on NBS⁹².

295. **Criterion 27.4.** Pursuant to Article 82 of the AML/CFT Law, supervisors shall in case of an identified breach request the supervised entity to remedy the deficiency identified, as well as “lodge a request with a competent body to initiate an adequate procedure” (the latter would refer to requesting the prosecutor to initiate proceedings for an economic offence in respect of the breach identified). The sectoral laws also empower the NBS and the Securities Commission to apply measures foreseen therein also for AML/CFT breaches⁹³. These measures include: sending a written letter of warning, issuance of orders for eliminating detected irregularities and revocation of license. The Securities Commission is also empowered to suspend or revoke licenses of the financial institutions under its supervision. While the legislation provides for a range of sanctions applicable for AML/CFT breaches, the supervisors may directly apply only letters of warning and some supervisors may revoke licenses of the FIs. The framework for issuing a fine, which is dependent on the discretion of the prosecutor whether to start the misdemeanour proceedings or not, seems to limit the powers of the supervisors to apply a broad range of sanctions compared to the requirements of the criterion.

Weighting and Conclusion

296. Overall, it can be concluded that the designated supervisory authorities are adequately empowered to undertake supervision of AML/CFT issues, and they are vested with the powers necessary for undertaking this supervision in practice. Breaches of the AML/CFT Law are sanctionable under the AML/CFT Law by a written warning or supervisory authorities may send a request to the prosecutor to initiate misdemeanour proceedings with the view of imposing a

⁹¹ Article 83 of the AML/CFT Law, Article 150 of the “old Law on Insurance”, Article 189 of the “new Law on Insurance”, Article 13h of the Law on Financial Leasing, Article 264 and following of the Law on Capital Market, Article 102 of the Law on Banks, Article 129e of the Law on Tax Procedure and Tax Administration, and Article 173 and following of the LPS

⁹² Article 83 of the AML/CFT Law, Article 64 of the Law on the NBS, Article 104 of the Law on Banks, Article 153 of the “old Law on Insurance”, Articles 191, 192 and 195 of the “new Law on Insurance”, Article 264 and following of the Law on Capital Market, Articles 121 and 129f of the Law on Tax Procedure and Tax Administration, and Article 173 and following of the LPS

⁹³ Article 110 of the Law on Banks, Article 69 of the Law on Voluntary Pension Funds and Pension Schemes, Article 13h of the Law on Financial Leasing, Article 161 and following of the “old Law on Insurance”, Article 197 and following of the “new Law on Insurance”, Article 207 of the Law on Capital Market, and Articles 183 and 215 of the LPS

pecuniary fine. Further sanctions are available with regard to some sectors on the basis of the sectoral legislation, this would concern mainly the sectors under the supervision of the NBS. Overall, the range of applicable sanctions for the sectors not under the supervision of the NBS is limited. In addition, it is considered that the full discretion given to the prosecutor, whether to initiate the misdemeanour proceedings or not, limits the powers of the supervisors to apply a broad range of sanctions. **Recommendation 27 is rated Largely Compliant.**

Recommendation 28 – Regulation and supervision of DNFBPs

297. Serbia was rated NC with the previous Recommendation 24. With regard to the requirements concerning casinos, the evaluators identified significant deficiencies in relation to the sanctioning regime for AML/CFT breaches. There were also no measures in place to prevent criminals from controlling a casino. The AML/CFT supervisory regime with regard to other DNFBP sectors was considered as overall non-compliant.

298. **Criterion 28.1.** Letter a) Casinos are obliged to be licensed pursuant to Article 41 of the Law on Games of Chance; permission for organising special games of chance in casinos is given on the basis of a public call. The number of licenses in the territory of Serbia is limited to 10 by Article 37 of the Law on Games of Chance.

299. Letter b) Together with the application for a license to operate a casino, founders and shareholders of the applicant, as well as their founders and shareholders, shall demonstrate that they have not been convicted in the past five years for one of the exhaustively enumerated criminal offences, this provision does not, however, ensure that the requirement would cover all the beneficial owners should the corporate structure be more complex.⁹⁴ The requirement applies also to “any person connected to the applicant”, which appears to cover criminal associates. Changes in the ownership structure of a casino are subject to prior approval of the Ministry of Finance and the same requirement as above applies for the shareholders of the applicant.⁹⁵ Pursuant to Article 52 of the Law on Games of Chance and following a proposal of the Minister of Finance, the Government may revoke the license if facts are encountered which would impede granting a license. Subject to the above described shortcoming, this would therefore ensure that measures can be taken with regard to persons convicted after the attribution of the license. It is to be noted, however, that this is not a strict obligation, but it fully relies on the discretion of the Minister of Finance and the Government. There are no requirements of a clear criminal record for managers and directors of casinos.

300. Letter c) According to Article 84(3) of the AML/CFT Law, the Administration for Games of Chance shall supervise casinos and on-line casinos with regard to their compliance with the requirements of the Law. The Administration for Games of Chance was responsible for supervision of casinos also according to the Law on Games of Chance. In 2012, the Administration for Games of Chance ceased to exist and the power to supervise casinos was attributed to the Sector for Foreign Exchange Operations and Transactions and Games of Chance of the Tax Administration pursuant to Law on Amendments to the Law on Tax Procedure and Tax Administration (RS Official Gazette no. 96/2012). Currently, therefore, according to the Law on Tax Procedure and Tax Administration, the competent authority to supervise casinos is the Tax Administration, according to Article 124 of the Law on Games of Chance it is the APML and according to the AML/CFT Law, it is the Administration for Games of Chance, as this provision was not amended when this institution ceased to exist. As a result of this discrepancy between sectoral legislation and the AML/CFT Law, there is a clear lack of clarity as to which authority is competent to undertake AML/CFT supervision of casinos.

⁹⁴ The list of offences is set out by the Decree Determining the Criminal Offences for which a Certificate of Non-Conviction for Certain Persons Must be Submitted with the Application for a License or Approval to Organise Certain Games of Chance (RS Official Gazette no. 128/2004). The offences in question are tax offences and offences against economy and property.

⁹⁵ Articles 39 and 41 of the Law on Games of Chance

301. **Criterion 28.2.** Authorities responsible for AML/CFT supervision of DNFBPs are designated in Article 84 of the AML/CFT Law. The respective authorities are as follows: real estate agents are supervised by the ministry competent for supervisory inspection in the area of trade (Market Inspectorate Sector within the Ministry of Trade, Tourism and Telecommunications) and lawyers by the Bar Association. Auditing companies, licensed auditors, providers of accounting services and tax advisors are supervised by the APML (following the amendments to the AML/CFT Law, no. 91/2010). Other sectors (notaries, TCSPs and dealers in precious stones and metals) are not subject to the requirements of the AML/CFT Law (see Recommendation 22) and are therefore not supervised in this respect. It is to be noted that as the dealers in precious stones and metals are exempt from the obligations under the AML/CFT Law due to the prohibition of the use of cash of EUR 15.000 and higher, the Tax Administration and the ministry competent for supervisory inspection in the area of trade are also responsible for supervision of compliance with the restriction to accept cash payments above this threshold.

302. **Criterion 28.3.** Limited AML/CFT supervision is undertaken in respect of real estate agents, accountants and auditors. No supervision takes place in respect of the other DNFBP sectors.

303. **Criterion 28.4.** Letter a) The empowerment of the APML to supervise AML/CFT compliance is set out in Article 83 of the AML/CFT Law. The Bar Association, despite being designated by the AML/CFT Law as the supervisor of AML/CFT compliance by lawyers, does not have power to undertake supervision in practice. No information was provided regarding the concrete powers given to the Ministry of Trade in respect of undertaking AML/CFT supervision of real estate agents in practice.

304. Letter b) Auditors and lawyers are required to be licensed by the respective sectoral legislation⁹⁶. Lack of previous criminal convictions is a prerequisite for granting the license. In addition, the license shall be revoked should the person be convicted subsequently. The requirements in this respect are, however, more limited than the FATF Standards. No measures are in place with regard to accountants and real estate agents.

305. Letter c) Pursuant to Article 82 of the AML/CFT Law, supervisors shall, in case of an identified breach, request the supervised entity to remedy the deficiency and/or file a request to a competent prosecutor to initiate misdemeanour proceedings. The applicable sanctions are foreseen in Articles 88 to 90 of the AML/CFT Law with regard to all reporting entities and in Article 91 for lawyers. These sanctions are in the form of pecuniary fines; the range of which is considered sufficiently broad. No other type of sanctions is however applicable to DNFBPs for breaches of the AML/CFT Law. In addition, it is considered that the full discretion given to the prosecutor, whether to initiate the misdemeanour proceedings or not, limits the powers of the supervisors to apply a broad range of sanctions (as described under c.27.4).

306. **Criterion 28.5.** Overall, supervision of DNFBPs is not performed on a risk-sensitive basis. A basic risk-based approach is applied by the APML to supervision of accountants and auditors, where supervision is undertaken on the basis of the characteristics of the individual reporting entities, and on-site inspections are undertaken based on the conclusions drawn from the off-site questionnaires. This approach is, however, mainly a result of lack of resources that the APML supervisory department is facing and does not allow to conclude that it is proportionate to the risks inherent to the sectors.

⁹⁶ Articles 6 and 83 of the Legal Profession Act, Articles 5, 6, 12 and 88 of the Law on Auditing

Lawyers: The restriction is limited only to criminal records for offences which “make the person unworthy of confidence for the practice of law”, and after obtaining a license also if the lawyer is convicted for any crime and imposed an imprisonment sentence of more than 6 months. The former is not defined in the Law. Criminal associates are not covered.

Auditors: The requirement of a clean criminal record covers only certified auditors and members of the management board. Shareholders of audit firms who are not licensed as certified auditors and other persons in the management of audit firms are therefore not covered. No measures are in place in relation to criminal associates.

Weighting and Conclusion

307. All DNFBP sectors subject to the requirements of the AML/CFT Law, with the exception of accountants, are required to be licensed (notaries and TCSPs are not covered by the AML/CFT framework). All sectors covered by the AML/CFT Law also have designated supervisors of AML/CFT compliance; there are however concerns with regard to the clarity of designation of the supervisor of casinos, as well as to the powers of the Bar Association to supervise lawyers in practice. Measures to prevent criminals from controlling a DNFBP are in place only for casinos, auditors and lawyers and do not fully comply with the FATF Standards. The range of sanctions available to the supervisors for sanctioning identified breaches of AML/CFT obligations is considered as sufficiently broad. It is however considered that the power of the supervisors to apply these sanctions is limited to a certain extent by the procedure in place which requires the application of pecuniary fines through a misdemeanour procedure, giving therefore the prosecutor full discretion as to whether initiate the proceedings or not. Risk-based approach is not yet applied to supervision of DNFBPs. **Recommendation 28 is rated Partially Compliant.**

Recommendation 29 - Financial intelligence units

308. Serbia was rated LC with the previous Recommendation 26 (FIU). As concerns the identified shortcomings, the evaluation team pointed to the fact that insufficient guidance was provided to reporting entities with regard to the reporting obligation and that the reports produced by the APML did not contain sufficient strategic analysis. General effectiveness concerns were also raised.

309. **Criterion 29.1.** The APML is established pursuant to Article 52 of the AML/CFT Law within the Ministry of Finance, as an administrative body at national level. It is responsible for collecting, processing, analysing and disseminating all information, data and documentation obtained pursuant to the AML/CFT Law, as well as undertaking other tasks related to prevention of ML and FT. Apart from SARs, the APML is competent to receive information that is deemed to be related to ML/FT from a number of other state institutions; consequently, the APML is empowered to collect information and conduct analysis also based on this information where there are reasons for suspicion. These functions of the FIU are assessed in detail in the previous MER (former Criterion 26.1). The functions of the APML are further governed by internal procedures. The dissemination function of the FIU (Article 59 of the AML/CFT Law) includes the powers to disseminate information to "competent state bodies", which, as demonstrated by the provided statistics, include a wide range of state authorities.

310. **Criterion 29.2.** a) The APML serves as the central agency for the receipt of SARs filed by reporting entities. Deficiencies under the SAR reporting requirements with regard to notaries (see R.23.1) affect also compliance with Criterion 29.2(a). b) The APML serves as the central body entitled to receive additional information under the AML/CFT Law, including data on cash threshold transactions (Article 37), declared and non-declared cross-border transportation of bearer negotiable instruments above the threshold and those bearer negotiable instruments below the threshold where there is suspicion of ML or FT. The additional information under Criterion 29.2(b) is used on a periodical basis for analysis purposes and connected to the received SARs or information on suspicion from other state authorities.

311. **Criterion 29.3.** a) The APML has wide powers to request and obtain additional information from reporting entities (Article 53 of the AML/CFT Law) and lawyers (Article 54). b) The APML has access to a number of information databases, as presented in the table below. Pursuant to Article 55 of the AML/CFT Law, the APML may request additional information from other state bodies, organisations and legal persons entrusted with public authorities. In addition, Article 72 of the AML/CFT Law requires courts, public prosecutors' offices and other state bodies to send to the APML regularly reports containing information on proceedings concerning offences related to ML or FT. The APML has access to information on a timely basis, as the AML/CFT Law specifies exact timelines for the provision of the requested information.

Table 31: List of databases to which the APML has access

Database	Authority holding the database	Information included in the database	Type of access by the APML
Database on reports from reporting entities	APML	Information on STRs and CTRs received by the APML	Internal APML database
APML case database	APML	Information on the cases opened by the APML	Internal APML database
Database of foreign currency payment operations with foreign countries	NBS	Transactions executed with natural and legal entities outside of Serbia	Direct access
Database on cross-border transportation of cash and BNIs	Customs Administration	Information on cross-border transportation of cash and BNIs in the value equal or over EUR 10.000	Direct access
Databases on uniform customs documents	Customs Administration	2 databases including information on the import of goods and their value	Direct access
Serbian Business Register	Serbian Business Registers Agency	Information requested for the establishment of a business entity in Serbia	Publicly available
Privatised public enterprises register	Privatisation Agency	Information related to the privatisation process in public enterprises	Direct access
Register of accounts of legal entities	NBS	Information on active bank accounts of legal persons	Publicly available
WorldCheck	-	-	Publicly available
Database of wanted persons	Interpol	-	Publicly available
Register of VAT obligors	Tax Administration	Information on registered VAT payers in Serbia	Publicly available
Belgrade Stock Exchange information	Belgrade Stock Exchange	Information on the trading on the Stock Exchange	Publicly available
Statistics on ownership structure of joint stock companies	Central Securities Depository and Clearing House	Statistics on the ownership structure of joint stock companies	Publicly available
Anti-Corruption Agency Register	Anti-Corruption Agency	Information on property and income of public officials	Publicly available
Real Estate Cadastre	Geodetic Authority of Serbia	Information on ownership of real estate	Publicly available

312. **Criterion 29.4.** a) The APML is obliged by law to carry out operational analysis in order to substantiate the reasons for suspicion of ML/FT and disseminate the information to competent authorities. b) The APML continuously conducts research and analyses trends and typologies of ML and FT. The annual report of the APML contains information on trends and patterns and a number of other documents of the FIU examine strategic aspects of the AML/CFT system. The undertaking of strategic analysis by the APML is also key for the responsibility of the APML to provide information

to the public on ML and FT issues, as well as it is essential for development of indicators for identification of ML/FT suspicions.

313. **Criterion 29.5.** The FIU is authorised to disseminate information pursuant to Article 59 of the AML/CFT Law, which can be done spontaneously or upon request pursuant to Article 58. The APML informed the evaluation team that all the information is disseminated as classified information, and thus subject to the provisions of the respective legislation, using couriers. This could be considered as a dedicated and securely protected channel. The evaluation team was, however, not provided with the relevant legislative provisions in question which would designate the information held and disseminated by the FIU as classified information, as well as which would regulate the handling of such. It is therefore not possible to conclude in this respect.

314. **Criterion 29.6.** a) Article 74, paragraph 1 states of the AML/CFT Law states that the data, information and documentation obtained by the APML under the same Law shall be classified with an appropriate degree of confidentiality. Article 76 further provides that this information may be used only for the purposes contained in the Law. The APML confirmed that information is processed as classified and therefore subject to requirements of the legislation on classified information. The evaluation team was not provided with this legislation, regulations setting out the different levels of confidentiality or legislation regulating the manner of handling classified information according to the different levels. b) The staff of the APML did not have the necessary security clearance at the time of the visit. c) There is an adequate level of physical and IT protection of APML's systems and facilities.

315. **Criterion 29.7.** a) There are no legislative obstacles which would impede the APML from carrying out freely its functions. Notwithstanding, some provisions of co-operation agreements of the APML with the tax police and the prosecutor's office lead to concerns with regard to the independence of the APML in its dissemination function (Article 5 of the MoU with prosecutor's office and Article 9 of the MoU with the Tax Police). b) The APML is able to cooperate independently with domestic and foreign authorities. c) The APML is established within the Ministry of Finance, its core functions are however distinct. d) The APML has an autonomous budget approved by the Government and it decides independently on the allocation of the resources of which it disposes. The status of the Director and the employees of the APML is governed by the Law on Civil Servants.

316. **Criterion 29.8.** The APML is a member of the Egmont Group since 2003. No significant problems were reported as regards co-operation with other countries.

Weighting and Conclusion

317. The majority of the criteria under this recommendation are fully met. However some concerns remain in regard to the independence and possible undue influence on the APML, the security clearance of the staff and related to the deficiencies in STR reporting regime. **Recommendation 29 is rated Largely Compliant.**

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

318. Serbia was rated PC on the previous Recommendation 27 (law enforcement authorities) due to a number of effectiveness issues, including the impact of corruption on law enforcement authorities and the judiciary. Deficiencies and inadequacies were also identified in the legal framework with respect to the designation of law enforcement authorities' competences and powers. This resulted in lack of effective and functional co-operation, communication and coordination mechanisms between competent law enforcement and prosecution services responsible for investigating and prosecuting ML, FT and underlying predicate offences

319. **Criterion 30.1.** The designated LEA competent for conducting police duties pertaining to ML related to organised criminality, corruption and/or FT is the Section for Suppression of ML within the Service for Combating Organised Crime, established within the headquarters of the Criminal Police Directorate of the Ministry of Interior. This unit serves as a focal point within the Ministry for exchanging data with the APML. The Section for the Suppression of ML has exclusive competence to

investigate ML cases when the property constituting the object of ML originates from criminal offences of organised crime (i.e. committed by an OCG or its members) or from a range of other crimes including serious corruption cases, terrorism and FT (Art. 2[6] of the Law on Organisation and Jurisdiction of Government Authorities in Suppression of OC). In any other case, territorial Police authorities specialized in economic crime (EC) suppression⁹⁷ are authorized to investigate ML offences in line with their respective territorial jurisdiction, according to the order of the competent public prosecutor. Territorial competence of the Police Administrations for ML cases (i.e. ML cases not falling under the competence of the Section for the Suppression of ML) is regulated by the Rule Book on Internal Structure and Systematization of Work Posts (which is a classified document and thus was not provided to the evaluation team). In such cases, in accordance with the general provisions of the CC⁹⁸ the investigation shall either be conducted by the police directorate on the territory of which the ML offence has been committed or the one on the territory of which the commission of the predicate offence has taken place, If these are different locations, the authority who has initiated the proceedings first has territorial jurisdiction.

320. There is no separate organizational unit designated for FT investigations. In these cases the Section for the Suppression of ML gives expert assistance to the Service for Combating Terrorism and Extremism. Terrorism and FT investigations related to ML offences are within the exclusive jurisdiction of the Section for the Suppression of ML. Due to the proximity of the two units in the MoI structure, such expert assistance can be provided on a simple request without formalities.

321. **Criterion 30.2.** Law enforcement authorities who investigate predicate crimes according to their respective competence are obliged to inform the prosecutor when they detect elements of an associated ML offence. If the predicate offence is an economic crime, the same police officers would automatically be authorized to investigate the related ML offence (i.e. the Section for Suppression of ML in case of an ML offence in cases provided under Article 2(6) of the Law on Organisation and Jurisdiction of Government Authorities in Suppression of OC and territorial Police authorities specialized in EC suppression in any other cases). Otherwise, if the predicate criminal offence is investigated by police officers of other organizational units, they must inform the prosecutor in charge of the possible existence of a related ML offence, who will engage the competent organizational unit for economic crime in the detection and investigation of the ML offence (as noted above, this competence depends on whether or not the predicate crime falls under Article 2 of the aforementioned Law).

322. **Criterion 30.3.** The CPC generally requires that proceeds from crime be determined in any criminal proceedings ex officio. The Financial Investigations Unit within the Service for Combating Organised Crime of the Ministry of Interior is the police authority competent for the purpose of Criterion 30.3 as concerns investigations into serious offences (including FT and high scale ML offences i.e. those above the threshold of 1.5 million RSD). Pursuant to the Law on Recovery, this Unit has the authority to identify, trace, and initiate seizure of assets subject to confiscation or suspected to originate from a criminal act in the framework of a financial investigation ordered and led by the public prosecutor. The identification, tracing and initiating the freezing/seizing of property for cases of ML which are not “high scale” (i.e. below the threshold) shall be carried out, pursuant to the rules of the CPC, by the Police authority that otherwise investigates the case.

323. **Criterion 30.4.** The authorities have not clarified whether there are authorities which, though not LEAs, have responsibility for pursuing financial investigations of predicate offences and whether, in that case the requirements under R. 30 are met by those authorities.

324. **Criterion 30.5.** There is no dedicated LEA for the investigation of criminal offences related to corruption. The more serious forms of corruption crimes (as listed under Art. 2(3) and 2(4) of the Law on Organisation and Jurisdiction of Government Authorities in Suppression of Organized Crime)

⁹⁷ For instance, the EC Department of the Police Administration for the City of Belgrade as well as Sections for EC Suppression within Departments of Criminal Police in the seat of regional Police Administrations.

⁹⁸ In line with Art.17(1) CC according to which “A criminal offence is committed both at the location where the offender was acting or was obliged to act, and at the location where the consequences of the act occurred in full or in part”.

are investigated by the Criminal Police Directorate while others fall under the competence of the territorial Police authorities specialized in suppression of economic crime. All these police forces are authorized to investigate, upon the decision of the prosecutor, any associated ML offence as discussed above under c.30.2. Financial investigations conducted by the Financial Investigations Unit (as discussed above under c.31.3) can generally take place in cases of organised and/or more serious forms of corruption crimes (see Art. 2(1) subparagraph 1 and 6 and Art. 2(2) of the Law on Recovery) and, as noted above, for more serious forms of ML (above 1.5 million RSD). For any other cases of corruption crimes, as well as for ML offences related to any sort of corruption crimes but below the 1.5 million RSD threshold, the authority that otherwise investigates the case is competent to identify, trace and initiate the freezing/seizing of property according to the rules of the CPC.

Weighting and Conclusion

325. Serbia largely complies with the requirements set under R. 30. It is not clear, however, whether there are non-LEAs which have responsibility for pursuing financial investigations of predicate offences and, in that case, if the requirements under R. 30 are met by such authorities; and whether the police forces which are involved in investigating corruption offences are also authorized to investigate, upon the decision of the prosecutor, any associated FT offence. **Recommendation 30 is rated Largely Compliant.**

Recommendation 31 - Powers of law enforcement and investigative authorities

326. Serbia was rated LC on the former Recommendation 28 in light of a number of issues related to effectiveness. This Recommendation was expanded in 2012.

327. **Criterion 31.1.** Criminal proceedings that precede the trial encompass pre-investigative proceedings and the formal investigation. Pre-investigative proceedings are led by the prosecutor, however, the police is authorised to implement all necessary measures to locate and apprehend the perpetrator, to detect and secure traces of the criminal offence and objects that may serve as evidence, as well as to collect all relevant information provided that they immediately (but not later than in 24 hours) notify the competent public prosecutor thereof. The formal investigation is ordered by the prosecutor. The latter conducts the proceedings and the police can only provide assistance if so requested. This equally applies to ML or FT cases or those related to predicate offences. Financial investigations provided for under the Law on Recovery of the Proceeds of Crime (hereinafter: Law on Recovery) are likewise ordered and led by the prosecutor. Authorisation to implement ordinary investigative methods discussed under Criterion 31.1 (compelling production of documents or other open-source records, search and seizure, taking statements etc.) is provided for in the CPC already as from the pre-investigative phase, as follows.

- (a) A record that constitutes evidence can be obtained by the authority conducting proceedings (Article 139 CPC) and can be seized if not surrendered voluntarily. Already in the pre-investigative stage, the police is authorised to inspect facilities and premises of public authorities, enterprises, shops and other legal persons, inspect their documentation and, if needed, seize it (Article 286). Production of banking information related to the suspect can only be ordered by the prosecutor (Article 144) and the records must be destroyed if they have not been used for evidence purposes. Similar authorisation is given to the Financial Investigation Unit by the Law on Recovery (see below under Criterion 31.3.b).
- (b) Search of a dwelling or other premises or a person may be performed if it is likely to result in finding the defendant, traces of the criminal offence or objects relevant for the proceedings (Articles 152-160). Similar authorisation is given to the Financial Investigation Unit by the Law on Recovery (see below under Criterion 31.3.b).
- (c) In the pre-investigative phase, the police can summon citizens in order to collect information (Article 288) and also can interrogate a person as a suspect (Article 289). Taking formal

statements from persons in the capacity of witness or defendant is only possible as from the commencement of the investigation.

- (d) The authority conducting proceedings seizes objects which must be seized under the CC or which may serve as evidence in criminal proceedings and secures their safekeeping (except for funds being the object of a suspicious transaction the seizure of which requires a court decision) (Article 147). During a search, objects and documents related to the purpose of the search will be seized (Article 153).

328. **Criterion 31.2.** Special investigative techniques can only be applied against a person suspected of having committed or preparing to commit one or more of the serious criminal offences listed under Article 162 of the CPC if evidence for criminal prosecution cannot be collected in another way or if its collection would be significantly hampered (Article 161). Both ML and FT offences fall within the scope of Article 162 of the CPC where ML is listed under paragraph (2) while FT is included under paragraph (1) by reference to offences “which according to separate statute fall within the competence of a prosecutor’s office of special jurisdiction”. FT falls within this category under Article 2(5) of the Law on Organisation and Jurisdiction of Government Authorities in Suppression of OC.

329. On the other hand, c.31.2 requires that special investigative techniques be generally available not only for the ML offence but also for the investigation of underlying predicate offences related (associated) to ML cases under investigation. This requirement is only met to the extent of offences listed (either directly or indirectly) under Article of the 162 of the CPC, which clearly does not encompass all categories of FATF Glossary offences⁹⁹ unless they are committed by an organised criminal group or its members (in which case they would fall under Article 162 paragraph (1) of the CPC mentioned above).

330. These investigative techniques can be ordered by the preliminary proceedings judge upon the motion of the public prosecutor (except for [d] which can be ordered by the Republic Public Prosecutor) and are provided for under the following CPC articles:

- (a) deployment of an undercover investigator (Art. 183-187) covert surveillance and recording of a suspect (Art. 171-173) and the implementation of simulated business deals (Art. 174-177)
- (b) covert interception of communications by telephone or other technical means or through the electronic or other address of a suspect, including the seizure of letters and parcels (Art. 166-170)
- (c) computer searches of already processed personal and other data (Art. 178-180)
- (d) controlled delivery of shipments of illicit or suspicious nature (Art. 181-182) which is understood to comprise, among others, cash, securities and other means of payment.

331. **Criterion 31.3.** (a) In criminal cases related to offences punishable by imprisonment of minimum four years (which includes ML and FT alike) and also the negligent form of ML in Article 231(5) CC, the authority conducting proceedings may order that accounts or suspicious transactions be checked (Article 143 CPC); this includes acquiring data from banks or other financial institutions about accounts a suspect has or controls and the funds in those accounts (Article 144) as well as the monitoring and temporary freezing of suspicious transactions (Article 145-146). The latter measures require the decision of the preliminary proceedings judge while the acquirement of data only requires and order from the prosecutor. No specific deadline applies to any of these specific measures.

332. As concerns in particular financial investigations under the Law on Recovery, the public prosecutor may order a bank or other financial institution to provide the Financial Investigation Unit with information on a certain person’s business and private accounts and safety deposit boxes (Article 22). No strict deadlines are attached to these measures, apart from the general requirement that financial investigations must be carried out with urgency (Article 18). All measures listed in this and the preceding paragraph shall take place without prior notification to the owner. To this end, FIs are required to preserve as a secret their compliance with the orders issued under the aforementioned paragraphs of the CPC and the Law on Recovery.

⁹⁹ For instance, offences against property or tax crimes.

333. (b) Financial investigation provided under the Law on Recovery aim to ensure the urgent identification and securing of criminal assets. Measures that can be taken in such proceedings include search of abodes and other premises (Article 20) obtaining and compelling of records and documents (Article 21) and acquirement of banking information (Article 22 as above).

334. In criminal investigations (including financial investigations) a number of MoUs have been concluded by the Ministry of Interior with the following authorities in order to provide the police with direct access to various databases that can serve as a source of information on a person's direct or indirect assets:

- the Republic Geodetic Authority that manages land and real estate registry,
- Customs,
- the public utility company “Infostan” that manages the registry of utilities beneficiaries in the territory of the city of Belgrade
- the SBRA - to check whether a person is founder or representative of any business entity in the territory of Serbia.

335. **Criterion 31.4.** As noted above under Criterion 29.5, the APML is authorised to disseminate information pursuant to Article 59 of the AML/CFT Law either spontaneously or upon the request of competent authorities made pursuant to Article 58. More specifically, Article 58(1) provides that where there is reason for suspicion of ML/FT a number of state bodies (including the police and the public prosecutor) can request the APML to initiate a procedure to collect data, information and documentation and to carry out other actions and measures within its competence. Article 59 stipulates that once the APML concludes that there are reasons for ML/FT suspicion it shall inform the competent state bodies so that they can take the necessary measures. The combined application of Article 58(1) (obligation to initiate a procedure upon request) and Article 59(1) (obligation to disseminate) is generally accepted by both LEAs and the APML as a sufficient, although indirect legal basis upon which agencies conducting preliminary investigations of ML or FT consider themselves authorized to ask (and receive) all relevant information held by the APML including data from its databases of suspicious transactions, data on opened accounts in the country and abroad (based on APML's EGMONT membership) and turnover on these accounts, data on rented safety boxes and also information on whether a natural person appears in the founding and managing structure of legal entities. Notwithstanding that, the evaluation team needs to note that neither of these articles explicitly provide for such an authorization, in which context an explicit legislative basis would undoubtedly be more favourable.

Weighting and Conclusion

336. The powers of law enforcement authorities to conduct ML/FT investigations and related financial investigations including the application of compulsory measures and special investigative techniques are generally in line with criteria 31.1 to 31.3 except that SIT cannot be applied in relation to all categories of predicate offences associated to ML cases under investigation, which is a deficiency. **Recommendation 31 is rated Largely Compliant.**

Recommendation 32 – Cash Couriers

337. Serbia was rated PC with respect to Special Recommendation IX on the cross-border transportation of currency and other financial instruments because the declaration system did not require that all persons making a physical transportation of currency and BNIs beyond the prescribed threshold submit a declaration to the Customs authorities.

338. At the time of the previous onsite visit, the requirements for cross-border transportation of currency and BNIs were set out primarily in the Law on Foreign Exchange Operations and a NBS Decision¹⁰⁰. A new declaration regime was introduced under Section VI of the new AML/CFT Law

¹⁰⁰ NBS Decision on the conditions for effecting personal and physical transfers of means of payment to and from abroad (“Official Journal RS” No.62/2006)

which was adopted in March 2009. This regime was briefly mentioned in the footnotes of the 2009 MER but could not be taken into account for rating purposes as it fell outside of the time-frame of the assessment. Now both regimes are in force in a complementary manner with the Law on Foreign Exchange Operations (Art. 31) and the related NBS Decision prescribing limitations and conditions for the cross-border transportation of currency and BNIs and Section VI of the AML/CFT Law and the related Rulebook¹⁰¹ providing for an obligatory declaration regime. Neither regime has been amended since the last round of evaluation.

339. **Criterion 32.1.** Under Section VI of the AML/CFT Law Serbia has implemented a declaration system to control the cross-border movement of currency and other physically transferable instruments. Although the scope of physically transferable instruments (Art.3 AML/CFT Law) is not as detailed as the FATF Glossary definition of BNIs, it appears wide enough to cover all BNIs that are in bearer form. The declaration regime only applies to natural persons crossing the state border while carrying cash or BNIs (Art.67). The declaration regime provides no explicit coverage of physical cross-border transportation of such instruments through container cargo or shipment of cash, including on behalf of a legal person, although the natural person acting on behalf of a legal person would fall under the scope of the regime.

340. **Criterion 32.2.** The aforementioned declaration system applies to the physical cross-border transportation of physically transferable instruments of payment amounting to or exceeding the value of 10,000 EUR or equivalent value. The data to be provided in such a declaration is stipulated by Article 81(5) AML/CFT Law and is set out in more detail in the Rulebook. The declaration system applies to travellers carrying amounts of cash or other BNIs that meet or exceed the threshold (32.2.b). Declarations can only be filed in writing with the Customs authority, which provides each passenger (either entering or leaving the country) with specific "PPS Forms" for this purpose.

341. **Criterion 32.3.** Serbia has implemented a declaration system.

342. **Criterion 32.4.** Pursuant to Article 6 of the Law on State Border Protection (in accordance with the Law on Police), border police officers are vested with a wide range of powers including checking the purpose of travel of a person crossing the state border, examining or searching the person or detaining them for the time necessary to perform the checks, requiring them to show items and objects which they carry with them or in the vehicle, examining the vehicle etc. Customs officers can require the presentation of documents establishing the identity of persons and can obtain information on the origin of the funds, the owner and recipient of the funds and on the use for which they are intended (by using the standardized declaration form pursuant to Article 81 [5] and [6] of the AML/CFT law). The customs officer inspects the data provided in the Form and validates it with his/her signature. Although the inspection does not routinely encompass the examination of the payable instruments carried by the traveller, Customs may perform further inspections or checks including the verification of the origin of the cash or BNIs declared, in terms of the legal acquisition thereof.

343. **Criterion 32.5.** Pursuant to Article 90 (2) and (3) of the AML/CFT Law, natural persons who fail to declare to the Customs authority a cross-border transportation of cash or BNIs amounting to or exceeding EUR 10,000 shall be punished for a minor offence with a fine amounting from RSD 5,000 to RSD 50,000. Those who fail to provide all the required data when giving a declaration on such cross-border transportation shall likewise be punished with a fine ranging between RSD 500 to RSD 50,000. These statutory sanctions had already been introduced at the time of the 2009 evaluation (but were not yet in force) and had been found to be very low and not sufficiently dissuasive. Apart from the declaration regime, the failure to comply with the NBS Decision that regulates conditions and limitations of cross-border physical transfer of payment instruments is a minor offence under the Law on Foreign Exchange Operations and is sanctioned with a fine ranging from RSD 5,000 to RSD 150,000 (Article 62[18] for resident natural persons and Article 63[14] for non-residents). Minor offence proceedings are conducted by minor offence (misdemeanour) courts according to the Law on Minor Offences. According to legal practice, minor offences under the

¹⁰¹ Rulebook on Cross-Border Transfer of Currency and other Bearer Negotiable Instruments Declaration ("Official Journal RS" No.78/2009)

AML/CFT law and those under the Law on Foreign Exchange Operations cannot simultaneously be applied, thus cumulating sanctions for the same act is not possible.

344. **Criterion 32.6.** Customs makes the information obtained through the declaration directly available to the APML (FIU) by forwarding them all the data collected in relation to each declared and non-declared physical cross-border transportation of payment instruments amounting to or exceeding EUR 10,000, including information on whether and on what grounds there is suspicion of ML or FT (Article 70[1] AML/CFT Law). Furthermore, data related to cross-border transportations below the threshold shall also be reported if there are reasons for ML or FT suspicion (Article 70[2]). In both cases, data is forwarded to the APML within three days of the date of the declaration. Pursuant to the Rulebook, the declaration form consists of three identical copies on self-copy paper and once it is filled in by the person making the declaration and validated by the customs officer, one of the copies is directly forwarded to the APML.

345. **Criterion 32.7.** Coordination between the competent Customs, Police and other authorities is prescribed by Article 64 of the Law on Public Administration according to which state administration authorities are generally obliged to cooperate in all common issues and to share data and information necessary for their operations. The Law on Protection of State Border stipulates that border control and border securing tasks are performed by the Police (Ministry of internal affairs) as well as by other state authorities, in accordance with their competencies defined by the law. The law introduces the institute of integrated border management (Article 4) under which the authorities participating in border control are obliged to coordinate their activities, cooperate and assist each other in performing their respective tasks. Furthermore, an Agreement on co-operation was signed between the Ministry of Finance (Customs Administration) and the Ministry of Interior on 23.01.2015 in order to enhance the efficiency of their actions, to coordinate certain activities and to cooperate in the enforcement of activities and measures that require exchange of information and prevention of criminal offences.

346. **Criterion 32.8.** In the declaration regime, the Customs Administration has the power to temporarily seize cash or other BNIs that have not been declared and deposit them into the account of the NBS held by the body competent to adjudicate in minor offence proceedings (Article 69[2] AML/CFT Law). On the other hand, Article 48 of the Law on Foreign Exchange Operations provides that Customs seizes from travellers the amount of cash and BNIs that exceeds the amount prescribed by the NBS Decision (which is EUR 10,000 just as the declaration threshold under the AML/CFT Law). The payment instruments can be temporarily seized pursuant to the Law on Minor Offences¹⁰² until the minor offences procedure is completed and a decision on the forfeiture (confiscation) of the cash or BNIs held temporarily is rendered (Article 54). This notwithstanding, forfeiture measures can only be imposed on assets exceeding the 10,000€ threshold regardless whether the minor offence is stipulated under Article 90 of the AML/CFT Law or Art. 62(18) or 63(14) of the Law on Foreign Exchange Operations.

347. While cash or other BNIs can be temporarily detained in case of non-compliance with the declaration obligation, there is no similar provision available if the obligation to declare (AML/CFT Law) and the conditions and limitations for cross-border transport (NBS Decision) are met but there is reasonable suspicion that the payment instruments are derived from illegal activity or are intended to fund such activities. Notwithstanding that, in case the suspicion of ML or FT is confirmed, criminal sanctions set forth in the criminal legislation are available to deal with natural persons involved in such activities and seizure and confiscation measures likewise apply, even if Article 69(2) of the AML/CFT Law is silent on whether immediate administrative seizure can be applied in such cases.

348. **Criterion 32.9.** Customs shall keep records with information on the amounts and identification data for declarations which exceed the prescribed threshold (Article 67[2] and 81[5] AML/CFT Law) as well as when there is a suspicion of ML or FT, in cases of cross-border transportation of payment instruments in amounts below the EUR 10,000 threshold (Article 69[1] and 81[6]). Such data is kept for at least 10 years from the date when it was obtained (Article 78). All

¹⁰² Law on Minor Offences (Official Gazette of the RS, No. 65/2013)

this information is forwarded to the APML which is bound by similar record-keeping requirements (Article 79) and can share such information with its foreign counterparts pursuant to Article 62. There is no specific reference to retaining information related to false declarations (in absence of ML/FT suspicion).

349. **Criterion 32.10.** Article 297 of the Customs Law regulates the recording, processing and protection of the data. The Customs Administration keeps records of personal and other data collected and compiled regarding the performance of its tasks, in accordance with the Law on Protection of Personal Data and other laws governing the protection, collection and storage of personal data and data on economic activity. In this respect, the Customs officer is obliged to collect and process personal data in such a way that the number and type of data to be processed and means of processing are proportionate or appropriate for the purpose of processing as well as to protect personal data against destruction, loss and unauthorized access and abuse.

350. **Criterion 32.11.** Carrying out a physical cross-border transportation of cash or other BNIs related to ML/FT or predicate offences is an act that could in itself constitute a criminal offence of ML or FT. The relative sanctioning regimes are discussed under C.3.9 and C.5.6 respectively. As noted above under C.32.8, there appears to be no directly applicable administrative seizure regime for potential ML/FT cases where the declaration and limitation obligations are met (eg. in cases mentioned in Art. 69[1] AML/CFT Law). The seizure and confiscation measures under the CC, CPC and the Law on Recovery would apply in such cases (see R4 above).

Weighting and Conclusion:

351. The introduction of the declaration regime in 2009 remedied most of the technical deficiencies noted in the previous round of evaluation. Nonetheless, the regime only covers natural persons performing cross-border transport of payment instruments while it does not address, to any extent, the physical transportation of cash or BNIs in mail or cargo. Sanctions for non-compliance are still low, whereas the administrative seizure and forfeiture/confiscation measures available only cover assets above the EUR 10,000 threshold set by the NBS. **Recommendation 32 is rated Largely Compliant.**

Recommendation 33 – Statistics

352. Serbia was rated PC with the previous Recommendation 32. The evaluators considered that the risk assessment of the various sectors in relation to ML and FT was insufficient. In addition, no comprehensive statistics were available with regard to the number of cases and amounts of property frozen, seized and confiscated, on MLA requests received and sent and on exchange of information between supervisory authorities.

353. **Criterion 33.1. Letter a).** The APML maintains statistics on STRs (which include breakdowns by different sectors of reporting entities and by offences involved) and CTRs received. In addition, data is kept on the disseminations made to the Public Prosecutor's Office and on outcomes of these disseminations. This information is analysed and published in the APML Annual Report.

354. Letter b) The authorities reported that statistics on criminal proceedings are maintained by courts and prosecutors' offices with regard to cases within their competence, including also data on proceedings for ML and FT. Detailed data with breakdowns is also kept on sanctions imposed. Data from the individual courts and prosecutors' offices are collected by the APML, which maintains comprehensive statistics for the entire territory of Serbia. Pursuant to Article 72 of the AML/CFT Law, courts and prosecutors are obliged to submit this data to the APML annually or following a request by the APML. The APML database is therefore updated manually once a year and is not electronically connected with the databases of the courts and prosecutors' offices.

355. As concerns statistics on ML and FT investigations, the Ministry of Interior maintains a centralised database (Joint Information System) which contains information on all reported criminal offences in the competency of the Police. It appears that comprehensive statistics are not maintained which would include the total number of investigations for the entire territory of Serbia undertaken

by all the authorities competent in this respect; this being particularly relevant given the numerous LEAs competent to investigate ML.

356. Letter c). Statistics are maintained on property frozen, seized and confiscated in ML cases by the courts and the Directorate for Management of Seized and Confiscated Assets.

357. Letter d). Statistics on MLA and extradition requests received and sent with breakdowns as to whether they have been executed or refused are kept by the Ministry of Justice. Furthermore, statistics are maintained on requests sent and received through INTERPOL, EUROPOL and Camden Assets Recovery Interagency Network, as well as on the exchange of information between FIUs. Statistics were also provided on exchange of information by the Securities Commission with its foreign counterparts. It has not been demonstrated that statistics are kept on requests for co-operation made and received by other LEAs or supervisory authorities other than the NBS.

358. In addition, the authorities keep statistics on the number of convictions for all the FATF designated categories of predicate offences (prosecutor's offices and courts), on money seizures at border crossing points (Customs Administration), number of postponement orders issued by the FIU and cases resulting thereof (APML).

Weighting and Conclusion

359. Statistics are maintained on all the issues required by the FATF Standards. It has not been demonstrated that statistics are kept on international requests for co-operation sent and received by some LEAs (other than the FIU or police through the Interpol, EUROPOL or CARIN channel) and supervisory authorities (with the exception of the NBS). **Recommendation 33 is rated Largely Compliant.**

Recommendation 34 – Guidance and feedback

360. Serbia was rated PC with the previous Recommendation 25. Financial institutions were not provided with guidance regarding ML/FT techniques and methods, as well as general guidance for the financial sector was not updated in order to reflect the amendments to the AML/CFT Law. No guidance or feedback was provided to DNFBP sectors.

361. **Criterion 34.1. *Feedback.*** Pursuant to Article 60 of the AML/CFT Law, the APML shall provide feedback to the reporting entity which filed an STR on the outcomes of the reporting, as well as general information on the techniques and trends identified by the APML. In practice, the APML holds annual separate meetings with each bank in order to provide feedback with regard to each STR submitted by the bank in question. In addition, the APML presents a general feedback to banks and informs them on trends and typologies once a year at a seminar organised by the Banking Association of Serbia. Feedback is not provided to the other reporting entities.

362. ***Guidance.*** Article 87 of the AML/CFT Law stipulates that the APML shall issue guidelines and recommendations for the purposes of implementation of the AML/CFT Law. AML/CFT typologies and trends are presented in the annual report of the APML, which is publicly available on the website of the APML. General information on typologies and trends is also included in the Strategy on the Fight against Money Laundering and Financing of Terrorism and in the ML and FT NRAs. With regard to specific guidance issued by the authorities, the APML, NBS and the Securities Commission have issued a number of guidance materials, both general and sector-specific.¹⁰³ The APML issued sector specific lists of indicators for all financial institutions and DNFBP sectors in the period 2010 to 2015,

¹⁰³ Rulebook on the Methodology for Implementing Requirements in Compliance with the AML/CFT Law (APML, no. 7/2010 and 41/2011), Recommendations for Suspicious Transaction Reporting (APML, July 2014), Decision on Minimal Content of the KYC Procedure (NBS, no. 46/2009), Guidelines for Assessing the Risk of ML and FT (NBS, no. 46/2009 and 104/209), Guidelines on the Application of the AML/CFT Law for Persons Supervised by the Securities Commission (Securities Commission, November 2009)

these lists are available on the website of the APML.¹⁰⁴ The APML also issued STR Reporting Guidelines for a number of DNFBP sectors.

Weighting and Conclusion

363. Feedback is provided regularly to the banking sector. Sector-specific lists of indicators and guidelines for identifying suspicious transactions and reporting thereof were issued by the APML and it appears that reporting entities have access to a sufficient number of sources of guidance and information on trends and typologies. **Recommendation 34 is rated Largely Compliant.**

Recommendation 35 – Sanctions

364. Serbia was rated PC with the previous Recommendation 17. The evaluators concluded that not all the requirements of the AML/CFT Law were covered by the sanctioning provisions. In addition, there was a lack of clarity in the application of sanctions under the AML/CFT Law and sectoral legislation; in this respect, concerns were raised in particular with regard to the applicability of administrative sanctions foreseen by the sectoral laws for AML/CFT breaches. With regard to some sectors, the authorities lacked the power to sanction for AML/CFT breaches completely. Finally, AML/CFT enforcement was considered as ineffective, resulting in the lack of application of proportionate and dissuasive sanctions for AML/CFT breaches in practice.

365. **Criterion 35.1.** Violations of the provisions of the AML/CFT Law are considered offences under Articles 88 and 89 of the AML/CFT Law; these provisions apply to legal persons and the responsible person in the legal person. With regard to entrepreneurs and other natural persons, violations of the AML/CFT Law are considered as minor offences under Article 90. Finally, Article 91 contains specific sanctions for violations committed by lawyers. The sanctions foreseen by the AML/CFT Law are in the form of pecuniary fines, which are considered as sufficiently broad to reflect the seriousness of the breach and the situation of the entity in question. In respect of some sectors, further sanctions may be applied for AML/CFT breaches pursuant to sectoral legislation.¹⁰⁵ Finally, on the basis of Article 82 of the AML/CFT Law, supervisors may issue an order to remedy the irregularities and deficiencies identified. It is to be noted that following the amendments to the AML/CFT Law, all the requirements of the AML/CFT Law are now covered by the sanctioning regime.

366. Sanctions for violations of the requirements under the UN sanctions regime are stipulated in Articles 18 and 19 of the LFA. The competent authority to supervise compliance with the LFA is the APML, which can request elimination of irregularities or apply to the prosecutor to initiate misdemeanour proceedings with the view of imposing a pecuniary fine. As concerns the sanctions applicable to NPOs for breaches of the AML/CFT requirements, the reader is referred to the analysis under criterion 8.5 above.

367. **Criterion 35.2.** Pursuant to Articles 88 and 89 of the AML/CFT Law, “a responsible person” in the reporting entities may also be sanctioned for violations of the Law. The term responsible person is not defined and according to the authorities it is interpreted as the person within the reporting entity responsible for the particular breach, which would be identified on a case-by-case basis. Article 90(1a) of the AML/CFT Law further establishes the offences from Articles 88 and 89 as minor

¹⁰⁴<http://www.apml.gov.rs/eng49/dir/Indicators.html>

¹⁰⁵ With regard to broker-dealer and voluntary fund management companies, the respective supervisors may revoke their operating licenses in case of identified breaches of the AML/CFT Law (Article 207 of the Law on Capital Market and Article 71 of the Law on Voluntary Pension Funds and Pension Schemes, respectively). Concerning some sectors, legislation foresees the applicability of sanctions set out in the sectoral legislation also for encountered breaches of “other laws for the supervision of which the authority is also competent”; this would apply also to violations of the AML/CFT Law (in this respect, see the analysis under c.27.4) (Article 110 of the Law on Banks, Article 69 of the Law on Voluntary Pension Funds and Pension Schemes, Article 13h of the Law on Financial Leasing, Article 161 and following of the “old Law on Insurance”, and Article 197 and following of the “new Law on Insurance”)

offences should the violations be committed (amongst others) by “any natural person”. It is however not clear whether this provision is applicable to directors and managers of reporting entities (as this would seem to overlap with the previous provisions enabling the punishment of responsible persons of reporting entities) or whether it is designed to be applied to entrepreneurs (which would however seem to overlap with paragraph 1 of the same article, which provides for penalties of entrepreneurs). Sanctions for natural persons pursuant to the above described provisions are also only in the form of pecuniary fines. In conclusion, it appears that the sanctioning framework set by the AML/CFT Law does not cover all the directors and senior management of reporting entities.

368. With regard to banks and voluntary pension funds, the NBS is empowered to sanction members of the management of the financial institutions on the basis of the sectoral legislation¹⁰⁶.

Weighting and Conclusion

369. All the requirements of the AML/CFT Law are covered by the sanctioning provisions of the AML/CFT Law. The Law foresees a broad range of pecuniary fines. Further types of administrative sanctions are available to supervisors under sectoral legislation, this is however in place only with regard to some sectors. Breaches of the UN sanctioning regime are punishable by letters of warning or pecuniary fines pursuant to the LFA and sanctions are also available for violations of the requirements related to NPOs. It appears that sanctions are not available for all types of managerial functions as foreseen by the FATF Standards (as only “responsible persons” of legal entities are covered), as well as the only sanction applicable to natural persons under the framework are pecuniary fines. **Recommendation 35 is rated Partially Compliant.**

Recommendation 36 – International instruments

370. Serbia was rated LC on the former Recommendation 35 and PC on Special Recommendation I, the latter being based on the FT offence not being in line with the definition of the offence in the FT Convention.

371. **Criterion 36.1.** Serbia is a party to the Vienna Convention¹⁰⁷, the Palermo Convention¹⁰⁸, the Merida Convention¹⁰⁹ and the FT Convention.¹¹⁰

372. **Criterion 36.2.** Serbia has implemented into domestic law the provisions of the Vienna, Palermo, Merida and FT Conventions.

373. The level of implementation of the Vienna, Palermo and Merida Conventions is subject to the conclusions regarding the minor shortcoming in Recommendation 3 which to a small extent undermines the implementation of Articles 3 and 7 of the Vienna Convention, Article 6 and 18 of the Palermo Convention and Articles 23 and 46 of the Merida Convention, and also the deficiencies identified as regards Recommendation 4 which undermine the implementation of Articles 5, 12 and 31 of the Vienna, Palermo and Merida Conventions respectively. Furthermore certain Articles of the Vienna (Article 10), Palermo (Articles 26, 27 and 30) and Merida Conventions (Articles 48, 53, 54 and 51) do not appear to be implemented in national legislation based on the information received.

374. The level of implementation of the FT Convention is, as mentioned in the section covering Recommendation 5, lacking as regards the FT offence and Article 2 of the FT Convention.

¹⁰⁶ Articles 114 and 117 of the Law on Banks, Article 69b of the Law on Voluntary Pension Funds and Pension Schemes

¹⁰⁷ As successor state to Yugoslavia which succeeded to the Convention on 12.3.01 from the Socialist Federal Republic of Yugoslavia which had ratified the Convention on 3.1.91

¹⁰⁸ As successor state to Yugoslavia which had ratified the Convention on 6.9.01

¹⁰⁹ As successor state to Serbia and Montenegro which had ratified the Convention on 20.12.05

¹¹⁰ As successor state to Yugoslavia which had ratified the Convention on 10.10.02

Weighting and Conclusion

375. A few articles of the Vienna, Palermo and Merida Conventions have not been implemented in the Serbian legal order. The other provisions have been implemented into domestic law though the shortcomings identified with respect to Recommendation 5 and the FT Convention Annex predicate offences and those in respect of Recommendations 3 and 4 have a bearing on the full implementation of a number of Articles of these conventions. **Recommendation 36 is therefore rated Largely Compliant.**

Recommendation 37 - Mutual legal assistance

376. Serbia was rated PC on the former Recommendation 36, with a number of technical deficiencies having been identified, including: no formal timeframes; the limited ability to provide assistance due to the application of the principle of dual criminality, coupled with the shortcomings in relation to the scope of the FT offence; limitations stemming from shortcomings identified with respect to provisional and confiscation measures available under Serbian law. Some effectiveness issues were also articulated. Former Special Recommendation V was rated as LC, again with no formal timeframes being an issue.

377. **Criterion 37.1.** Serbia is party to the Council of Europe Convention on Mutual Assistance in Criminal Matters and its two additional protocols and is also a party to several bi-lateral MLA treaties with neighbouring countries. Where MLA between Serbia and the other jurisdiction is not governed by an international instrument or where specific issues are not regulated under these treaties, the MLA Law is the legal basis for providing MLA regarding criminal investigation and prosecutions including ML, FT and associated predicate offences. Serbia may provide a wide range of MLA (as per Articles 2 and 83 of the MLA Law) should the conditions in Article 7¹¹¹ be fulfilled – including the principle of dual criminality. In addition, judicial authorities may provide information relating to known criminal offences and perpetrators without letters rogatory (Article 98), and Article 96 enables Joint Investigative Teams. However, there is nothing in the legislative provisions which explicitly provides for “rapid” provision of MLA. Furthermore, once again, MLA may be limited in light of the deficiencies identified in relation to the scope of the FT offence under R. 5 and the application of the principle of dual criminality.

378. **Criterion 37.2.** The Ministry of Justice is the central authority for the transmission of letters rogatory and annexed documents from a foreign judicial authority to the national judicial authority (Article 6). The requests are executed by the Prosecutor’s office or by courts. The timeliness in which a matter is dealt with shall depend on the type of MLA request. There do not appear to be any guidelines which have been issued in order to timely prioritise the execution of requests. The Ministry of Justice has developed the LURIS system which allows for electronic registering and monitoring of progress of international legal assistance-related cases. The full implementation of LURIS remains an on-going project.

379. **Criterion 37.3.** There are concerns that some of the conditions for execution of MLA provided under Article 7 of the MLA Law (where an international treaty does not otherwise govern it) are unduly restrictive. Article 7 excludes execution of MLA requests in cases where a *res iudicata* has

¹¹¹ Article 7 of the MLA law provides the following preconditions to the execution of MLA requests: 1)the criminal offence, in respect of which legal assistance is requested, 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 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. Without prejudice to paragraph 1, sub-paragraph 4 of this Article, mutual assistance shall be granted for the criminal offence against the international humanitarian law that is not subject to the state of limitations.

been pronounced (*ne bis in idem* principle), this does not pose a problem. However, Article 84 of the MLA Law¹¹² which provides for the conditions under which other forms of MLA may be provided, limits the scope of the *ne bis in idem* principle and only allows the provision of MLA if “if there are no criminal proceedings pending against the same person before national courts for the criminal offence which is the subject of the requested mutual assistance”. Thus, the indictment seems to have the same effect as a *res iudicata* which appears unduly restrictive. The exclusion of MLA where the statute of limitations has been met also appears unduly restrictive and is uncommon both in international practice and in relevant international Conventions dealing with MLA (Council of Europe Convention on Mutual Assistance in Criminal Matters and its two additional protocols and CETS No. 198). See also the considerations expressed under C37.6 on dual criminality.

380. **Criterion 37.4.** Serbia does not refuse MLA requests on grounds that the offences involve fiscal matters, and furthermore, though not expressly provided under the law, it is implicit that an MLA request will not be refused on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions or DNFBPs, except in cases under the CPC addressing legal professional privilege/secrecy.

381. **Criterion 37.5.** Pursuant to Article 9 of the MLA Law (where an international treaty does not otherwise govern it), state authorities are mandated to safeguard the confidentiality of information obtained during the execution of requests for MLA.

382. **Criterion 37.6.** Dual criminality is required under Article 7 MLA Law (if an international treaty does not apply) regardless of whether the request involves coercive actions.

383. **Criterion 37.7.** The dual criminality principle for MLA does not require the offence to be placed in the same category or be denominated by the same terminology by both countries. The Serbian authorities advised that the flexibility of the principle means that as long as an offence would be an offence under Serbian law, its terminology is not relevant.

384. **Criterion 37.8.** Article 12 of the MLA Law provides that the CPC will be applied unless the MLA Law stipulates differently, thus allowing for the application of powers to use compulsory measures and the application of special investigative techniques provided under the CPC, to be available for MLA. Article 83¹¹³ of the MLA law also provides for the application of powers to use compulsory measures and special investigative techniques in the context of MLA.

Weighting and Conclusion

385. Serbia fulfils the majority of the criteria under Recommendation 37; however, there are some shortcomings with respect to the imposition of the principle of dual criminality where MLA requests do not involve coercive actions and the guidelines for timely prioritisation of MLA requests. There are also concerns that some of the conditions for execution of MLA requests provided under the MLA law (where an international treaty does not otherwise govern it) are unduly restrictive. The issues identified in respect to Recommendations 3 and 5 could also have a cascading effect on the ability of

¹¹² Article 84 of the MLA law provides that other forms of MLA may be provided if the conditions listed in Article 7 of this law met as well as: 1) if the conditions envisaged by the Criminal Procedure Code are met, 2) 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.

¹¹³ It provides in particular: 1) conduct of procedural activities such as issuance of summonses and delivery of writs, interrogation of the accused, examination of witnesses and experts, crime scene investigation, search of premises and persons, temporary seizure of objects; 2) implementation of measures such as surveillance and tapping of telephone and other conversations or communication as well as photographing or videotaping of persons, controlled delivery, provision of simulated business services, conclusion of simulated legal business, engagement of under-cover investigators, automatic data processing; 3) exchange of information and delivery of writs and cases related to criminal proceeding pending at the requesting party, delivery of data without the letter rogatory, use of audio and video-conference calls, forming of joint investigative teams; 4) temporary surrender of a person in custody for the purpose of examination by the requesting party's competent body.

Serbia to provide the widest possible range of MLA. **Recommendation 37 is therefore rated Largely Compliant.**

Recommendation 38 – Mutual legal assistance: freezing and confiscation

386. Serbia was rated PC for Recommendation 38 in the previous round with the shortcoming regarding the provisional and confiscation measures underlining this rating from a technical point of view as well as issues with timeframes and co-ordination arrangements.

387. **Criterion 38.1.** The authorities reported that provision of MLA in respect of freezing and confiscation is undertaken on the basis of international treaties. No further information has however been provided as to which treaties are referred to in particular and it was therefore not demonstrated that there is a sufficient legal basis in this respect¹¹⁴. If international treaties are not applicable, the Law on Recovery of the Proceeds of Crime provides for co-operation for tracing, prohibiting the disposal of, temporary seizure and confiscation of the proceeds of crime in respect of the specific offences listed in Article 2 of that Law. However, the provisions do not seem to cover confiscation and application of provisional measures with regard to instrumentalities and property of corresponding value. Where the Law on Recovery does not apply, the MLA Law allows for the temporary seizure of objects as part of MLA, but there is no ability for confiscation. In addition, the MLA Law does not define the term “object” and it is thus not clear whether this would cover the definition of proceeds as required by the FATF Standards.

388. **Criterion 38.2.** Articles 68-71 of the Law on Recovery of Proceeds of Crime do not require a prior conviction in order to provide MLA assistance with regard to confiscation and the application of provisional measures.

389. **Criterion 38.3.** Serbia is a member of the CARIN which allows it to coordinate actions with other member jurisdictions. The Directorate for Management of Seized and Confiscated Assets within the Ministry of Justice has responsibilities for managing (which implicitly includes disposal) of seized and confiscated proceeds derived from a criminal offence. The responsibilities of the Directorate are comprehensively set out in Article 9 of the Law on Recovery of Proceeds of Crime.¹¹⁵

390. **Criterion 38.4.** According to the authorities, sharing of confiscated assets would be possible pursuant to Article 78 of the Law on Recovery of Proceeds of Crime, subject to the regulation of the matter in an international agreement between the parties. Serbia is currently not party to any agreements, which would enable sharing of confiscated proceeds of crime.

Weighting and Conclusion

391. Serbia can provide MLA with regard to confiscation and provisional measures on the basis of international agreements or, should no such agreement be in place, domestic legislation. The domestic legislation is, however, not fully comprehensive with regard to confiscation related MLA requests. Whilst there is a legislative basis which would enable sharing confiscated property with other countries, this would have to be undertaken on the basis of a further agreement with the foreign jurisdiction and no such agreements have been concluded up to date. **Recommendation 38 is rated Largely Compliant.**

¹¹⁴ The concern in this respect is founded on the fact that, for example, multilateral treaties concluded under the auspices of the UN do provide a legal basis for executing confiscation related MLA requests, but they propose to jurisdictions several procedural options for the implementation in practice. As a result, without implementing internal procedures on state level, it is not clear how the authorities would proceed and whether they would have a sufficient legal empowerment to execute the requests.

¹¹⁵ Serbia is establishing an Asset Recovery Office which shall be in charge of co-ordinating seizure and confiscation actions with other countries, but this is not yet in place.

Recommendation 39 – Extradition

392. Serbia was rated LC on Recommendation 39 in the last evaluation based on effectiveness concerns.

393. Serbia has ratified the European Convention on Extradition and its additional protocols. Serbia is also a party to several bi-lateral extradition agreements with neighbouring countries in the Balkan region and Eastern Europe, as well as France, Spain, Netherland and the United Kingdom. Where an international convention is not in place between Serbia and the other jurisdiction, or where such international instrument does not regulate any particular aspects of extradition between the jurisdictions, the MLA Law governs extradition.

394. **Criterion 39.1.** (a) ML and FT are extraditable offences pursuant to Article 13 of the MLA Law (a person may be extradited for an offence punishable by imprisonment of a maximum of more than a year under the legislation of both the requesting state and Serbia) (b) the LURIS system used by the MoJ for recording, monitoring and tracking of MLA cases is also used for extradition related MLA cases (c) the pre-conditions in Article 16 of the MLA Law for executing extradition requests (taken together with the general MLA conditions in Article 7) are not unduly restrictive or unreasonable.

395. **Criterion 39.2.** As a general ruleset set out by the MLA Law (Article 16(1)), Serbian nationals may not be extradited. Nevertheless, Serbia has concluded a number of bilateral agreements with other countries (Montenegro, Bosnia and Herzegovina, Croatia, and the “former Yugoslav Republic of Macedonia”) which allow for the extradition of nationals for offences punishable by imprisonment of four years or more, which would cover offences of ML and FT. In any other cases, Chapter III of the MLA Law provides for the assumption of criminal prosecutions, pursuant to which Serbia may assume prosecution of offences following a separate MLA request in this respect. Criminal prosecution may be however assumed only if the person has a domicile or residence in Serbia, or is serving a prison sentence in Serbia. This is a discretionary mechanism that requires a letter rogatory and there is no legal provision to ensure that assumption of the criminal procedure would be done “without undue delay”. In conclusion, Serbia can extradite its nationals to several countries with which it has concluded agreements in this respect and, in remaining cases, proceedings may be assumed on the basis of a letter rogatory.

396. **Criterion 39.3.** Dual criminality is required for extradition (Article 7 of the MLA Law) but both countries do not need to place the offence within the same category or use the same terminology.

397. **Criterion 39.4.** Pursuant to Article 30 of the MLA, the person sought for extradition may be surrendered in a simplified procedure, subject to consent of the defendant. In addition, Articles 24 to 26 of the MLA Law provide for the possibility of detaining the person sought for extradition in cases of urgency prior to the submission of the letter rogatory pursuant to a detention request. This request may be submitted directly to the national judicial authority or police, or through the Ministry of Justice or Interpol. An issued international arrest warrant shall be also deemed as such request, subject to reciprocity.

Weighting and Conclusion

398. The majority of the criteria are satisfied but there is a minor shortcoming in that the provision for assuming criminal proceedings, where extradition is not possible, is discretionary. **Recommendation 39 is rated Largely Compliant.**

Recommendation 40 – Other forms of cooperation with other jurisdictions

399. Serbia was rated PC on Recommendation 40. The evaluation team pointed to the gaps in the framework enabling the supervisory bodies to exchange information and co-operate with foreign counterparts and stressed that the information provided did not enable to fully assess whether exchange of information by supervisory and law enforcement authorities was subject to

disproportionate or unduly restrictive conditions. In addition, the information available was also not sufficient to assess effectiveness of international cooperation of supervisory and law enforcement authorities.

400. **Criterion 40.1.** Competent Serbian authorities can provide promptly a range of information to their foreign counterparts in relation to ML, predicate offences and FT.

401. **Criterion 40.2.** a) a legal basis for cooperating with foreign counterparts is clearly set for the APML and the law enforcement agencies. As concerns the NBS and Securities Commission, a general legislative empowerment is in place, its practical implementation however has to be grounded on particular agreements concluded with foreign counterparts. No information was provided as concerns the competency to cooperate with foreign counterparts by other supervisory authorities or the Tax Police. b) There are no impediments to use of the most effective means of co-operating. c) The APML exchanges information through the Egmont Secure Web. Police cooperation is undertaken via INTERPOL's secure I-24/7 data exchange system, the secure SIENA link with EUROPOL and the communication line with liaison officers at SELEC (Bucharest). In addition, the Financial Investigations Unit exchanges information via CARIN. No information was provided in respect of the other authorities. d) No information was provided as to whether the competent authorities have in place processes for the prioritisation and timely execution of requests. e) No information was provided in this respect.

402. **Criterion 40.3.** The APML does not need to have a MoU in place in order to cooperate with other FIUs, nevertheless, a number of such memoranda have been signed.¹¹⁶ The NBS and the Securities Commission can cooperate with foreign counterparts only on the basis of a previous agreement. The Securities Commission is a party to the multilateral IOSCO MoU, whilst the NBS signed a number of bilateral MoU with foreign supervisors in respect of supervision of banks¹¹⁷ and insurance businesses¹¹⁸. No MoU were signed by the NBS concerning co-operation on issues related to supervision of the pension funds sector and financial leasing companies. Police agencies do not require a previous agreement to be in place in order to cooperate with foreign counterparts. Notwithstanding, the MoI concluded 47 MoU related to police cooperation in fight against crime. Information was not provided in respect of the other authorities.

403. **Criterion 40.4.** There are no specific legal provisions regulating explicitly the provision of feedback to the authority from which assistance was sought and providing this in a timely manner, there are, however, no provisions which would pose an obstacle to doing so. The APML reported in this respect that they provide feedback regularly on the basis of a request of the foreign authority.

404. **Criterion 40.5.** Provision of assistance by the relevant Serbian authorities is not subject to unreasonable or unduly restrictive conditions.

405. **Criterion 40.6.** Information obtained by the APML from foreign authorities pursuant to Article 61 of the AML/CFT Law may be disseminated only following a prior consent of the foreign authority. No such restriction is, however, formulated in respect of information which would be obtained from foreign authorities in other manner (such as information contained in a request for cooperation from that foreign authority or information provided spontaneously). It is to be noted that all the information obtained by the APML shall be classified with an appropriate degree of confidentiality (Article 74 of the AML/CFT Law) and can be used only for the purposes established by the AML/CFT Law (Article 76 of the AML/CFT Law). As stated in the analysis under Recommendation 29, the evaluation team was not provided with the relevant provisions of the legislation on classification of information and was therefore not able to fully assess this issue.

¹¹⁶The APML concluded 43 MoUs with foreign FIUs.

¹¹⁷ Bilateral MoUs were signed with Belgium, Bosnia and Herzegovina, Cyprus, France, Germany, Greece, Hungary, Italy, "The former Yugoslav Republic of Macedonia", Montenegro, the Russian Federation, Slovenia, Turkey. In addition, the NBS is party to three multilateral MoUs which include in addition to the aforementioned countries also Albania, Bulgaria and Romania.

¹¹⁸ The NBS concluded bilateral MoUs in respect of the insurance sector with Austria, Belgium, Hungary, "The Former Yugoslav Republic of Macedonia" and Slovenia.

Finally, the APML stated that all information obtained from foreign FIUs is treated in the same manner and handled in accordance with Egmont Principles for sharing information.

406. Appropriate safeguards in respect of the Securities Commission are set out in the IOSCO MoU. As concerns the NBS, this criterion is met in the context of supervision of banks (Article 8(3)), it appears however, that no similar safeguards are in place with regard to the other sectors supervised by the NBS. No information was provided in respect of law enforcement agencies and other supervisors.

407. **Criterion 40.7.** The authorities are required to apply same confidentiality requirements to all information, same protection would therefore be given as to the information obtained from domestic sources and the information under Criterion 40.6 applies.

408. **Criterion 40.8.** The AML/CFT Law provides broad powers for the FIU to collect and exchange the requested information from reporting entities and state authorities. The APML is empowered to request information from the reporting entities and other state authorities when it assesses that there are reasons to suspect ML or FT (Articles 53 to 55 of the AML/CFT Law). Read together with Article 62, which enables it to exchange all required information spontaneously or based on a request, it can be considered that should the APML assess that the request for information provides sufficient reasoning for ML or FT suspicions, it may request information domestically following a foreign request. In addition, the APML is also empowered to temporarily suspend a transaction at the request of a foreign competent body.

409. As concerns the supervisory authorities, the Securities Commission is empowered to undertake inquiries on behalf of foreign authorities on the basis of the IOSCO MoU. Law enforcement agencies have the same investigative powers applicable at the request of other countries that they otherwise have in accordance with the domestic law. No information was provided with regard to other authorities.

Exchange of information between FIUs

410. **Criterion 40.9.** Article 62 of the AML/CFT Law provides the legal basis for receiving and answering requests for information from foreign state authorities competent for the prevention of money laundering and terrorist financing. No MoU is needed for the exchange of information.

411. **Criterion 40.10.** Even though this issue is not explicitly regulated by the AML/CFT Law, there are no impediments in the legislation which could preclude the provision of feedback to other FIUs by the APML. The APML reported that in practice they do provide feedback to foreign FIUs upon request.

412. **Criterion 40.11.** The APML is empowered to exchange information spontaneously or based on a request pursuant to Article 62 of the AML/CFT Law. This empowerment applies to all information held by the APML.

Exchange of information between financial supervisors¹¹⁹

413. **Criterion 40.12.** A general empowerment for the NBS to cooperate with foreign central banks and regulatory authorities is set out in Article 11 of the Law on NBS. A specific reference empowering the NBS to share information and provide assistance to foreign counterparts is included in the sectoral legislation¹²⁰ and applies in each case only to the activities undertaken by the NBS pursuant to the same laws (in this respect, it appears, for example, that the NBS does not have the power to exchange information with its counterparts in respect of supervision of financial leasing providers and voluntary pension funds). The Securities Commission is able to cooperate with foreign counterparts on the basis of Article 262 of the Law on Capital Market. It is to be noted, however, that the requirements of the aforementioned laws require a prior agreement to be concluded with the foreign counterpart in question in order for the Serbian supervisors to be able to exchange

¹¹⁹This refers to financial supervisors which are competent authorities and does not include financial supervisors which are SRB.

¹²⁰ Article 8 of the Law on Banks, Article 187 of the “new Law on Insurance” and Article 178 of the LPS

information and provide assistance.¹²¹ In this respect, the Securities Commission is a signatory of the multilateral MoU of the International Organisation of Securities Commissions and Article 280 of the Law on Capital Market reiterates the power to exchange information and provide assistance to foreign counterparts parties to the MoU. A list of MoUs signed by the NBS is set out above. MoUs in respect of supervision of the insurance sector were concluded by the NBS only with 5 countries and no agreements are in place concerning the pension funds and leasing sectors. It appears that there is no legal basis for cooperation by other financial supervisors (AML/CFT Law determines the Foreign Currency Inspectorate as the supervisory body for exchange offices and money transfer service providers).

414. **Criterion 40.13.** The legislative provisions stated above do not contain any limitations as to the type of information the Serbian supervisors would be able to exchange with their foreign counterparts. It is to be reiterated that it appears that the supervisors are not empowered to exchange information with regard to all the financial sectors.

415. **Criterion 40.14.** The above described legislative provisions do not restrict the scope of the information that can be shared with foreign supervisors and it therefore appears that the NBS and the Securities Commission are empowered to share also the information as required by this criterion (subject to the limitation to only some sector as concerns the NBS). It is to be noted that the exact scope of what type of information may be shared would be dependent on the terms of the respective MoUs. No information was provided with regard to the other supervisors.

416. **Criterion 40.15.** There is no clear provision upon which supervisors could conduct inquiries on the behalf of foreign counterparts. The above listed legislative provisions authorise the NBS and the Securities Commission to “cooperate” with foreign counterparts. Given the general scope of these provisions, it is considered that the legislation does not impede the ability of the supervisors to conduct inquiries on behalf of foreign counterparts, the empowerment to do so and the scope of such power would however have to be based on concrete MoUs signed with the relevant foreign authority. No further information was, however, provided with regard to the MoUs signed by the NBS. In addition, pursuant to Article 122 of the Law on Banks, the NBS shall undertake supervision of banking groups on a consolidated basis and it sets conditions under which this consolidated supervision would be exercised by the supervisor from the country of seat of the holding company.¹²²

417. As concerns the Securities Commission, the IOSCO MoU requires supervisors to obtain information or take a testimony pursuant to a request by another signatory. It does not however provide any further powers and it does not regulate the possibility of undertaking inquiries by a signatory on the territory of another party.

418. **Criterion 40.16.** Article 8 Para 3 of Law on Banks prescribes that the NBS may exchange data (information) obtained from foreign regulatory bodies subject to prior consent of the body that provided the data (information). It appears, however, that the NBS is not subject to a similar limitation with regard to data provided in the context of supervision of financial institutions other than banks. The use of the information received by the Securities Commission from other signatories of the IOSCO MoU is limited by Article 10 thereof, which states that the information may be used only in a manner or for purposes stated in the request, otherwise consent from the requested authority must be obtained. No information was available with regard to the other supervisory authorities.

Exchange of information between law enforcement authorities

419. **Criterion 40.17.** Exchange of information between Serbian law enforcement authorities and their foreign counterparts for intelligence or investigation purposes is conducted on the ground of

¹²¹ An exception in this regard is contained in Article 211 of the Law on Payment Operations which provides for a broad range of cooperation, assistance and information sharing in respect of payment and electronic money institutions with respective supervisors in EU Member States. This provision shall, however, apply only as of the date of accession of Serbia to the EU.

¹²² Article 247 of the Law on Insurance regulates shared undertaking of supervision of financial groups by supervisory authorities from EU Member States. This provision shall, however, apply only as of the date of accession of Serbia to the EU.

Article 19 of the Law on Police, as well as under the relevant international and bilateral treaties to which Serbia is party. Within the Ministry of Interior, it is the International Operational Police Cooperation Directorate (IOPCD) that is in charge of information exchange with law enforcement authorities abroad. The exchange of information is conducted via the INTERPOL's secure I-24/7 data exchange system, the secure SIENA link with EUROPOL as well as the communication line with the liaison officers at SELEC (Bucharest). There are no limitations regarding the type of criminal offence subject to this information exchange so it may equally encompass ML, FT or associated predicate offences and may also target the identification and tracing of proceeds. In practice, the Financial Investigations Unit exchanges information via CARIN in this respect. Concerns exist, however, due to the wording of Article 19 of the Law on Police which seems to limit international operational cooperation to cases of "terrorism, organised crime, illegal migration and other forms of transnational crime and border violations". The Tax Police exchanges information based on international agreements concluded by the Tax Administration and in case there is no such agreement in place, Article 157 of the Law on Tax Procedure and Tax Administration.

420. **Criterion 40.18.** As far as international operational cooperation (i.e. international cooperation that does not require MLA and the involvement of judicial authorities) is concerned, the law enforcement authorities have the same investigative powers applicable at the request of other countries that they otherwise have in accordance with the domestic law (see Art. 19b of the Law on Police). No information was provided in this respect with regard to the Tax Police and other LEAs.

421. **Criterion 40.19.** Serbia can take part and assist in joint investigation teams on the basis of the Second Additional Protocol to the European Convention on Extradition and the MLA Law (Art. 96), operational cooperation and support at the level of law enforcement is also specifically envisaged in Article 27 of the Police Co-operation Convention in SEE¹²³, as well as in Article 18 of the Operational and Strategic Co-operation Agreement between the Republic of Serbia and European Police Office (EUROPOL), dated January 2014. On this legal basis, the Republic of Serbia has already formed joint investigation teams with the Kingdom of the Netherlands, the Czech Republic, the Republic of Austria and Hungary.

Exchange of information between non-counterparts

422. **Criterion 40.20.** In accordance with Article 62 of the AML/CFT Law, the FIU can exchange information with state bodies of foreign countries competent for the prevention and detection of money laundering and terrorism financing at their written and grounded request or on its own initiative. The authorities confirmed that this provision is understood broadly, including all authorities involved in the AML/CFT framework. It appears that there are no legal provisions enabling other competent authorities (supervisory authorities and law enforcement agencies) to exchange information related to AML/CFT purposes with foreign non-counterparts, nevertheless, it appears that there is also no provision which would restrict indirect exchange of information.

Weighting and Conclusion

423. The framework regulating international cooperation of the APML and the Police with their foreign counterparts is broadly in line with the FATF Standards. The sectoral legislation empowers the NBS (with respect to some sectors under its supervision) and the Securities Commission to cooperate with their foreign counterparts, the cooperation in practice can, however, be undertaken only on the basis of a MoU. Whilst the Securities Commission is party to the IOSCO Multilateral MoU, no information on concluded MoUs was provided by the NBS. It has not been demonstrated that other law enforcement agencies, other supervisors and the NBS in respect of some sectors, have sufficient powers to cooperate with foreign counterparts. Apart from the FIU, there are no legal provisions enabling other competent authorities to exchange information related to AML/CFT purposes with foreign non-counterparts, nevertheless, there are also no provisions which would be explicitly impeding it. **Recommendation 40 is rated Partially Compliant.**

¹²³ Other Parties include: Albania, Austria, Bosnia and Herzegovina, Bulgaria, Hungary, Moldova, Montenegro, Romania, Slovenia and "the former Yugoslav Republic of Macedonia".

Summary of Technical Compliance – Key Deficiencies

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	PC	<ul style="list-style-type: none"> The ML and FT NRAs do not identify the residual risks and the actions envisaged in Action Plans in the NRAs are not prioritised accordingly; Some threats and vulnerabilities in the ML and FT NRAs have not been assessed to an appropriate extent which impacts on the conclusions; There is no general policy for requiring AML/CFT stakeholders to apply a RBA to allocating resources and implementing measures to prevent and mitigate ML/FT and its application has not been demonstrated with regard to all relevant authorities to a full extent; Conditions for the application of simplified and enhanced CDD requirements are not based on the conclusions of the NRAs; Supervision of the implementation by all reporting entities of the risk related requirements suffers from the deficiencies of the supervisory framework; Guidelines for the undertaking of risk assessment by reporting entities have not been issued for all the sectors; There are no general provisions for all reporting entities to have policies, controls and procedures to manage and mitigate the identified risks.
2. National cooperation and coordination	LC	<ul style="list-style-type: none"> There are no co-operation and coordination mechanisms in place to combat the financing of proliferation of WMD.
3. Money laundering offence	LC	<ul style="list-style-type: none"> The scope of the ML offence and its purpose requirement is not fully consistent with the purpose requirement of the ML offences in Article 6(1)(a)(i) of the Palermo Convention and Article 3(1)(b)(i) of the Vienna Convention.
4. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> Although confiscation of instrumentalities is possible to some extent under the law, it is not in line with the requirements under criterion 4.1(b); It is not possible to confiscate assets of equivalent value to instrumentalities used or intended for use in ML or predicate offences or for property that is intended or allocated for use in FT; It is unclear to what extent it is possible under the law to void actions where the authorities may be prejudiced in ability to recover property subject to confiscation.
5. Terrorist financing offence	LC	<ul style="list-style-type: none"> Not all acts defined in one of the treaties listed in the annex to the FT Convention are covered by the FT offence; The application of the FT offence to some of the terrorism acts is subject to an additional purpose element.
6. Targeted financial sanctions related to terrorism & FT	PC	<ul style="list-style-type: none"> The framework for the implementation of UNSCRs 1267, 1373 and 1988 does not cover all the requirements; The framework for designation and freezing does not ensure that the measures can be taken without delay.
7. Targeted financial sanctions related to proliferation	NC	<ul style="list-style-type: none"> There is no framework in place to implement UNSCRs related to the prevention, suppression and disruption of proliferation of WMD and its financing.
8. Non-profit organisations	PC	<ul style="list-style-type: none"> No review was conducted of the adequacy of the legal framework relevant to the NPO sector;

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		<ul style="list-style-type: none"> • No review was conducted of the NPO sector with regard to its activities, size and vulnerability to FT; • No systematic outreach activities to the NPO sector were carried out in relation to FT; • Measures in place are not sufficient to ensure transparency, integrity and public confidence in NPOs; • There is no central, dedicated governmental body with responsibility for monitoring NPOs and identifying abuses; • There are no mechanisms in place to ensure prompt sharing of information on NPOs.
9. Financial institution secrecy laws	LC	<ul style="list-style-type: none"> • The legislation does not enable information sharing between FIs with regard to wire transfers.
10. Customer due diligence	PC	<ul style="list-style-type: none"> • Minor technical shortcomings of the set of required CDD measures remain in place; • The definition of beneficial owner is limited; • CDD requirements do not apply to a full extent to wire transfers; • CDD requirements do not apply to a full extent to legal arrangements; • No measures foreseen for cases where the CDD process would tip-off the customer (c.10.20).
11. Record keeping	LC	<ul style="list-style-type: none"> • No explicit requirement for reporting entities to keep account files and business correspondence; • The requirement to keep records of undertaken analysis does not apply to all circumstances.
12. Politically exposed persons	PC	<ul style="list-style-type: none"> • There are no requirements related to domestic PEPs; • Lack of definition of persons entrusted with a prominent function in an international organisation impedes the application of the requirements to PEPs from international organisations; • Senior politicians are not covered (even for foreign PEPs); • Lack of requirement to identify source of wealth; • Guidelines to assist reporting entities in identifying PEPs have not been issued for all sectors; • The limitation of PEPs to persons holding such functions in the past year is not commensurate to the assessed risk;
13. Correspondent banking	PC	<ul style="list-style-type: none"> • Requirements related to correspondent banking are limited only to correspondent relationships with FIs that are not included on a list of countries that are deemed to apply AML/CFT standards at EU level or higher; • Reporting entities are not required to understand the nature of respondent's business and determine the quality of supervision or reputation.
14. Money or value transfer services	LC	<ul style="list-style-type: none"> • Minimum sanctions applicable to legal persons cannot be considered as dissuasive and proportionate; • The obligations for MVTSPs in respect of their agents do not cover the requirements of c.14.5.
15. New technologies	LC	<ul style="list-style-type: none"> • The vague requirement of the AML/CFT Law in this respect is fully developed by secondary legislation only in respect of banks.
16. Wire transfers	PC	<ul style="list-style-type: none"> • No requirements in place with regard to beneficiaries of wire transfers.

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
17. Reliance on third parties	C	
18. Internal controls and foreign branches and subsidiaries	PC	<ul style="list-style-type: none"> • No requirements to implement group-wide programmes or measures on a group-wide level.
19. Higher-risk countries	PC	<ul style="list-style-type: none"> • Consideration of geographical risk is left to the discretion of reporting entities; • No other countermeasures are foreseen by the legislation;
20. Reporting of suspicious transaction	C	
21. Tipping-off and confidentiality	C	
22. DNFBPs: Customer due diligence	PC	<ul style="list-style-type: none"> • Notaries are not covered by the AML/CFT framework; • Deficiencies identified under Recommendations 10, 11, 12, 15 and 17 are also applicable to compliance with Recommendation 22.
23. DNFBPs: Other measures	PC	<ul style="list-style-type: none"> • Notaries are not covered by the AML/CFT framework; • Deficiencies identified under Recommendations 18 and 19 are also applicable to compliance with Recommendation 23.
24. Transparency and beneficial ownership of legal persons	LC	<ul style="list-style-type: none"> • Serbia has not fully assessed the threat posed by different types of legal persons; • Not all the requirements of R.24 are subject to liability and proportionate sanctions.
25. Transparency and beneficial ownership of legal arrangements	PC	<ul style="list-style-type: none"> • There are no specific measures in place to prevent the misuse of trusts/legal arrangements; • The deficiencies under Recommendation 10 related to legal arrangements undermine the availability of information on trusts; • There is no explicit requirement for trustees to disclose their status to reporting entities when forming a business relationship or carrying out an occasional transaction above the threshold; • There are no provisions enabling to hold trustees liable for failure to meet their obligations.
26. Regulation and supervision of financial institutions	PC	<ul style="list-style-type: none"> • Measures to prevent criminals from controlling FIs do not fully cover the FATF Standards; • Risk-based approach is not applied to supervision outside the banking sector; • ML/FT risk profile of individual institutions is not taken into consideration to a sufficient level outside the banking sector.
27. Powers of supervisors	LC	<ul style="list-style-type: none"> • The imposition of sanctions for AML/CFT breaches through misdemeanour proceedings, where full discretion is given to the prosecutor, limits the sanctioning powers of supervisors.
28. Regulation and supervision of DNFBPs	PC	<ul style="list-style-type: none"> • Notaries are not covered by the AML/CFT framework; • Accountants are not subject to licensing; • Lack of clarity with regard to the designated supervisor of casinos; • Lack of clarity whether the Bar Association is empowered

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		<p>to supervise AML/CFT compliance of lawyers in practice;</p> <ul style="list-style-type: none"> • No measures are in place preventing criminals from controlling real estate agents and accountants; • Measures preventing criminals from controlling casinos, auditors and lawyers are more restrictive than the FATF requirements; • The imposition of sanctions for AML/CFT breaches through misdemeanour proceedings, where full discretion is given to the prosecutor, limits the sanctioning powers of supervisors.
29. Financial intelligence units	LC	<ul style="list-style-type: none"> • Not all staff was subject to security clearance; • Lack of clarity on the application of data-confidentiality restrictions on the information held by the FIU.
30. Responsibilities of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> • Lack of clarity as to whether there are non-LEAs which have responsibility for pursuing financial investigations of predicate offences; • Lack of clarity as to whether the police forces which are involved in investigating corruption offences are also authorised to investigate associated FT offences.
31. Powers of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> • Special investigative techniques cannot be applied in relation to all categories of predicate offences associated to ML cases under investigation; • No explicit authorisation for LEAs to request all relevant information held by the APML.
32. Cash couriers	LC	<ul style="list-style-type: none"> • The declaration regime in place does not cover cross-border transportation of cash or BNIs through container cargo or shipment; • No power to detain cash or BNIs when there is a suspicion that these are derived from illegal activity or are intended to fund such activities in case of compliance with the declaration obligation; • No obligation to maintain records on information related to false declarations; • Available sanctions for non-compliance with the declaration obligation are considered as low.
33. Statistics	LC	<ul style="list-style-type: none"> • Statistics are not kept on co-operation of all LEAs and supervisory authorities.
34. Guidance and feedback	LC	<ul style="list-style-type: none"> • Feedback is provided only to the banking sector.
35. Sanctions	PC	<ul style="list-style-type: none"> • Sanctions are not available to all types of managerial functions as required by the FATF Standards; • With regard to some sectors and natural persons, the only available sanctions for AML/CFT breaches are pecuniary fines.
36. International instruments	LC	<ul style="list-style-type: none"> • Not all the relevant articles of the Vienna, Palermo and Merida Conventions have been fully implemented; • Remaining shortcomings from Recommendations 3 to 5 also impact on compliance with Recommendation 36.
37. Mutual legal assistance	LC	<ul style="list-style-type: none"> • Some of the conditions for execution of MLA under the MLA Law (when an international convention is not applicable) are considered as unduly restrictive; • Dual criminality is required under the MLA Law regardless of whether the request involves coercive actions;

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
38. Mutual legal assistance: freezing and confiscation	LC	<ul style="list-style-type: none"> • Lack of clarity with regard to the applicable procedure in practice when assistance is provided on the basis of an international convention; • National legislation does not enable the provision of a full scope of MLA with regard to tracing, seizure and confiscation of assets;
39. Extradition	LC	<ul style="list-style-type: none"> • No requirement which would ensure that proceedings are assumed without undue delay in case an extradition request was refused solely on the grounds of nationality.
40. Other forms of international cooperation	PC	<ul style="list-style-type: none"> • Lack of clarity on the empowerment of other supervisors (apart from the NBS and the Securities Commission) to cooperate with foreign counterparts; • Lack of signed agreements which would enable the NBS to co-operate with its foreign counterparts with regard to supervision of pension funds and leasing companies; • Lack of clarity with regard to safeguards and confidentiality requirements applicable to the information exchanged with regard to the authorities other than the APML, Police, Securities Commission and NBS (only with regard to supervision of banks).

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Anti-money laundering and counter-terrorist financing measures

Serbia

Fifth Round Mutual Evaluation Report

This report provides a summary of the AML/CFT measures in place in Serbia as at the date of the on-site visit (28 September to 9 October 2015). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Armenia's AML/CFT system, and provides recommendations on how the system could be strengthened.