

#### *Chapter 4: Free movement of capital*

Member States must remove, with some exceptions, all restrictions on movement of capital both within the EU and between Member States and third countries. The *acquis* is based on the Treaty on the Functioning of the European Union, in particular Articles 63-66. The definition of the different types of capital movements relies on Annex I of Directive 88/361/EEC. Relevant case-law of the European Court of Justice and Commission Communications 97/C220/06 and 2005/C293/02 provide additional interpretation of the above Articles.

The *acquis* also includes rules concerning payments. Directive 2007/64/EC on payment services in the Internal Market (PSD) is the legal foundation for the creation of an EU-wide single market for payments. The PSD establishes a modern and comprehensive set of rules applicable to all payment services, national and cross-border, in the European Union. The target is to make cross-border payments as easy, efficient and secure as 'national' payments within a Member State, while at the same time enhancing rights of the payment service users. The PSD also seeks to improve competition by opening up payment markets to new entrants, thus fostering greater efficiency and cost-reduction. At the same time the Directive provides the necessary legal platform for the Single Euro Payments Area (SEPA). Regulation (EC) No 924/2009 on cross-border payments in the EU eliminates the differences in charges for cross-border and national payments in euro up to the amount of EUR 50.000. It applies to all electronic payments (credit transfers, direct debits, payments by means of debit and credit cards and cash withdrawals at cash dispensers). It guarantees that, when a consumer makes a cross-border electronic payment in euro, it costs him the same as making a corresponding payment in euro within his own Member State.

Directive 2000/46/EC on the taking up, pursuit of and prudential supervision of the business of electronic money institutions enables the use of electronic money within the EU and sets the rules concerning operations of e-money institutions. E-money institutions are the third category of payment service providers, aside credit institutions (banks) and payment institutions (created by PSD). This law has been recently thoroughly reviewed and will be repealed by 30 April 2011, when a revised e-money Directive, 2009/110/EC, enters into force.

Directive 2005/60/EC<sup>1</sup> (which repeals Directive 91/308/EEC, as amended by Directive 2001/97/EC) requires entities subject to the Directive to apply customer due diligence and to report suspicious transactions, as well as to take relevant supporting measures, such as record keeping, training and establishing internal procedures. A key requirement to combat financial crime is the creation of effective administrative and enforcement capacity, including co-operation between supervisory, law enforcement and prosecutorial authorities. The new Directive aligns with and goes beyond the relevant 40 Recommendations on money laundering and nine Special Recommendations on terrorist financing of the Financial Action Task Force (FATF). The *acquis* in this area also comprises Commission Directive

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<sup>1</sup> Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

**2006/70/EC,<sup>2</sup> Regulation (EC) 1889/2005,<sup>3</sup> Regulation (EC) 1781/2006<sup>4</sup> as well as two Council of Europe (CoE) Conventions (CE) (CETS 141 and 198 <sup>5</sup>) and EU legislation on judicial and police cooperation (including the Joint Action 98/699/JHA of 3 December 1998, the Council Framework Decision 2001/500/JHA and the Protocol of 30 November 2000 extending Europol's competence to money laundering). In addition, Council Decision 2000/642/JHA of 17 October 2000 sets out arrangements for cooperation between Financial Intelligence Units (FIUs) of the Member States.**

**The Stabilisation and Association Agreement already lays down specific obligations in the areas covered by this Chapter. When answering the questions below, please make reference to the state of implementation of such obligations.**

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<sup>2</sup> Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis.

<sup>3</sup> Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the EU.

<sup>4</sup> Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds.

<sup>5</sup> Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (so-called Strasbourg Convention; CETS 141); Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Warsaw Convention; CETS 198).

## ***I. CAPITAL MOVEMENTS AND PAYMENTS***

**On the basis of the attached table, please indicate the situation for each type of capital transaction (whether the transaction has been liberalised, any conditions attached to the liberalisation, authorisation procedures, applicable domestic legislation, etc.):**

**1. What are the plans and timetables for complete liberalisation of medium and long-term capital movements? Please distinguish between decisions already adopted, measures programmed, and conditional measures.**

At present, the Republic of Serbia is undergoing a capital movement liberalisation process. By signing the EU Stabilisation and Association Agreement, the Republic of Serbia undertook to comply with its provisions and its gradual implementation until full liberalisation. In the four year period following the entry into force of the Stabilisation and Association Agreement, the Republic undertook to assure the creation of necessary preconditions relative to further gradual implementation of the European Union's rules in relation to the freedom of capital movements.

Capital movement in the Republic of Serbia is regulated by the Law on Foreign Exchange Operations (Official Gazette of RS, No. 67/06) which entered into force on 27 July 2006. The Law recognizes gradual liberalisation of capital movements and to that effect long term capital operations have been liberalised, resident deposit operations have been partially liberalised, and the limitations pertaining to short-term capital operations have been kept.

Following capital operations have been **liberalised**:

- direct investments abroad by residents made in line with the law regulating foreign trade and direct investments by non-residents in the Republic made in line with the law regulating foreign investments;
- acquisition of ownership of real estate by residents abroad and non-residents in the Republic under the law governing legal ownership relations;
- acquisition of equities abroad by residents which do not represent direct investments and long-term debt securities issued by OECD member states and international financial institutions by residents, and acquisition of equities and long-term debt securities in the Republic by non-residents in line with the law regulating the securities market;
- operations with financial derivatives;
- investments of investment fund management companies and voluntary pension fund management companies abroad and investments of non-residents into investment funds and voluntary pension funds in the Republic, made according to laws regulating operations with investment and voluntary pension funds;
- insurance company investment made in line with the law governing insurance operations;
- loans and credits accompanying cross-border commercial transactions (trade in goods and services), which banks, residents – legal persons and entrepreneurs grant to or borrow from non-residents;
- long-term financial loans borrowed from non-residents by banks, residents – legal persons and entrepreneurs;
- financial loans to finance agriculture and promote exports, utilised by the Export Credit and Insurance Agency of the Republic of Serbia;
- financial loans which banks grant to non-residents and bank guarantees for credit operations between two non-residents abroad;

- purchase of claims and assumption of debts from residents by banks and residents – legal persons arising from cross-border credit operations;
- deposit operations of non-residents in the Republic;
- personal transfers of means of payments to abroad by residents natural persons are effected freely up to 10.000 euros per month without any documentation.

Deposit operation of residents **has been partially liberalised**.

Banks may freely keep their foreign exchange in bank accounts abroad, as well as certain categories of other residents: persons employed in diplomatic and consular missions abroad, persons undergoing professional training abroad, persons emigrating from the country, persons selling real estate abroad, persons domiciled in Serbia who besides having Serbian nationality are also some other country's nationals, Serbian nationals staying abroad (on the basis of work visa, stay permit etc.) for a period no longer than a year and persons who earned foreign pensions in countries with which no inter-governmental agreement has been concluded.

Legal persons may keep their foreign exchange in a foreign bank account only upon the NBS approval for the following purposes: for investment and research work abroad, paying operating costs of representative and branch office abroad, making guarantee deposit for the purpose of participating in a tender procedure, collecting donations and grants, collecting payments against court decision, making guarantee deposit for the purpose of sending bids for acquisition of equities abroad, utilising a foreign financial loan intended for making payments abroad etc.

**Partially liberalised** are financial loans which residents grant to non-residents, and warranties that residents grant to non-residents, for credit operations between two non-residents abroad.

Residents – legal persons other than banks may grant financial loans to non-residents and grant warranties for credit operations between two non-residents abroad from the profit they realised abroad and under condition that the non-resident –debtor is majority owned by the resident and under the obligation to contract and obtain from non-resident payment collateral instruments.

Investment of residents (NBS and banks excluded) into short-term securities abroad, and of non-residents into domestic short-term securities **has not been liberalised**. Cross-border borrowing of banks, residents – legal persons and entrepreneurs in the form of a short-term financial loans for settling obligations in the Republic - conversion to national currency, bank liquidity and other purposes stipulated in bylaws of the National Bank of Serbia also **have not been liberalised**.

Cross-border credit operations of residents – natural persons other than entrepreneurs and branches of foreign legal persons **have not been liberalised**. Cross/border credit operations of residents – entrepreneurs also **have not been completely liberalised**, since resident-entrepreneur may not grant a financial loan to a non-resident, warrant for credit operations between two non-residents abroad nor purchase claims and assume debt of another resident arising from cross-border credit operations.

## 2. Describe the key features of the current law on foreign exchange operations

The Law on Foreign Exchange Operations (hereinafter referred to as the "Law", was published in the Official Gazette of the Republic of Serbia, No. 62/2006 and entered into force on 27 July 2006. Basic features of the current Law are as follows:

Payment, collection and transfer under **current operations** is executed freely. Deadline for collection of payment from export of goods or services and the deadline for import of prepaid goods or services is 180 days, after which it is regarded as cross-border credit operation and recorded with the National Bank of Serbia (Articles 4 and 5). Banks and residents other than natural persons may purchase and sell claims and assume debt from foreign trade operations of residents (Article 7). Resident shall bring into the Republic profit made abroad by the performance of construction works upon its completion, and shall inform the Foreign Exchange Directorate of the profit made by the performance of business activities abroad (Article 9).

Payment, collection and transfer under **capital operations** between residents and non-residents are executed freely in line with the Law. Payment and transfer of capital with regard to **direct investments** of residents to abroad and non-residents into the Republic are executed freely, in line with the law governing foreign trade and the law governing foreign investments (Article 11).

Payments for the purpose of **acquiring ownership of real estate** of residents abroad and non-residents in the Republic are executed freely, in line with the law governing property rights (Article 12).

Residents may freely effect payment for the purpose of investing in **equities** abroad which does not represent a direct investment, as well as in long-term debt securities issued by the OECD member countries and international financial institutions, and in other long-term debt securities if their rating and issuer country are prescribed by the National Bank of Serbia. Residents may effect payment also for the purpose of purchasing domestic securities denominated in foreign currency and issued abroad (Article 13). Non-residents may effect payment for the purpose of purchasing long-term debt securities and equities in the Republic, in line with the law governing the securities market (Article 14). The law contains restrictions with regard to investment of residents (except the NBS and banks) in foreign short-term securities and non-residents in domestic short-term securities (Article 15). Banks may perform these operations in line with the Decision on Conditions and Manner in which Banks May Purchase Foreign Short-term Securities on Domestic and Foreign Market (Official Gazette of RS, No. 16/2007), which was adopted by the National Bank of Serbia.

**Transactions with financial derivatives** are executed freely, in line with the Decision on Terms under which Banks, Residents and Non-residents May Perform Transactions with Financial Derivatives (Official Gazette of RS, No. 80/2007), which was adopted by the National Bank of Serbia (Article 16).

Residents - **investment and voluntary pension fund management companies** may effect payment for the purpose of investing abroad, and non-residents may effect payment for the purpose of investing into investment and voluntary pension funds in the Republic in line with the provisions of the law governing activities with investment and voluntary pension funds (Article 17).

**Cross/border credits and loans** taken by banks, residents - legal persons and entrepreneurs, used to finance foreign trade in goods and services, are fully liberalised and may be both short-term and long-term ( Articles 18 and 21 (2) ). Cross-border financial loans which

are used for other purposes, such as: settling obligations in the Republic, bank liquidity and other purposes (Article 21 (2)) are partially liberalised and may be freely used if long-term, as provided for in the Decision on the Terms and Conditions of Using Foreign Financial Credits for the purposes Under Article 21(2) of the Law on Foreign Exchange Operations ( Official Gazette of RS, No. 81/2006, 105/2007, 8/2008 and 44/2009), which was adopted by the National Bank of Serbia. This Decision also provided for full liberalisation of cross-border financial loans for financing agriculture and operations performed by the Export Credit and Insurance Agency of the Republic of Serbia, which can be taken as short-term.

Banks may, without limitations, grant all types of loans to non-residents (Articles 18 and 23(4)), whereas residents – legal persons and entrepreneurs may without limitations grant to non-residents loans accompanying cross-border commercial transactions (Article 18 (4) and (5)) .

Residents – legal persons may grant financial loans to non-residents and grant warranties for credit operations between two non-residents abroad from the profit they realised abroad and under condition that the non-resident –debtor is majority owned by the resident. Residents – natural persons and branches of foreign legal entities may not engage in cross-border borrowing or lending. Cross-border credit operations are recorded with the National Bank of Serbia (Article 24) in the manner prescribed by the Decision on Methods, Deadlines and Forms Used in Recording Foreign Credit Operations (Official Gazette of RS, No. 9/2007, 24/2008, 120/2008, 40/2009 and 88/2009).

Banks and residents – legal persons may, without limitations, **purchase claims and assume debts from residents arising from cross-border credit operations** (Article 20(1)), and non-residents may perform these operations under terms and in the manner prescribed by the National Bank of Serbia (Article 20(3)).

Residents' external **deposit operations** have been partially liberalised. Banks may keep foreign exchange in the accounts with banks abroad, while other residents may keep foreign exchange in the accounts with banks abroad only in line with the Decision on the Terms and Conditions under which a Resident May Be Allowed to Hold Foreign Exchange in Bank Accounts Abroad (Official Gazette of RS, No. 16/2007, 36/2007, 118/2007, 44/2009, 64/2009, 21/2010) which was adopted by the National Bank of Serbia (Article 27). Non-resident may keep foreign exchange and dinars in the account with a bank in the Republic without restrictions in accordance to the Decision on Terms of Opening and Manner of Maintaining Non-resident Accounts (Official Gazette of RS, No. 16/2007, 12/2008, 61/2008), which was adopted by the National Bank of Serbia (Article 28). Non-resident that transacts business through a non-resident account shall effect transfer from such account to abroad provided that its tax liabilities towards the Republic arising from this business operation have been settled. Foreign bank that keeps funds in the correspondent account with the bank in the Republic and non-resident – natural person that transfers funds to abroad from its foreign currency and dinar savings account, executes this transfer freely (Article 29).

Residents – **insurance companies** may effect payment for the purpose of depositing and investing abroad, in line with provisions of law governing insurance activities. Residents may pay insurance premiums based on insurance contract concluded with non-resident insurance company, under the condition that such contract is allowed by the law governing insurance activities (Article 30).

**Personal and physical transfers of means of payment** to and from the Republic of Serbia are executed in line with the Decision on the Conditions for Effecting Personal and Physical Transfers of Means of Payment to and from Abroad (Official Gazette of RS, No. 67/2006, 52/2008, 18/2009), which was adopted by the National Bank of Serbia (Article 31).

According to this regulation, the amount of foreign cash that residents may freely take abroad, and non-residents bring into Serbia without declaring it to customs authorities is EUR 10,000, thus it became harmonised with the Directive (EC) No. 1889/2005 of 26 October 2005. Residents are allowed to freely effect transfer of this amount of foreign exchange (EUR 10,000) abroad through a bank, and only for transfers that exceed EUR 10,000 (based on a gift, financial aid to a family member, inheritance etc.) presentation of prescribed documentation to a bank is required.

**International payment transactions** are performed in foreign exchange and dinars through banks, whereas state bodies and organizations perform international payment transactions through the National Bank of Serbia. The National Bank of Serbia adopted a Decision on Conditions and Manner of Performing International Payment Transactions (Official Gazette of RS, No. 24/2007, 31/2007, 38/2010) prescribing in detail conditions and manner of performing international payment transactions (Article 32).

Residents are allowed to effect **collection and payment in respect of non-resident** other than the one with regard to whom the resident has claims or debts under current or capital transaction, provided that such transaction is allowed by this law (Article 33).

**Payments in the Republic** between residents and between residents and non-residents are effected in dinars, and in foreign exchange in itemised cases (foreign currency lending in the country, purchase of claims and payables under foreign trade and international credit operations, sale and lease of real estate etc.), and shall also be effected in respect of activities which are regulated by laws governing the securities market and other financial instruments, and deposit insurance, and in other instances prescribed by law. Contracting in foreign exchange is allowed, but payments are effected in dinars. Instances in which payment, collection, payments made and payments received may be effected in foreign cash are regulated by the Decision on Payment, Collection of Payments, Paying in and Paying out in Foreign Cash (Official Gazette of RS, No. 9/2007, 118/2007, 18/2009, 38/2010), which was adopted by the National Bank of Serbia (Article 34), which, inter alia, prescribes that residents – legal persons, entrepreneurs and branches of foreign legal persons when performing their registered business activities can collect foreign cash in cases: when providing services to natural persons – residents and non-residents in international circulation of goods and passengers, selling goods to natural persons – residents and non-residents in a duty free shops, supplying fuel, lubricants oil and other expandable goods to foreign aircrafts and ships in ports in the Republic, when collecting tolls for foreign registration vehicles.

Foreign exchange and foreign cash may be purchased and sold only in the **foreign exchange market** for purposes allowed by Law (Article 38). **The dinar exchange rate** against foreign currencies is freely established in the foreign exchange market, in line with the foreign exchange demand and supply (Article 40).

The law envisages that, in the event of more serious disturbances in the balance of payments, when capital movements, resulting from excessive inflow or outflow of capital from the Republic, cause or threaten to cause serious difficulties in the implementation of monetary policy and foreign exchange rate policy, upon the proposal of the National Bank of Serbia, the Government may adopt **protective measures** (which are itemised), for the duration of the disturbances, but not longer than six months following adoption thereof (Article 42).

3. Please comment on the strategy for liberalisation of short-term capital movements. How is this strategy linked to other economic developments? How consistent is it with other policy objectives, in particular that of the exchange rate? Given experience

**elsewhere, are excessive inflows not considered more likely than initial outflows? Which instruments are available to manage inflows?**

Law on Foreign Exchange Operations contains limitations with regard to short-term capital movements – residents may not effect payment for the purpose of purchasing foreign short-term securities. This limitation does not refer to the National Bank of Serbia and banks engaging in those activities under conditions prescribed by the National Bank of Serbia in its Decision on Terms and Conditions of the Purchase of Foreign Short-term Securities by Banks in Foreign and Domestic Markets (Official Gazette of RS, No. 16/2007), nor it refers to domestic investment and voluntary pension funds and insurance companies, who effect such payments in accordance with laws governing their business. Furthermore, non-residents cannot effect payment for the purpose of purchasing domestic short-term securities. Also, residents–banks, legal persons and entrepreneurs may not utilise short-term cross-border financial loans for settling obligations in the Republic (conversion to national currency), bank liquidity and other purposes stipulated by the National Bank of Serbia.

Short-term capital transactions have not been liberalised because, having in mind the achieved level of economic development and macroeconomic stability in the country, premature liberalisation of capital movements would increase the exposure of national economy to volatile movements of short-term capital, primarily due to differences between interest rates in domestic and foreign capital markets.

Also, premature liberalisation could cause macroeconomic instability and disbalance in financial sector due to the specificity of Serbian economic transition characterized by insufficiently developed and shallow financial market and still ongoing reforms.

Prior to complete liberalisation of capital movements, economic reforms should be finalized and capital inflow absorption capacity should be increased. Serbia implemented and continues to implement overall economic reforms in order to increase resistance of its economy to risks related to possible reversibility of capital flows. Liberalisation of capital movements before the completion of these reforms would jeopardise full integration of the Republic of Serbia into financial flows, and on the other hand it would increase risks of causing financial and macroeconomic instability.

Having in mind the above stated and the experience of other countries, it is our opinion that the present level of liberalisation of capital movements is relatively advanced and in line with current state of economic and institutional reforms in Serbia. Experiences of other developing economies indicate that gradual and well planned dynamics of capital movement liberalisation reduces risks pertaining to the creation of a macroeconomic and financial crisis. Liberalisation of long-term capital inevitably precedes liberalisation of short-term capital, as is the case with liberalisation of inflow which precedes capital outflow. Precondition necessary for short-term capital movement liberalisation is the existence of free floating exchange rate supported by inflation targeting regime and the existence of a developed financial market. From this point of view, the Republic of Serbia has already achieved a high level of liberalisation of capital movements even before many of these institutional preconditions pertaining to liberalisations have been satisfied.

Based on experiences of other transitional countries, short-term capital liberalisation could result in somewhat larger short-term capital inflows, having in mind the expected increase of the country's credit rating and higher level of interest rates than in developed countries. However, shallow capital market and a non-diverse portfolio of short-term securities with sovereign bonds



dominating domestic market indicate that neither significant initial inflow nor excessive outflow can be expected. In the circumstances during and following the global financial crisis more rigorous standards for establishing the rating and control of banks and all capital (especially short-term) market participants are to be expected.

The National Bank of Serbia can address the issue of oscillations in foreign assets inflow and outflow dynamics by changing reference interest rate and by the legal reserves policy. Temporary limitations with regard to capital movements may be introduced by adopting protective measures which shall be applied no longer than six months following adoption thereof. The Law on Foreign Exchange Operations envisages that, following the proposal of the National Bank of Serbia, in the event of more serious disturbances in the balance of payments, when capital movements, resulting from excessive inflow or outflow of capital from the Republic, cause or threaten to cause serious difficulties in the implementation of monetary policy and foreign exchange rate policy, the Government may adopt protective measures.

Having in mind the achieved level of economic growth of the Republic of Serbia, it has been agreed that a gradual approach to liberalisation of capital movements should be taken within a timeframe that would assure time necessary to adjust the economy of the Republic to new and extremely strong competition with other EU Member States. In line with the Stabilisation and Association Agreement, the Republic of Serbia undertook to lift limitations regarding short-term capital movements within a four-year period following its entry into force. It has been estimated that a four-year period is required in order to establish a sustainable macroeconomic stability and satisfy preconditions to neutralise potential negative effects of short-term capital movement liberalisation.

**4. On current account convertibility, it is our understanding that Serbia has not yet accepted IMF Article VIII status. In this context, can Serbia provide information on what are the remaining technical issues?**

By entering into force of the preceding Law on Foreign Exchange Operations in April 2002, which was harmonised with Article VIII of the Statute of the IMF, the conditions were established for proclaiming current account convertibility on 15 May 2002.

**5. What are the obligations of the State regarding bonds issued for payment of frozen foreign exchange deposits: principal/interest? What is the market value of these bonds (in percentage)? What can these bonds be used for?**

**What are the obligations of the State regarding bonds issued for payment of frozen foreign exchange deposits: principal/interest?**

Pursuant to provisions of the *Law on the Settlement of Public Debt of the Federal Republic of Yugoslavia arising from the Citizens' Foreign Exchange Savings* (Official Journal of FR Y, No. 36/2002), obligations arising from 'old' foreign currency savings were converted into public debt of FR Y, and the debt of the Republic of Serbia.

Total amount of public debt was EUR 4.2 billion.

Until 30 November 2010, the Republic of Serbia paid its debt a total amount of EUR 1.81 billion, i.e. public debt of the Republic of Serbia as of 30 November 2010 amounted EUR 2.39 billion.

In order to settle debt, on 19 August 2002, the Republic of Serbia issued bonds with nominal value of EUR 1, maturing on each May 31 during the period from 2002 to 2016, and containing pre-calculated annual interest rate of 2% until maturity date. Bonds were issued as non-material securities, individually for each year, registered in the name of the holder and being transferable, registered in proprietary accounts opened with the Central Registry, depot and securities clearing, and paid in euros or dinars, at the owner's request. (Uprava za javni dug)

#### **What can these bonds be used for?**

Besides for payments within due date, bonds may be used as follows:

- before their maturity: for payment of medical treatment costs at home and abroad, medicines and orthopaedic aids at home and abroad, for payment of funeral costs and costs of transportation of remains from abroad (initial owners of savings and bonds are entitled to these);

- for purchase of shares of companies in the ownership transformation process, purchase of shares of commercial banks, purchase of apartments, residential premises, business premises, land and other state-owned property - under conditions set by property owners;

- for payment of sales tax, excise duty, property tax, personal income tax and corporate tax – within bonds' maturity dates.

Domestic legal person and entrepreneur, natural person and citizens temporarily working abroad, natural and legal person, may purchase and sell bonds of the Republic of Serbia at the stock exchange for foreign currency. (Uprava za javni dug)

As of 29 November 2010, market value of block of bonds (series A2011- series A2016) was 86.91% of its nominal value; maximum market value of bonds maturing on 31 May 2011 – 97.79%, and minimum – bonds maturing on 31 May 2016 – 78.55%. (NBS)

#### **6. What has been the contribution of foreign direct investment to the development of the economy? What was the size of FDI inflows (annual, cumulative and per capita) in recent years? What were the originating countries and into which sectors was it mainly channelled? What share has been brown-field (e.g. in the context of privatisation) and what share green-field investment?**

Contribution of foreign direct investment to the development of economy has been significant with a view to acceleration and quality of economic growth and export growth. Positive effects of FDI are reflected in increased competitiveness, better quality of services, increased number of products, new technologies and lower costs. Foreign direct investment inflow was intensive and on average amounted to 6.5% of GDP in the period 2003-2009, and even reached 14.3% of GDP in 2006. Largest inflow of foreign direct investments was recorded in the financial sector (29%),

manufacturing industry (20%), telecommunications (14%), real estate construction and trade (8%). (*EXCEL TABLES ATTACHED*)(NBS)

Overview of **gross foreign direct investment inflow in relation to privatisation of socially-owned enterprises:**

Table 1 – Results of privatisation as of 30 November 2010

| <b>Description</b>          | 2002   | 2003   | 2004   | 2005   | 2006   | 2007   | 2008   | 2009  | 1.1.-<br>30.11.<br>2010. | <b>Total<br/>2002-2010</b> |
|-----------------------------|--------|--------|--------|--------|--------|--------|--------|-------|--------------------------|----------------------------|
| No of<br>companies<br>sold: | 211    | 638    | 237    | 317    | 281    | 316    | 277    | 94    | 34                       | <b>2.405</b>               |
| No of<br>employees          | 37.320 | 76.927 | 38.808 | 58.931 | 45.962 | 45.011 | 27.187 | 9.119 | 1.634                    | <b>340.899</b>             |
| <b>million EUR</b>          |        |        |        |        |        |        |        |       |                          |                            |
| Selling<br>price            | 319    | 840    | 154    | 371    | 240    | 434    | 253    | 49    | 13                       | <b>2.673</b>               |
| Investments                 | 320    | 320    | 100    | 99     | 152    | 104    | 62     | 25    | 2                        | <b>1.184</b>               |
| Welfare<br>programme        | 146    | 128    | 3      | 0      | 0      | 0      | 0      | 0     | 0                        | <b>277</b>                 |

*Source: Privatisation Agency*

As shown in the Table, from 1 January 2002 to 30 November 2010 inflow of investments in the Republic of Serbia amounted to EUR 1.184 billion.

In this regard, economic policy directed towards attracting investments (green-field and brown-field) shall be continued aiming to attract foreign capital, new technologies and increase employment.

As of 30 November 2010, there were 183 contracts concluded with foreign buyers regarding privatisation of companies through tender or auction methods, and 43 of which were subsequently terminated.

By investing in infrastructure favourable conditions for investors and for balanced regional development are being created.

Creation of favourable conditions for establishment of small and medium-sized companies through provision of finance reduces unemployment, increases competitiveness, stimulates balanced regional development and export.

Also, present activities aimed at attracting investors from electronic industry, information technologies, car industry etc. shall be continued.

- 7. Please comment on privatisations of state-owned enterprises in the past and those envisaged in the future. Which sectors are involved? Does the government maintain any special rights (e.g. 'special shares', representation on the board of directors, veto rights on important decisions) in privatised companies? How many residual shares does the State own in privatised companies? Who/which institution is in charge of their management? How is the State represented in companies where it owns shares? Is there a strategy or an action plan for the management of State capital?**

**Please comment on privatisations of state-owned enterprises in the past and those envisaged in the future. Which sectors are involved?**

Law on Privatisation (Official Gazette of RS No. 38/01, 18/03, 45/05, 123/07) regulated privatisation of socially-owned companies, whereas the Law on Right to Free Shares and Monetary Compensation Exercised by Citizens in the Privatisation Process (Official Gazette of RS No. 123/07 and 30/10) regulates right to free distribution of shares of public companies, i.e. companies with majority state-owned capital. Regulation on Sale of Capital and Property by Public Tender (Official Gazette of RS, No. 45/01, 59/ 03, 110/ 03, 52/ 05, 126/07, 96/08, 107/08 and 98/09), Regulation on Sale of Capital and Property by Public Auction (Official Gazette of RS, No. 52/05, 91/07, 96/08 and 98/09) and the Regulation on the Procedure and Method of Sale of Shares and Holdings of Shareholders Funds by Public Auction (Official Gazette of RS, No. 72/2010) are bylaws which have enabled the application of the said laws.

Portfolio of the Privatisation Agency's Privatisation Centre contains 455 enterprises. 255 of them have socially-owned capital and the financial structure of 200 contains Shareholder Fund capital, Privatisation Agency and/or state-owned capital, i.e. capital of the Republic of Serbia, Pension and Disability Fund and/or Development Fund.

In the process of transformation of the entire public sector it is necessary to regard public utility companies as separate entities due to their complexity with a view to providing public-communal services, so special models for each activity should be defined, which is especially important in cases when some form of partnership with the private sector has been arranged..

There are numerous problems in the functioning of public utility companies in the Republic of Serbia (in some parts of the Republic they are the only companies in operation there and therefore very important for given region) which is a consequence of the inherited and newly created circumstances in the last 15 years: technical-technological obsolescence; oversized companies; tendency toward irrational spending; high indebtedness; high level of losses; strong budgetary dependency; inadequate solution of issue of ownership; fragmentation of activities; decrease in volume and quality of services etc. Also, basic obstacle for a long-term public interest regarding good quality communal service to be met is the lack of means to be used for modernisation and expansion of communal infrastructure, because most public utility companies are not capable of financing larger magnitude of necessary investments with own means.

**Does the government maintain any special rights (e.g. 'special shares', representation on the board of directors, veto rights on important decisions) in privatised companies?**

All rights and obligations of buyer and seller are defined in the sales contract, so there are no special rights of the Government or its bodies in form of 'special share', representation on the board of directors, veto rights and the like.

How many residual shares do the State own in privatised companies?

Shareholders Fund was established in line the Law on Amendments and Supplements to the Law on the Right to Free Shares and Monetary Compensation Exercised by Citizens in the Privatisation Process (Official Gazette of RS, No. 30/10).

Privatisation Agency is acting in the name and for the account of the Shareholders Fund.

Property of Shareholders Fund is its right of property over the following non-monetary stakes:

- (a) shares and stakes entered in the Privatisation Register,
- (b) shares and stakes that the Share Fund transferred to the Shareholders Fund (unsold shares of the Share Fund, initially transferred to the Share Fund in line with the provisions of the Law on Ownership Transformation and the Law on Privatisation, and shares transferred to the Share Fund in accordance with the Law on the Right to Free Shares and Monetary Compensation Exercised by Citizens in the Privatisation Process (Official Gazette of RS No. 123/07 and 30/10), which entitled existing shareholders to waive their shares for the purpose of subscribing to free shares.

On the basis of shareholder's 'waiver', the portfolio of Shareholders Fund was enlarged by 40%.

The Shareholders Fund portfolio contains 1,735 companies where: 1,517 are public limited companies, 24 private limited companies and 194 limited liability companies.

### **Who/which institution is in charge of their management?**

Privatisation Agency uses its voting right based on shares transferred to it in accordance with Article 116 of the Law on Amendments and Supplements (Official Gazette of RS, No. 30/10) when making decisions at the Shareholders' Assembly regarding the following:

- 1) Increase and decrease of equity of joint-stock company;
- 2) Restructuring of joint-stock company;
- 3) Pledging property, establishing mortgage and other cases of property encumbering;
- 4) Long-term lease of property;
- 5) Composition with creditors;
- 6) Acquisition and disposition of real estate and other valuable property.

### **How is the State represented in companies where it owns shares?**

Shareholders Fund does not take active participation in managing bodies; it only uses its voting right at the Shareholders' Assembly.

### **Is there a strategy or an action plan for the management of State capital?**

One of the main privatisation goals, among others, is to end participation of state-owned capital in company capital, i.e. that state-owned shares are sold in one of the manners prescribed by law. There is no formal strategy for managing the remaining state-owned capital in privatised companies.

Adoption of a strategy for restructuring local public-utility companies (PUC) established by local government bodies is envisaged for the forthcoming period. Goals of the Government of the Republic of Serbia (RS) and other competent institutions is to implement an optimum transformation model with regard to companies engaged in public-utility type of activities in order to safeguard public interest and at the same time assure their efficient operation in compliance with the standards of EU Member States.

In that sense, in line with the conclusion of the Serbian Government as of 6 November 2008 which opted to analyse the state of local communal companies and propose strategy for their restructuring, the Ministry of Economy and Regional Development established a Working Group for PUC made up of representatives of the Ministry of Economy and Regional Development, Office of the Prime Minister, other relevant ministries, the Privatisation Agency and the Standing Conference of Towns and Municipalities. So far the first draft strategy has been prepared.

**8. Was there considerable inflow of capital other than FDI (portfolio investment, other)? If so, did it pose problems for the conduct of monetary policy or the exchange rate? How were such problems resolved? If such inflows have not yet taken place, how do the authorities envisage managing their impact in the future? (c.f. economic chapter and chapter 20 – enterprise and industrial policy)**

In parallel with FDI, there was also a significant increase in foreign long term-loans, whereas portfolio investments were relatively low. This foreign capital inflow created problems with regard to the implementation of monetary policy and foreign exchange rate policy. Problems were resolved by increasing the required reserve ratio, withdrawing money through repo operations of the NBS which resulted in high reference interest rate and in the appreciation of the dinar exchange rate for several years.

**9. Is the financial system sufficiently developed to cope with the greater freedom of capital movements? What are the implications for financial supervision? Is there a clear division of competencies among the authorities that are in charge of financial supervision? Please provide details.**

Serbian financial system has successfully weathered the global financial crisis and showed stability, which is an indicator of the level of its development and ability to be adequate framework for free movement of capital. Financial system, since it is bank-centric, is highly capitalised and liquid and showed high resistance on observed stress tests so that any increase in the volume of loans in arrears did not jeopardize the adequacy of capitalisation of bank s.

Both market participants and regulators, acting in the market affected by the effects of global financial crisis, showed high level of responsibility and seriousness. For these reasons, financial control of market participants was carried out within standard frameworks without any special implications for its scope, quality and results.

The division of jurisdiction between financial supervisors is clear, precise and grounded in relevant laws.

In that respect, the National Bank of Serbia in line with the Law on the National Bank of Serbia (Official Gazette of RS, No. 72/2003, 55/2004, 85/2005 – other law and 44/2010) grants and

revokes banks' operating licences, supervises bank solvency and legality of operations and performs other activities in line with the law governing banks.

This very law prescribes that, as part of its control function, the National Bank of Serbia:

- grants and revokes operating licenses to insurance companies, exercises control of such operation and supervision over it, grants and revokes authorization for carrying out certain insurance operations and carries out other activities in line with the law governing insurance;
- grants and revokes operating licenses for carrying out leasing operations, supervises these operations and performs other activities in line with law governing leasing operations;
- grants and revokes operating and managing licenses to voluntary pension fund management companies, supervises this activity and performs other activities in line with law governing voluntary pension funds.

In accordance with the Law on Foreign Exchange Operations, the National Bank of Serbia supervises exchange offices<sup>6</sup>

**10. Does a substantial inflow of capital provide the opportunity for a more balanced opening of the capital account, by allowing residents to invest abroad? In this context, what are the investment rules applied to institutional investors (e.g. pension funds) regarding investment in foreign securities?**

According to the Law on Foreign Exchange Operations (Official Gazette of RS, No. 62/2006, adopted on 19 July 2006), voluntary pension fund management companies may effect payment for the purpose of investing abroad, in line with provisions of the law governing activities of voluntary pension funds. According to the Law on Voluntary Pension Funds and Pension Schemes (Official Gazette of RS, No. 85/2005, passed on 6 October 2005) and the Decision on the Maximum Amounts of Voluntary Pension Fund Assets Investment and Terms and Conditions for Investing Such Assets Abroad (Official Gazette of RS, No. 63/2007, 67/2007, 111/2009 and 34/2010, adopted on 6 July 2007 and amended in 2007, 2009 and 2010, last amended on 29 May 2010), assets of voluntary pension funds may be invested abroad into certain types of assets but with following limitations:

- 1) in debt securities issued by foreign countries and international finance institutions, provided that their credit rating is no less than 'A', as established by Standard&Poor's, Fitch-IBCA or Thompson BankWatch, or 'A2' as established by Moody's;
- 2) in debt securities issued by legal entities headquartered in the EU Member States of OECD countries, provided that such securities are traded on the stock market in such states and their credit rating is no less than 'A', as established by Standard&Poor's, Fitch-IBCA or Thompson BankWatch or Moody's rating agencies;
- 3) in shares issued by legal entities headquartered in the EU/OECD member states, provided that such shares have been officially quoted on the stock exchange in these member states for at least two years and their minimum market capitalisation is EUR 500,000,000;
- 4) in deposit certificates issued by banks headquartered in EU/OECD member states based on following deposited securities: securities issued by international financial institutions, debt securities issued by foreign governments or foreign legal entities provided that their credit rating is no less than 'A', as established by Standard&Poor's, Fitch-IBCA, Thompson

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<sup>6</sup> By adopting amendments to the Law on Foreign Exchange Operations, which is currently in the parliamentary procedure, the supervision over exchange offices shall be transferred to the Ministry of Finance.

BankWatch or Moody's and shares of foreign legal persons which are listed and traded in stock exchange markets of the EU or OECD member states.

In any case, total investment abroad may not exceed 10% of fund's assets.

Insurance companies may invest assets for covering technical reserves in following: (1) up to 30% and 20% of life and non-life technical reserves respectively, in debt securities traded in an organized market of securities in the country and in debt securities issued by legal entities headquartered in the EU/OECD member states; (2) as of 1 January 2010, up to 15% and 10% of life and non-life technical reserves respectively, in shares traded in an organized market of securities in the country and in shares issued by legal entities headquartered in the EU and/or OECD member states, where individual investment in debt securities and shares cannot exceed 5% of technical reserves; (3) debt securities issued by the EU and/or OECD member states, central banks of these states or international financial organisations, and in securities guaranteed for by any of these entities.

Also, these securities must meet certain quality related criteria, including the prescribed rating, minimum market capitalisation and that for the past two years they have been traded.

Insurance companies may deposit and invest assets up to 20% of their core capital abroad.

**11. Please explain in detail the nature and scope of restrictions on the acquisition of real estate by foreigners (i.e. natural and legal persons from the EU and third countries) in your country.**

According to Article 84 of the Constitution of the Republic of Serbia, foreign nationals may acquire ownership of real estate in line with the law and international agreements. The Law on Property Rights prescribes that foreign nationals may acquire property rights in real estate provided there is reciprocity with the country they are from.

By adopting the Constitution of the Republic of Serbia a legal possibility for changing the ownership regime for urban building plots was created and for the first time since 1958 it was possible to have private ownership of those plots, and since the Law on Planning and Construction entered into force, it is possible to have ownership right to building land. Consequently, acquiring ownership of building plots under conditions prescribed by law is not limited to domestic persons and it can be obtained under general conditions and other special laws, and primarily by applying the principle of reciprocity.

**12. Please outline considerations involved in plans for the eventual liberalisation of inward investment in real estate in your country, distinguishing, if appropriate, between agricultural, forest, industrial, residential (urban, rural, coastal), security areas. In this context, what progress has been made on the establishment of a land register?**

Area of foreign investment in Serbia is regulated by the Law on Foreign Investment (Official Journal of FRY, No. 3/2002 and 5/2003 Official Journal of SM, No. 1/2003 – constitutional charter).



According to Article 7 of this Law, A foreign investor may establish and/or invest in companies registered to carry out all profit gain activities. Article 8 of this Law provides that a foreign investor enjoys the same rights and duties with respect to his/her investment as domestic natural and legal persons. As for certain investment in real estate, Article 20 of the Law on Foreign Investment strictly stipulates that foreign natural and legal person in the capacity of foreign investor can acquire ownership over real estate in accordance with the Law.

Also, it is important to emphasize that limits for foreign investors in Serbia are set in Article 19 of this Law according to which foreign investor may not, alone or with another foreign investor, establish a company for manufacturing and trade of weapons or in an area specified as a restricted zone. Nevertheless, we believe that these provisions will not be changed because of potential security risk that such change could provoke in the country.

Considering these provisions we believe that legal framework covering foreign investments allows for foreign investor smooth investment in this and other fields resulting in significant scale of foreign investments in Serbia in last 5 years.

Republic Geodetic Authority is competent for establishment and maintenance of Real Estate Cadastre, unique record of real estates, property rights, taxes and limitations.

By establishing Real Estate Cadastre, land register for the area of 23% cadastre municipalities from the total number of cadastre municipalities was repealed (North Serbia and part of Central Serbia). On the small part of Serbian territory deeds system and intabulation were used and they are also repealed by introducing Real Estate Cadastre. Previous records were not so easy to keep up-to-date, predominantly because of voluntary entry, time when they were established and long time of their maintenance and hand-kept records like in 19 century. As such they did not allow: safety and reliability of entered rights and real estate market development.

Land cadastre records were based and maintained for the area of whole Serbia and cadastral data are the base for establishment of Real Estate Cadastre.

In 1980's i.e. 1988 the Law on State Survey and Cadastre provided for establishment of cadastre for real estates. Following adoption of that Law, by-laws were adopted defining in more details these issues and work on establishing Real Estate Cadastre begun.

Today, Real Estate Cadastre is established with 92% cadastre municipalities from total 4522 i.e. Real Estate Cadastre was established for 15 931 691 cadastre parcels or 85% of total number.

Complete Real Estate Cadastre was established for whole territory of 5 towns, 5 municipalities in Belgrade and 69 political municipalities in the Republic of Serbia. Final works on Real Estate Cadastre establishment are in progress in the rest of towns and municipalities.

So far, the following data has been entered in the records of the Real Estate Cadastre:

- 15 931 691 cadastre parcels

- ☐ 3 824 207 buildings and other facilities, from what
  - ☐ 1 384 486 family housing buildings
  - ☐ 22 744 buildings for collective housing
  - ☐ 2108726 other buildings and facilities
  
- ☐ building special parts
  - ☐ 493 022 apartments,
  - ☐ 50 499 business premises,
  - ☐ 34 691 garages
  
- ☐ 628 865 mortgages,
- ☐ 900 547 other taxes and notes

Numerical data in accordance with the Regulation on Establishment of Mid-term Programme of Works for the Republic Geodetic Authority for period 1 January 2010 – 31 December 2014 (Official Gazette of RS, No. 7/2010) planned for digitalisation in 2011 of analogue maps for another 35% cadastre municipalities and another 30% in 2012. Plan for digitalisation of analogue cadastre maps in 2010 is already exceeded and with a view to meet user needs and achieve work efficiency, Republic Geodetic Authority plans complete digitalisation of all cadastre maps by the end of 2012.

Development of software application is underway for connecting in one system 5 independent systems (registry, cadastral records, database of digital cadastral maps, address register and register of spatial units). In that way connection of numerical and spatial data will be executed and central database on the level of the Republic of Serbia will be formed.

Established Real Estate Cadastre by the end of 2011 and developed and implemented new information system will contribute to more efficient work of the Authority that will have positive effects on development of society in whole and particularly in:

- ☐ safety of entered rights,
- ☐ more efficient data distribution to end-users,
- ☐ improved and more efficient land planning for more economic use,

- ☐ development of real estate market,
- ☐ increase in domestic and foreign investment.

Since October 2004 in cooperation with World Bank, the Real Estate Cadastre and Registration Project in Serbia is being implemented. This project made it possible to significantly speed up establishment of Real Estate Cadastre and drawing of digital cadastre maps by additional financing. End of project is expected in October 2011.

Agricultural Land Administration in the Ministry of Agriculture is competent for issues related to foreigner rights to acquire property in the Republic of Serbia.

Under current law this right is not allowed. Article 1, Paragraph 3 of the Law on Agricultural Land (Official Gazette 62/2006 and 41/2009): "Owner of agricultural land may not be foreign natural or legal person". Under the SAA there is transitional period of 4 years of the day of SAA entry into force.

Also, there is no investment liberalization plan in real estate, in the case of state forest. Namely the Forest Law (Official Gazette of RS, No. 30/10) in Articles 98 and 99 disallows disposal or lease of state-owned forests and forest land, except in special cases. Forest user can, with the Government's consent sell part of the state-owned forest or forest land on which it is impossible to organise rational husbandry under market conditions or swap for individually-owned forest or forest land if these forests are isolated or enclaves or half-enclaves in the forest complex are state property.

13. Are there investment agreements with third countries which provide for pre-establishment access of investments? With which countries have investment agreements been concluded? Please provide relevant information on dates of ratification, initial terms of agreements, automatic renewal procedures, and periods for which acquired rights exist. Do such agreements include a regional economic integration organisation clause? Which sectors are normally excluded (e.g. aviation, maritime transport, fishing, audiovisual, etc.) from such agreements? (*c.f. chapter 30 – external relations*)

In connection with amendments and the termination of agreement, standard Draft Agreement on Mutual Encouragement and Protection of Investment which the Government of the Republic of Serbia signed in 2007 (attached) fully complies with basic principles of the 1969 Vienna Convention on the Law of Treaties and prescribes that "a treaty may be amended by agreement between the Contracting State and they shall enter into force in accordance with the same procedure provided for the entry into force of the original agreement." All signed bilateral agreements contain similar formulation.

Serbian Draft Agreement on Mutual Promotion and Protection of Investment, as well as texts of 46 bilateral agreements of this type do not in any way foresee a more favourable approach to investments. Provisions of the agreement relating to the granting of national and most favoured nation treatment "do not oblige any Contracting Party to extend to investors of other Contracting

Party granting of any treatment, preference or privilege which it may grant to third country by virtue of its membership in the Economic Union, Free Trade Zone, Monetary Union or any similar international agreement which establishes such unions or other forms of regional cooperation which are or may be accessed by the contracting party" (Article 3 of Standard Draft Agreement).

The only areas with limited foreign investments are production and trade in arms, radio broadcasting, piloting, loading and ship overhauling. Law on Foreign Investments (Official Journal of FRY, No. 3/02 and 5/03) and other regulations related to foreign investments in Serbia and legal status of foreign investors stipulate that foreign investors may invest in companies registered for all business activities other than those in certain areas specifically listed in the law. Article 19(1) of the Law on Foreign Investments stipulates that foreign investor may neither himself nor with another foreign investor establish a company for the manufacture and trade of arms in the Republic of Serbia, or in areas specified as restricted zones under the law. This article also explicitly stipulates that a foreign investor may establish a company engaged in previously defined business activities together with a domestic legal person or invest in such a company, but may not acquire a majority share in the management of such company. If a foreign investor intends to participate in the manufacture and trade of arms, paragraph (2) of the law stipulates that it must previously obtain approval from a competent body responsible for matters of defence.

Article 41(2) of the Law on Broadcasting (Official Gazette of RS, No. 42/02,97/04,76/05,79/05,62/06,85/06,86/06,41/09) stipulates that "a domestic legal person founded by foreign legal persons established in countries in which, under their internal regulations, it is not allowed or possible to determine the origin of its equity capital, may not participate in public tender for broadcasting license." The same Article in paragraph (3) stipulates that "foreign natural or legal person may hold up to 49% of the equity capital of the broadcasting license holder, unless otherwise stipulated by international agreements ratified by the Republic of Serbia."

Business activities related to piloting, loading and ship overhauling may be performed only by domestic natural and legal persons.

A list of bilateral investment agreements of the Republic of Serbia is attached. It lists all the agreements concluded, the parties, the name of each agreement, date of signature, ratification and entry into force. Each of them contains a provision referring to automatic extension of agreement term and the period in which the established rights continue to be valid. Most agreements state that "the Agreement is concluded for a period of ten years and shall automatically be extended in successive five year periods, unless either Contracting Party gives not less than a twelve months' notice of its intention to terminate the Agreement." In respect of investments made prior to the date when the termination of agreement becomes effective, its provisions shall remain in force for a further period of ten years from that date." Regarding the entry into force, the following provision applies: "Each Contracting Party shall inform in writing the other Contracting Party about the realisation of internal constitutional procedure regarding its entry into force. The Agreement enters into force on the date of receipt of second of the two notices."

## ***II PAYMENT SYSTEMS***

### **14. What are the general rules governing non-cash payments in Serbia? (NBS)**

Dinar payment transactions are regulated by the Law on Payment Transactions (Official Journal of FRY, No. 3/2002 and Official Journal of FRY, No 5/2003 and Official Gazette of RS, No. 43/2004 and No. 62/2006) and bylaws, operational rules and guidelines which closely regulate issues related to payments in dinars. Bylaws prescribe the following: Form, contents and method of using four basic uniform payment transaction instruments (pay-in order, pay-off order, transfer order and collection order), terms and manner of opening, maintaining and closing of accounts with the bank, settlement and clearing and the functioning of settlement accounts with the National Bank of Serbia, unique structure for identification and classification of accounts and list of accounts for performing payment transactions with the bank, method of oversight over payment clearing and settlement systems, general rules for conducting authorisation-based direct debit, clearing and settlement of authorisation-based direct debit, electronic method of performing payment transactions, method of supervision of performing payment transactions, clearing and settlement of payment cards transactions and other issues.

Interbank payments in dinars are executed through the RTGS and clearing system of the National Bank of Serbia. Direct debit and cheque clearing is operated by the Association of Serbian Banks and the settlement is performed in the RTGS system. Clearing and settlement of national payment card transactions is executed in the National Bank of Serbia, while transactions in dinars with the international payment card brands are only settled in the RTGS system.

Non-cash payments in Serbia between residents and between residents and non-residents may also be effected, by way of exception, in foreign exchange according to Article 34 of the Law on Foreign Exchange Operations (Official Gazette of RS, No. 62/06) in cases such as:

- foreign currency lending to residents – legal persons and entrepreneurs for the payment of import of goods and services, and to residents – natural persons for the purchase of real estate in the country;
- payment of deposit as collateral;
- purchase of claims and payables arising from foreign trade and foreign credit transactions;
- insurance premium and transfer in relation to life insurance;
- sale and lease of real estate;
- activities regulated by laws governing the securities market and other financial instruments, and deposit insurance, as well as in other instances prescribed by law.

### **15. What are the general conditions applicable for cross-border payments between Serbia and other countries, in particular EU Member States? Are they different from those concerning national payments? If yes, describe main differences.**

NBS prescribes terms and manner of executing international payment transactions based on the authorisation from the Law on Foreign Exchange Operations. The National Bank of Serbia adopted a Decision on Terms and Conditions of Performing Foreign Payment Transactions (Official Gazette of RS, No. 24/07, 31/07 and 38/10) and the Guidelines for Implementing the Decision on Terms and Conditions of Performing Foreign Payment Transactions (Official Gazette of RS, No. 24/07, 31/07, 41/07, 3/08, 61/08, 120/08 and 38/10) which prescribe

deadlines for cross-border payments and the manner in which payments and collections with regard to international payment transactions are effected.

In relation to payment transaction instruments used for payment, collection and transfer within the meaning of this Decision, banks are obliged to apply international banking rules and standards, as well as modern telecommunication systems, including SWIFT.

The Guidelines for Implementing the Decision on Terms and Conditions of Performing Foreign Payment Transactions specifically regulate payments to beneficiaries in EU Member States in the amount up to EUR 50,000, in the sense that, prior to accepting the order, the bank is required to notify the principal in writing or electronically, as to the:

- time span during which funds need to be in the account of the beneficiary's bank, specifying the exact start of the time span;
- (tentative) amount of time needed for the beneficiary's bank to credit its account;
- level of fees and other charges to be paid by the order issuer;
- date of bank account debiting ( currency date);
- procedure that may be taken by the principal in the event of appeal or damage claim;
- exchange rates applied (in the event of conversion of euro).

Payment transactions performed in dinars are regulated by the Law on Payment Transactions and bylaws passed based in line with this Law, and payment transaction in foreign exchange are regulated by the Law on Foreign Exchange Operations and its bylaws, with most important differences being the following: completely separate legal frameworks, different payment instruments applied, different reporting requirements, different payment codes etc.

**16. Are banks the only authorised institutions to execute payment transactions? If not, what other institutions are authorised to perform them? Explain the process and requirements to be fulfilled to grant an authorisation to a non-bank institution, if applicable.**

With regard to dinar payment transactions – payment transactions may be performed by banks licensed by the National Bank of Serbia, whereas payment transactions for budgetary beneficiaries, in compliance with the law governing the budget system, are executed through the Treasury Department which is a part of the Ministry of Finance.

Also, in line with the provisions of the Law on Payment Transaction, the PTT enterprises (post, telegraph, telephone) conduct the following payment transaction activities:

- 1) receive payments from natural persons in favour of accounts maintained with a bank and make payouts to such persons;
- 2) receive payments on daily takings for accounts of banks' clients;
- 3) receive and collect cheques under citizens' current accounts.

The Law on Foreign Exchange Operations stipulates that international payment transactions are performed in foreign exchange and dinars through banks, whereas state bodies and organizations perform international payment transactions through the National Bank of Serbia.

**17. Is the information on the conditions governing the use of payment services fully transparent and easily available for payment service users? Are financial institutions required to inform their customers on these conditions? If yes, describe in detail the information that needs to be provided by financial institutions.**

In line with the Law on Banks (Official Gazette of RS, No. 107/2005), each bank shall make general terms of business, as well as their amendments, clearly visible in its business premises, not later than 15 days prior to their implementation. A client (natural or legal person) may request from a bank appropriate explanations and instructions regarding the implementation of general terms of business. For the purposes of the law, general terms of business are considered to be all documents containing standard terms of business applicable to all clients of a bank, general conditions for establishing relationship between clients and the bank, the procedure regarding communication between clients and the bank, and the general conditions for conducting transactions between clients and the bank. At client's request, bank shall make available information regarding its business relationship with the client.

Pursuant to the Decision on the General Terms of Business to be Applied by Banks in Relations with Natural Person Clients (Official Gazette of RS, No. 74/2009), bank shall provide that the client - natural person is informed of general terms of business by way of informing the client, at his/her request, that he/she can obtain information in writing on the bank's general terms of business relating to the request and that he/she may request further clarifications and instructions regarding the application of those terms. Furthermore, bank shall advertise its products and services in accordance with its general terms of business, in a clear and understandable manner and without giving any inaccurate information which could mislead the client regarding terms under which he/she uses those products and services. In addition, pursuant to the above mentioned Decision, for account opening, maintaining and closing, in its general terms of business the bank shall prescribe type and level, and the range of all fees and costs to be charged to the client, specify whether they are fixed or variable, and in the case of latter – specification of adjustment periods, method of adjustment and reasons for adjustment. Also, with regard to the issuance and use of payment cards, in its general terms of business the bank shall set forth terms of payment card use and actions to be taken in the event of any damage to the card, theft of card loss.

Pursuant to the Decision on Conditions and Manner of Opening, Maintaining and Closing Bank Accounts (Official Gazette of RS, No. 33/2005 and 25/2009), the basic elements of the contract on opening and maintaining a bank account, concluded between the client (natural or legal person) and the bank – and the manner and deadlines for submitting a statement of all changes in the account (by mail, fax, email, at the teller), provided that the deadline for the legal person is not longer than two days following the day of occurrence of change, and the bank shall submit to the natural person the statement of changes in the account at least once a month. Client shall take care of the statements received from the bank and examine them, and shall inform the bank on any discrepancy or contestation of liabilities or claims. Bank shall examine each reported discrepancy, contestation or indebtedness,, provide available relevant information and where the data is consistent and determined it shall make necessary adjustments and corrections in the

account. One of the basic elements of the contract are transactions that the bank shall perform for the client, mutual right and obligations, responsibility and indemnity etc. The contract cannot diminish the rights and obligations under the law, but it can add to them provided they do not diminish the rights of third parties. In addition, the bank shall inform the client of each change in relation to contract elements no later than 30 days before such change becomes effective.

The users of payment services themselves may inform on the manner of execution of international payment transaction in accordance with the regulations published in the Official Gazette of the Republic of Serbia and on the website of the National Bank of Serbia. In line with their business policy, banks also publish those terms on their websites and through other means of communication.

**18. Are financial institutions required to supply their customers with information (a) prior, (b) subsequent to a payment transaction (either single transaction or a transaction covered by a framework contract)? If yes, describe the information that needs to be provided.**

**Dinar payment transactions**

In accordance with the Law on Banks, bank shall provide its clients, upon their request, with information related to their business relationship, and this also refers to providing information prior to and after the execution of a payment transaction.

The Law on Payment Transactions prescribes that the receiving bank (bank that receives the payment order) shall not execute the payment order if it does not contain all prescribed data regarding the recipient and the sender and their banks, and other prescribed data and if data inconsistency makes the execution of the order unrealisable. If the bank refuses to accept payment order it shall immediately notify the client. In addition, the receiving bank shall assist clients to carry out payment transactions in a satisfactory manner and to act in best interest of its client. With regard to debit transfers, specific bank are obliged if it refuses payment order under conditions stipulated by the law to immediately notify the sender – creditor.

According to the Decision on the Form, Contents and Manner of Use of Uniform Instruments in Payment Transactions (Official Gazette of RS, No. 57/2004, 82/2004), pay-in order, collection order and pay-off order contain two copies, one of which remains with the bank and the other one is returned to the client together with the certificate on the received payment order. However, when the client uses transfer order in paper form (which contains only one copy) or in case of electronic payment transaction, at their request, the bank shall issue a certificate on the received payment order and the certificate on the executed payment. All instruments contain elementary transaction data provided by the client: numbers of accounts in the payment transaction, name of issuer of order, name of recipient or the debtor, amount, purpose, code of payment, reference number, value date, place and date of receipt of payment order, seal and signature of the issuer.

**International payment transactions**

The Decision on Terms and Conditions of Performing Foreign Payment Transactions and Guidelines for Implementing the Decision prescribes ways of informing clients regarding international payment transaction issues.



Following the account opening, the bank shall provide client with information regarding the manner of foreign exchange payment effected through correspondent bank abroad in line with the Decision on the Unique Account Identification and Classification Structure and Plan of Accounts for the Application of International Rules and the IBAN Standard (Official Gazette of RS, No. 116/2006).

Regarding collections from abroad, after the receipt of notice of incoming funds, the bank shall notify the beneficiary, whose name appears on the notification of the foreign bank, on the same day and at latest on the following business day after receiving cover for the execution of payment order. On the same day or on the first business day after receiving the notification, the beneficiary shall submit to the bank all data necessary for execution of payment in respect of collection and enclose supporting document, if it is prescribed as a condition for payment order execution. After receiving funds from abroad the bank shall issue collection order to the client. In accordance with international rules and standards in the banking sector, following the execution of transaction bank is obliged to submit statement of the account.

For effecting foreign payment, the principal shall submit payment order to the bank for which cover has been provided in the bank and it shall enclose a document based on which payment shall be executed in compliance with applicable regulations. By way of exception, the bank and the principal may agree in writing that when submitting the foreign payment order, the principal is not obliged to enclose the document underlying the payment and determining the payment grounds. However, if other regulations stipulate that for certain payments presentation of certain documents is required; those cases cannot be the subject of contract between the bank and the principal in order not to derogate from the provisions of those regulations.

Based on the payment order received the bank shall effect foreign payment within the time limit agreed upon with the principal. The bank shall accept the payment order or return it to the principal no later than on the first business day following the date of its receipt and, unless agreed otherwise, return the funds provided within the same time-frame. In accordance with international rules and standards in the banking sector, banks notify the client of the execution of foreign payment and send statements of relevant accounts.

In addition, the Guidelines for Implementation of the Decision on Terms and Conditions of Performing International Payment Transactions prescribe that in cases when payments to beneficiaries in EU Member States do not exceed the amount of EUR 50,000, prior to accepting the order, the bank is required to notify the principal in writing or electronically, as to the:

- time span during which funds need to be in the account of the beneficiary's bank, specifying the exact start of the time period;
- (tentative) amount of time needed for the beneficiary's bank to credit its account;
- level of fees and other charges to be paid by the order issuer;
- date of bank account debiting ( currency date);
- procedure that may be taken by the principal in the event of appeal or damage claim;
- exchange rates applied (in the event of conversion of euros).

In addition, after the execution of payment, the said Guidelines prescribe that the bank shall provide the principal with the following data:

- transaction reference number identifying the transaction (reference);

- payment amount less costs;
- amount of fees and other costs to be paid by the order issuer;
- applicable exchange rate, in case euros are converted into another currency;
- currency date.

**19. Are there any specific rules concerning charges for payment services? Are they regulated in any way? If yes, please describe.**

In accordance with the Law on Payment Transactions, payment transaction is performed according to instruction of the client. In conducting payment transactions pursuant to this law, the bank may charge the client the fee-commission for the services rendered in accordance with the bank's policy and the agreement concluded with the client.

Fees for rendering foreign payment operation services are subject to business policies of individual banks.

**20. What are the rules concerning the authorisation of the payment transaction? Are there specific rules concerning liability for an unauthorised payment transaction? Are there rules concerning the revocability of a payment order? Please describe them.**

**Dinar payment transactions**

In accordance with the Law on Payment Transactions, the receiving bank is obliged to execute payment order that is accurately completed, authorised and authentic. Payment order must include the data on the issuer and the recipient of the order and their respective banks, data on the amount, as well as other prescribed data. According to the Decision on the Form, Contents and Manner of Use of Uniform Instruments in Payment Transactions (Official Gazette of RS, No. 57/2004 and 82/2004), instruments of payment are signed by authorised persons whose signatures are deposited with the bank maintaining client's account. Apart from the signature, instruments of payment shall contain the seal of the issuer, which imprint has been deposited to the bank, except in case of natural persons who do not have seals. According to the Decision on Conditions and Manner of Opening, Maintaining and Closing Bank Accounts, when opening accounts - natural persons shall deposit signatures of the persons authorized to sign orders for the purpose of disposing of funds in the account, whereas legal and natural persons engaged in business activity shall submit the Signature Specimen Card of the persons authorized to sign orders for the purpose of disposing of funds on accounts – signed by the authorized person from the Certificate of Registration with the competent authority and stamped with a seal, which shall serve for certification of payment instruments. In accordance with the Law on Payment Transactions, the bank shall return to the issuer the payment order that was not made out in conformity with the above stated rules. According to the Decision on Electronic Payment Transactions (Official Gazette of RS, No. 57/2004) the electronic payment order shall contain the elements for checking authenticity and correctness of such orders and authenticity of the issuer.

In addition, one of the relevant provisions is that according to the Law on Payment Transactions, in debit transfers, the debtor's bank shall be obliged to execute the payment order issued by the

creditor only upon submission of matured securities, bills of exchange or the authorization given by the debtor to the creditor authorising it to collect the funds.

The law also prescribes that when receiving and executing payment orders, the receiving bank shall be obliged to apply the provisions of this law and the regulations adopted on the basis thereof, and shall be punished for economic offence if when receiving and executing payment orders does not apply provisions of the law or the regulations adopted on the basis thereof.

In accordance with the Law on Payment Transactions, the issuer, or other authorised person on behalf of the issuer, may cancel a payment order—by submission, to the receiving bank, of authorised and authentic cancellation order, on the date and in the manner allowing the cancellation to be initiated before execution of issuer's instructions stated in such order, provided that the receiving bank has not executed the issuer's instructions stated in the payment order. The cancellation order shall be submitted to the receiving bank in written form or electronically and it must identify the payment order to be cancelled. The cancellation or withdrawal of payment orders may not be made after the payment transaction has been executed.

In accordance with the Law on Payment Transactions, credit transfer is considered as executed when the payment to the specific bank-creditor's bank has been effected. In internal credit transfer, the payment is executed when the bank debits the account of the issuer with the amount stated in the payment order. In interbank credit transfer, the payment is effected to the specific bank when the interbank settlement is made including the payment order of the issuer's bank. In accordance with the same law, debit transfer is executed when the specific bank debits the account of the recipient—debtor, pursuant to instructions stated in the payment order received.

### **International payment transactions**

The Decision on Terms and Conditions of Performing Foreign Payment Transactions prescribes that after the receipt of notice of incoming funds, bank shall notify the beneficiary, whose name appears on the payment order received from the foreign bank, of the collection of payment on the same day, and at latest on the first business day after receiving cover for the execution of such payment order. On the same day or on the first business day after receiving the notification, the beneficiary shall submit to the bank all data necessary for execution of payment in respect of collection and shall enclose supporting document, if it is prescribed as a condition for payment order execution. After receiving funds from abroad the bank shall issue collection order to the client. In accordance with international rules and banking standards, following the execution of transaction the bank is obliged to submit statement of the account.

If the details necessary for crediting the beneficiary's account are not submitted to the bank within the prescribed period, the bank shall credit its account payable for designated payments in respect of collections from abroad.

Rules with regard to responsibility for unauthorised payment transactions and irrevocable payment orders are not the subject to the Decision on Terms and Conditions of Performing Foreign Payment Transactions.

**21. What are the rules in the case of non-execution of a payment or an execution differing from the instructions given by the customer? Are there different rules for national and cross-border payments? Is there any compensation foreseen for the customer?**

**Dinar payment transactions**

In accordance with the Law on Payment Transactions, when the credit transfer is not executed, the issuer shall not be obliged towards the original bank but it shall be entitled to the recovery of funds – up to the amount to which its account has been debited for the execution of the payment order which it has issued. In that case the issuer shall be entitled to compensation from the original bank for the expenses of executing the order, interest for the amount recovered to its account and actual expenses. The original and the intermediary bank executing the issuer's instructions without an executed credit transfer, shall be released from the liability towards the receiving bank, and shall have, towards both the receiving and the specific bank, whichever has not effected the payment transaction, the same rights as the issuer. The right to the recovery of funds, the expenses for executing the order, interest and actual expenses shall be realised notwithstanding the liability of each participant in payment transaction.

*Liability for loss*

In case that the receiving bank has been negligent with the execution of instructions for payments of the cautious issuer or it has omitted to inform its issuer on its refusal to effect the instructions stated in the payment order, in compliance with the Law on Payment Transactions, the receiving bank shall be responsible for the return of funds in the amount stated in the relevant order (if the funds have been paid), as well as for the damages arisen for that reason (fees, interest and actual damages). In case that any other bank acted with gross negligence, except the original bank, the issuer shall be entitled to compensation for damages either from the original bank or from the bank acting with gross negligence. In such case the bank acting with gross negligence shall be liable, and in case both banks acted with gross negligence – the liability of each bank shall be established.

*Liability for delay in executing orders*

In accordance with the Law on Payment Transactions, the receiving bank shall be liable for the interest on amount stated in the payment order due to the delay in executing it. The issuer may request the compensation of interest either from the original bank or from the receiving bank causing the delay. The recipient may request the compensation of interest either from the specific bank or from the receiving bank causing the delay. The receiving bank causing the delay in executing the payment order shall be liable to the original bank or to the specific bank that has paid the interest – up to the amount thereof.

*Wrong execution of credit transfers*

When the credit transfer has been executed but not pursuant to the instructions contained in the payment order, in accordance with the Law on Payment transactions, the following shall be applied:

- 1) When the amount paid to the recipient exceeds the amount contained in the issuer's payment order or the bank executes the payment order several times through error, the Recipient's bank based on the proof of the bank that has through error executed the order in the amount exceeding that indicated in the order received by it or that has through error

executed the order several times, shall be obliged to return such funds (as a refund) to the issuer of the payment order;

2) When the amount paid to the recipient is smaller than the amount stated in the issuer's payment order, the bank that has transferred the smaller amount shall be obliged to pay the balance, but it shall be entitled to compensation (refunding) from the issuer;

3) When the payment has been made to a recipient other than the one indicated in the issuer's payment order, it shall be considered that the credit transfer has not been executed. The bank that has made the error shall have to act pursuant to the instruction contained in the payment order, and the bank that has made the payment to a recipient not indicated in the issuer's payment order (the wrong recipient) shall be obliged to return the received funds (as a refund) to the issuer of the payment order.; The recipient to whom funds have been transferred (funds on account that belong to other parties) may not dispose of the funds so obtained.

In addition, with regard to debit transfers the law prescribes that the bank refusing the payment order shall be responsible to the recipient for wrongful refusal of the payment order. The wrongful refusal of the payment order shall be deemed to be the refusal made in spite of the fact that:

1) The specific bank was notified that the debtor had given the authorisation for debit transfer;

2) The proper identification of the name and the number of the account of the recipient-debtor was made with the specific bank;

3) The recipient-debtor had the cover in its account.

In line with the Law on Payment Transactions, return of funds under payment orders provided (as funds on account that belong to other parties) shall have priority over all other payments from the account from which the return of funds shall be made.

### **International payment transactions**

If the client submits payment order to the bank the contents of which is different from the one prescribed or for which funds have not been provided in the bank, the bank shall return the payment order to the principal no later than on the first business day following the date of its receipt and, unless agreed otherwise, return the funds provided within the same time-frame.

Compensation to the client in case of non-execution of payment in compliance with the instructions received from the client is not the subject to the Decision on Terms and Conditions of Performing Foreign Payment Transactions and the Guidelines for its implementation.

**22. Are there time limits and value dates for executing payment transactions? If yes, please describe them (for national and cross-border transactions). Is there compensation to the payment service user if the deadline limit, value date or the deadline agreed is not complied with?**

### **Dinar payment transactions**

In accordance with the Law on Payment Transactions, the receiving bank shall be obliged to execute the payment order within the banking day on which it has received the same, or at value date if such date is stated in the payment order, whichever date is later. The receiving bank may determine the time until when the orders shall be considered as received on such banking day, but not longer than the time defined by the National Bank of Serbia. Upon execution of the credit

transfer, the specific bank shall be liable to the recipient for the amount stated in the payment order received by it and shall be obliged to promptly credit such amount. Payment to the recipient shall be made by crediting its account, at the latest on the next banking day following the date of the credit transfer. Upon the completion of debit transfer, the specific bank and each receiving bank getting the payment from its receiving bank – the remitter shall be liable to its remitter for the amount stated in the payment order, and each such payment must be effected at the latest on the following banking day after the date on which the obligation has occurred. Upon receipt of funds to its account, the original bank shall debit itself relative to the issuer for the amount stated in the payment order of such an issuer, while the provisional credit, if granted by the bank to the issuer, shall become final. The original bank shall not be obliged to transfer to the issuer the funds until final crediting of its account. Transfer of funds before completion of the debit transfer shall be considered as provisional, unless otherwise agreed.

If the bank fails to comply with the provisions of the law it shall be fined for economic offence.

### **International payment transactions**

The Decision on Terms and Conditions of Performing Foreign Payment Transactions prescribes that the bank shall notify the beneficiary, whose name appears on the payment order received from the foreign bank, of the collection of payment on the same day, and at latest on the first business day after receiving cover for the execution of such payment order. On the same day or on the first business day after receiving the notification, the beneficiary shall submit to the bank all data necessary for execution of payment in respect of collection and shall enclose supporting document, if it is prescribed as a condition for payment order execution. The above mentioned obligations shall be performed on the same day if the conditions are met by 10 a.m. or, if not, on the following business day.

Based on the payment order received as stipulated in relevant regulations, the bank shall effect foreign payments within the time limit agreed upon with the principal.

Compensation to beneficiaries of payment services in the event of failure to comply with the term, value date of prescribed time frame is not the subject to the Decision on Terms and Conditions of Performing Foreign Payment Transactions and the Guidelines for its implementation.

### **23. Is there a complaint system in place for the settlement of disputes between the customers and the payment service providers? If yes, explain the system. Are the competent authorities appointed to ensure the compliance with the payments law and to deal with complaints? If yes, explain their competences.**

Treatment of complaints made by users of services of financial institutions supervised by the National Bank of Serbia and the conduct of mediation proceedings within the competence of the National Bank of Serbia - Centre for Financial Services Consumers (the Centre).

The Centre is considering complaints, conducting mediation proceedings and providing useful information through the Call Centre thus providing assistance in solving problems between financial institutions supervised by the National Bank of Serbia and their customers.

Prior to the mediation proceedings, the National Bank of Serbia shall act upon customer's complaint.

If a consumer of financial services thinks that some financial institution does not adhere to the provisions of concluded contracts, good business practice or published general operating terms, the consumer should first attempt to resolve this issue by directly addressing the financial institution in question. However, if within 30 days from the day the financial institution received the complaint, the consumer does not receive answer or is not satisfied with it, the consumer has the possibility and right to notify the National Bank of Serbia in writing.

If deemed justifiable, not later than eight days the National Bank of Serbia may request the financial institution to submit a written statement on the problem set out in the complaint. Not later than eight days after receiving the financial institution's written statement regarding the complaint, the National Bank of Serbia will consider the response and allegations set out in the complaint and accordingly send a response to the customer.

If after receiving the financial institution's statement, the customer is still not satisfied with the answer or solution proposed, it may propose that the National Bank of Serbia intermediates in the dispute settlement by conducting mediation proceedings. For users of financial services the mediation organized by the National Bank of Serbia is free of charge.

Mediation proceedings may be conducted only with the express consent of both parties. The National Bank of Serbia shall notify, in writing, the parties of the location, date and time of mediation proceedings which may result in settlement or the parties may quit or terminate the proceedings.

If during the resolution of customer's complaint irregularities regarding the operations of certain financial institutions are found, the Centre shall notify supervision departments responsible for the supervision of financial institutions.

The Bank Supervision Department of the National Bank of Serbia is responsible for the supervision of legality of banks' operations, and supervision of banks' foreign and domestic payment transactions.

#### **24. Is there an out-of-court redress procedure available? If yes, explain it.**

Within the competence of the National Bank of Serbia - Centre for Financial Services Consumers lies the conduct of the mediation proceedings between financial institutions under the supervision of the National Bank of Serbia and service users for the purpose of peaceful resolution of disputable issues.

A precondition for the conduct of mediation proceedings by the National Bank of Serbia is that it had already considered customer's complaint.

If a consumer of financial services thinks that some financial institution does not adhere to the provisions of concluded contracts, good business practice or published general operating terms, the consumer should first attempt to resolve this issue by directly addressing the financial institution in question. However, if within 30 days from the day the financial institution received the complaint, the consumer does not receive answer or is not satisfied with it, the consumer has the possibility and right to notify the National Bank of Serbia in writing.

If deemed justifiable, not later than eight days the National Bank of Serbia may request the financial institution to submit a written statement on the problem set out in the complaint. Not later than eight days after receiving the financial institution's written statement regarding the complaint, the National Bank of Serbia will consider the response and allegations set out in the complaint and send a response to the customer.

If after receiving the financial institution's statement, the customer is still not satisfied with the answer or solution proposed, it may propose that the National Bank of Serbia intermediates in the dispute settlement by conducting mediation proceedings. For users of financial services the mediation organized by the National Bank of Serbia is free of charge.

The National Bank of Serbia's mediation proceedings is voluntary and shall be initiated only if both parties agree to participate. In the National Bank of Serbia, mediation proceedings are conducted by its employees – the mediators authorised by the competent body of the Republic of Serbia and who are on the list of authorised mediators of the respective body and the National Bank of Serbia.

Mediation proceedings may result in settlement or the parties may quit or terminate the proceedings.

### ***III. FIGHT AGAINST MONEY LAUNDERING***

**25. Regarding alignment with Directive 2005/60/EC of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, please respond to the following:**

**a) How has money laundering/financing of terrorism been criminalised, which criminal activities are covered by the law and how is money laundering/financing of terrorism defined?**

Money laundering is incriminated by Article 231 of the Criminal Code of the Republic of Serbia, which reads as follows:

#### **Money Laundering**

##### **Article 231**

1) Whoever converts or transfers property while aware that such property originates from a criminal offence, with intent to conceal or misrepresent the unlawful origin of the property, or conceals and misrepresents facts on the property while aware that such property originates from a criminal offence, or obtains, keeps or uses property with foreknowledge, at the moment of receiving, that such property originates from a criminal offence, shall be punished by imprisonment of six months to five years and fined.



(2) If the amount of money or property specified in paragraphs 1 of this Article exceeds one million five hundred thousand dinars, the offender shall be punished by imprisonment of one to ten years and fined.

(3) Whoever commits the offence specified in paragraphs 1 and 2 of this Article using the property they themselves generated by the commission of a criminal offence, shall be sentenced as referred to in paragraph 1 and 2 of this Article and fined.

(4) Whoever commits the offence specified in paragraphs 1 and 2 of this Article in a group, shall be punished by imprisonment of two to twelve years and fined.

(5) Whoever commits the offence specified in paragraphs 1 and 2 of this Article, and could have been aware and should have been aware that the money or the property represent proceeds acquired by criminal offence, shall be punished by imprisonment of up to three years.

(6) The responsible officer in a legal entity who commits the offence specified in paragraphs 1, 2 1, 2 and 5 of this Article, shall be punished by the penalty prescribed for that offence, if aware or ought to have been aware that the money or property are proceeds from crime.

(7) Money and property specified in paragraphs 1 through 6 of this Article shall be seized.

The Republic of Serbia adopted the “all crime approach” system with regard to previous or predicate criminal offences. This means that money laundering shall be understood to mean all actions referred to in paragraph.1 of Article 231 of the Criminal Code, involving property generated by the commission of any criminal offence prescribed by criminal legislation of the Republic of Serbia.

Financing terrorism is incriminated by Article 393 of the Criminal Code of the Republic of Serbia, which reads as follows:

### **Terrorism financing**

#### **Article 393**

(1) Whoever directly or indirectly provides or collects funds intended to fully or partially finance commission of criminal offences 312, 391. Referred to in Articles 312, 391 and 392 hereof, shall be punished by imprisonment of one to ten years.

(2) Whoever encourages and helps to provide or collect funds intended to finance commission of criminal offence 312, 391. specified in Articles 321, 391 and 392 of the Code, regardless of whether the offence was actually committed, and/or regardless of whether the funds were actually used for the commission of the crimes, shall be punished by imprisonment sentence of six months to five years.

(3) The funds specified in paragraph 1 of this Article shall be seized.

**b) Which institutions and professions are covered by your legislation and with regard to which activities?**

In accordance with Article 4 of the Law on the Prevention of Money Laundering and Financing of Terrorism (Official Gazette of RS, No. 20/09, 72/09), obligors, i.e. persons obliged to apply actions and measures prescribed by that law (customer due diligence, suspicious transactions reporting, data keeping etc.) are the following:

- 1) Banks;
  - 2) Licensed exchange offices;
  - 3) Investment fund management companies;
  - 4) Voluntary pension fund management companies;
  - 5) Financial leasing providers;
  - 6) Insurance companies, insurance brokerage companies, insurance agency companies and insurance agents with a licence to perform life insurance business operations;
  - 7) Persons dealing with postal communications;
  - 8) Broker-dealer companies;
  - 9) Organisers of special games of chance in casinos;
  - 10) Organisers of games of chance operated on the Internet, by telephone, or in any other manner using telecommunication networks;
  - 11) Auditing companies;
  - 12) Licensed auditors.
- Obligors shall include both entrepreneurs and legal persons exercising the following business activities:
- 1) Intermediation in real-estate transactions;
  - 2) Provision of accounting services;
  - 3) Tax advising.
  - 4) Intermediation in credit transactions and provision of loans;
  - 5) Factoring and forfeiting;
  - 6) Provision of guarantees;
  - 7) Provision of money transfer services.

**c) How and by which competent authority is the integrity of the institutions and professions mentioned under b) checked?**

The financial sector and the integrity of financial institutions in the Republic of Serbia is regulated by relevant sectoral laws. The Law on Banks, The Insurance Law, and The Law on Financial Leasing and the Draft Law on Voluntary Pension Funds stipulate that members of board of directors or executive committee members, and major shareholders may not be persons previously convicted for criminal offences. The National Bank of Serbia shall verify the said provisions when issuing operating licenses and granting approvals for managerial appointments.. With regard to broker-dealer companies and investment fund management companies the above mentioned activities are performed by the Securities Commission

**d) When/in which situations do customers and beneficial owners have to be identified and verified and which means of identification are accepted? Specify any special measures for non face-to-face account opening or transactions;**

In accordance with Article 8 of the Law on the Prevention of Money Laundering and Financing of Terrorism (AML/CFT Law), the obligor shall:

- 1) Identify the customer;
- 2) Verify the identity of the customer based on documents, data, or information obtained from reliable and credible sources;
- 3) Identify the beneficial owner and verify the identity in the cases specified in this law;
- 4) Obtain information on the purpose and intended nature of a business relationship or transaction, and other data in accordance with this law;
- 5) Regularly monitor 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 client's business transactions.

In line with Article 9 of this law, stated actions and measures (customer due diligence measures) are applied in the following cases:

- 1) When establishing a business relationship with a customer;
- 2) When carrying out a transaction amounting to the RSD equivalent of EUR15,000 or more, calculated by the National Bank of Serbia median rate on the date of execution of the transaction (hereinafter referred to as: RSD equivalent), irrespective of whether the transaction is carried out in one or more than one connected operations;
- 3) When there are reasons for suspicion of money laundering or terrorism financing with respect to a customer or transaction;
- 4) When there are doubts about the veracity or credibility of previously obtained data about a customer or beneficial owner.

The identity of a natural person is verified by obtaining personal data by inspecting a personal identity document with a mandatory presence of the person whose identity is being established. If it is not possible to obtain all the specified data from such a document, the missing data shall be obtained from another official document. The data that cannot be obtained for objective reasons in such manner shall be obtained directly from the customer. Under this law, a 'personal document' is a valid document with a photo issued by the competent State authority. 'Official document' is a document issued by a State authority within its term of reference (certificates, extracts from other public registers etc.). Objective reasons in favour of obtaining data directly from the client are understood to mean solely the situations when the official documents do not contain data as requested by law.

Identity of a legal person is established by obtaining data on it specifically by inspection of original or certified copy of the documentation from the register kept by a relevant authority of the resident country of the legal person, the copy of which is kept according to the law. If it is not possible to obtain all the data from an official public register, the obligor shall obtain the missing data from an original or certified copy of a document or other business documentation presented by the customer. If the missing data is not possible to ascertain in a prescribed manner for objective reasons, the obligor is bound to establish the data based on the customer's written statement. Objective reasons in favour of obtaining data directly from the customer are understood to mean solely the situations when the official documents do not contain data as requested by law.

The obligor, under the conditions set out by the Minister, may also identify and verify the identity of the customer who is a natural person, or its legal representative, based on a qualified electronic certificate of the customer issued by a certification body in the Republic of Serbia, and based on a foreign electronic certificate which is equal to the national one, in accordance with the law governing electronic operations and electronic signature. Rulebook on Methodology for the Implementation of the Law on the Prevention of Money Laundering and Terrorism Financing provides for conditions under which identity of the client (natural person) and/or the client's legal representative can be established and verified using qualified electronic certificate. The conditions go as follows:

- 1) the qualified electronic certificate of the customer must be issued by a certification body entered into the register of a competent body in accordance with the law governing electronic operations and electronic signature;
- 2) qualified electronic certificate of the customer must not be issued under a pseudonym;
- 3) the obligor must create technical conditions and other enabling it to check at any moment if the qualified electronic certificate of the client has expired or has been recalled, and whether the personal cryptographic key is valid and whether it has been issued in line with point 1 of this paragraph;
- 4) obligor must check if the qualified electronic certificate of the client is subject to any restrictions of use in terms of the amount of transaction, manner of doing the business, and similar, and must bring its business operations in compliance with the restrictions;
- 5) obligor shall provide technical conditions for keeping records regarding the use of the system through the qualified electronic certificate.

The obligor shall inform the Administration for the Prevention of Money Laundering (APML) and the supervising body that the identification and verification of customer identity shall be performed based on a qualified electronic certificate.

However, it is not possible to establish customer's identity in this manner if the obligor has any doubts as to the veracity of the obtained data or credibility of the documents from which the data was obtained. If the obligor identifies and verifies the identity of the customer in this manner, it shall ensure that the first transaction of the customer is conducted from the account opened by the customer in their own name with a bank or similar institution.

Other cases of opening of accounts, other forms of establishing business cooperation or performing transactions without the physical presence of the customer, which are provided for and governed by the Law on the Prevention of Money Laundering and Financing of Terrorism are as follows:

- 1) Through proxy, and
- 2) Through third parties, which, for the purpose of the law, are understood to mean banks, insurance companies, investment and pension funds, and broker-dealer companies from Serbia or countries which apply standards for the prevention of money laundering and financing of terrorism at the level of EU standards or higher.

Whenever obligors establish a business relationship without the presence of the customer, they shall apply enhanced due diligence measures. Article 31 prescribes additional measures to be taken in such cases:

1) Obtaining additional documents, data, or information based on which it shall identify a customer; 2) Conducting additional inspection of submitted identity documents or additional verification of customer data;

3) Ensuring that, before the execution of other customer transactions in the obligor, the first payment shall be carried out from an account opened by the customer in its own name or which the customer holds with a bank or a similar institution ;

4) Other measures laid down by the relevant supervisory body (such as, for example, a mandatory validation in the court of law of power of attorney).

**e) Specify if bearer passbooks or other bearer instruments are allowed in your country?**

Maintaining anonymous accounts is prohibited in the Republic of Serbia. In compliance with Article 34 of the Law on the Prevention of Money Laundering and Financing of Terrorism, the obligor shall not open or maintain anonymous accounts for customers, issue coded or bearer savings books, or provide any other services that directly or indirectly allow for concealing the customer identity.

**f) When and what do the institutions and professions mentioned under b) precisely have to report to your FIU (Financial Intelligence Unit) with regard to money laundering/financing of terrorism? Do supervisory or other competent authorities also have to report to the FIU in this respect? Are the reporting institutions forbidden to tip-off clients that information has been or will be reported to the FIU?**

The obligor shall furnish the Administration for the Prevention of Money Laundering in case of any cash transaction exceeding EUR 15,000, the so called cash transaction reporting, and whenever there are reasons for suspicion of money laundering or terrorism financing with respect to a transaction or customer, regardless of the amount of transaction, the so called suspicious transaction reporting.

In accordance with the Law on the Prevention of Money Laundering and Financing of Terrorism, competent supervisory bodies shall inform the Administration (FIU) in writing when they establish or identify, while executing tasks within their competence, facts that are or may be linked to money laundering or terrorism financing.

According to Article 58 of this law, other state bodies may initiate the procedure in the Administration for the Prevention of Money Laundering. The said Article reads as follows: "If there are reasons for suspicion of money laundering or terrorism financing in relation to certain transactions or persons, the APML may initiate a procedure to collect data, information and documentation as provided for in this Law, as well as carry out other actions and measures within its competence also upon a written and grounded initiative by a court, public prosecutor, police, Security Information Agency, Military Intelligence Agency, Military Security Agency, Tax Administration, Customs Administration, National Bank of Serbia, Securities Commission,

Privatisation Agency, competent inspectorates and State bodies competent for state auditing and fight against corruption."

On the basis of Article 73 of the AML/CFT Law, there is a provision on no tipping-off to the clients that certain information has been reported to the Administration ( FIU). The provision goes as follows):

#### Prohibition of disclosure (No tipping-off)

#### **Article 73**

(1) The obligor, lawyer and their employees, including the members of the governing, supervisory or other managing bodies, or any other person having access to the data referred in this Law shall not disclose to the customer or any other person the following:

- 1) that the APML was sent data, information and documentation on a customer or transaction with respect to which there is suspicion of money laundering or terrorism financing;
- 2) that the APML has issued an order for a temporary suspension of transaction;
- 3) that the APML has issued an order to monitor financial operations of the customer;
- 4) that proceedings against a customer or a third party have been initiated or may be initiated in relation to money laundering or terrorism financing.

#### **g) Are the institutions and professions mentioned under b) required to keep records? Specify the contents of that requirement (which documents, retention period etc.);**

In accordance with Article 80 of the Law on the Prevention of Money Laundering and Financing ff Terrorism, the obligor shall keep records of data:

- 1) Concerning the customers, as well as business relationships and transactions;
- 2) That was sent to the APML pursuant to Article 37 of that Law (reports on reporting cash and suspicious transactions).,

The contents of such records is specified in Article 81 of the Law on the Prevention of Money Laundering and Financing of Terrorism, which lists the data which the obligor must keep: These are the following data::

- 1) Business name, address, seat, registry number, and tax identification number (hereinafter referred to as: TIN) of the legal person establishing a business relationship or carrying out a transaction, and for which a business relationship is established or transaction executed;
- 2) Name and surname, date and place of birth, place of permanent or temporary residence, unique personal identity number (hereinafter referred to as: UPIN), of the representative, empowered representative or procura holder who establishes a business relationship or executes a transaction on behalf of and for the account of a customer which is a legal person or any other person under civil law referred to in

Article 3, paragraph 1, item 10 of this law (e.g. tenants' council, students' excursions etc.), as well as the type and number of the personal document, date and place of issue;.

- 3) Name and surname, date and place of birth, place of permanent or temporary residence and UPIN of the natural person, his legal representative and empowered representative, as well as of the entrepreneur establishing a business relationship or carrying out a transaction, and. for whom a business relationship is established or transaction executed, as well as the type and number of personal document, name of the issuer, and the date and place of issue;
- 4) Business name, address, seat, registry number and TIN of the entrepreneur;
- 5) Name and surname, date and place of birth and place of permanent or temporary residence of a natural person entering a casino or accessing a safe-deposit box;.
- 6) Purpose and intended nature of a business relationship, as well as information on the type of business and business activities of a customer;
- 7) Date of establishing of a business relationship, and the date and time of entrance into a casino or access to a safe-deposit box;
- 8) Date and time of transaction;
- 9) Amount and currency of the transaction;
- 10) The intended purpose of the transaction, name and surname as well as the place of permanent residence, or the business name and seat of the intended recipient of the transaction;
- 11) Manner in which a transaction is executed;
- 12) Data and information on the origin of property which was the subject matter or which will be the subject matter of a business relationship or transaction;
- 13) Reasons for suspicion of money laundering or terrorism financing;
- 14) Name, surname, date and place of birth, and place of permanent or temporary residence of the beneficial owner of a legal person or person under foreign law, whereas in the case referred to in Article 3, paragraph 1, item 13, line 2 of this law, data on the category of the person in whose interest the person under foreign law was founded or operates;.
- 15) Name of the person under civil law referred to in Article 3, paragraph 1, item 10 of this Law, and name and surname, date and place of birth and place of permanent or temporary residence of each member of such person.

Article 77 of this law specifies the period for keeping the data obtained in line with this law and which are stated in Article 81 of that law. The said Article reads as follows:

"Period for keeping the data in the obligor and lawyer"

### **Article 77**

(1) The obligor and lawyer shall keep the data and documentation that are obtained under this Law concerning a customer, established business relationships with a customer and executed transactions for a period of at least ten years from the date of termination of the business relationship, executed transaction, or the latest access to a safe deposit box or entry into a casino.

(2) The obligor and lawyer shall keep the data and documentation about the compliance officer, deputy compliance officer, professional training of employees and executed internal controls for a period of at least five years from the date of termination of the duty of the compliance officer, implemented professional training or conducted internal control.

Article above shows that all the data and documentation obtained in line with the Law on the Prevention of Money Laundering and Financing of Terrorism is to be kept for a period of ten years. For example, data on the identity of the customer, natural or legal person, are kept for ten years, and the same also applies to all accompanying documentation, such as photocopies of personal documents or extracts from business registers or other public books, and all statements and other business documentation obtained from the customer.

All other data collected by the obligors which are not obtained on the basis of AML/CFT Law are collected pursuant to Article 22 of the Law on Accounting and Auditing, with the following deadlines:

Financial and audit reports are kept for twenty years.

Journal and general ledger are kept for ten years.

Subsidiary ledgers are kept for five years.

Payrolls or analytical records of earnings are kept permanently should they represent substantial data on employees.

Documents based on which data are entered in business books are kept for five years.

Documents in relation to payment transactions are kept for five years by authorised financial institutions performing payment transactions.

**h) Are the institutions and professions mentioned under b) required to apply internal procedures and training of employees with regard to money laundering/financing of terrorism? Specify the measures;**

Based on Article 44 of the Law on the Prevention of Money Laundering and Financing of Terrorism, the obligor shall ensure regular internal control of execution of tasks for the prevention and detection of money laundering and terrorism financing.

According to Article 45 of the AML/CFT Law, Minister of Finance is empowered, at the proposal of the Administration, to prescribe manner of conducting internal control, keeping and protection of data, keeping records and training, specialization and improvement of the staff in the obligor and law partnerships according to the law. The Rulebook on Methodology for Implementing the Provisions of AML/CFT Law, published in the Official Gazette of RS, No.07/2010, prescribes the manner for conducting internal control and organizing trainings in obligors

In accordance with Article 43 of the Law, the obligor shall provide for a regular professional education, training and improvement of employees carrying out the tasks of prevention and detection of money laundering and terrorism financing. In addition, the Article stipulates that professional education, training and improvement shall include familiarising with the provisions of laws and regulations drafted based on the law, and internal documents, reference books on the



prevention and detection of money laundering and terrorism financing, including the list of indicators for identifying customers and transactions in relation to which there are reasons for suspicion of money laundering or terrorism financing. The obligor shall develop annual professional education, training and improvement programmes for the employees in the area of prevention and detection of money laundering and terrorism financing, no later than until March for the current year. The programme shall contain:

- 1) projected number of trainings per year;
- 2) planned number of employees to attend the trainings, and their professional profile;
- 3) training topics in the area of prevention of money laundering and terrorism financing;
- 4) manner in which training may be delivered (seminars, workshops etc.).

The law also stipulates penal provisions if the obligor fails to provide for the training in the area of prevention and detection of money laundering and terrorism financing, and the supervisory authorities control the implementation of this requirement in practice.

Each obligor must have procedures for the implementation of AML/CFT Law which are introduced on the basis of the Law and Rulebook on Methodology for the Implementation of AML/CFT Law, as well as the ML/FT risk analysis for each group of clients, products or transactions.. Supervisory bodies control the application of these procedures.

**i) Specify if the institutions and professions mentioned under b) are supervised with regard to the requirements mentioned under c) to h) and to what extent?**

Article 82 of the Law on the Prevention of Money Laundering and Financing of Terrorism relevant supervisory bodies for the implementation of the Law on the Prevention of Money Laundering and Financing of Terrorism, as follows:

(1) The supervision of the implementation of this Law by the obligor and lawyer shall be conducted by the following bodies, within their respective competences:

- 1) APML;
- 2) The National Bank of Serbia;
- 3) Securities Commission
- 4) Ministry competent for supervisory inspection in the area of trade;
- 5) Foreign Currency Inspectorate;
- 6) Administration for Games of Chance;
- 7) Ministry competent for postal communication;
- 8) Bar Association.

(2) If the body referred to in paragraph 1 of this Article, when conducting supervision, establishes irregularities or illegal acts in the implementation of this Law, it shall, in accordance with the law governing its supervising powers, act as follows:

- 1) Demand that the irregularities and deficiencies be remedied in the period which it sets itself;
- 2) Lodge a request to the competent body for the institution of an adequate procedure;
- 3) Take other measures and actions for which it is authorised in the law.

**j) In what way do competent authorities have to give feedback to the institutions and professions mentioned under b) (specific/case-by-case feedback, general feedback, other)?**

Pursuant to Article 60 of the Law on the Prevention of Money Laundering and Financing of Terrorism, the APML shall inform the obligor, lawyer and the State body that reported to the APML a person or transaction with respect to which there are reasons for suspicion of money laundering or terrorism financing, of the results brought about by their reporting.

The Republic of Serbia has adopted the model of providing general feedback to the obligors, which it is authorized to do by relevant international standards. . In that regard, the information given to the obligor is related to:

- 1) Data on the number of the sent reports on transactions or persons in relation to which there are reasons for suspicion of money laundering or terrorism financing;
- 2) Results brought about by such reporting;
- 3) Information held by APML on money laundering and terrorism financing techniques and trends in the area;
- 4) Description of cases from the practice of the APML and other competent state bodies.

At regular meetings held within the associations of obligors several times a year, as well as at AML/CFT seminars, the obligors are familiarized with ML/FT typologies and trends, as well as with the outcome of the reports they submitted. In addition, annual report that the APML has to prepare and submit to the Government, and which is posted on the APML's official website, must contain data on practical cases and observed money laundering and financing terrorism typologies. Any compliance officer appointed by an obligor, who is responsible for reporting transactions, may come and have a meeting with the Administration officials, and this is a regular case, and may have an insight into the outcome of his/her reporting. This particular case illustrates provision of specific information to the obligor on a case-by-case basis, a method applied by the Administration.

**k) What penalties exist with regard to infringements of your anti-money laundering/financing of terrorism regulation?**

Penal provisions represent a separate section of the Law on the Prevention of Money Laundering and Financing of Terrorism. Obligor – natural person or entrepreneur shall be punished for minor offence with a fine amounting from RSD 5,000 to RSD 500,000 whereas economic offence liability is provided for obligors that are legal persons, threatened with fine ranging from RSD 50,000 to 3,000,000.

**26. Please elaborate on the functioning of the FIU, the supervisory authorities and the law enforcement authorities with regard to, inter alia, available resources (staff and budget), operational powers, independence, (inter-)national co-operation between competent authorities and the results achieved in terms of suspicious transactions reports received, supervisory investigations (including detected infringements, sanctions imposed), freezing/seizing orders, confiscations and prosecutions/indictments/convictions.**

The Administration for the Prevention of Money Laundering is an administrative authority within the Ministry of Finance. It was established in accordance with the Law on Prevention of Money Laundering, which entered into force on 10 December 2005, when it obtained the status of a legal person. The APML is run by the director appointed for a five-year period by the Government following the proposal of the Minister of Finance. The Administration is staffed by 25 employees working in three departments: Department of Analytics, Department for International Cooperation, Legal and Financial Issues and Department of Suspicious Transactions. Pursuant to Article 53 of the Law on the Prevention of Money Laundering and Financing of Terrorism, if the Administration for the Prevention of Money Laundering assesses that there are reasons to suspect money laundering or terrorism financing in certain transactions or persons, it may request the following from the obligor:

- 1) Data from the customer and transaction records kept by the obligor based on Article 81, paragraph 1 of this law;
- 2) Data regarding money and property of a customer in the obligor;
- 3) Data about transactions of money and property of a customer in the obligor;
- 4) Data regarding other business relations of a customer established in the obligor;
- 5) Other data and information .

Pursuant to Article 54 of the Law on the Prevention of Money Laundering and Financing of Terrorism, if the Administration for the Prevention of Money Laundering assesses that there are reasons to suspect money laundering or terrorism financing in certain transactions or persons, it may request from the lawyer data, information and documentation needed in order to detect or prove money laundering or terrorism financing Pursuant to Article 55 of the Law on the Prevention of Money Laundering and Financing of Terrorism, in order to assess whether there are reasons for suspicion of money laundering or terrorism financing in relation to certain transactions or certain persons, the APML may request data, information and documentation required to detect and prove money laundering or terrorism financing from the State bodies, organizations and legal persons entrusted with public authorities.

Article 56 of this law authorises the APML to temporarily suspend transaction if it assesses that there are reasonable grounds for suspicion of money laundering or terrorism financing with

respect to a transaction or person carrying out the transaction, of which it shall inform the competent bodies in order to take measures within their competence. Article 57 of this law authorises the APML, in case it assesses that there are reasons for suspicion of money laundering or terrorism financing with respect to certain transactions or persons, to issue a written order to the obligor to monitor all transactions and business operations of such persons carried out in the obligor.

The Administration for the Prevention of Money Laundering is a separate authority within the Ministry of Finance. The director of the APML is appointed for a five-year term by the Government, at the proposal of the Minister of Finance. The director autonomously decides on all measures available to the APML as defined by the law (receiving, analysing, referring to other authorities of cases suspected to involve money laundering or terrorism financing, etc.) The Administration has its own budget, on whose execution the Director decides autonomously. The facts stated legally and practically ensure autonomous functioning of the Administration as an FIU.

The Administration for the Prevention of Money Laundering, as a financial intelligence unit of the Republic of Serbia, is a member of the international association of FIUs - the Egmont Group. It exchanges information with foreign FIUs through Egmont Secure Web.. In 2009, The APML received 102 request for information and sent 80 request fo foreign FIUs. The APML takes active participation in the work of workgroups who meet three times a year within the Egmont Group. The Administration plays a particularly active role in the Operational Working Group, which is a forum for discussions on specific operational challenges in FIUs' work, as well as in the Legal Working Group, where legal experts from all over the world work on enhancement of legal standards in AML/CFT area.

The Administration for the Prevention of Money has so far concluded 26 agreements with foreign financial intelligence units. In 2010, the agreements with Israel, the Netherlands, Lithuania, Cyprus, etc. have been signed.

The main priority of The Administration for the Prevention of Money Laundering is signing MOU with countries which condition the exchange of financial intelligence data upon the existence of such agreement, and then with the EU member states.

As the Administration is now vested with new powers, based on the Law Amending the AML/CFT Law, which are primarily reflected in supervisory powers over certain categories of obligors (accountants, auditors, intermediaries in provision of loans, providers of tax advisory services, etc), a plan and strategy for strengthening the system in place, especially its preventive side, focus on the increase in number of APML staff. Being an Egmont Group member, the Administration can very quickly come in posession of relevant intelligence from other countries on money flows.

State authorities competent for combat against organised crime are entitled not only to an increased salary, but also to privileged years of service, due to higher risk of the jobs they do. The Administration is the only body in the system for combating organised crime whose members have no benefits due to high risk exposure encountered in their line of work. MoneyVAL Committee has noticed this fact, analysing the entire system against money laundering and terrorism financing in Serbia, and has accordingly issued a binding recommendation in its Report with regard to increasing administrative capacities of the Administration. Namely, there are 25 civil servants currently employed in the Administration, which is by far less then the number of employees in FIUs in the countries similar to Serbia in terms of size Also, there is a danger that good civil servants would leave the Administration. Prevention of money laundering is an area constantly evolving and changing (as its trends and typologies constantly develop), and so

experts in this field are in high demand, in banking industry above all. The employees of the Administration are highly professional and skilled, continuously undergoing additional training in specialized courses, seminars and workshops.

We believe a system for increasing the salaries of employees of the Administration for the Prevention of Money Laundering should be established. First, it would prevent further braindrain from the Administration, and secondly, it would attract experts and professionals in other financial industries which are marked as vulnerable in terms of money laundering – for example, experts in securities, accountants, auditors, etc.. In this manner the preventive part of the system for the prevention of money laundering would function more efficiently, which would ultimately contribute to the improvement of the overall system for combating organised crime.

APML tried to solve this problem while drafting the Law Amending AML/CFT Law, having provided for its staff to be entitled to a salary that cannot be larger than double the salary they would earn in line with regulations on salaries of civil servants and employees. Similar legal solution is provided for by the Law on Organisation and Competence of State Authorities in Suppression of Organized Crime, Corruption and Other Very Serious Criminal Offences (Official Gazette of RS, No. 42/02...72/09) and the Regulation on Salaries of Persons Doing Jobs in Special Organizational Units of State Authorities Competent for the Suppression of Organised Crime (Official Gazette of RS, No. 14/03, 67/05 и 105/05), which was adopted under that law. However, this kind of Draft Law did not come across proper understanding of the Republic Secretariat for Legislation, which delivered negative opinion on it. Nevertheless, there are several laws in the legal system of the Republic of Serbia which state authorities' officials to reward their employees. One of those laws is the Law on Data Secrecy (Official Gazette of RS, No. 104/09) which, in its Article 92 authorises the Government to increase salaries of the Council Office staff by 20% due to specific working conditions, complexity and nature of work. We wish to emphasize the fact that the Administration's employees are dealing with highly confidential data on a daily basis, having regard to the fact that according to Article 74 of the Law on the Prevention of Money Laundering and Financing of Terrorism, all data obtained by the Administration is regarded as an official secret.

Given the fact that the Law Amending AML/CFT Law granted supervisory powers to the Administration with regard to certain categories of obligors, there are plans to change job classification of positions in the Administration and to establish a new department for on-site supervision, hiring at least 15 new civil servants.

An outstanding problem stems from inappropriate premises of the Administration.. Existing business space is inadequate in office size and its functionality. The Administration has highly confidential databases of financial intelligence, which is kept on a specially designed, very expensive servers. Therefore it is very important to keep the server itself in a premise which is adequate in terms of safety.

According to the Law on the Prevention of Money Laundering and Financing of Terrorism (Official Gazette of RS, No. 20/2009, 72/2009 and 91/2010), Article 72, courts, public prosecutors' offices and other state bodies competent to submit reports shall regularly send to the Administration for the Protection of Money Laundering (APML), for the purposes of compilation and analysis, data and information on proceedings concerning minor offences, economic offences and criminal offences related to money laundering and terrorism financing, about the perpetrators, as well as about the confiscation of proceeds generated from criminal offence (hereinafter referred to as: 'proceeds'), the republic public prosecutor's office and other competent prosecutors' offices shall annually as well as upon request of the APML, send the

following data to the APML: date of indictment; name, surname, date and place of birth, or the business name and seat of the indicted person, legal qualification of the offence, as well as the place, time and manner of commission of the offence, legal qualification of the predicate offence, the place, time and manner of commission of the offence.

In line with the provisions of the Law on Organization of Courts (Official Gazette of RS, No. 116/2008, 104/2009 and 101/10), higher courts and higher public prosecutors' offices shall adjudicate for the money laundering criminal offences. According to the Law, appeals regarding decision of the higher courts may be submitted to the appellate court. Article 2 of the Law on Organization and Jurisdiction of Government Authorities in Suppression of Organised Crime, Corruption and other Exceptionally Severe Criminal Offences (Official Gazette of RS, No. 42/2002, 27/2003, 39/2003, 67/2003, 29/2004, 58/2004 – other law, 45/2005, 61/2005 and 72/2009) stipulates that the law is applied as to detect, prosecute and indict for criminal offence of money laundering provided for in Article 231 of the Criminal Code, if the property which is the object of money laundering originates from the criminal offences for which the law also prescribes special jurisdiction (criminal offences of organised crime, criminal offences by abuse of office from Articles 359, 366, 367 and 368 of the Criminal Code, when an offender, that is, a person receiving the bribe, an official or a responsible person holding public office based on the election, appointment, or appointment by the National Assembly, the Government, the High Judicial Council, or the State Prosecutorial Council, criminal offence of the abuse of office from Article 359, paragraph 3 of the Criminal Code, when the value of the acquired material gain exceeds the amount of 200,000,000.00 dinars and criminal offence of the international terrorism and the criminal offence of financing terrorism (Articles 391 and 393 of the Criminal Code)).

The Criminal Procedure Code – CPC (Official Journal of FRY, No. 70/2001 and 68/2002 and the Official Gazette of RS, No. 58/2004, 85/2005, 115/2005, 85/2005 – other law, 49/2007, 20/2009 – other law 72/2009 and 76/2010) Chapter XXIX A. (Special provisions on organized crime, corruption and other exceptionally severe criminal offence proceedings) prescribes that the provisions of this Chapter also apply to the criminal offence of money laundering, which enables the use of special measures of prosecuting authorities for the purpose of discovering and proving criminal offences, such as surveillance and recording of telephone and other conversations, rendering of simulated business services and conclusion of simulated legal affairs, controlled delivery and automatic computerized search of personal and other related data.

According to the Article 58 of the Law on Prevention of Money Laundering and Terrorism Financing, if there are reasons for suspicion of money laundering or terrorism financing in relation to certain transactions or persons, the APML may initiate a procedure to collect data, information and documentation, as well as carry out other actions and measures within its competence also upon a written and grounded initiative by a court, public prosecutor, police, Security Information Agency, Military Intelligence Agency, Military Security Agency, Tax Administration, Customs Administration, National Bank of Serbia, Securities Commission, Privatisation Agency, competent inspectorates and state bodies competent for state auditing and fight against corruption.

As stated earlier, the APML shall initiate a procedure only when the grounds for suspicion of money laundering or terrorism financing are presented.

Based on Article 59 of the Law if the APML assesses that there are reasons for suspicion of money laundering or terrorism financing in relation to a transaction or person, it shall forward data to the competent state bodies, and send them feedback in relation to the institution of proceedings regarding the APML.

Based on Article 234 of the Criminal Procedure Code, a public prosecutor may request that the competent government authorities, banking or other financial institutions make an inspection of business activities of certain individuals for whom grounds of suspicion exist that they have committed criminal offences for which a prison sentence of not less than four years is envisaged, and to provide them with documentation and data that may be used as evidence of a criminal offence or proceeds from criminal offence, as well as information on suspicious financial transactions referred to in the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds arising from criminal offence and terrorism financing. Public prosecutor shall immediately inform investigative judge about the aforementioned request and the data collected.

Upon a substantiated written request of the public prosecutor, the investigative judge may issue an order by which a competent authority or institution shall be requested to temporarily suspend certain financial transaction, payment, i.e. issuance of suspicious money, securities or objects for which grounds of suspicion exists that they are resulting from criminal offence or from proceeds from criminal offence, or that they are intended for the execution or concealment of a criminal offence.

This article also prescribes that if the public prosecutor does not initiate criminal proceedings within six months after he had been familiarized with the data collected through the application of this measure or if he states that he shall not be using them in the proceedings, and that he shall not request the initiation of proceedings against the suspect, all of the collected material will be destroyed under the supervision of the investigative judge and the investigative judge shall make a relevant record.

According to the Law on Seizure and Confiscation of the Proceeds from Crime, Article 20, during a financial investigation the public prosecutor may order banking or other financial organization to transmit the data on the status of the owner's business and private accounts, and safety deposit boxes. This authorisation of the public prosecutor is similar to a provision contained in Article 234(1) of the Criminal Procedure Code the difference being that Article 234(1) of the Criminal Procedure Code relates to a specific criminal offence, proceeds from that criminal offence.

Law on Seizure and Confiscation of the Proceeds from Crime prescribes proceedings on the temporary and permanent seizure of assets, as follows:

If there is a risk that subsequent seizure of the proceeds from crime could be hindered or precluded, the public prosecutor may file a motion for temporary seizure of assets. The motion shall contain data on the owner, description and legal qualification of a criminal offence, designation of assets to be seized, proof of assets, circumstances establishing reasonable grounds to suspect that assets derive from a criminal offence, and reasons justifying the need for temporary seizure of assets. The motion shall be decided upon, depending on the phase of

proceedings, by the investigative judge, president of the trial chamber and/or the trial chamber conducting the main hearing.

Should there be a risk that the owner will make use of the proceeds from crime before the court decides on the motion for temporary seizure of assets, the public prosecutor may issue an order banning the use of assets, and on temporary seizure of movable assets. The measure shall be in force until ruling of the court on the prosecutor's motion. The order shall be enforced by the Financial Intelligence Unit.

Prior to the ruling on the motion for temporary seizure of assets the court shall schedule a hearing to which the owner, his/her defence counsel and/or attorney, if any, and the public prosecutor shall be summoned. The summons shall be delivered to the known address and/or seat of the person with a caution that the hearing will be held irrespective of his/her appearance. If the summons has been delivered directly to the owner or his/her defence counsel and/or attorney, it will be considered that the delivery to the owner has been thereby duly performed.

According to the Law on Seizure and Confiscation of the Proceeds from Crime (Official Gazette of RS, No. 97/2008) which entered into force on 1 March 2009, the authorities competent to trace, seize/confiscate and manage the proceeds from crime include the public prosecutor, the court, Financial Intelligence Unit of the Ministry of Internal Affairs, and the Directorate for management of seized and confiscated assets. The Directorate shall: 1) manage the seized/confiscated proceeds from crime, objects resulting from the commission of a criminal offence (Article 87 of the Criminal Code - CC (Official Gazette of RS, No. 85/2005, 88/2005 - correction, 107/2005 - correction, 72/2009 and 111/2009)), material gain obtained by a criminal offence (Articles 91 and 92 of the Criminal Code) and assets given as pledge in criminal proceedings; 2) conduct professional assessment of the seized proceeds from crime; 3) store, safeguard and sell provisionally the seized proceeds from crime and administer funds thus obtained in accordance with the law; 4) maintain records of assets managed in terms of paragraph 1, subparagraph 1 of this Article, including the records on court proceedings deciding on such property; 5) participate in extending international legal assistance; 6) participate in training of civil servants and magistrates on seizure of the proceeds from crime; 7) perform other tasks in accordance with this law. The Directorate shall perform the abovementioned tasks also in relation to material gain deriving from commercial felony and misdemeanour.

If the summons cannot be delivered in the prescribed manner, the court shall assign an *ex officio* lawyer to the owner for the purposes of the proceedings on the temporary seizure of assets. The hearing shall be held within five days from the day of filing of the motion for temporary seizure of assets. A hearing once commenced shall be concluded without being discontinued. The public prosecutor shall present evidence on assets in possession of the owner, circumstances regarding reasonable grounds to suspect that the proceeds derive from a criminal offence and circumstances indicating a risk that subsequent seizure thereof would be hindered or prevented. The owner and his/her defence counsel and/or attorney shall challenge contentions of the public prosecutor.



On conclusion of the hearing the court shall pass a decision sustaining or rejecting the motion for temporary seizure of assets. The decision on temporary seizure of assets shall contain information on the owner, description and legal qualification of criminal offence, information on assets being seized, circumstances giving rise to reasonable grounds to suspect that the assets derive from a criminal offence, reasons justifying the need for temporary seizure of assets and the duration of seizure.

By decision, the court may leave the owner a part of the assets if sustenance of the owner or persons he/she is obliged to support in compliance with the provisions of the Law on Enforcement Procedure would be brought into question. The court shall deliver the decision to the owner, his/her defence counsel and/or attorney, the public prosecutor and the Directorate. The decision may be appealed within three days from the day of delivery of the decision. The appeal shall not stay enforcement of the decision. The pre-trial chamber and a higher instance court shall decide on the appeal against the decision.

Temporary seizure of assets may be in force until ruling on the motion for permanent seizure of assets. The court may reconsider the decision thereof in case of death of the owner or if circumstances emerged that would question whether temporary seizure of assets was justified.

The Law prescribes the permanent seizure of assets as follows:

After legal entry into force of indictment and not later than one year following the final conclusion of criminal proceedings, the public prosecutor shall file a motion for permanent seizure of the proceeds from crime. The motion shall contain information on the defendant and/or the cooperative witness, description and legal qualification of the criminal offence concerned, designation of assets to be seized, evidence on assets in possession of the defendant and/or cooperative witness and lawful income thereof, circumstances indicating a manifest disproportion between assets and income, and grounds justifying the need for permanent seizure of assets. The motion against the legal successor shall contain evidence that he/she has inherited the proceeds from crime, and the motion against the third party shall contain evidence that the proceeds from crime were transferred without compensation or with compensation that is not commensurate with an actual value in order to deter seizure.

The chamber holding the main hearing and the president of such trial chamber shall decide on the motion. The proceedings for permanent seizure of assets shall be a matter of urgency.

Should the motion for permanent seizure of assets be filed during the first-instance proceedings the court shall summon the owner to the main hearing to state whether he/she will challenge the motion. If the owner who was duly summoned fails to appear at the main hearing or fails to give a statement on the motion or he/she states that he/she will not challenge the motion, a decision on the motion shall be passed within the judgement. The decision on the motion may be contested in the appeal against the judgement. Should the owner state that he/she challenges the motion, the decision shall be taken in separate proceedings. The court shall by a judgement rejecting the indictment or acquitting of charges refuse the motion for permanent seizure of assets and revoke the decision on temporary seizure of assets. The court may transmit the data on assets of the owner to the Tax Administration.

When the owner states that he/she is challenging the motion for permanent seizure of assets or if the motion has been filed after the final conclusion of criminal proceedings, the court shall conduct the main hearing to rule on the motion. Prior to the hearing the court shall schedule a preparatory hearing within 30 days from the day of finality of a convicting judgement or from the day of the filing of the motion by the public prosecutor, to make evidence proposals.

The court shall summon to the preparatory hearing the owner, his/her attorney, if any, and the public prosecutor. The summons shall be sent to a known address and/or seat of the person summoned, with a caution that the hearing will be held irrespective of his/her attendance

If the summons has been delivered directly to the owner or his/her attorney, it will be considered that the delivery to the owner has been thereby duly performed. In case the summons cannot be delivered in this manner, the court shall assign an *ex officio* lawyer to the owner for the purposes of the proceedings on the permanent seizure of assets. The summons will be delivered to the owner allowing minimum eight days between delivery of summons and the date of hearing.

The court shall by means of summons invite parties to the proceedings to present facts at the preparatory hearing and propose evidence their motion is based on or which they use to challenge the motion of the adverse party. Following the presentation of evidence the court shall schedule the main hearing within the period of three months from the day the preparatory hearing was conducted on. If circumstances exist, giving rise to an assumption that some evidence cannot be collected within the mentioned period or if evidence should be provided from abroad, the day of the main hearing may be postponed for the maximum of another three months. Upon expiry of the period of six months the main hearing shall be conducted irrespective of failure to collect certain evidence.

Should the public prosecutor fail to attend the hearing the latter shall be postponed. President of the Chamber shall so notify the competent public prosecutor. The main hearing shall commence with presentation of the contents of the public prosecutor's motion. A hearing once commenced shall be concluded without adjournment.

If the motion is directed against the assets of a convicted person and/or a cooperative witness, the public prosecutor shall present evidence on assets owned by the convicted person and/or the cooperative witness, on lawful income thereof, and circumstances indicating a manifest disproportion between the assets and lawful income. The convicted person and/or the cooperative witness, and his/her attorney shall challenge thereafter contentions of the public prosecutor.

If the motion is directed against assets of legal successor or the third party, the public prosecutor shall present evidence that the legal successor has inherited the proceeds from crime and that the latter has been transferred to a third party without compensation or with compensation that is manifestly disproportionate to the actual value, to frustrate seizure of assets. The legal successor or the third party and his/her attorney shall challenge thereafter contentions of the public prosecutor.

Upon conclusion of the main hearing the court shall pass a decision sustaining or rejecting the motion for permanent seizure of assets. The ruling on permanent seizure of assets shall contain data on the owner, description and legal qualification of a criminal offence, data on assets to be seized and the value being seized from the owner if he/she possessed the proceeds from crime with the objective to frustrate seizure of assets thereof, and the decision on costs for managing temporarily seized assets. By ruling, the court may pass a decision on the property claim of the injured party the existence of which has been determined by a final decision. The court may decide to leave a portion of assets to the owner if the sustenance of the owner or persons he/she is required to support in terms of the Law on Enforcement Procedure would otherwise be brought into question.

Upon receiving the decision the Directorate shall without delay undertake measures for safeguarding and maintaining the assets seized. The Directorate shall manage the seized assets until final conclusion of the procedure for permanent seizure of assets.

The decision on permanent seizure of assets shall become final where the court rejects as unfounded the appeal filed against said decision or sustains the appeal filed against the decision rejecting the motion for permanent seizure of assets, and passes a decision on permanent seizure of assets.

The aforementioned quoted provisions of the Law on Seizure and Confiscation of the Proceeds from Crime are significant also with a view to the fact that according to Article 2 of the Law, its provisions also apply to criminal offence of money laundering from article 231(2) of the Criminal Code.

According to the statistical data, in 2009 there were six cases of criminal offences of money laundering in progress, and in 2010 this office so far has worked on five cases. There are no data regarding 2008.

According to the data on the judiciary of the Statistical Office of the Republic of Serbia, in 2008 four persons were indicted and convicted for the criminal offence of money laundering. The convicted persons were sentenced to 3 to 12 month imprisonment.

According to the same source, eight persons were reported for committing criminal offences of money laundering in 2009, out of which six indictments were raised. Six persons were convicted for this criminal offence, where four persons were sentenced to imprisonment and two received a suspended sentence.

From the moment the Law on Seizure and Confiscation of the Proceeds from Crime entered into force until October 2010, significant results in relation to the seizure of proceeds from crime have been accomplished, and according to the statistical data, the total number of motions for instigation of financial investigations in the Republic of Serbia for the period from its entry into force until mid-October 2010 is 226, number of persons investigated is 416, 365 of which are defendants, 39 third persons, 1 legal successor and 11 legal persons. Total number of orders banning the use of assets is 141, and total number of orders issued according to Article 20 of the Law on Seizure and Confiscation of the Proceeds from Crime is 217. Total number of filed motions for temporary seizure of assets is 34 against 72 persons in total, out of which 7 have been sustained fully, 5 sustained in part and 7 rejected as unfounded.

Previous analysis showed that the biggest number of motions that have been filed and assets seized relate to the abuse of office, followed by criminal offences against public health, unlawful production, keeping and distribution of narcotics as well as criminal offences against economy.

So far two judgements for the permanent seizure of assets have been passed (two immovable properties - one 30m<sup>2</sup> land parcel and one residential building – a 180m<sup>2</sup> house) and around 70 decisions on temporary seizure of assets for which there is reasonable grounds to suspect that assets derive from a criminal offence. So far, of the total number of decisions on the temporary seizure of assets, not a single one relates to the criminal offence of terrorism financing, and four relate to money laundering.

In line with the decisions pertaining to the criminal offence of money laundering, the Directorate for management of seized and confiscated assets took over the management of the following: 3 apartments in Belgrade, 3 apartments and 1 house in Novi Sad, economic estate with 450 ha of land owned and 600 ha leased for a long period and 1 Mercedes vehicle. The seized property belongs to perpetrators of criminal offences and persons connected to them, relatives and legal persons, as well as to persons to whom the property had been transferred to.

**27. Specify to what extent you have implemented the FATF (Financial Action Task Force) 40 Recommendations on money laundering and the FATF 9 Special Recommendations on terrorist financing.**

The FATF recommendations for the most part have been implemented in the legal system of the Republic of Serbia. Being a member of the Council of Europe, the Republic of Serbia is subject to evaluations of the Moneyval Committee, which is a specialised committee for fighting money laundering and terrorism financing and which works on the principle of mutual evaluation of member states, where compliance of their system with the standards prescribed by the FATF recommendations is evaluated. Mutual Evaluation Report regarding the assessed activities and measures taken by the Republic of Serbia with regard to combating money laundering and terrorism financing was adopted by the Moneyval Committee on 9 December 2009 in Strasbourg at its 31<sup>st</sup> Plenary. With the aim to implement the recommendations from the Report and further bringing of Serbian legal system into compliance with relevant international standards, the new Law Amending the AML/CFT Law was adopted. Most important novelty contained in this law is in relation to the obligation to collect data accompanying transfers of funds exceeding EUR 1,000, which is in line with the Special Recommendation number 7 of the FATF, and the REGULATION (EC) No 1781/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 November 2006 on information on the payer accompanying transfers of funds. REGULATION (EC) No 1889/2005 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 October 2005 on controls of cash entering or leaving the Community is implemented by the Law on the Prevention of Money Laundering and Financing of Terrorism and by the Rulebook on Cross-Border Transfer of Currency and Other Bearer Negotiable Instruments Declaration (Official Gazette of RS, No. 78/2009). Cash transfer control is the same as in the EU countries.

In its report, the Moneyval provided several recommendations regarding the implementation of certain FATF Recommendations. Based on these recommendations, the Government has adopted an Action Plan for their implementation. Currently some steps are being taken to implement recommendations on drafting the law on repressive measures undertaken on the basis of relevant UN SC Resolutions; on risk analysis of non-profit organizations; on risk analysis of cash transfer across the state border, as well as on the implementation of a number of laws and other regulations already passed.

The Progress Report, adopted on 8 December 2010 in Strasbourg, represents a regular procedure for the Council of Europe member states, all of which should undergo a year after the adoption of the Report. The Progress Report mostly confirms the compliance of the Serbian legal system with FATF Recommendations.

Evaluation Report on the evaluation of anti-money laundering and combating the financing of terrorism of December 2009 and the Progress Report on the progress made by December 2010, with annexes and statistical data, represent objective and unbiased analysis of situation in this area and can be found on the website of the Council of Europe, at the following address: [http://www.coe.int/t/dghl/monitoring/moneyval/Countries/Serbia\\_en.asp](http://www.coe.int/t/dghl/monitoring/moneyval/Countries/Serbia_en.asp)

The Republic Public Prosecutor's office (RPPO) took part in the preparation of the Report following the third round of evaluation of measures and activities with regard to combating money laundering and terrorism financing and prepared explanations in relation to certain recommendations within the competence of the public prosecutor's office.

The legislative capacity in this area has been increased (Recommendation 1) with regard to definitions of certain terms. Amendment to the Criminal Code – CC (Official Gazette of RS, No. 85/2005, 88/2005 - correction, 107/2005 - correction, 72/2009 and 111/2009) which entered into force on 11 September 2009, in Article 112(36) defines what is considered property.

The provision of Article 112(36) of the Criminal Code envisages that the property is considered to be good of every kind, tangible or intangible, movable or immovable, or the estimates and invaluable documents in any form that proves right or interest in relation to such well. Property is considered income or other benefit that originates, directly or indirectly, from criminal offence, as well in which it is converted or with which it is merged.

The adoption of Amendments to the Law on the Market of Securities and Other Financial Instruments is underway (Official Gazette of RS, No. 47/2006), which will widen the scope of incrimination and it will be possible to define criminal offences mentioned in the Recommendation:

- Insider trading would be defined as trading in company shares or other securities (bonds or blocks of shares) by individuals who have the authority to access classified (secret) company information.

- Market manipulation is described as every deliberate attempt to interfere with the free and fair operation of the market by creating an artificial, false or inaccurate price of shares or market of bonds, commodities and currencies.

The Republic Public Prosecutor's office organised a series of professional seminars with the aim to educate the law enforcement agencies' members. In 2009, in the organization of the republic public prosecutor's office – Department for Combating Corruption and Money Laundering and the Office of Legal Counsel of the American Embassy and the United States Department of Justice, seminars covering the following topics were held: "Gathering and analysing evidence of financial, economic crimes and corruption" in Belgrade, Novi Sad, Niš and Kragujevac with the representatives of relevant state bodies for the purpose of promoting team work and professional capacities of state bodies which are obliged to cooperate with the prosecutor's office (Tax Administration, Customs Administration, National Bank of Serbia, Administration for Prevention of Money Laundering, Privatisation Agency, Public Procurement Office, Budgetary Inspection and Audit, Anti-Corruption Agency, Commission for Protection of Competition). Also, a series of seminars on combating corruption, money laundering, terrorism and terrorism financing were held in Zlatibor and Belgrade.

With regard to Recommendation 8 the Law on Seizure and Confiscation of the Proceeds from Crime (Official Gazette of RS, No. 97/2008) passed by the National Assembly of the Republic of Serbia on its First Sitting of the Second Regular Session on 23 October 2008, regulates the mandatory reporting to the public prosecutor.

Article 20 of the Law on Seizure and Confiscation of the Proceeds from Crime provides for obtaining financial information. The provision of Article 20 of the Law on Seizure and Confiscation of the Proceeds from Crime reads:

«The public prosecutor may order banking or other financial organization to transmit to the Unit data on the status of the owner's business and private accounts, and safety deposit boxes.

The public prosecutor may by the order specified in paragraph 1 of this Article permit the Unit to undertake automatic data processing on the status of the owner's business and private accounts, and safety deposit boxes. »

The provision of Article 19(3) of this law additionally stipulates that no person may be denied by invoking the duty of confidentiality in respect of business, official, state and military secret. Objects that may serve as evidence under Article 15(2) of this law shall be provisionally impounded. Government and other authorities, organizations and public services are required to enable the Unit to conduct inspection, and to transmit information, documents and other objects referred to in paragraph 1 of this Article. Inspection and transmission referred to in paragraph 2 of this Article may not be denied by invoking the duty of confidentiality in respect of business, official, state and military secret.

Procedure under which a public prosecutor may request that the competent government authorities, banking or other financial institutions make an inspection of business activities of a person when reasonable suspicion exists that he/she has committed a criminal offence and submit data or information on suspicious financial transactions is stipulated in Article 234 of the

Criminal Procedure Code - CPC (Official Journal of FRY, No. 70/2001 and 68/2002 and the Official Gazette of RS, No. 58/2004, 85/2005, 115/2005, 85/2005 – other law, 49/2007, 20/2009 – other law, 72/2009 and 76/2010).

The provision of Article 234 directly incorporates the concept of suspicious financial transaction as defined in the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds Arising from Criminal Offence and Terrorism Financing, so that a public prosecutor may request that the competent government authority, banking or other financial institution make an inspection of business activities of individuals for whom grounds of suspicion exist that they have committed criminal offences for which a prison sentence of four years minimum is envisaged, and to provide them with documentation and data that may be used as evidence of a criminal offence or proceeds from criminal offence, as well as information on suspicious financial transactions referred to in the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds Arising from Criminal Offence and Terrorism Financing. Public prosecutor shall immediately inform investigative judge about the request and the data collected.

Upon a substantiated written request of the public prosecutor, under previously specified conditions, the investigative judge may issue an order by which a competent authority or institution shall be requested to temporarily suspend certain financial transaction, payment, i.e. issuance of suspicious money, securities or objects for which grounds of suspicion exists that they are resulting from criminal offence or from proceeds from criminal offence, or that they are intended for the execution or concealment of a criminal offence. The investigative judge shall make a decision. The owner of funds may file an appeal against the decision of the investigative judge. Chamber referred to in Article 24(6) of the Code decides on the appeal. The public prosecutor's order shall describe in more detail the contents of the measure or action he has requested to be undertaken.

If the public prosecutor does not initiate criminal proceedings within six months after he had been familiarized with the data collected through the application of this measure or if he states that he shall not be using them in the proceedings, and that he shall not request the initiation of proceedings against the suspect, all of the collected material will be destroyed under the supervision of the investigative judge and the investigative judge shall make a relevant record.

With regard to Recommendation 10, the Criminal Procedure Code in the aforementioned provision of Article 234 regulates the obtaining of data from financial institutions.

With regard to Recommendation 25, a two-way communication is established with the Administration for the Protection of Money Laundering, banks through the Association of Banks, Tax Administration etc. in line with Article 55 of the Law on the Prevention of Money Laundering and Financing of Terrorism (Official Gazette of RS, No. 20/2009 and 72/2009).

Republic Public Prosecutor's office shall send to the APML the data on all reports of criminal offences and prosecuted cases of criminal offences of money laundering. The request for data from the competent state bodies and persons entrusted with public authorities is stipulated in Article 55. In order to assess whether there are reasons for suspicion of money laundering or terrorism financing in relation to certain transactions or certain persons, the APML may request data, information and documentation required to detect and prove money laundering or terrorism

financing from the state bodies, organizations and legal persons entrusted with public authorities. The APML may request from the bodies and organizations previously mentioned to send data, information, and documentation required to detect and prove money laundering and terrorism financing in relation to persons that have participated or cooperated in transactions or business operations of persons in relation to which there are reasons for suspicion of money laundering or terrorism financing. These bodies and organizations shall send the requested data to the APML in writing, within eight days from the date of receipt of the request or provide to the APML a direct electronic access to the data and information, without fees. In urgent cases, the APML may request the data to be sent within a time period shorter than eight days.

With regard to the establishment of effective cooperation with the police authorities (Recommendation 27 and competent authorities within the meaning of Recommendation 28), regular meetings with police authorities have been held in order to improve cooperation between the police and the district public prosecutors in line with the Work Plan of the republic public prosecutor's office based on the Action Plan for the Implementation of the National Strategy for the Prevention of Money Laundering and Terrorism Financing where permanent and ad hoc working groups have been established.

The adoption of the new Criminal Procedure Code has been planned, in which the scope of legislative capacity would be widened in terms of increased jurisdiction of the public prosecutor's office and stronger connection between the police and the public prosecutor's office which would conduct the investigation and to that end promote team work, and that there are certain competences of the Ministry of Internal Affairs with regard to instigation of disciplinary proceedings.

Also, financial investigations shall be instigated at the order of the public prosecutor according to the Law on Seizure and Confiscation of the Proceeds from Crime and it is in the jurisdiction of the public prosecutor to conduct financial investigations in direct cooperation with the police authorities.

Prosecutor's office for organised crime works directly with the Counter-Organized Crime Service (SBPOK) of the Ministry of Interior of the Republic of Serbia, where the special prosecutor's office for combating organised crime has greater competences with a view to the application of special tactics, techniques and methods, the possibility to control insertion of agents and controlled payments, etc.

With regard to Recommendation 30 the republic Republic Public Prosecutor's office has been specialized through the establishment of the Department for Combating Corruption and Money Laundering within the activities in relation to the implementation of the Action Plan for the Implementation of the National Strategy for Combating Terrorism, the public prosecutor's office continued to monitor criminal offences of corruption in line with the Work Program and Mandatory Instruction A No. 194/10 on handling the cases in this area.

According to this instruction, all appellate public prosecutors' offices have established Departments for Combating Crime, whereas the higher public prosecutor's offices appointed specialized deputy public prosecutors who act in corruption cases and who are contact persons with regard to the coordination with the republic public prosecutor's office. Higher and basic



public prosecutors' offices keep records and directly inform the republic public prosecutor's office of the received criminal offence reports. All public prosecutors' offices must inform the Republic Public Prosecutor's office of all decisions in cases containing elements of corruption, which in case of rejection of criminal offence report or waiver of prosecution of criminal offences must be rendered in chambers with mandatory presence of the public prosecutor, and submit to the republic public prosecutor's office a copy of the first-instance judgment and prosecutor's appeal, if any, followed by the second—instance judgment. All decisions regarding the waiving of prosecution in these cases are made in chambers with mandatory presence of the public prosecutor. Separate records of money laundering offence proceedings are kept.

In line with this activity, in 2009, the Republic Public Prosecutor's office handled 908 cases, as well as cases from previous years (760 in 2008 and 578 in 2007). In this manner efficient monitoring and supervision of the work of the public prosecutor's office is enabled in every single case and the provision of professional assistance in the form of giving opinions, suggestions and guidelines for clarification of issues in certain cases, with special emphasis on the consistent application of legal provisions on the mandatory seizure of proceeds from crime. In the course of the year the cooperation has also been accomplished in the form of meetings with public prosecutors and their deputies at the republic public prosecutor's office when this was required for the purpose of processing more complex cases, and in the form of team work with the professionals – representatives of competent state authorities and institutions.

Preventive activity of the Republic Public Prosecutor's office has been achieved through this kind of work, in the form of enabling the control of the prosecutor's decisions in cases when the proceedings have not been instigated or have been dismissed (correctness of the decisions, their reasoning), which consequently activated certain cases after the dismissal of the criminal offence report and more correct and complete reasoning of decisions, the essence of which has not been questioned. The aim of this kind of activity is also a better protection of the professional integrity of the public prosecutor's office.

The work of the Department for Combating Corruption is based on specialisation and centralisation in establishing communication and coordination of specialised departments for combating corruption, intense exchange of information regarding cases and consultations carried out by the republic public prosecutor's office with the higher ranking and the lower ranking public prosecutor's offices.

With regard to Recommendation 32, the Republic Public Prosecutor's office gathers data and prepares records of cases related to money laundering offences and predicate criminal offences which it receives from the district public prosecutors' Offices based on the Mandatory Instruction A No. 194/10. If needed, this data is presented to other state authorities, exchanged and updated.

**28. Is there a complaint system in place for the settlement of disputes between the customers and the payment service providers? If yes, describe main differences.**

The Law on the Prevention of Money Laundering and Financing of Terrorism (Official Gazette of RS, No. 20/09) has entered into force on 27 March 2009.

This law introduced some novelties in the Republic of Serbia's money laundering and terrorist financing system, as follows: provisions on terrorism financing, risk-based approach, restriction of cash transactions exceeding EUR 15,000, etc.

The law is in compliance with relevant international standards and with the following EU acts of law:

- Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (Third Directive);
- Commission Directive 2006/70/EC, of 1 August 2006, on implementation of the Third Directive as regards the definition of politically exposed person, and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis;
- Regulation (EC) 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering 1889/2008, 26. or leaving the Community.

On 30 November 2010 the Law amending the Law on the Prevention of Money Laundering and Financing of Terrorism was adopted. This law was published in the Official Gazette of the Republic of Serbia, No.91/2010 of 3 December 2010. The amendments have fully implemented provisions of the Regulation (EC) No. 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds. By adopting the said article of this law the FATF Special Recommendation VII is fulfilled.

In addition, for the purposes of implementing the Law, the Rulebook on Methodology for Implementing AML/CFT Law was issued (in February 2010, in line with the Implementing Directive- *Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis.*)

The Law on the Prevention of Money Laundering and Financing of Terrorism, along with its bylaws and other sectoral laws, such as the Law on Banks, Insurance Law, Law on Securities etc., all of which protect the integrity of the financial sector, accounts for the system of regulations which ensures the prevention of use of the financial sector for the purposes of money laundering and financing of terrorism.