

Chapter 32: Financial Control

This chapter contains four main policy areas, namely public internal financial control (PIFC), External Audit (EA), the protection of the EU's financial interests and the protection of the Euro against counterfeiting.

With regard to the first two areas, there is no Union legislation requiring transposition into national law. Rather, the screening concerns the commitment of the candidate country to adopt international standards for internal control and internal audit and EU best practice. The international standards referred to are embodied in the INTOSAI Guidelines for Internal Control Standards for the Public Sector (2004), based on the second version of the COSO model of the Institute of Internal Audit (IIA). For this purpose, the candidate country should discuss with the Commission and adopt a PIFC Policy Paper with a short and long term action plan having realistic deadlines. With regard to the latter two areas, there is a precise *acquis*. Where it is directly applicable upon accession there is a particular focus on administrative structures and capacity.

PIFC is a comprehensive concept to support the candidate country in upgrading its internal control systems. EA relates to the function of the Supreme Audit Institution reporting to Parliament. PIFC and EA relate to the entire public budget, in particular central government income and expenditure, including foreign funds. However, the more specific rules for managing and controlling EU funds are treated under the relevant other accession negotiation chapters.

The PIFC concept is based on three principles, 1) managerial accountability implemented through, *inter alia*, sound financial management and control (FMC) systems, 2) decentralised and functionally independent internal audit (IA) and 3) centralised harmonisation of the FMC and IA systems.

Regarding **external audit**, the candidate country is expected to apply the norms defined by the International Organisation of Supreme Audit Institutions – INTOSAI - in particular its Lima Declaration and Mexico Declaration, which foresee supreme audit institutions that are functionally, institutionally and financially independent and report to Parliament only.

The other relevant policy area under this chapter concerns the **protection of EU financial interests**. First, it comprises operational cooperation of Member States, which must have the capacity to cooperate effectively with the European Commission and to communicate all suspected cases of irregularities and fraud. They must ensure the protection of EU funds at an (at least) equivalent level to the protection of national funds. Member States are also obliged to assist and cooperate on-the-spot checks carried out by EU services. While some of this *acquis* applies directly to Member States and thus does not need to be transposed, effective cooperation and coordination structures and capacities in the candidate country need to be set-up. In order to facilitate the required cooperation by future Member States, the nomination of national anti-fraud cooperation services – AFCOS – as a single contact point with OLAF is considered very useful. Furthermore, this part of the chapter also includes the convention on the protection of the EU's financial interests ("PIF-Convention") and its three protocols, including the harmonisation of penal law and the reinforcement of cooperation.

Finally, this part of the chapter comprises the non-penal aspects of the **protection of the Euro against counterfeiting**, such as the prohibition of metals or tokens similar to Euro coins, the obligation for financial institutions to withdraw counterfeit notes and coins and effective anti-counterfeiting bodies and procedures.

I. PUBLIC INTERNAL FINANCIAL CONTROL AND EXTERNAL AUDIT

Public Internal Financial Control

General

- 1. Which ministry (and which organisation within the ministry) has the responsibility to develop, harmonise, coordinate and check the following elements of PIFC in your country? What is the legal basis of this responsibility? Please provide a translated copy.**

- a) Financial management and control systems (covering managerial accountability, accounting, ex-ante financial control, ex-post financial control, inspection);**
- b) Internal audit (comprising financial, systems-based, performance and IT-audits).**

The Ministry of Finance, Department – Central Harmonisation Unit is responsible for the development, harmonisation, coordination and monitoring of the financial management and control system and internal audit. The Department comprises two internal organisational units:

- a) Section for Financial Management and Control Harmonisation
- b) Section for Internal Audit Harmonisation.

PIFC is regulated by Article 80 of the Law on Budget System ("Official Gazette of RS", Nos. 54/2009 and 73/2010).

"Article 80:

Internal financial control in the public sector shall include:

- 1) financial management and control of public funds beneficiaries;
- 2) internal audit of public funds beneficiaries;
- 3) harmonisation and coordination of financial management and control and internal audit performed by the Ministry of Finance – Central Harmonisation Unit."

- a) Financial management and control systems (covering managerial accountability, accounting, ex-ante financial control, ex-post financial control, inspection);**

The financial management and control system is regulated by Article 81 of the Law on Budget System.

“Article 81:

Public funds beneficiaries establish financial management and control, implemented through policies, procedures and activities, with the task to provide reasonable assurances to achieve their objectives through:

- 1)) operations in compliance with regulations, internal acts and agreements
- 2) reliability and integrity of financial and business reports
- 3) economical, efficient and effective use of resources
- 4) safeguarding of assets and data (information).

Financial management and control comprise the following:

- 1) control environment
- 2) risk management
- 3) control activities
- 4) information and communications
- 5) monitoring and assessment of the system.

Financial management and control shall be organised as a system of procedures and responsibilities of all persons in an organisation.

The manager of a public funds beneficiary shall be responsible for the establishment, maintenance and regular updating of the financial management and control system. The manager of a public funds beneficiary may delegate his responsibility for the establishment, maintenance and regular updating of the financial management and control system to the person he authorises.

The manager from paragraph 4 hereof shall report to the Minister on the adequacy and functioning of the financial management and control system until 31 March of the current for the previous year in the prescribed manner.

The Minister shall establish common criteria and standards for the establishment, functioning and reporting on the financial management and control system in the public sector."

b) Internal audit (comprising financial, systems-based, performance and IT-audits).

Internal audit is regulated by Article 82 of the Law on Budget System.

“Article 82:

Internal audit shall be set up at the Public funds beneficiaries.

Head of the public funds beneficiaries shall be responsible for the setting up and providing conditions for adequate functioning of the internal audit.

Internal audit is organisationally independent of the activity it audits; it is not the part of any business process or organisational part of the organisation, and is directly accountable to the head of a public funds beneficiary.

The functional independence of internal audit is ensured by independent decision making on: the field of audit based on risk assessment, method of performing audit and reporting on completed audit.

Based on the objective examination of evidence, internal audit provides assurances of the adequacy and functioning of the existing processes of risk management, control and management of an organisation, and state whether these processes function as envisaged and whether they enable the achievement of the organisation's objectives.

Internal audit offers advisory services consisting of advice, guidance, training, aid or other services with the aim to increase the value and improve management of the organisation, as well as risk management and control.

Internal auditors perform internal audit.

In performing their tasks, internal auditors apply international standards of internal audit, the code of ethics of internal audit and principles of objectivity, competence and integrity.

Internal auditors shall keep the confidentiality of official and business data.

The manager from paragraph 1 hereof shall report to the Minister on functioning of the internal audit system in the prescribed manner until 31 March of the current for the previous year.

The Minister shall prescribe the common criteria for organisation and standards and methodological guidelines for the performing and reporting of internal audit, and shall regulate in more detail internal audit activities in the public sector.”

Pursuant to Article 83 of the Law on Budget System, the Central Harmonisation Unit performs the following activities:

1) central harmonisation, coordination, monitoring the application and examining the quality of financial management and control and internal audit in the public sector

- 2) defining common criteria and standards for the setting up and functioning of the financial management and control system
- 3) defining common criteria for the organisation and performing of internal audit in the public sector
- 4) keeping the register of certified internal auditors in the public sector and records of internal audit charters
- 5) professional training, certification and monitoring of the work of internal auditors
- 6) training of public sector managers and employees in the field of financial management and control, in line with internationally accepted standards
- 7) consolidation of annual reports on the adequacy and functioning of the financial management and control system and functioning of the internal audit system, submitted by heads of public funds beneficiaries until 31 March of the current for the previous year for the purpose of reporting to the Minister of Finance.

Annex 1: The Law on Budget System ("Official Gazette of RS", Nos. 54/2009, 73/2010 and 101/2010)

- 2. Has this Ministry or organisation written a Policy Paper or Strategy Paper, describing the present situation of public internal financial control in your country and analysing the adequacy of these systems? Does this paper contain recommendations for the future development of PIFC? Has this paper been endorsed by the Ministry of Finance and by the Government? Has the paper become a general policy carried by the Government? Please provide a copy in one of the official EU languages.**

-Has this Ministry or organisation written a Policy Paper or Strategy Paper, describing the present situation of public internal financial control in your country and analysing the adequacy of these systems?

The Ministry of Finance, Department – Central Harmonisation Unit has prepared the proposal of the Strategy for the Development of Public Internal Financial Control in the Republic of Serbia. The Strategy describes the current situation of public internal financial control in our country and gives an analysis of the adequacy of these systems.

-Does this paper contain recommendations for the future development of PIFC?

The Strategy for the Development of Public Internal Financial Control in the Republic of Serbia contains recommendations for the future development of PIFC, presented in the Action Plan that is integral to the Strategy.

-Has this paper been endorsed by the Ministry of Finance and by the Government?

The Government adopted the Strategy for the Development of Public Internal Financial Control in the Republic of Serbia in August 2009 ("Official Gazette of RS", No. 61/2009) in line with the adopted National Programme for Integration with the European Union (Conclusion of the Government 05 No: 011-8132/2007-11 of 9 October 2008).

-Has the paper become a general policy carried by the Government?

This document is part of the general policy carried out by the Government. By adopting the Strategy, the Government decided to implement internal control and internal audit principles both to public funds controlled by the Government and to EU funds based on internationally accepted internal control standards for the public sector and internal audit and best practice of the EU.

-Please provide a copy in one of the official EU languages.

Annex 2: The Strategy for the Development of Public Internal Financial Control in the Republic of Serbia ("Official Gazette of RS", No. 61/2009)

3. Does PIFC in your country cover the control and audit of income (customs and tax authorities), expenditure (commitments, tender and contracting procedures, disbursements and recovery of unduly paid amounts), assets and liabilities? Does PIFC cover all parts of the national (and lower authorities) budgets and if not, which parts are excluded and covered by the control of other institutions?

-Does PIFC in your country cover the control and audit of income (customs and tax authorities), expenditure (commitments, tender and contracting procedures, disbursements and recovery of unduly paid amounts), assets and liabilities?

PIFC is a comprehensive system of measures for the management and control of public revenue, expenditure, assets and liabilities, established by the Government through public sector organisations with the aim to harmonise the management and control of public funds, including foreign funds, with the regulations, budget and principles of sound financial management, efficiency, effectiveness, economy and transparency.

-Does PIFC cover all parts of the national (and lower authorities) budgets and if not, which parts are excluded and covered by the control of other institutions?

PIFC covers all parts of the budget of the Republic of Serbia and budgets of lower levels of power, as prescribed by Articles 80, 81 and 82 of the Law on Budget System.

See answer to Q1.

4. How is PIFC (control and audit) organised in authorities below the central level and regional/local level, in as far as they benefit from national budgetary funding? And how in respect to their own funds?

-How is PIFC (control and audit) organised in authorities below the central level and regional/local level, in as far as they benefit from national budgetary funding?

PIFC covers all public funds beneficiaries in the Republic of Serbia in the same way. Public funds beneficiaries are direct and indirect budget beneficiaries, beneficiaries of funds of mandatory social insurance organisations and public companies founded by the Republic of Serbia or local authorities, legal entities founded by such public companies, legal entities directly or indirectly controlled by the Republic of Serbia or local authorities in regard to more than 50% of their equity or more than 50% of votes in the board of directors, and other legal entities where public funds comprise more than 50% of total revenue. Public funds beneficiaries shall establish, in line with Articles 81 and 82 of the Law on Budget System, the financial management and control system and the internal audit function in line with internationally accepted standards.

-And how in respect to their own funds?

PIFC covers all funds disposed by a public funds beneficiary, including own revenue.

5. Could an overview be given of any weak points in the areas mentioned under question 3 above, as perceived by the Ministry or other parties (such as the Supreme Audit Institution, the Treasury or the Parliament), that need further consideration for improvements in the future?

The Rulebook on the Common Criteria for Organisation and Standards and Methodological Guidance for Performing Internal Audit in the Public Sector ("Official Gazette of RS", No. 82/2007) and The Rulebook on the Common Criteria and Standards for the Setting up and Functioning of the Financial Management and Control System in the Public Sector ("Official Gazette of RS", No. 82/2007) should be amended and supplemented so as to elaborate definitions, mutual relations and to clearly demarcate the key PIFC elements, in order to raise the managers' awareness of their role and management accountability in the new decentralisation system, in line with Amendments to the Law on Budget System adopted in September 2010.

Further, it is necessary to harmonise internal acts of public funds beneficiaries with amendments to the Law on Budget System and future amendments to the above Rulebooks for the purposes of unique and more efficient implementation of PIFC.

It was assessed in the Report of the State Audit Institution on Audit of the Final Account of the Budget of the Republic of Serbia for 2008 that functional control and audit were not established

in government bodies subject to audit, which were required to establish internal control and audit in line with positive regulations.

As regards the relationship of the State Audit Institution and internal audit, an answer was given to Q21 of this Chapter.

According to Article 82, paragraphs 1 and 2 of the Law on Budget System, public funds beneficiaries establish internal audit, while the manager of a public funds beneficiary is responsible for the establishment and provision of conditions for the adequate functioning of internal audit.

Article 66 of the Law on the National Assembly ("Official Gazette of RS", No. 9/2010) envisages that control of the Parliamentary budget execution be implemented in line with regulations on budget inspection and state audit, and that an internal auditor performs internal audit of the Parliamentary budget execution in the National Assembly, in line with the Audit Plan. The internal auditor is accountable to the Secretary General of the National Assembly who is the authorising officer for the use of Parliamentary budget funds. The internal auditor submits a report on his/her work to the Secretary General of the National Assembly and the competent committee of the National Assembly (Administrative Committee) at least once a year. Pursuant to Article 67 of the Law on the National Assembly, the Secretary General of the National Assembly submits to the competent committee (Administrative Committee) quarterly reports on the use and disposal of the funds for the work of the National Assembly, and the Committee submits an annual report thereon to the National Assembly. Sitzings of the National Assembly and its working bodies (committees) are public.

Amendments to the Rulebook on Internal Job Classification in the National Assembly are currently underway, envisaging, inter alia, the establishment of the job position for an internal auditor, with the job requirements and description. The resources for the work of the internal auditor have been allocated in the National Assembly's budget for 2011.

Control of Parliamentary budget expenditure is provided by the establishment of the internal auditor in the National Assembly and by considering reports of the internal auditor and Secretary General of the National Assembly.

6. Could information be provided on the salary levels of the public control and audit staff, including a comparison with salaries in the private sector? Are there any other income elements not deriving from the national budget, either for control/audit staff or organisations? Is it difficult under the present salary regime to find and retain suitable staff for these functions?

-Could information be provided on the salary levels of the public control and audit staff, including a comparison with salaries in the private sector?

Salaries of public control and audit staff are regulated by the Law on Salaries of Public Servants and Employees ("Official Gazette of RS", Nos. 62/06, 63/06, 115/06 and 101/07) and the Law

on Salaries in Government Bodies and Public Services ("Official Gazette of RS", Nos. 34/01 ...and 63/06). Salaries in the public sector for the above category range between EUR 400 and EUR 800 vs. EUR 800–2000 in the private sector.

At this moment, salaries of state auditors in the State Audit Institutions are lower than salaries of private sector employees – commercial audit. For instance, salaries of public sector auditors range between EUR 1200 and 1400, while salaries of private sector auditors range between EUR 2000 and 3000. The salary of the general auditor in the public sector is EUR 1700, while salaries of directors at private audit firms range between EUR 3000 and EUR 5000.

-Are there any other income elements not deriving from the national budget, either for control/audit staff or organisations?

There are no other income elements for employees engaged in public control and audit or for organisations.

-Is it difficult under the present salary regime to find and retain suitable staff for these functions?

Salaries of staff engaged in public internal control and audit are two and more times lower than salaries in the private sector, which represents the main difficulty in finding and retaining suitable staff for these functions, which is particularly pronounced in case of internal auditors.

The State Audit Institution faced the problem of engaging highly expert staff with specific knowledge and skills. After the entry into force of the Law on Amendments to the Law on the State Audit Institution ("Official Gazette of RS", No. 36/10), the financial position of state auditors improved significantly, which helped remove one of the main obstacles to engaging new staff.

Legislation

7. Please, provide the following documents in one of the official EU languages, if available:

- a) Framework Law for PIFC, Budget Law, Treasury Law, Inspection Law;**
- b) Specific Laws on FMC and IA and inspection (implementation laws);**
- c) Tertiary regulations, such as manuals for FMC and IA, IA Charter, Codes of Ethics for FMC and IA, Audit trails.**

Annexes 1, 3 and 4: the Law on Budget System, the Rulebook on the Common Criteria for Organisation and Standards and Methodological Guidance for Performing Internal Audit in the Public Sector, the Rulebook on the Common Criteria and Standards for the Setting up and Functioning of the Financial Management and Control System in the Public Sector.

Financial management and control (FMC) systems

- 8. Will a central Treasury system be developed? To what extent will the control functions of the Treasury have an impact on certain tasks of the traditional checks during ex-ante control or make them redundant? How will the Treasury control functions be integrated into the ex-ante control activities of the Ministry of Finance and in line ministries?**

-Will a central Treasury system be developed?

The public sector reform from 2002 established the centralised Treasury system by consolidating all financial funds of Republic budget beneficiaries in a single Consolidated Treasury Account (CTA of the Republic). In terms of disposing of financial funds, transaction accounts of direct budget beneficiaries were closed, so that their expenditure is executed from the single account of the Republic budget and changes in balances are recorded through recording accounts within the Treasury's main ledger. Before the execution of requested payments by direct budget beneficiaries, automated ex-ante control is carried out – it is checked whether the requested payments are within the established appropriations, quotas, economic classifications, etc.

The development of the budget system is directed to the further centralisation of the disposal of financial funds, by closing transaction accounts to indirect budget beneficiaries as well (due on 31 December 2012) – payments for them will also be made from the single budget account, i.e. ex-ante control will be carried out in the same way as for direct budget beneficiaries.

-To what extent will the control functions of the Treasury have an impact on certain tasks of the traditional checks during ex-ante control or make them redundant?

Under the Law on Budget System, the control function of the Treasury Administration is limited to the control of expenditure in respect of assigned appropriations, in line with the adopted budget and approved quotas.

-How will the Treasury control functions be integrated into the ex-ante control activities of the Ministry of Finance and in line ministries?

Ex-ante control is entirely within the remit of managers of public funds beneficiaries. Managers are fully responsible for the adequacy and functioning of the financial management and control system.

- 9. Provide a description of the general set-up, roles and responsibilities of financial services in line ministries and/or budgetary chapters (you should cover the functions of the authorising officer, the accountant, double signature systems for commitments and disbursements, the ex-ante financial controller, the inspection and the ex-post financial controller). Has the concept of audit trails been introduced?**

-Provide a description of the general set-up, roles and responsibilities of financial services in line ministries and/or budgetary chapters (you should cover the functions of the

authorising officer, the accountant, double signature systems for commitments and disbursements, the ex-ante financial controller, the inspection and the ex-post financial controller).

Financial services perform five main financial functions such as:

- Development of the budget/financial plans
- Stipulation of the financial control framework
- Management of budget execution and assets that the beneficiary is responsible for
- Keeping business books
- Financial reporting.

Budgetary funds from the Consolidated Treasury Account may be paid out by the following procedure:

- The financial officer of a direct budget beneficiary, responsible for a particular field, identifies the payment commitment. The invoice, pre-invoice or another document must be the basis for the payment commitment.
- The financial officer of a direct budget beneficiary inspects whether the accompanying documentation is appropriate and correct. If the basis for the payment request is a pre-invoice or another document, the officer checks whether the calculations are correct and whether the documentation is appropriate, i.e. whether it has the legal basis. The accompanying documentation is forwarded to the officer for preparation.
- Based on available (own) documents, the "preparation" officer of a direct budget beneficiary prepares the request for creating the undertaken commitment, electronically and in hard copy (printed), encloses therewith the photocopies of documents proving the legal basis for the payment, the type of expenditure, the expected payment date, the amount of the payment commitment, the financing source, function, code of economic classification, signs the form – the request for creating the undertaken commitment (electronically and in hard copy) at the place designated as “preparation” and submits it to the person in charge of “certification” in the direct beneficiary, along with the accompanying documentation.
- The authorised “certification” officer of a direct budget beneficiary inspects the request for creating the undertaken commitment and the accompanying documentation in order to check whether the form is correctly completed, whether the expenditure corresponds to the purpose approved in the budget, whether the estimated payment dates and amounts have the appropriate basis – whether they correspond to the approved appropriations and quotas; and certifies the request for creating the undertaken commitment in hard copy at the place designated as “certification”.
- The “approving” person of a direct budget beneficiary – the official managing a direct public funds beneficiary or a person he authorises, inspects the request for creating the undertaken commitment and the accompanying documentation, and signs the form in hard copy at the place with designation “approval” and forwards it to the financial service.
- The financial service of a direct budget beneficiary submits the request for creating the undertaken commitment (original form), the decision on the allocation of funds (original) and photocopies of the accompanying documentation to the Treasury Administration.

- Once the direct budget beneficiary receives the electronic report "undertaken commitment" by the Treasury Administration, the person in charge of preparation links, i.e. "adds payment", which is how the electronic payment request is created.
- The direct budget beneficiary – the person for “certification” electronically certifies the payment request; in such status, the payment request awaits the payout made by the Treasury Administration.
- After that, the financial service of a direct budget beneficiary archives original copies of the request for creating the undertaken commitment and accompanying documentation. The request for creating the undertaken commitment is in hard copy and electronic form.
- The financial service of a direct budget beneficiary compares the transactions from the report of the Treasury Administration with submitted payment requests, and enters changes in its supporting ledgers and records.

-Has the concept of audit trails been introduced?

The concept of audit trails has been introduced in the operation of ministries.

10. Describe the planning and nature of ex-ante control (scope and contents, 100% checks or sampling based on risk assessment, etc). Are statistical methods used in such sampling, such as the Monetary Unit Sampling technique? Are risk assessment and risk management techniques being developed?

There is 100% check of all business changes, and not statistical sampling based on risk assessment. Preventive control is applied to check the formal and substantial accuracy of business events. Checks by phases and officers are explained in answer to Q9.

Internal Audit (IA) systems

11. Has the function of internal audit been introduced in your country’s public sector (please refer to the attached Glossary for the exact meaning of the internal audit concept). Describe the functional independence of the internal audit function in the following terms: status of independence vis-à-vis management, nomination, transfer and demotion, freedom to set annual and strategic audit plans and ad hoc planning, freedom to report to the highest level of the hierarchy and in case of conflict to other relevant organisations. Are internal audit units established in line ministries? Do they share tasks with the inspectors or is a strict separation foreseen between the two functions?

-Has the function of internal audit been introduced in your country’s public sector (please refer to the attached Glossary for the exact meaning of the internal audit concept).

The obligation of introducing the function of internal audit into the public sector is prescribed by Article 82 of the Law on Budget System.

-Describe the functional independence of the internal audit function in the following terms: status of independence vis-à-vis management, nomination, transfer and demotion, freedom to set annual and strategic audit plans and ad hoc planning, freedom to report to the highest level of the hierarchy and in case of conflict to other relevant organisations.

The internal audit unit and internal auditor are functionally and organisationally independent and directly accountable to the manager of public funds beneficiaries. Functional independence is established by independent planning, execution and reporting on completed internal audit. Organisational independence is established relative to other organisational parts of the public funds beneficiary. The internal audit manager and internal auditor may not be assigned any other function or activity, apart from the internal audit activity. The internal audit manager and internal auditors are independent in their work and may not be dismissed or transferred to another workplace due to presentation of facts and issuance of recommendations relating to internal audit. The Central Harmonisation Unit performs the tasks of coordination of training and supervision of work of internal auditors (quality control). Internal auditors may address the Central Harmonisation Unit for all issues regarding quality control and may request from the Unit to give its opinion on a professional conflict.

-Are internal audit units established in line ministries?

Internal audit units are established in 15 ministries with 50 auditors.

-Do they share tasks with the inspectors or is a strict separation foreseen between the two functions?

The Law on Budget System envisages strict separation between the functions of inspection and internal audit. Additional stipulation for internal auditors is contained in the Rulebook on the Common Criteria for Organisation and Standards and Methodological Guidance for Performing Internal Audit in the Public Sector.

12. What kind of audits is performed by the Ministry of Finance and by Internal Audit Units, if established, in line ministries and other spending centres (e.g. regularity and legality audits, systems-based audits, performance and IT audits)?

Internal audit units and internal auditors perform audit of the system, giving assurances to managers of public funds beneficiaries about the adequacy and effectiveness of the financial management and control system in respect to the organisation's objectives. Audit is carried out by collecting evidence and its analysis and assessment.

13. What procedures have been introduced to ensure adequate audit reporting (contradictory procedures with auditees) and for the adequate follow-up of audit findings? Who ensures the feed back of audit findings into the FMC systems?

The Rulebook on the Common Criteria for Organisation and Standards and Methodological Guidance for Performing Internal Audit in the Public Sector and the Internal Audit Manual prescribe the conduct of audit, reporting on completed audit and monitoring of implementation of given recommendations based on internal audit findings.

Deadlines and responsible persons for the implementation of recommendations are established in the action plan for the implementation of recommendations. The action plan is integral to the report on each completed audit.

The manager of the auditee decides on how to act upon recommendations from the audit report and takes activities for the implementation of recommendations. The auditee is required to submit to the auditing team a report on execution of the activity plan. The report on execution of the activity plan is submitted within the deadline established by the audit report.

The internal audit manager may decide on the conduct of control audit, with the aim to examine the degree of implementation of audit recommendations.

Central harmonisation for FMC and IA

14. Could a description be given of the tasks that the Ministry of Finance has in relation to providing central guidance on methodology to all ex-ante financial control and internal audit activities in all line ministries and government spending centres? How does the Ministry ensure that these guidelines are adhered to? Are there compliance and substantive tests performed for this purpose?

-Could a description be given of the tasks that the Ministry of Finance has in relation to providing central guidance on methodology to all ex-ante financial control and internal audit activities in all line ministries and government spending centres?

The Ministry of Finance established the Department – Central Harmonisation Unit that comprises two internal units.

The Internal Audit Harmonisation Section is tasked with developing and updating of methodologies, standards, organisation of training, certification and supervision over the establishment and development of internal audit in the public sector, monitoring and assessing the current circumstances, consolidation of annual reports on the state of PIFC, including the proposal of necessary improvements for enhancing the efficiency of internal financial control in the public sector.

- The Section for Financial Management and Control Harmonisation is tasked with developing of methodologies, standards, organising training for managers and employees responsible for financial management and control, supervision over the establishment and development of the financial management and control system in the public sector, monitoring and assessment of the current circumstances, consolidation of annual reports on the system of financial management and control of public funds beneficiaries.

-How does the Ministry ensure that these guidelines are adhered to?

Adherence to the guidelines is ensured by collecting, analysing and consolidating annual reports on the self-assessment of the state of internal audit and financial management and control, and by on-site inspection.

-Are there compliance and substantive tests performed for this purpose?

Compliance tests and substantive tests were not performed due to limited capacities in the Central Harmonisation Unit.

15. What actions are undertaken to train controllers and auditors? Who is responsible? Is there a Public Finance School for these functions? Are there contacts with the SAI, the IIA chapter for your country and with academic authorities? Is there training for certified public internal auditors? Are staffs being trained to become training specialists?

-What actions are undertaken to train controllers and auditors? Are staffs being trained to become training specialists?

In the process of introducing PIFC carried out so far, training was delivered by foreign consultants who trained domestic instructors as future lecturers. Domestic instructors from the Central Harmonisation Unit conduct training both for internal audit and financial management and control. Talented trainees will be selected to undergo the train-the-trainer programme, which will ensure the sustainability of teaching staff.

The Rulebook on the Terms, Conditions and Procedure for Taking Examination to Acquire the Title of a Certified Internal Auditor in the Public Sector ("Official Gazette of RS", No. 46/2009) regulates the training of certified internal auditors in the public sector and the certification scheme.

-Who is responsible?

The Ministry of Finance, Department – Central Harmonisation Unit is responsible for the organisation of training for internal audit and financial management and control.

-Is there a Public Finance School for these functions?

There is no public finance school for these functions.

-Are there contacts with the SAI, the IIA chapter for your country and with academic authorities?

There are contacts with the SAI, but it is not possible to use training-related services of this institution given that it was recently established. Establishment of branches of the Internal Auditors Institute is underway. For the time being, internal audit is not studied at faculties as a separate subject.

16. Have rules been established to ensure a minimum of knowledge and experience before staff can become financial controllers and internal auditors (examination board or otherwise)?

The Rulebook on the Terms, Conditions and Procedure for Taking Examination to Acquire the Title of a Certified Internal Auditor in the Public Sector establishes the rules for acquiring the title of a certified internal auditor in the public sector and prescribes the procedure and programme of training and examination.

Annex 5: The Rulebook on the Terms, Conditions and Procedure for Taking Examination to Acquire the Title of a Certified Internal Auditor in the Public Sector ("Official Gazette of RS", No. 46/2009).

17. What expertise is presently transferred to the government in this field under what programmes (consultants, Sigma, others)?

The consultative activity of SIGMA is currently underway in relation to harmonisation of regulations with *acquis communautaire*.

18. Could a description be given of the available staff capacity in the organisation dealing with the development of FMC and IA harmonisation?

The Assistant Minister of Finance (with a B.A. degree in law) manages the Central Harmonisation Unit that comprises two sections:

- a) The Section for Internal Audit Harmonisation, consisting of the group manager and three officers (three with B.A. degrees in economics and one with a B.Sc. degree in electrical engineering)
- b) The Section for Financial Management and Control Harmonisation, consisting of one manager and two officers (all of them with B.A. degrees in economics).

The Supreme Audit Institution (SAI) (External Audit)

19. The SAI is requested to provide an extensive description of its tasks, responsibilities, its independence and its relations to the Parliament and the Ministry of Finance (discussions and follow-up of its recommendations). Relevant issues are how the SAI is adapting to EU best practice and international standards of external audit. Describe the remit of the SAI (coverage of all budgetary chapters, non-budgetary national funds, lower authorities etc). Have the rights and duties of the SAI been defined in the

Constitution? How is the independence of the SAI ensured? What is the current staff of the SAI and what are the future plans to improve its capacity? Please provide a copy of the SAI Law in one of the official EU languages.

The State Audit Institution as the supreme government body in charge of auditing public funds in the Republic of Serbia was established by the Law on the State Audit Institution from 2005 ("Official Gazette of RS", Nos. 101/05, 54/07 and 36/10). The Constitution of the Republic of Serbia from 2006 ("Official Gazette of RS", No. 98/2006) confirmed the autonomy and independence of this institution that is subject to oversight by the National Assembly to which it is also accountable for its work.

The Law on the State Audit Institution (hereinafter: the Law) regulates the establishment and activity, legal status, competences, organisation and manner of operation of the State Audit Institution (hereinafter: the Institution) and other issues important for operation of the Institution, and rights and obligations of auditees.

-The remit of SAI – description of tasks

Within its remit, the Institution performs the following activities:

- 1) plans and conduct audit, in line with the Law
- 2) adopts by-laws and other regulations for the purpose of implementing the Law
- 3) submits reports
- 4) takes attitudes and issues opinions and other forms of public communications relating to the application of some provisions of the Law
- 5) when needed and in line with its capacities, offers expert assistance to the Assembly, Government and other government bodies in relation to important measures and projects, in the manner that does not diminish the independence of the Institution
- 6) may give advice to public funds beneficiaries
- 7) may give remarks on draft proposals of laws and other regulations and issue opinions on public finance issues
- 8) may give recommendations for amendments to valid laws based on information it obtained in the audit procedure, if there are indications that negative consequences or unplanned results will be caused or may be caused
- 9) adopts and publishes audit standards relating to public funds, in respect of performance of the Institution's audit responsibilities, audit manuals and other expert literature important for upgrading the audit profession
- 10) establishes the education programme and examination programme for acquiring the titles of a state auditor and certified state auditor, and keeps the register of persons who acquired these titles
- 11) establishes criteria and validates expert titles acquired abroad, within the Institution's remit
- 12) cooperates with international audit and accounting organisations in the fields relating to accounting and audit within the public sector
- 13) performs other activities determined by the Law.

Subject to audit, in line with the Law, are the following:

- 1) revenue and expenditure in line with budget system regulations and regulations on public revenue and expenditure
- 2) financial statements, transactions, calculations, analyses and other records and information of auditees
- 3) soundness of operation of auditees in line with the Law, other regulations and granted authorisations
- 4) purpose of using public funds in entirety or in a particular segment
- 5) the system of financial management and control of the budget system of other bodies and organisations subject to the Institution's audit
- 6) system of internal controls, internal audit, accounting and financial procedures of auditees
- 7) acts and activities of auditees that cause or may cause financial effects on beneficiaries' revenue and expenditure, government assets, borrowing and issue of guarantees and the purposeful use of funds used by auditees
- 8) regularity of operation of management bodies and other responsible persons in charge of planning, execution and supervision of operation of public funds beneficiaries
- 9) other fields envisaged by special laws.

Auditees are:

1. direct and indirect beneficiaries of budgets of the Republic, territorial autonomies and local authorities in line with regulations on the budget system and the public revenue and expenditure system
2. mandatory social insurance organisations
3. budgetary funds established by a special law or by-law
4. the National Bank of Serbia in relation to the use of public funds and operation with the government budget
5. public enterprises, companies and other legal entities founded by a direct or indirect public funds beneficiary
6. legal entities where direct or indirect beneficiaries have a stake in capital and/or management
7. legal entities founded by legal entities in which the government has a stake in equity and/or management
8. legal and natural persons receiving from the Republic, territorial autonomies and local authorities subsidies and other non-refundable funds and guarantees
9. entities engaged in accepting, keeping, issue and use of public reserves
10. political parties, in line with the law on financing of political parties
11. beneficiaries of EU funds, donations and aid by international organisations, foreign governments and NGOs
12. the contracting party in relation to executing international agreements, agreements, conventions and other international acts, when this is established by an international act or when determined by an authorised body
13. other entities that use funds and assets under control and at disposal of the Republic, territorial autonomies, local authorities or mandatory social insurance organisations.

According to responsibilities prescribed by the Law, more than 9000 entities – budget beneficiaries, are subject to audit.

-Responsibilities, independence and relations to the Parliament and the Ministry of Finance (discussions and follow-up of its recommendations).

The Constitution of the Republic of Serbia and the Law on the State Audit Institution guarantee the autonomy and independence of the Institution. These acts stipulate that for the performance of activities coming within its remit the Institution is accountable only to the National Assembly of the Republic of Serbia (hereinafter: the Assembly). The Law prescribes that acts whereby the Institution performs its duty of audit may not be subject to contestation before courts and other government bodies.

The Institution reports to the Assembly by submitting: 1) the annual report on its operation; 2) special reports during the year; 3) reports on audit of the final account of the budget of the Republic, final accounts of financial plans of mandatory social insurance organisations and consolidated financial statements of the Republic.

The Institution reports to assemblies of local authorities on audit relating to auditees coming within their remit and simultaneously submits these reports to the Assembly.

Following consideration of the Institution's reports, the responsible body of the Assembly submits its attitudes and recommendations to the Assembly in the form of a report. Based on important facts and circumstances underscored in the reports, the Assembly decided on recommendations, measures and deadlines for their implementation. The Assembly may request from the Institution additional explanation of some facts and circumstances.

In addition, the Institution submits to the Assembly other proposals described in more detail in the subtitle "Response report" of this answer.

In terms of its relations to the Ministry of Finance, the Institution observes the Ministry as an auditee and a government body responsible for activities of the Republic budget. The relations to this Ministry are regulated by the Law on the State Audit Institution and the Law on Budget System. Under the Law on Public Servants ("Official Gazette of RS", Nos. 79/05, 81/08... and 104/09), the Institution is required to obtain from the Ministry of Finance its consent to the Staffing Plan. There have been no problems in the obtainment of the consent as it is given based on funds appropriated to the Institution under the law on the Republic budget for the coming year.

The relations of the Institution to the Ministry in the procedure of auditing the final account of the Republic budget have so far been correct. In the audit and post-audit procedure, the Ministry has accepted the auditors' findings and eliminated the deficiencies highlighted by auditors.

The Institution considers exchange of information and cooperation with the Ministry of Finance indispensable as it is a body responsible for central harmonisation of financial management and

control and internal audit in the public sector. In terms of public internal financial control, the Institution has so far pointed to deficiencies in this system only through audit findings.

-Audit programme

The Institution conducts audit based on the annual audit plan that it is required to adopt before the end of the year for the next calendar year.

Within the legal framework, the Institution independently decides on auditees, object, volume and type of audit, the time of the beginning and duration of audit.

The audit programme covers each year the following:

- 1) budget of the Republic of Serbia
- 2) mandatory social insurance organisations
- 3) appropriate number of local government units
- 4) operation of the National Bank of Serbia relating to the use of public funds
- 5) appropriate number of public enterprises, companies and other legal entities founded by a direct or indirect public funds beneficiary that has a stake in their equity or management.

During a calendar year, the Institution may amend and supplement the audit programme.

For the purpose of implementing the audit programme, the Institution may engage auditors of state audit institutions of other countries and commercial audit firms.

To implement its audit programme, the Institution may use reports on completed audit issued by commercial audit firms, or based on these reports it may plan additional procedures in the auditee.

-Audit procedure

The Institution performs its audit tasks in line with the Law and the Rules of Procedure of the State Audit Institution ("Official Gazette of RS", No. 9/09) (hereinafter: the Rules of Procedure) and in line with International Audit Standards, INTOSAI standards and national regulations.

In line with the Law, the Rules of Procedure define in more detail the manner and procedure of audit performed by the Institution. The Council adopts the Rules of Procedure following the previous obtainment of the Assembly's consent.

For the time being, the Institution performs audit of financial statements and audit of the regularity of operations and it plans to initiate audit of the purposefulness of operations in 2013.

The Institution launches the audit procedure by adopting the conclusion on the conduct of audit.

Following completed audit procedures in the auditee, the Institution prepares a draft report on completed audit which it submits to the auditee and persons that were responsible for covered operations, in the period that the audit refers to.

The auditee and/or the responsible person has the right to submit a justified objection to the draft report on completed audit.

The Institution considers the justifiability of remarks from the objection, invites the responsible persons of the auditee to the discussion on the draft audit report; during the discussion, these persons may also submit new evidence. There can be several discussions on the draft report.

Following the discussion, a Council member or the responsible supreme state auditor inspects the audit report, establishes the justifiability of remarks and examines whether the conclusions are based on evidence from documents and whether the procedure was conducted in line with audit standards. Following the assessment of remarks and conclusions, a Council member or the responsible supreme state auditor establishes the proposal of the audit report that is submitted to the auditee and responsible persons.

The auditee and or the responsible person of the auditee from the period that the completed audit refers to, may file an objection against the audit findings contained in the proposal of the audit report.

The Council decides on the objection against the proposal of the report. The Council may decide to:

- exclude the disputable finding from the report
- keep the disputable finding in the report in an unmodified form
- to incorporate the disputable finding in the audit report in the contents determined by the Council.

The submitter of the objection against the proposal of the report receives an answer determined by the Council. There is no legal recourse against the answer.

-Unrestricted access to information

The Institution has adequate powers to obtain the timely, unrestricted, direct and free access to all necessary documents and information, with the aim of proper performance of the legal responsibility.

-Response report

The auditee in whose operation irregularities or deficiencies were detected and were not eliminated during audit, is required to submit to the Institution the report on elimination of detected irregularities or deficiencies.

The auditee must submit this report within the deadline established by the Institution, between 30 and 90 days, starting from the day following that of submission of the audit report.

If the Institution assesses that the response report does not indicate that the detected irregularities or deficiencies were eliminated in a satisfactory manner, it is deemed that the public funds beneficiary is in breach of the obligation of sound business.

If a significant irregularity or deficiency is eliminated in an unsatisfactory manner, it is deemed that there is a serious form of breaching the obligation of sound business.

Breach or a serious form of breach of the obligation of sound business by the auditee is assessed in line with guidelines adopted by the Council.

If the obligation of sound business is breached, the Institution may file a request for implementation of measures. The request is forwarded to the body assessed to be able to take measures under its remit against the public funds beneficiary that is in breach of obligations of sound business.

If the obligation of sound business is seriously breached, the Institution informs the Assembly thereof.

Following the hearing to which the public funds beneficiary is also invited, the working body of the Assembly, responsible for the oversight of the budget and other public funds, adopts within its remit the conclusion on recommendations and measures to be taken due to serious breach of the obligation of sound business.

Further, if the obligation of sound business is seriously breached, the Institution:

- 1) submits the invitation for relief from duty of the responsible person
- 2) informs the public.

The Institution is required to submit without delay the request for initiation of misdemeanour proceedings or to file criminal charges to the competent body, if it establishes in the audit procedure materially significant activities that point to elements of a misdemeanour or criminal offence.

-About the independence of the Institution

The main standards from the Lima Declaration relating to the independence of the State Audit Institution are generally complied with.

Financial independence is observed to the greatest extent: the Institution submits the request for necessary financial funds and is restricted only by the consent to the request given by the Assembly board responsible for finance; the Institution exercises the right to use funds allocated to it under a separate budget line, in line with its financial plan.

The Institution has so far received the requested financial funds.

In terms of financial independence, we would like to underscore that the Institution does not have a separate account (as the Assembly), which is why it does not have complete financial independence as the Ministry of Finance can influence the allocation of budgetary funds, particularly for the needs of the Institution, and such influence can also be made by the Assembly board responsible for finance.

Note: the manner of financing the Institution is explained in answer to Q37 – Political criteria.

Business premises used by the Institution: The Institution uses business premises assigned to it for use by the National Bank of Serbia (15 offices) whose operation, in the segment relating to operation with the budget, it audits. These premises are insufficient (the Institution has 35 employees; there will be at least 56 employees by end-2010 and at least 73 newly employed until the end of January 2011 – these data are obtained based on decisions adopted in the recruitment procedure).

The Government is the responsible body that decides on the distribution of business premises disposed by the Republic, and it is under the Law on the State Audit Institution obliged to provide premises to the Institution. Since the start of its operation, the problem of business premises has featured as one of the most important problems, if not the most important one: the Institution either did not have business premises and was unable to employ staff or it has money to rent premises but does not have staff, which is why renting premises is an irrational solution. This issue will come to the fore once new employees start to work.

-Independence of officials of the State Audit Institution

The independence of Council members is guaranteed by the Law on the State Audit Institution. The procedure of appointment and relief from duty of Council members is also prescribed by the Law.

Officials have the following terms of office: Council members perform their tasks over a five-year period (two terms of office are allowed) and supreme state auditors and the Institution's Secretary over a six-year period (with the possibility of reappointment). The term of office of Council members is not sufficiently long to enable them to perform their duties and exercise full discretionary rights, while the special retirement conditions are not prescribed for the top management of the State Audit Institution. The safety of terms of office is not guaranteed either as the initiative for the relief from duty may be launched by at least 20 MPs, which instils Council members with permanent insecurity and is contrary to the independence principle from the Lima and Mexico Declarations.

-What is the current staff of the SAI and what are the future plans to improve its capacity?

The State Audit Institution has 35 employees – 5 of them are Council members and the Secretary. Of the total number of employees, the Institution has 4 supreme state auditors (managers of services), 5 certified and 2 state auditors. Other employees have the same status as employees in government administration bodies. Apart from salaries and manner of appointment, state auditors have the same rights and obligations as other employees.

After the salaries of state auditors were raised, one of the most important reasons for slow recruitment of auditing staff was eliminated. Until end-2010, the total number of employees is planned to reach 56; until the end of January 2011 there will be 73 employees – these data are obtained based on decisions adopted in the recruitment procedure). Until end-2011, the Institution plans to fill in all workplaces determined by the act on internal organisation and job classification, including the centres in Niš and Novi Sad, outside of the Institution's head office.

In addition to raising the number of employees and existing training, the Institution plans to organise additional education of staff, particularly auditing staff for gaining the certificates for state and certified state auditors.

-International exchange of experiences

- Cooperation with EUROSAI and INTOSAI

The right to fully-fledged membership of EUROSAI is granted to supreme audit institutions that are members of the International Organisation of Supreme Audit Institutions (INTOSAI) and that accepted the current Statute of EUROSAI. The State Audit Institution has been a fully-fledged member of INTOSAI since November 2008. In line with that, the Institution undertook activities aimed at fully-fledged membership of EUROSAI. At the XXXV meeting of the Governing Board of EUROSAI in Kiev, the State Audit Institution was accepted as the 50th member of EUROSAI.

- Cooperation with the Office of the Auditor General of Norway (OAGN) – the Project of Building Institutional Capacities of the State Audit Institution

With mediation of the Embassy of the Kingdom of Norway in Belgrade, cooperation was established with the Office of the Auditor General of Norway. The statement of cooperation was signed on 28 May 2008. Cooperation is planned to last until 31 December 2013 with the possibility of extension. The cooperation is aimed at the establishment and institutional strengthening of capacities of the State Audit Institution for the purpose of the continuous upgrade of financial management of the Serbian public sector. The OAGN finances the entire cooperation project.

Within the project, cooperation developed in several directions. Activities within the project covered the following fields: financial audit, Strategic Plan of the Institution, Code of Ethics of the Institution, public relations and initiation of cooperation between the National Assembly of the Republic of Serbia and the Norwegian Parliament (the Storting), with a special focus on the support and monitoring of reports submitted by the Institution.

- Cooperation with UNDP

The State Audit Institution is one of the partners at the UNDP (United Nations Development Programme) Project Strengthening Accountability Mechanism in Public Finance, together with the Public Procurement Directorate and the Commissioner for information of public importance

and personal data protection. The purpose of the Project financed by the Government of the Kingdom of Norway/Ministry of Foreign Affairs is to provide support in the establishment of effective and stable accountability mechanisms in public finance in Serbia, with the aim to improve the preventive and investigative aspects in the public spending cycle through activities of capacity development in these three institutions. The Project also relates to strengthening of capacities of the media and civic society organisations for active participation in improving the accountability and transparency of processes so as to enable their active participation in the monitoring and control mechanism.

Within the project component devoted to the State Audit Institution, support is provided to the development of the certification programme for acquiring the auditing titles, the upgrade of the Institution's capacities through the analysis of needs for training and implementation of training, preparation of the Communication Strategy and implementation of activities in the field of public relations.

As one of the priority regulatory bodies that can contribute to the improvement and strengthening of cooperation with the National Assembly, the State Audit Institution took part in the UNDP Project Strengthening the Accountability of the Serbian Parliament, aimed at, inter alia, the improvement and development of mechanisms of cooperation between regulatory authorities and the National Assembly of the Republic of Serbia.

- Cooperation with the Court of Audit of the Republic of Slovenia and the State Audit Institution of Montenegro

For the purpose of exchanging experiences and with the aim of developing the programme of certification and implementation of examples of good practice, representatives of the State Audit Institution visited the Court of Audit of Slovenia and the State Audit Institution of Montenegro which have already implemented certification programmes.

Annex 6: The Law on the State Audit Institution ("RS Official Gazette", Nos. 101/05, 54/07 and 36/10)

20. Is the SAI involved presently in any strategies to reform itself? Has it already developed a strategy paper for its future tasks?

In cooperation with the Office of the Auditor General of Norway (OAGN), the strategic plan of the State Audit Institution for the 2011-2015 period is in the final phase of preparation and its adoption by the Council is expected until end-2010. The key priorities have been defined regarding the upgrade of audit services, greater independence of the Institution, attraction and retention of expert staff, the upgrade of organisational and management capacities, and the upgrade of partnership relations with key interested parties.

A special focus of the Strategic plan are activities aimed at the continuous education of staff – both officials and officers. To that effect, the training of staff aimed at strengthening of audit capacities is planned for 2011. The Institution is not the beneficiary of EU funds in terms of

development of the Strategy, but it has applied for IPA 2011 funds – for the project relating to strengthening of institutional capacities.

21. Could you describe in detail what procedures have been set up for adequate co-operation between the Supreme Audit Institution and the organisation(s) responsible for public internal financial control, e.g. for avoiding duplication of audit tasks at the same time in the same locality, for informing each other about perceived control/audit weaknesses in government expenditure/income, for the way of reporting audit findings to each other, for training or any other kind of regular cooperation?

In its first report on the financial audit of the final account of the budget of the Republic of Serbia for 2008, the State Audit Institution pointed to the weaknesses of the functions of internal audit and internal control of those budget beneficiaries that are required to establish these functions. In their comments on the audit report of the State Audit Institution, these beneficiaries informed the Institution that they undertook the necessary measures to establish these functions.

As an external auditor, the State Audit Institution has the task to examine the effectiveness of internal audit. In the audit procedure, to the extent possible, internal audit reports were available to auditors. Due to the unevenly developed system of internal control and audit in entities subject to audit, the reports were insufficient for auditors to give their opinion. Namely, where they existed, the reports were not comprehensive and referred only to some segments of entities' operations. The Institution acknowledges efforts invested in strengthening internal audit and control as in that way the preconditions will be met for state auditors to assess internal audit as effective, while at the same time the distribution of tasks and better cooperation between the Institution and internal audit will be achieved.

II. PROTECTION OF THE EU FINANCIAL INTERESTS

A. Management and Control of (future) EU Funds

Treatment and follow-up of cases of suspected fraud and other irregularities, protection of EU financial interests (non-penal aspects)¹:

(a) Implementation of the Convention for the protection of the Communities; financial interests and its protocols

22. What are the applicable definitions of "irregularities", "fraud", "corruption" and "money laundering"? Please identify: a) the relevant fraud provisions in national criminal law; b) the general forgery offences as well as the corruption offences in national criminal law?

¹ Penal issues related to the protection of the Communities' financial interests are dealt with under Chapter 24.

Criminal Code ("Official Gazette of RS", Nos. 85/2005, 88/2005 – corr., 107/2005 – corr., 72/2009 и 111/2009), Chapter twenty one – Offences against property and Chapter thirty three - Offences against Official Duty, prescribes the following offences:

Fraud (Article 208) - Whoever with intent to acquire unlawful material gain for himself or another by false presentation or concealment of facts deceives another or maintains such deception and thus induces such person to act to the prejudice of his or another's property, shall be punished with imprisonment of 6 months to five years and with fine. Whoever commits the offence previously specified only with intent to cause damage to another, shall be punished with imprisonment up to six months and with fine. If by the offence previously specified material gain is acquired or damages caused exceeding four hundred and fifty thousand dinars, the offender shall be punished with imprisonment of one to eight years and with fine. If by the offence previously specified material gain is acquired or damages caused exceeding million five hundred thousand dinars, the offender shall be punished with imprisonment of two to ten years and with fine.

Improper use of budget funds (362a) – Responsible person of the budget funds user or responsible person at the organisation of obligatory social insurance, who incurs the liabilities or, at the charge of the budget account, approves the payment of expenses and charges exceeding the amount of one million dinars in relation to the amount defined in the budget, financial plan, or act of the Government defining the amount of the funds of borrowing, shall be punished by fine or imprisonment up to one year.

Embezzlement (Article 364) – Whoever with intent to acquire for himself or another unlawful material gain appropriates money, securities or other movables entrusted to him by virtue of office or position in a government authority, enterprise, institution or other entity or store, shall be punished by imprisonment of six months to five years. If the offence results in acquiring material gain exceeding four hundred and fifty thousand dinars, the offender shall be punished by imprisonment of one to eight years. If the offence results in acquiring material gain exceeding one million five hundred thousand dinars, the offender shall be punished by imprisonment of two to twelve years.

Unauthorised Use (Article 365) – Whoever without authorisation uses money, securities or other movables entrusted to him by virtue of his office or under terms of his position in a government authority, enterprise, institution, or other organisation or store or without authorisation gives such items to another for use, shall be punished by imprisonment of six months to five years.

Unlawful Mediation (Article 366) – Whoever solicits or receives reward or any advantage for himself or other person, directly or through third party, to, by using his official or social position or actual or assumed influence, intercede for performance of an official act, shall be punished by imprisonment of six months to five years. When a person, directly or through a third party, promises, offers, or gives reward or any other advantage to another person to, by using his official or social position or actual or assumed influence, intercede for performance of an official act, shall be punished by imprisonment for three years.

If a person, abusing his official or social position or actual or assumed influence, intercedes for performance of an official act that should not be performed or not to perform an official act that should have been performed, he shall be punished by imprisonment of one to eight years.

When a person directly or through a third party, promises, offers, or gives reward or any other advantage to another person to, abusing his official or social position or actual or assumed influences, intercedes for performance of an official act that should not be performed or not to perform an act that should be performed, he shall be punished by imprisonment of six months to five years.

If a person, abusing his official or social position or actual or assumed influence, intercedes for performing an official act that should not be performed or not to perform an act that should be performed, and if a reward or any other advantage has been required or received, he shall be punished by imprisonment of two to ten years.

In relation to a foreign official who commits the above offences, he shall be punished by the penalty prescribed for that offence.

The reward and material gain shall be seized.

Soliciting and Accepting Bribes (Article 367) - An official who solicits or accepts a gift or other benefit, or promise of a gift or other benefit for himself or another to perform an official act within his competence that should not be performed or not to perform an official act that should be performed, shall be punished by imprisonment of two to twelve years.

An official who solicits or accepts a gift or other benefit, or promise of a gift or other benefit for himself or another to perform an official act within his competence that should not be performed or not to perform an official act that should be performed, shall be punished by imprisonment of two to eight years. An official who commits the above offences in respect of uncovering of a criminal offence, instigating or conducting criminal proceedings, pronouncement or enforcement of criminal sanction, shall be punished by imprisonment of three to fifteen years.

An official who after performing or failure to perform an official act, solicits or accepts a gift or other benefit in relation thereto, shall be punished by imprisonment of three months to three years.

A foreign official who commits any of the above offences shall be punished by the penalty prescribed for that offence.

A responsible officer in an enterprise, institution or other entity who solicits or requires or receives gift or other advantage or who receives the promise of gift or other advantage for himself or other person to within his official authorisation commit an official act that should not be performed or not to commit an act that should be performed, as well as when an official after performance and failure to perform an official act regarding it, requires or receives a gift or other advantage, shall be punished by imprisonment prescribed for that act.

The received gifts and material gain shall be seized.

Bribery (Article 368) - Whoever makes or offers a gift or other benefit to an official, to within his official competence perform an official act that should not be performed or not to perform an official act that should be performed, or who acts as intermediary in such bribing of an official, shall be punished by imprisonment of six months to five years. Whoever makes or offers a gift or other benefit to an official to, within his official competence, perform an official act that he is obliged to perform or not to perform an official act that he may not perform or who acts as intermediary in such bribing of an official, shall be punished by imprisonment up to three years.

The above provisions of the Criminal Code shall apply also when a bribe is made or offered to a foreign official. The offender who reports the offence before becoming aware that it has been detected, may be remitted from punishment.

Provisions of this Article of the Criminal Code shall apply also when a bribe is given or promised to a responsible officer in an enterprise, institution or other entity.

A gift or other benefit seized from the person accepting the bribe may, in case an offender has reported an act before becoming aware that it has been detected, be returned to the person giving the bribe.

Also, Criminal Code, Chapter thirty three - Offences against Official Duty, prescribes the following offences:

Counterfeiting Money (Article 223) – a person who produces forged money with intent to put it in circulation as genuine or who with same intent alters genuine money, shall be punished by imprisonment of two to twelve years and fined. A person who procures forged money with intent to circulate it as real or who puts forged money in circulation shall be punished by imprisonment of one to ten years and fined. If by the previously mentioned offences forged money is produced, altered, circulated or procured in an amount exceeding one million five hundred thousand dinars and/or a corresponding amount in foreign currency, the offender shall be punished by imprisonment of five to fifteen years and fined. Whoever accepting forged money as genuine, and upon learning that it is counterfeit, puts it in circulation or whoever knows that forged money is produced or that forged money is put in circulation and fails to report it, shall be punished by fine or imprisonment up to three years. Forged money shall be impounded.

Forging Securities (224) – a person who produces forged securities or alters genuine securities with intent to use them as genuine, or to give them to another to use, or whoever uses such forged securities as genuine or procures them to such intent, shall be punished by imprisonment of one to eight years and fined. If the total nominal amount of forged securities exceeds one million five hundred thousand dinars, the offender shall be punished by imprisonment of two to twelve years and fined. A person who receives forged securities as genuine and upon learning that these are forgeries puts them in circulation, shall be punished by imprisonment up to three years and fined. Forged securities shall be impounded.

Forgery and Misuse of Credit Cards (225) – a person who fabricates a forged credit card or who alters a real credit card with intent to use as genuine or who uses such credit card as genuine, shall be punished by imprisonment from six months to five years and fined. If the offender acquired an unlawful material gain through the use of the card, he shall be punished by imprisonment of one to eight years and fined. If the offender acquired an unlawful material gain exceeding one million five hundred thousand dinars, he shall be punished by imprisonment of two to twelve years and fined. An offender committing the offence by unauthorised use of other's card or confidential data uniformly defining the card in payment system shall be punished by imprisonment up to eight years and fined or imprisonment from two to twelve years and fined. A person who obtains a forged credit card with intent to use it as genuine or whoever obtains information with intent to use for fabrication of forged credit card, shall be punished by fine or imprisonment up to three years. Forged credit cards shall be impounded.

Forging Value Tokens (226) – a person who produces forged value tokens or alters genuine value tokens with intent to use them as genuine, or to give them to another to use, or whoever uses such forged tokens or procures them to such intent, shall be punished by imprisonment up to three years. If the overall value of value tokens exceeds one million five hundred thousand dinars, the offender shall be punished by imprisonment of one to eight years. A person who by removing a stamp invalidating a value token or otherwise endeavours to give such value token an appearance as if unused in order to re-use them, or who re-uses the already used value tokens or sells them as valid, shall be punished by fine or imprisonment up to one year. Forged value tokens shall be seized.

Money Laundering (Article 231) – When a person 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 knowledge, at the moment of receiving, that such property originates from a criminal offence, he shall be punished by imprisonment of six months to five years and fined. If the amount of money or property exceeds one million five hundred thousand dinars, the offender shall be punished by imprisonment of one to ten years and fined.

When a person has committed any of the above offences with the property procured by him by committing an offence, he shall be punished by penalty laid down in paragraph 1 and 2 of this Article and fined. If a person has committed any of the above offences in a group, he shall be punished by imprisonment of two to twelve years and fined.

When a person has committed any of the above offences, and could have been aware or should have been aware that the property represents proceeds acquired by criminal offence, he shall be punished by imprisonment of up to three years. The responsible officer in a legal entity who commits any of the above offences shall be punished by the penalty stipulated for that offence, if aware or should have been aware that the money or property represents proceeds acquired by criminal offence. The money and property shall be seized.

23. Please identify the relevant provisions in national criminal law concerning the criminal liability of company managers. What is the applicable definition of complicity in economic crimes?

Article 112 paragraph 5 of the Criminal Code prescribes that a responsible officer is an owner of a business enterprise or other entity, or an officer of a company, institution or other entity to whom, by virtue of his office, invested funds are entrusted or is authorised to perform a specific scope of tasks in respect of management of the property, production or other activity or in supervision thereof, or is in fact entrusted with discharge of particular duties. A responsible officer shall be also the official in case of criminal offences designating the responsible person as perpetrator, when such offences are not provided in the Chapter of this Code dealing with the criminal offences against official duty or criminal offences of an official.

Article 85 of the Criminal Code prescribes the security measure of Prohibition to Practise a Profession, Activity or Duty, which is ordered with criminal conviction and may last from one up to ten years from verdict effectiveness, and the time spent in prison shall not be included in the time of the measure duration. The court may prohibit an offender from practising a particular profession, activity, or all or certain duties related to the disposition, use, management or handling of another's property or taking care of that property, if it is reasonably considered that his further exercise of that duty would be dangerous. If ordering a suspended sentence, the court may order revoking of such sentence if the offender violates the prohibition to practise a particular profession, activity or duty.

Also, Article 95 of the Criminal Code provides for legal consequences of conviction relating to loss or forfeiture of particular rights: termination of public function, termination of employment or termination of practising a particular profession or occupation, or forfeiture of particular permits or licenses issued by decision of a government authority or local self-government authority. Legal consequences of conviction comprising ban on acquiring particular rights are: prohibition to acquire particular title, profession or occupation or promotion in service and prohibition to acquire particular permits and licenses issued by decision of a government authority or local self-government authority.

The Criminal Code defines complicity in criminal offence:

Co-perpetration (Article 33) - If several persons jointly take part in committing a criminal offence, or jointly commit an offence out of negligence, or by carrying out a jointly made decision, by other premeditated act significantly contribute to committing a criminal offence, each shall be punished as prescribed by law for such offence.

Incitement (Article 34) - Whoever with intent incites another to commit a criminal offence shall be punished as prescribed by law for such offence. Whoever with intent incites another to commit a criminal offence whose attempt is punishable by law, and such offence has not been attempted at all, shall be punished as for the attempted criminal offence.

Aiding and Abetting (Article 35) - Anyone aiding another with intent in committing a criminal offence shall be punished as prescribed by law for such criminal offence, or by a mitigated penalty. The following, in particular, shall be considered as aiding in the commission of a criminal offence: giving instructions or advice on how to commit a criminal offence, supply of means for committing a criminal offence, creating conditions or removal of obstacles for committing a criminal offence, prior promise to conceal the commission of the offence, offender, means used in committing a criminal offence, traces of criminal offence and items gained through the commission of criminal offence.

Limits of Culpability and Punishment of Accomplices (Article 36) - An accomplice is culpable for a criminal offence within the limits of his intent or negligence, and the inciter and abettor within the limits of their intent. Grounds which preclude the culpability of the perpetrator (mental incompetence, mistake of fact, and mistake of law) do not preclude a criminal offence of co-perpetrator, inciter or abettor if he is culpable. Personal relations, characteristics and circumstances due to which the law allows remittance of punishment, or that affect sentencing, may be taken in consideration only for such perpetrator, co-perpetrator, inciter or abettor where such relations, characteristics and circumstances exist. Personal relations, characteristics and circumstances representing an essential element of a criminal offence do not have to exist with an inciter or abettor. An inciter or abettor having no such personal characteristic may be given a mitigated penalty.

24. Please identify the relevant provisions in national criminal law concerning the liability of legal persons.

Criminal Code of the Republic of Serbia prescribes that the liability of legal persons for criminal offences, as well as sanctions to legal persons are imposed by special law.

Law on the Liability of Legal Entities for Criminal Offences ("Official Gazette of RS", no. 97/2008) defines in general criminal liability of legal entities for any criminal offences and applies to national and foreign legal entity liable for the criminal offence committed on the territory of the Republic of Serbia. This Law applies to foreign legal entity liable for the criminal offence committed abroad at the detriment of the Republic of Serbia, its national, or domestic legal entity. This Law shall be applicable to national legal entities held accountable for criminal offences committed abroad. The Law shall not apply in the two above situations if special conditions are met for criminal prosecution under the provision of the Criminal Code.

Legal entity is national or foreign entity considered to be legal entity under positive legislation of the Republic of Serbia. A liable person is a natural person legally or de facto entrusted with certain duties within a legal entity, as well as a person authorised, that is, a person who may reasonably be considered as authorised to act on behalf of a legal entity.

A legal person shall be held accountable for criminal offences which have been committed for the benefit of the legal person by a responsible person within the remit, that is, powers thereof.

The liability of the legal entity shall also exist where the lack of supervision or control by the responsible person allowed the commission of crime for the benefit of that legal person by a natural person operating under the supervision and control of the responsible person. Liability of legal entity shall be based upon culpability of the responsible person.

A legal person shall be held accountable for criminal offence committed by the responsible person even though criminal proceedings against the responsible person have been discontinued or the act of indictment refused.

Should a legal entity cease to exist before the completion of criminal proceedings, a fine, security measures and confiscation of the proceeds from crime may be imposed against the legal entity being a legal successor thereof, if the liability of the legal entity that ceased to exist had been established. Should the legal entity cease to exist after the final completion of the proceedings where the liability has been established and a penal sanction for a criminal offence imposed, a fine, security measures and confiscation of the proceeds from crime shall be enforced against the legal entity being a legal successor thereof. A legal entity who, after the commission of a criminal offence changed its legal form which it had operated within, shall be liable for criminal offences under the conditions stipulated in this Law. A legal entity that has bankrupted shall be liable for criminal offence committed before the instigation of or in the course of the bankruptcy procedure. The punishment of confiscation of the proceeds from crime or a security measure of confiscation of instrumentalities shall be imposed against the liable legal entity.

A legal entity shall be liable for an attempt of a criminal offence under the conditions the attempt is provided for by law as punishable. An accountable legal entity may be imposed a punishment for an attempt as provided for by this Law, but it may be also punished less severely. A legal person who has prevented the commission of a criminal offence to complete may be exonerated from the punishment.

A legal person shall be liable for the continuance of a criminal offence if it is accountable for several criminal offences committed by two or several responsible persons, provided that the criminal offences constitute a joinder in sense of prescribed provisions of the Criminal Code. The sanction imposed against the liable legal person for the continuance of a criminal offence may be aggravated to the extent of a double amount stipulated in this Law.

The following penal sanctions may be imposed against a legal person for the commission of criminal offences: sentence; suspended sentence; security measures. The following sentences may be imposed against a legal person: fine; termination of the status of a legal entity.

Fine and the termination of the status of a legal entity may be imposed solely as principal sentences.

Fines shall be imposed in certain levels within the stipulated range of the smallest and the largest measure of fines. A fine may not be less than a hundred thousand dinars nor may it exceed the amount of five hundred million dinars.

The court of law shall determine the size of a fine for a legal person who has committed a criminal offence within the range provided for such offence by the law, taking into account the purpose of punishing and having regard to all circumstances relevant to the fine being higher or smaller (extenuating and aggravating circumstances), in particular: the degree of liability of the legal person for the commission of a criminal offence, the size of the legal entity, the position and the number of responsible persons within the legal entity who have committed a criminal offence, measures taken by the legal entity to prevent and detect a criminal offence and measures it took against the responsible person after the commission of a criminal offence. When conditions governing mitigation of fines exist the court shall reduce the size of fines within the following limits:

- 1) if the minimum sentencing measure for a criminal offence, as provided for by law, amounts to one million dinars, the fine may be reduced up to one hundred thousand dinars;
- 2) if the minimum sentencing measure for a criminal offence, as provided for by law, amounts to two million dinars, the fine may be reduced up to one million dinars;
- 3) if the minimum sentencing measure for a criminal offence, as provided for by law, amounts to five million dinars, the fine may be reduced up to two million and five hundred thousand dinars;
- 4) if the minimum sentencing measure for a criminal offence, as provided for by law, amounts to ten million dinars, the fine may be reduced up to five million dinars;
- 5) if the minimum sentencing measure for a criminal offence, as provided for by law, amounts to twenty million dinars, the fine may be reduced up to ten million dinars.

Where the court is empowered to exonerate a legal entity from punishment it may mitigate the respective punishment without any limits stipulated for the mitigation of fines referred to in this Law.

Should a legal entity be held accountable for several criminal offences in concurrence, the court shall impose a single fine at the levels of the sum of punishments established, in so far as that it may not exceed the levels of five hundred million dinars. If prison sentences of up to three years of service are specified for all criminal offences in concurrence, the single fine may not exceed the levels of ten million dinars.

The sentence of termination of the status of legal entity may be imposed if the activity of the legal entity concerned was for the purposes of the commission of criminal offences, in its entirety or to a considerable extent. Following the finality of a judgement imposing the sentence of termination of the status of a legal entity, the procedure of winding-up, bankruptcy or termination of a legal entity in a different manner shall be conducted. A legal entity shall cease to exist by being deleted from the Register managed by a competent authority.

A legal entity may be exonerated from a punishment if it:

- 1) detects and reports a criminal offence before learning that criminal proceedings have been instituted;
- 2) on a voluntary basis and without delay removes incurred detrimental consequences or returns the unlawfully gained proceeds from crime.

The court may impose a suspended sentence on a legal entity for the commission of criminal offence. By imposing a suspended sentence on a legal person the court shall determine a fine of the maximum amount of up to five million dinars, and concurrently it shall specify that the sentence shall not be enforced if the convicted legal person, during a period defined by the court that may not be shorter than one year and not longer than three years (probation period), is not held accountable for any criminal offence prescribed in this Law. In deciding whether or not to impose a suspended sentence, the court shall take into account, in particular, the degree of liability of the legal entity concerned for the commission of a criminal offence, the measures taken by the legal person to prevent and detect the criminal offence and the measures it took against the responsible person after the commission of the offence. The court shall revoke a suspended sentence if a convicted legal person under probation period is held accountable for one or several criminal offences for which the fine of five million dinars or of higher levels has been imposed on it.

If, under probation period, the convicted legal person is held accountable for one or several criminal offences for which the fine of less than five million dinars was imposed on it, the court shall, having assessed all circumstances relating to the committed criminal offences and the legal entity, in particular the relatedness of committed criminal offences and the significance thereof, decide whether or not it will revoke the suspended sentence. The court is, thereby, bound to the prohibition to impose a suspended sentence if the fine exceeding five million dinars should be imposed on the legal person for criminal offences established in the suspended sentence as well as for new criminal offences.

If it revokes the suspended sentence, the court shall, by virtue of the provisions in this Law, impose a single sentence both for prior and new criminal offences, having regard to the punishment from the annulled suspended sentence as established. If it does not annul the suspended sentence, the court may impose a suspended conviction or a sentence for a new criminal offence.

Should the court find that a suspended sentence should be imposed also for a new criminal offence it shall, by applying the provision of this Law, determine a single sentence both for prior and new criminal offences, specifying a new probation period that may not be shorter than one year and longer than three years as of the day of finality of the new judgement. During the probation period, should the convicted legal person be held accountable for a criminal offence, the court shall revoke the decision on the suspended sentence and impose a sentence, by virtue of the provision of this Law.

The court may determine that the legal entity, on which a suspended sentence has been imposed, may be placed under protective supervision for a specified period of time during the probation period. The protective supervision may include one or several commitments as follows:

- 1) to organise control to prevent further commission of criminal offences;
- 2) to abstain from business activities if that could be an opportunity or encouragement for re-commission of criminal offences;
- 3) to remove or alleviate the damage incurred by the commission of criminal offences;

- 4) to carry out work in the public interest;
- 5) to submit periodical reports on business operations to the authority competent for conducting the protective supervision.

The following security measures may be imposed for criminal offences which legal entities are liable for:

- 1) prohibition to practise certain registered activities or operations;
- 2) confiscation of instrumentalities;
- 3) the publicising of the judgement.

The court may impose on the liable legal person one or several security measures where conditions to impose them exist, provided for by law. Security measures for the confiscation of instrumentalities or the publicising of the judgement may be imposed if the suspended sentence has been imposed on the liable legal person. The court may forbid the liable legal entity to practice certain registered activities and operations in respect of which a criminal offence has been committed. The measure under this Law may be imposed for a period between one and three years as of the day of finality of the judgement.

The instrumentalities used or were intended for use to commit a criminal offence or that derived from the commission of a criminal offence may be confiscated if they are in the possession of the legal entity concerned. The instrumentalities under this Law may be confiscated also where they are not in the possession of the legal entity concerned if so required for the purpose of the interests of overall safety and by reason of morals, but the right of a third party to compensation shall not be infringed thereby. Mandatory confiscation of instrumentalities may be ordered by law. The security measure of publicising a judgement shall be imposed by the court if it found that it would be useful for the public to get acquainted with the content of the judgement, particularly if the publicising of the judgement would contribute to eliminating a danger to life or health of people or to protecting the general interest. The court shall pass a decision, according to the significance of the criminal offence and the need for informing the public, on what kind of mass media the judgement will be publicised through, as well as whether the reasoning of the judgement will be publicised in its entirety or in extracts, taking into consideration that the manner of publicising should allow everyone, in whose interest the judgement is to be publicised, to be informed. A convicting judgement of a legal entity for some criminal offence may as a legal consequence have termination, that is, forfeiture of certain rights or prohibition upon acquiring certain rights. Legal consequences may be provided for by law solely, setting in by virtue of the law itself under which they are set forth. Legal consequences of the conviction relating to termination or forfeiture of certain rights shall include:

- 1) termination of practicing certain activities or business operations;
- 2) forfeiture of certain permits, approvals, concessions, subsidies or other forms of incentives granted by a decision of a government authority or an authority of the local self-government unit.

Legal consequences of conviction relating to loss or forfeiture of particular rights are:

- 1) prohibition to practice certain activities or business operations;
- 2) prohibition upon participation in the public procurement procedure;
- 3) prohibition upon participation in privatisation of business entities;

4) prohibition upon acquiring certain permits, approvals, concessions, subsidies or any other forms of incentives granted by a decision of a government authority or an authority of the local self-government unit.

Legal consequences of the conviction shall set in on the day of finality of the judgement ordering a fine. Legal consequences of the conviction under this Law may be specified to be in force for the maximum period of ten years.

In relation to economic offences pursuant to Article 25 of Law on Organisation of Courts (“Official Gazette of RS”, Nos.116/2008, 104/2009 and 101/10), the Commercial Court shall make decisions on economic offences and, accordingly, on the termination of the protective measure or legal consequence of the conviction.

Pursuant to Article 26 of the above Law, the Commercial Court of Appeal, as the court of the second instance, shall, among other, make decisions on appeals against the decisions of the commercial courts and other bodies, in accordance with the law.

Pursuant to the legislation of the Republic of Serbia, legal entities and responsible persons at legal entity shall be liable for economic offences, as a type of punishable offences (besides misdemeanors and now also criminal offences, after passing of the new Law on the Liability of Legal Entities for Criminal Offences)

Economic offences are established as a special type of punishable offences by enactment of the first Law on Economic Offences (“Official Gazette of SFRY”, Nos. 4/77, 36/77 – corr., 14/85, 10/86 (consolidated version), 74/87, 57/89, and 3/90 and “Official Gazette of FRY”, Nos. 27/92, 16/93, 31/93, 41/93, 50/93, 24/94, 28/96, and 64/2001, and “Official Gazette of RS” No. 101/2005 – other law) from 1960, and the applicable Law on Economic Offences was enacted in 1977, and it was amended several times, mostly in the part relating to the amount of fines.

Economic offences are defined in the law as socially detrimental breach of rules on economic and financial operation which has resulted in or could result in severe consequences and which is in the rule by competitive authority determined as an economic offence, which also prescribes how the offenders shall be punished.

The most frequent types of the economic offences about which courts decide are from the areas of accounting and audit, payment system, market of securities and other financial instruments, overtaking of joint stock companies, anti-money laundering, protection of copyrights and related rights, protection of nature and other goods, food safety, traffic safety... around 6000-7000 cases of the economic offences are on average processed by the commercial courts on an annual basis.

Law on Economic Offences is applied, thus, even today this Law governs general conditions and principles for the imposition of sanctions for the economic offences, system of the sanctions, as well as procedure for determining liability and imposition of sanctions to economic offenders.

In relation to economic offence proceedings against economic offenders (legal and responsible persons), Article 56 of the above Law lays down the application of previously applicable

Criminal Procedure Code (“Official Gazette of SFRY”, No. 4/77... “Official Gazette of FRY”, Nos. 27/92 and 24/94) by listing relevant provisions on basic principles, joinder and severance of proceedings, transfer of territorial jurisdiction, jurisdiction consequences, recusal, public prosecutor, injured party, defendant, briefs and minutes, costs of criminal proceedings, rendering and pronouncing decisions, service of documents and examination of files, meaning of legal expressions, summoning and serving the defendant, investigation, expertise, preparations for trial, trial, judgment, regular legal remedies, reopening, motion for the protection of legality, proceedings for implementation of measures, and issuance of arrest warrant and notice.

Article 16 of the Law on Economic Offences provides for that individual provisions of Criminal Code of SFRY i.e. General Criminal Code (“Official Gazette of SFRY”, No. 44/76.... “Official Gazette of FRY”, No. 35/92...”Official Gazette of RS”, No. 39/03) apply in the matter of the economic offences (on extreme necessity, mental competence, premeditation and negligence, mistake of law and mistake of fact, attempt, complicity, method, time, and place of criminal offence)

Amendments in the criminal legislation, both in the Criminal Procedure Code (“Official Gazette of FRY”, Nos. 70/2001 and 68/2002 and “Official Gazette of RS”, Nos. 58/2004, 85/2005, 115/2005, 85/2005 – other law, 49/2007, 20/2009 – other law, 72/2009, and 76/2010) and in the Criminal Code are the relevant reason for the enactment of new Law on Economic Offences. Draft of the new Law on Economic Offences has been prepared by the Working Group appointed by the decision of the Ministry of Justice.

The applicable Law on Economic Offences lays down in its Article 9 who should take tort on behalf of legal entity to constitute his criminal liability. Thus, a legal entity is responsible for an economic offence if it has been committed through an act or failure of due supervision by management body, act or failure of due supervision by responsible person, or act by other person who was authorized to act on behalf of legal entity, which means that the lawmaker has accepted the principle of the so-called legal entity's objective liability.

Proceedings for the economic offences are instituted at court by public prosecutor by raising motion to indict, and unless the proceedings are instituted, and if prosecution is abandoned during the proceedings, the victim may instigate and/or continue the proceedings for the economic offence if he has filed proposal to exercise the property request.

For legal entity and liable person, single proceedings are instigated and implemented based on the principle of parallel liability of the legal entity and liable person in the proceedings which are indivisible, except in very restrictive cases provided for by the law, when it is possible to bring the action only against the legal entity or only against the liable person.

For the economic offence laid down in the regulation, legal entity and responsible person at legal entity may be liable and/or responsible person at state authority, if this is provided for by the regulation.

For the economic offence, foreign legal entity and responsible person at foreign legal entity may be liable if the conditions provided for in the law are met.

In the proceedings for economic offence, legal entity and responsible person may have defence attorney, different or common unless this is contrary to their interests.

The regulation laying down economic offence may provide for that all or only some legal entities may be liable for that economic offence.

Legal entity in bankruptcy shall be liable for an economic offence, regardless of whether the economic offence has been committed before instituting or during the bankruptcy procedure, but he may not be imposed fine, but only the security measure of seizure of the objects or seizure of property gain achieved in the act.

Representative who is authorized to take any actions in the proceedings which may be taken by the offender in the criminal proceedings participates for the legal entity in the proceedings. Representative is a person authorized to represent the legal entity based on the law, act of competent government authority, or articles of association or other general act of the legal entity having authorization in writing by the authority that has appointed him.

For economic offence, only fine may be prescribed or imposed, the general minimum or maximum of which is determined in the law (from 10,000.00 to 3,000,000.00 dinars for legal entity and from 2,000.00 to 200,000.00 dinars for responsible person) and the collected fines are the revenue of the budget of the Republic of Serbia.

Suspended sentence may also be imposed for an economic offence if conditions are met provided for by the law. Besides the suspended sentence, security measure of public announcement of judgment and confiscation of objects may be imposed.

Security measures may be imposed for economic offenders only if fine is imposed unless otherwise determined in the law. Security measures include: public announcement of judgment in public means of information, confiscation of the objects used or intended for committing the economic offence, or which resulted from committing the economic offence, prohibition for legal entity and responsible person to deal with the economic activity or operations, from 6 months to 10 years, from the finality of the judgment.

After the conclusion of the main hearing, judgment is, as a rule, immediately imposed and it is publicly announced including important reasons.

Appeal may be filed by authorized persons against the judgment imposed by the first instance court which delays the enforcement of the judgment.

High Commercial Court shall decide on the appeal only at the meeting of the chamber comprised of two judges and lay judge. Appeal is not permitted against the decision by the High Commercial Court.

Upon the request for the protection of legality filed by the Republic Public Prosecution Office against the effective decision made in the economic criminal proceedings decision shall be made by the Supreme Court of Cassation.

Enforcement of the sanctions imposed for the economic offences shall be governed and implemented in the manner provided for in the Law on Enforcement of Penal Sanctions ("Official Gazette of RS", Nos. 85/2005 and 72/2009).

25. Please identify the relevant provisions in national criminal law concerning the possible seizure, confiscation or removal measures for results and instruments of economic crimes.

Seizure of the property i.e. the property acquired by committing offence is defined in the Republic of Serbia in the Criminal Code – chapter VII (Art. 91. 91 to 93) and Law on Seizure and Confiscation of Proceeds from Crime ("Official Gazette of RS", No. 97/2008).

Pursuant to the provisions of the Criminal Code, it is possible to seize pecuniary equivalent instead of actual proceeds acquired from crime. Article 92 paragraph 1 of the Criminal Code prescribes that money, items of value and all other material gain obtained by a criminal offence shall be seized from the offender, and if such seizure should not be possible, the offender shall be obligated to provide the replacement of other material gain commensurate with the value of the gain obtained from crime or pay a pecuniary amount commensurate with obtained material gain.

Also, pursuant to Article 87 of the Code, it is possible to impose the security measure of seizing object. The security measure of seizing the object may be determined in relation to the object intended for or used for committing criminal offence or which resulted from committing criminal offence, when there is a threat that certain object will be re-used for committing criminal offence, or when the seizure of the object is necessary for the purpose of protection of general security or for moral reasons. The law may stipulate a mandatory seizure of objects and/or their mandatory destruction. The law may also stipulate the requirements for seizure of particular objects in specific cases.

Law on the Seizure and Confiscation of the Proceeds from Crime governs the requirements, the procedure and the authorities responsible for tracing, seizing/confiscating and managing the proceeds from crime.

Provisions of this Law shall apply to the following criminal offences: organised crime, showing pornographic material and child pornography, against economy (Article 223 paragraph 3, Article 224 paragraph 2, Article 225. paragraph 3, Article 226 paragraph 2, Article 229. paragraph 2. and 3, Article 230 paragraph 2, and Article 231 paragraph 2 of the Criminal Code), unlawful production, keeping and distribution of narcotics, against public peace and order, abuse of office, and against humanity and other goods protected by international law.

Offences against economic interests - Criminal Code to which the Law on Seizure and Confiscation of the Proceeds from Crime apply:

Counterfeiting Money – Whoever produces forged money with intent to put it in circulation as genuine or who with the same intent alters genuine money, or whoever procures forged money

with intent to circulate it as real or who puts forged money in circulation, and if by such offences money is produced, altered, circulated or procured in an amount exceeding one million five hundred thousand dinars and/or corresponding amount in foreign currency, the offender shall be punished by imprisonment of five to fifteen years and fined.

Forging Securities - Whoever produces forged securities or alters genuine securities with intent to use them as genuine, or to give them to another to use, or whoever uses such forged securities as genuine or procures them to such intent, and if the total nominal amount of forged securities exceeds one million five hundred thousand dinars, the offender shall be punished by imprisonment of twelve to ten years and fined.

Forgery and Misuse of Payment Cards – Whoever fabricates a forged payment card or who alters a real payment card with intent to use as genuine or who uses such forged card as genuine and who by using the card acquires unlawful material gain in the amount exceeding one million five hundred thousand dinars, shall be punished by imprisonment of two to twelve years and fined.

Forging Value Tokens - Whoever fabricates or alters value tokens with intent to use them as genuine or to give them to another to use, or who uses such forged hallmarks as genuine or obtains them to such end, and if the overall value of value tokens exceeds one million five hundred thousand dinars, shall be punished by imprisonment of one to eight years.

Tax Evasion - Whoever with intent to fully or partially avoid payment of taxes, contributions or other statutory dues, gives false information on legal income, objects and other facts relevant to determination of such obligations, or who with same intent, in case of mandatory reporting, fails to report lawful income, objects and other facts relevant to determination of such obligations or who with same intent conceals information relevant for determination of aforementioned obligations, and the amount of obligation whose payment is avoided exceeds one hundred and fifty thousand dinars, shall be punished by imprisonment of one to eight years and fined.

If the amount of the liability whose payment is avoided exceeds one million five hundred thousand dinars, the offender shall be punished by imprisonment of two to ten years and fined.

Smuggling - Whoever engages in sale, distribution or concealment of uncleared goods or organizes a network of dealers or middlemen for distribution of such goods, shall be punished by imprisonment of one to eight years and fined.

Money Laundering – 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, and if the amount of money or property exceeds one million five hundred thousand dinars, shall be punished by imprisonment of one to ten years and fined.

The authorities competent to trace, seize/confiscate and manage the proceeds from crime shall 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 for Management of Seized and Confiscated Assets is established by this Law as a body within the Ministry of Justice to perform the tasks provided for under this Law. The Directorate shall perform tasks ex officio under the competence thereof or at the order of the public prosecutor and the court. Government and other authorities, organizations and public services are required to extend assistance to the Directorate.

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 for temporary seizure of assets 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 investigating 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, the public prosecutor may issue an order banning the use of assets, and on temporary seizure of movable assets. This measure shall be in force until ruling of the court on the public prosecutor's motion. The order shall be enforced by the Unit in charge of financial investigation.

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/or president of such trial chamber shall decide on the motion. The proceedings for permanent seizure of assets shall be a matter of urgency.

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/or 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.

The court may by the ruling 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 would otherwise be brought into question, in accordance with the Law on Enforcement Procedure ("Official Gazette of RS", No. 125/2004).

The court shall deliver the decision to the owner, his/her attorney, the public prosecutor and the Directorate for management of seized and confiscated assets. 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 may be appealed by authorized persons within eight days from the date of delivering the decision. The appeal shall not preclude the Directorate to undertake measures for safeguarding and maintaining the assets seized. The appeal against the decision shall be decided upon by a higher instance court.

In deliberating the appeal the court may reject the appeal as untimely or disallowed, refuse the appeal as unfounded or sustain the appeal and reverse or revoke the decision and refer the case for reconsideration.

If in the same case the decision has been already revoked once, the second-instance court shall schedule a hearing to decide on the appeal, insofar as the decision may not be revoked and the case referred for reconsideration to the first-instance court.

The decision on permanent seizure of assets shall become final when 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.

When the decision on assets seizure becomes final, the seized assets shall become the property of the Republic of Serbia. Based on the decision of the Minister in charge of science and/or culture, permanently seized objects of historical, artistic and scientific value shall be assigned by the Directorate without compensation to institutions competent for safekeeping such goods. The Government shall pass a decision on handling permanently seized foreign cash holdings, objects of precious metals, precious or semi-precious stones and pearls. Provisions of the law governing the handling of property in ownership of the Republic of Serbia shall apply to permanently seized immovable assets.

26. What are the requirements of national procedural penal law regarding general possibilities for extraterritorial jurisdiction based on the personality principle?

Criminal Code in its Article 6 provides for that criminal legislation of the Republic of Serbia shall apply to anyone committing a criminal offence on its territory. Criminal legislation of Serbia shall apply to anyone committing a criminal offence on a domestic vessel, regardless of

where the vessel is at the time of committing of the act. Criminal legislation of Serbia shall apply to anyone committing a criminal offence in a domestic aircraft while in flight or domestic military aircraft, regardless of where the aircraft is at the time of committing of criminal offence. If criminal proceedings have been instituted or concluded in a foreign country in respect of the above cases, criminal prosecution in Serbia shall be undertaken only with the permission of the Republic Public Prosecutor. Also, criminal prosecution of foreign citizens in the above cases may be transferred to a foreign state, under the terms of reciprocity.

Pursuant to Article 7 of the Criminal Code, criminal legislation of Serbia shall apply to anyone committing abroad a criminal offence against the constitutional order and security of the Republic of Serbia or criminal offence of money counterfeiting if counterfeiting relates to domestic currency.

Pursuant to Article 8 of the Criminal Code, Criminal legislation of the Republic of Serbia shall apply to a citizen of Serbia who commits a criminal offence abroad other than those against the constitutional order and security of the Republic of Serbia and criminal offence money forfeiting if counterfeiting relates to domestic currency, if found on the territory of Serbia or if extradited Serbia. In this case, criminal legislation of Serbia shall also apply to an offender who became a citizen of Serbia after the commission of the offence.

Pursuant to Article 9 of the Criminal Code, criminal legislation of Serbia shall also apply to a foreign citizen who commits a criminal offence against Serbia or its citizen outside the territory of Serbia other than those against the constitutional order and security of the Republic of Serbia and criminal offence of money counterfeiting if counterfeiting relates to domestic currency, if found on the territory of Serbia or if extradited to Serbia. Criminal legislation of Serbia shall also apply to a foreign citizen who commits a criminal offence abroad against a foreign state or foreign citizen, when such offence is punishable by five years' imprisonment or a heavier penalty, pursuant to laws of the country of commission, if such person is found on the territory of Serbia and is not extradited to the foreign state. Unless otherwise provided by the Criminal Code, the court may not impose in such cases a penalty heavier than the one set out by the law of the country where the criminal offence was committed.

Article 10 of the Criminal Code provides for special conditions for criminal prosecution for criminal offence committed abroad. Criminal prosecution shall not be undertaken in case of Art. 8. and 9 of the Criminal Code if the offender has fully served the sentence to which he was convicted abroad; the offender was acquitted abroad by final judgement or the statute of limitation has set in respect of the punishment, or was pardoned; to an offender of unsound mind a relevant security measure was enforced abroad; and for a criminal offence under foreign law criminal prosecution requires a motion of the victim, and such motion was not filed.

In case referred to in Art. 8. and 9 of the Criminal Code, criminal prosecution shall be undertaken only when criminal offences are also punishable by the law of the country where committed. When in case referred to in Article 8 and in case when a foreign citizen commits a criminal offence against Serbia or its citizen (Article 9 paragraph 1 of CC), and the law of the country where the offence was committed does not provide for criminal prosecution for such

offence, criminal prosecution may be undertaken only by permission of the Republic Public Prosecutor.

Following the permission of the Republic Public Prosecutor, prosecution may also be undertaken for the offence committed by a foreign citizen to a foreign state or a foreign citizen abroad, when such offence is punishable by five years' imprisonment or a heavier penalty, pursuant to laws of the country of commission, if such person is found on the territory of Serbia and is not extradited to the foreign state, if such offence was, at the time when it was committed, considered criminal offence under general legal principles recognized in international law, regardless of the law of the country in which the criminal offence was committed.

Detention, any other depriving of liberty in respect of a criminal offence, depriving of liberty during extradition procedure, as well as the punishment that the offender has served abroad pursuant to the judgment of a foreign court shall be calculated in the punishment imposed by a domestic court for the same criminal offence, and if the punishment is not of the same kind, calculation shall be done according to the assessment of the court.

(b) Capacity for operational cooperation in the field of the protection of the EU financial interests.

27. The EU acquis requires that national law protects EU funds in the same way as national funds. Does national law provide for specific obligations and procedures with regard to the treatment of cases of suspected fraud and other irregularities affecting national, EC or international funds?

Criminal Code, chapter thirty three - Offences against Official Duty, provides for in general the obligations in relation to the treatment of the cases when there is suspicion of embezzlements and other irregularities affecting the funds of state, EC, and international funds, in its Article 364 defining criminal offence of embezzlement providing for that whoever with intent to acquire for himself or another unlawful material gain appropriates money, securities or other movables entrusted to him by virtue of office or position in a government authority, enterprise, institution or other entity or store, he shall be punished by imprisonment of six months to five years. If the offence results in acquiring material gain exceeding four hundred and fifty thousand dinars, the offender shall be punished by imprisonment of one to eight years. If the offence results in acquiring material gain exceeding one million five hundred thousand dinars, the offender shall be punished by imprisonment of two to twelve years.

Also, the amendments of the Criminal Code from 2009 introduced a new criminal offence Use of Budget Funds for Non-specified Purpose. Based on this part, responsible person of the budget funds user or responsible person at the organization of obligatory social insurance, who incurs the liabilities or, at the charge of the budget account, approves the payment of expenses and charges exceeding the amount of one million dinars in relation to the amount defined in the budget, financial plan, or act of the Government defining the amount of the funds of borrowing, shall be punished by fine or imprisonment up to one year.

Accordingly, abuse of the funds is made a criminal offence in the Criminal Legislation of the Republic of Serbia.

28. How are cases of suspected fraud and other irregularities dealt with in practice? Are any data kept on detected cases of suspected fraud and other irregularities? If yes, please provide recent data.

Criminal Code of the Republic of Serbia – CC, in Article 364, prescribes the criminal offense of embezzlement.

According to the data on justice from the Statistical office of the Republic of Serbia in 2008 for the crime of embezzlement, 405 persons were indicted and 276 persons were found guilty. And 65 persons were sentenced to prison. In 40% of sentences of imprisonment, the sentence was imposed in the range of 3 to 6 months, and in 30%, the sentence was imposed in the range of 6 to 12 months.

According to the same source, in 2009, 233 persons were convicted for the crime of embezzlement, from which 47 persons were sentenced to prison and 186 persons received a suspended sentence.

In accordance with Article 222, paragraph 1. Criminal Procedure Code - CPC all state authorities, authorities of territorial autonomy or local self-government, public enterprises and institutions are obliged to report a crime which is prosecuted in the line of duty, of which they have been notified or learned in any other way. On the basis of paragraph 2 applicant of the criminal offense report from paragraph 1 of this Article, shall present evidence that they are familiar with and take actions to preserve evidences of the crime, objects on which or with which a criminal offense was done as well as other evidences. On the basis of Article 223 of CPC, everyone has to report a crime that is prosecuted ex officio. The crime of embezzlement is prosecuted ex officio.

On the basis of Article 235, paragraph 2. CPC, if a public prosecutor from the application can not assess whether the states are correct, or if the data in the report do not provide a sufficient basis to decide if the investigation will be conducted, or if the public prosecutor only heard the news that the criminal act was done, especially if the perpetrator is unknown, public prosecutor shall, by himself or through other agencies gather necessary information. He may summon citizens, and if he is unable to undertake this alone, the public prosecutor shall request from law enforcement agencies to gather necessary information and to take other measures for the detection of crimes and perpetrators. The public prosecutor can always request from law enforcement agencies to inform him on measures taken. For criminal offenses punishable by imprisonment to five years, in the Criminal Procedure Code, a shorten procedure is provided. Before submitting a draft indictment (indictment act), the public prosecutor may propose to the investigating judge to undertake a specific investigation actions.

If the prison sentence to eight years was predicted for the criminal offense, the public prosecutor can bring charges without investigation if the collected data related to the crime and the offender provide sufficient grounds for accusation (Article 244 paragraph 6. CPC).

The criminal offense of fraud from Article 364 of CC was defined as follows: whoever with intent to acquire unlawful material gain for himself or for another appropriates money, securities or other movables entrusted to him by virtue of office or position in a government authority, enterprise, institution or other entity or store, shall be punished by imprisonment of six months to five years. If the offence from paragraph 1 of this Article resulted in acquiring material gain exceeding four hundred and fifty thousand dinars, the offender shall be punished by imprisonment of one to eight years. If the offence from paragraph 1 of this Article resulted in acquiring material gain exceeding one million five hundred thousand dinars, the offender shall be punished by imprisonment of two to twelve years.

The crime of fraud is particularly expressed through the annual statistic data. Thus, in 2007 for this criminal offense 374 persons were charged, and in 2008 there was 392 persons charged, and in 2009 – 400 persons were charged. In 2007 for this criminal offense, 55 persons were charged, in 2008 there was 70 persons convicted to prison, and in 2009 – 51 person was convicted to prison. In 2007, 3 persons were fined, in 2008 there was 1 person fined, and in 2009 – 6 persons were fined. In 2007 for this criminal offense, 275 persons received suspended sentence, in 2008 there was 229 persons with suspended sentence, and in 2009 – 169 person received a suspended sentence.

In the title XXXIII of the Criminal Code, criminal offenses against official duty were prescribed. In addition to the crime of embezzlement (Article 364.) the criminal offenses of abuse of office were laid down (Article 359.), dereliction of duty (Article 361.), unlawful collection and payment (Article 362.), improper use of budget funds (Article 362 a.), fraud in service (Article 363.), and unauthorised use (Article 365.). The common to the criminal offenses of abuse of office (Article 359.), dereliction of duty (Article 361.) and unlawful collection and payment (Article 362.), improper use of budget funds (Article 362 a.), and fraud in service (Article 363.), is that they are done by responsible person or an official.

In the sense of Article 112 paragraph 3. and 4. the official is: person in a state body handling official duties, elected or appointed in the state agency, local government body, or a person who continuously or occasionally executes official duty, or official functions in these bodies, a person in the institution, company or other subject, entrusted with public authority functions, who decides on the rights and obligations of persons and legal entities or public interest. Official is also a person entrusted with handling some official duties, as well as military personnel. Foreign official person is a person who is a member of the legislative, executive or judicial authority of the state, a public officer or an official of an international organization and its agencies, judges and other officials of the international tribunal. In sense of Article 112 paragraph 5, prescribes that a responsible officer is an owner of a business enterprise or other entity, or an officer of a company, institution or other entity to whom, by virtue of his office, invested funds are entrusted or is authorised to perform a specific scope of tasks in respect of management of the property, production or other activity or in supervision thereof, or is in fact entrusted with discharge of particular duties. A responsible officer shall be also the official in case of criminal offences designating the responsible person as perpetrator, when such offences are not provided in the Code on criminal offences against official duty or criminal offences of an official.

Criminal offense of embezzlement and unauthorised use can be executed by any person, and not just official, or responsible person.

Title XXII of CC provides criminal offenses in the economy as follows: counterfeiting money (Article 223), forging securities (Article 224.), forgery and misuse of credit cards (Article 225.), forging value tokens (Article 226), making, acquiring and giving to another of means for counterfeiting (Article 227.), issuing of uncovered checks and use of uncovered credit cards (Article 228.), tax evasion (Article 229.), avoidance of withholding tax (Article 229.a), smuggling (Article 230.), money laundering (Article 231.), abuse of monopolist position (Article 232.), unauthorized use of another's company name (Article 233.), misfeasance in business (Article 234.), causing bankruptcy (Article 235.), causing false bankruptcy (Article 236.), damaging creditors (Article 237.), abuse of authority in economy (Article 238.), damaging business reputation and credit rating (Article 239.), disclosing a business secrets (Article 240.), preventing control (Article 241.), illegal production (Article 242.), illegal trade (Article 243.), deceiving buyers (Article 244.), and forging symbols for marking of goods, measures and weights (Article 245.).

Law on the Liability of Legal Entities for Criminal Offences provides the conditions for responsibilities of legal entities for criminal offenses, criminal measures may be imposed on legal entities and rules of procedure for deciding on the liability of legal entities, imposing criminal sanctions, making decisions on rehabilitation, termination of security measures and legal consequences of the conviction and execution of court decisions.

Basis for the liability of the legal entity is defined in the Article 6 of the above law. A legal person shall be held accountable for criminal offences which have been committed for the benefit of the legal person by a responsible person within the remit, that is, powers thereof.

The liability of the legal entity shall also exist where the lack of supervision or control by the responsible person allowed the commission of crime for the benefit of that legal person by a natural person operating under the supervision and control of the responsible person.

The following sentences may be imposed against a legal entity: fine and termination of the status of a legal entity.

The following security measures may be imposed for criminal offences which legal entities are liable for: 1) prohibition to practise certain registered activities or operations; 2) forfeiture and 3) publication of the verdict.

For the criminal offense, according to the rules for legal entity and responsible person, a unique procedure is run and one verdict is reached. If the law, due to certain reasons, can not start or conduct criminal proceedings against the responsible persons, the procedure may be initiated only against the legal entity.

29. Is Serbia considering setting up specific institutions or bodies for the investigation and/or treatment of cases of suspected fraud and other irregularities affecting national,

EC and/or international funds (separate from the PIFC-systems), or are such institutions or bodies already in place? If so, what is the scope of their competencies? How are their administrative capacity and their operational independence ensured? Have any procedures been defined for the communication, by other national authorities, of cases of suspected fraud and other irregularities to these institutions or bodies? Have any mechanisms been defined for cooperation between these different authorities?

In terms of protection from fraud and identity theft, our legal framework in this area of criminal law is mostly consisted of following criminal offenses according to the Criminal Code – CC of the Republic of Serbia:

Article 298 Damaging computer data and programs criminalizes illegal interference of computer data and software by erasing, changing, damaging, concealing or in any other way making the computer data unusable.

Article 299 Computer sabotage criminalize disruption of computer data and hardware that is done with the intention of preventing or interrupting of electronic processing and transmission of data, which can be done by creation and insertion of computer virus.

Article 300 Creation and introduction of computer virus criminalize creation as well as introduction of a computer virus.

Article 301 Computer fraud criminalizes a certain interaction with the data which is done with the intention of gaining a profit and therefore causes a material damage to another person.

And all other aspects of protection against counterfeiting and identity fraud are set by the criminal acts from Articles 223, 224, 225, 226 and 357 of CC of RS because they proved to be applicable in legal practice in all of these frauds.

Article 302 Unauthorized access to computer, computer network or electronic data processing criminalize a misuse related to illegal access.

Article 303 Preventing or restricting access to public computer network

Article 304 Unauthorized use of computer and computer network

Article 208 Fraud

Article 185 Showing pornographic material and use of children for pornography criminalize acts related to distribution of child pornography and production of such material.

Article 199 Unauthorized use of copyright works or related rights

Article 200 Unauthorized removal or altering of electronic information on copyright and related rights criminalize misleading copyright infringement.

Article 225 forgery and misuse of credit cards

In order to determine the identity, profile for Serbia identifies certain regulations of the Criminal Procedure Code – CPC as well as regulations that meet the standards for governing supervision and seizure of letters, telegraphs and other deliveries.

Our legislative profile is adequate in terms of seizure of evidence which may serve for identification, because in the CPC by formal aspects related to seized documents, files etc. seizure of letters, telegraphs and all other deliveries are also regulated. There are also solutions related to seizure and surveillance and proceeding on secret audio and video surveillance of the suspect.

Article 504e of the CPC regulates the proceeding of surveillance and recording of communications, whilst Article 504Љ of CPC relates to automatic computer searching of personal and other data.

Regulations on legal aid in the Criminal Procedure Code are transferred and adjusted in special Law on legal assistance in criminal matters and as such, these regulations comply with the regulations and principles from Second additional protocol on convention from 1959, because they provide general principles and essence of effective international assistance and define new methods other than making written requests, as well as procedure for providing direct informal legal assistance without a letter rogatory, which all facilitate and accelerate the procedure.

30. Have any mechanisms been defined for cooperation with EC authorities and guaranteeing sufficient assistance to EC investigators during their anti-fraud investigations?

By decisions of the Minister of Justice and Republic Public Prosecutor (RPP) a contact prosecutor was named for cooperation through EUROJUST and thus paved the way to further institutionalize the relations between Ministry of Justice and European network of prosecutors. During 2009 the talks continued on the commencement of negotiation on Agreement on cooperation with EUROJUST. The representatives of the PP were engaged in the negotiation.

Within the operative contacts to EUROJUST, an option to approach American Work Files of EUROPOL (AWF files) and European anti-fraud office OLAF was considered, aiming to use their procedures for operative cooperation. This will enable the cooperation in the area of financial frauds, embezzlement and other misuses, and the process of establishing the cooperation according to EU standards is still ongoing. The cooperation is extended with new regulations which regulate the protection of data and other procedures, of which the compatibility of our jurisdiction for cooperation with European agencies for law enforcement depends.

During 2009 the procedure of providing direct law assistance has not changed, because by passing the Law on mutual assistance in criminal matters ("Official Gazette of RS", No. 20/2009) admission without a previously versed letter rogatory, agreement on the formation of joint investigatory teams, video conferencing etc; so that the legality in so far direct application

of principles from second Additional Protocol from 1959 on direct contacts between law enforcement agencies, as previously provided in PROSECO project and especially in Memorandum on Understanding between state prosecutions in the region on the implementation of cooperation on combating organized crime and other forms of serious criminal offenses, and evaluated by experts of European Commission. The Republic Public Prosecution Office has continued the practice, whenever possible, to meet the demands of foreign prosecution, in a way that the demands sent by email or fax machine were evaluated on validity according to the regulations, translated and instructed to all relevant prosecutions, courts and police. It is determined as a priority in RPP office to act upon the demands of foreign public prosecutions and police sent through EUROJUST, which has a special agreement with EUROPOL, SECI/SELEC Center for Combating Transborder Crime, OLAF and other agencies, for action on these requirements are valued in the EU as a contribution of the Republic of Serbia to combating transborder crime.

31. Financial and judicial follow up: Have any procedures been defined for the communication of cases of suspected fraud to the prosecution authorities? Have any procedures been defined for the recovery of uncollected resources and unduly spent funds in the case of suspected fraud or other irregularities?

By the Criminal Procedure Code - CPC in Article 222; it is stated that all public authorities, authorities of territorial autonomy or local self-government, public enterprises and institutions are obliged to report a crime which is prosecuted ex officio, of which they have been notified or learned in any other way. Above applicants of the criminal offense, shall present evidence that they are familiar with and take actions to preserve evidences of the crime, objects on which or with which a criminal offense was done as well as other evidences.

In the Article 223 of CPC, general obligation to report is provided, thus everyone has to report a crime that is prosecuted ex officio. In which cases non-reporting of a crime is treated as a criminal offense is determined by the criminal law.

Article 224 of the CPC prescribes to whom and in what form the reports of criminal offenses are submitted, and is provided that reports shall be submitted to a competent public prosecutor, in written or orally. If the report is submitted orally, the applicant shall be warned on consequences of false reporting. Oral report shall be put in record, and if the report was submitted by telephone, an official note shall be made. If the report is filed to a court, the authority of the interior or incompetent public prosecutor, they will accept the report and immediately forward the report to competent public prosecutor.

As specially designated, the duty of competent authority of the Ministry of the Interior on solving the acts according to Article 225 of CPC and, if there is grounded suspicion that a criminal offense has been done ex officio, law enforcement agencies of the Interior shall take the necessary measures to locate the offender, to prevent the offender or accomplice to hide or flee, to detect and provide evidence of criminal offenses and objects which might serve as evidence. In order to fulfil these duties, the police authorities may seek information from citizens, to carry out inspection of vehicles; passengers and luggage; for the required time limit the movement in

certain area; to take appropriate action related to establish the identity of persons and objects; to call the search for an individual or items being sought; that in presence of a responsible person inspect certain buildings and premises of state bodies; companies and other legal entities, gain insight into their documents, and if necessary seize; as well as take other actions and measures. A record or an official note will be put together about objects that have been found or seized, as well as about facts and circumstances discovered during certain actions that can be of interest to criminal proceedings.

Criminal Code of the Republic of Serbia – CC regulates the confiscation, seizure grounds, conditions and manner of seizure of illegal profit and protection of injured party as follows: (from Article 91 to Article 93 of CC).

Basis for confiscation:

No one can retain material gain obtained by criminal offense and this benefit shall be seized, under the conditions prescribed by this Code, and the court decisions that established the criminal offense.

Conditions and manner for confiscation:

Money, items of value and all other material gains obtained by a criminal offense shall be seized from the offender, and if such seizure should not be possible, the offender shall be obligated to provide the replacement of other material gains to commensurate with the value of the gains obtained from crime or pay a pecuniary amount commensurate with obtained material gain. Material profit gained in criminal offense shall be confiscated from the person or a legal entity to which it has been transferred without compensation or with compensation that obviously does not correspond to the real value. If the material profits obtained by criminal offenses were for a third party, it shall be seized.

Protection of the injured party:

If in the criminal proceedings the property claim has been adopted, the court shall order the forfeiture of profits only if it exceeds awarded property claim of the injured in that amount. The injured party that was in criminal proceedings, in terms of any property claim, directed to litigation may require to be reimbursed from a seized property, if he files a lawsuit within six months from the day of finality of the decision that directed him to litigation. The injured party that did not file a lawsuit in criminal proceedings may require a reimbursement from the seized profits, if he filed his lawsuit within three months for the purpose of establishing his claim, and not later than three years from the day of finality of the decision on confiscation of profits. In these cases, the injured party shall request the reimbursement from the seized profits within three months from the day of finality of the decision that adopted his request.

B. Protection of the Euro against counterfeiting (non-penal aspects)

32. Which definition of counterfeiting of both for notes and coins is provided by national law?

Money forging is defined as a criminal offence by Article 223 of the Criminal Code. The offence is committed by producing forged money or altering genuine money. To establish criminal offence, it is necessary to have the intention to put in circulation forged money as genuine money, irrespective of whether this is domestic or foreign money, banknotes or coins.

The offence is also committed by obtaining forged money with the intention to put it in circulation as genuine or by putting forged money in circulation. It is also punishable when a person accepts forged money as genuine and upon learning that it is forged, puts it in circulation or when a person knows that forged money is produced or that forged money is put in circulation and fails to report it.

Under Article 227 of the Criminal Code, whoever makes, acquires or gives to another to use means of producing forged money will be punished.

The text below contains an excerpt from the Criminal Code, specifying related criminal offences of securities forging, payment card forging and misuse, value tokens forging, and making, acquiring and giving to another means of forging:

Forging Money - Article 223

- (1) Whoever produces forged money with intent to put it in circulation as genuine or who with same intent alters genuine money, shall be punished by imprisonment of two to twelve years.
- (2) Whoever procures forged money with intent to circulate it as real or who puts forged money in circulation, shall be punished by imprisonment of one to ten years.
- (3) If by the offence specified in paragraphs 1 and 2 of this Article forged money is produced, altered, circulated or procured in an amount exceeding one million five hundred thousand dinars and/or a corresponding amount in foreign currency, the offender shall be punished by imprisonment of five to fifteen years.
- (4) Whoever accepting forged money as genuine, and upon learning that it is counterfeit, puts it in circulation or whoever knows that forged money is produced or that forged money is put in circulation and fails to report it, shall be punished by fine or imprisonment up to one year.
- (5) Forged money shall be impounded.

Securities forging – Article 224

- (1) Whoever produces forged securities or alters genuine securities with the intention to use them as genuine, or to give them to another to use, or whoever uses such forged securities as genuine or procures them to such intent shall be punished by imprisonment of one to five years.
- (2) If the total nominal amount of forged securities specified in paragraph 1 of this Article exceeds one million five hundred thousand dinars, the offender shall be punished by imprisonment of two to ten years.
- (3) Whoever receives forged securities as genuine and upon learning that these are counterfeits puts them in circulation, shall be punished by fine or imprisonment up to one year.
- (4) Forged securities shall be impounded.

Forging and misuse of payment cards – Article 225

- (1) Whoever fabricates a forged payment card or who alters a real payment card with the intention to use it as genuine or who uses such payment card as genuine, shall be punished by imprisonment from three months to three years.
- (2) If the offender from paragraph 1 of this Article acquired an unlawful material gain through the use of the card, he shall be punished by imprisonment of six months to five years.
- (3) If the offender from paragraph 1 of this Article acquired an unlawful material gain exceeding one million five hundred thousand dinars, he shall be punished by imprisonment of two to ten years.
- (4) The penalty specified in paragraphs 2 and 3 of this Article shall be imposed also to whoever commits the offence through unauthorised use of another's card.
- (5) Whoever obtains a forged payment card with the intention to use it as genuine or whoever obtains information with the intention to use it for fabrication of a forged payment card, shall be punished by fine or imprisonment up to one year.
- (6) Forged payment cards shall be impounded.

Forging of value tokens – Article 226

- (1) Whoever fabricates forged or alters genuine value tokens with the intention to use them as genuine or to give them to another to use, or who uses such forged tokens as genuine or obtains them to such end, shall be punished by imprisonment up to three years.
- (2) If the overall value of tokens specified in paragraph 1 of this Article exceeds one million five hundred thousand dinars, the offender shall be punished by imprisonment of one to eight years.
- (3) Whoever by removing a stamp invalidating a value token or otherwise endeavours to give such value token an appearance as if unused in order to re-use them, or who re-uses the already used value tokens or sells them as valid, shall be punished by fine or imprisonment up to one year.
- (4) Forged value tokens shall be seized.

Making, acquiring and giving to another means of forging – Article 227

- (1) Whoever makes, acquires, sells or gives to another to use means for producing forged money or or forged securities, shall be punished by imprisonment of six months to five years.
- (2) Whoever makes, acquires, sells or gives to another to use means for producing forged payment cards or forged value tokens, shall be punished by fine or imprisonment up to two years.
- (3) The means from paragraph 1 and 2 of this Article shall be impounded.

33. Does national legislation provide for the obligation of credit institutions and other payment service providers, and any other institutions engaged in the processing and

distribution to the public of notes and coins (as specifically indicated in article 6 of Regulations 1338/2001) to ensure that Euro notes and coins, which they have received and which they intend to put back into circulation, are checked for authenticity and that counterfeits are detected?

The Guidelines for Implementing the Decision on Terms and Conditions for Performing Exchange Operations ("Official Gazette of RS", Nos. 67/2006, /corrigendum 68/2006/, 116/2006, 24/2007, 50/2007, 118/2007, 120/2008, 11/2010 and 18/2010) stipulate that a licensed exchange dealer must possess devices for detecting counterfeit foreign currency cash (including euros) (Section 3). On the other hand, the National Bank of Serbia is required to deliver once a year to banks and licensed exchange dealers a compact disk with data on circulating foreign currency banknotes and counterfeits (Section 5a). Further, when it finds a banknote suspected of being counterfeited, a licensed exchange dealer is required to try to keep its holder and to notify the Ministry of Interior of the appearance of a banknote suspected of being counterfeited (Article 16). Banknotes suspected of being counterfeited are submitted to the National Bank of Serbia for expertise (Section 16). Foreign currency coins are not subject to expertise in the National Bank of Serbia, but are accepted and forwarded for expertise to the competent centre abroad.

Annex 7: The Decision on Terms and Conditions for Performing Exchange Operations ("Official Gazette of RS", Nos. 67/2006, /corrigendum 68/2006/, 116/2006, 24/2007, 50/2007, 118/2007, 120/2008, 11/2010 and 18/2010)

34. Does national legislation provide for the obligation of credit institutions and other payment service providers, and any other institutions engaged in the processing and distribution to the public of notes and coins (as specifically indicated in article 6 of the Regulation 1338/2001) to withdraw from circulation all banknotes and coins which they know or have sufficient reason to believe to be counterfeit and to hand them over to the competent authorities? Have any sanctions been defined in the case this obligation is not complied with?

Pursuant to the Guidelines for Implementing the Decision on Cash Management and Distribution of Banknotes and Coins ("Official Gazette of RS", Nos. 116/2008, 27/2009 and 107/2009, /corrigendum 3/2010) when a bank finds in the stock of cash any suspected counterfeit banknote, it is required to send it to the National Bank of Serbia for expertise. No sanction is prescribed if the bank fails to send to the National Bank of Serbia a suspected counterfeit banknote. The non-existence of sanction in the above regulation does not affect criminal liability of the person who fails to send suspected counterfeit money to the National Bank of Serbia (Article 223, paragraph 4 of the Criminal Code).

Annex 8: The Guidelines for Implementing the Decision on Cash Management and Distribution of Banknotes and Coins ("Official Gazette of RS", Nos. 116/2008, 27/2009 and 107/2009, /corrigendum 3/2010)

35. Which authorities have been designated for the centralisation, technical analysis and processing of information on counterfeit bank notes and coins, both Euro and other currencies?

Under Article 58, paragraph 2 of the Law on the National Bank of Serbia ("Official Gazette of RS", Nos. 72/2003, 55/2004, 85/2005-„other law" and 44/2010), the analysis and establishment of authenticity of money are performed at the National Bank of Serbia, the Division of National Centres for the Fight Against Counterfeiting and Analysis of Banknotes and Coins, regardless of whether this is domestic or foreign money. One copy of the report on expertise is submitted to the National Central Bureau of INTERPOL and another copy to the Police Administration in whose territory the counterfeit was detected. The data on all counterfeits detected during a calendar year are submitted in the form of a report to the National Central Bureau of INTERPOL, with report elements provided by the Bureau.

Annex 9: The Law on the National Bank of Serbia ("Official Gazette of RS", Nos. 72/2003, 55/2004, 85/2005-„other law" and 44/2010)

36. Have any procedures been defined for the transmission of examples of counterfeit banknotes and coins, both Euro and other, and related information to the relevant authorities inside or outside your country?

Counterfeit banknotes may be delivered to judicial authorities in the country and abroad (international legal aid), to the Ministry of Interior and other domestic and foreign institutions engaged in anti-counterfeiting efforts.

37. Have any procedures been defined for the gathering and indexation of statistical data relating to counterfeit banknotes and coins (both for the Euro and other currencies)?

The answer is given to Q35.

38. Which sanctions apply for the entering into circulation and for the use of medals and token similar to Euro coins?

The criminal offence of money counterfeiting involves the fabrication of counterfeit money or alteration of genuine money. The use of a medal or token as metal money (EUR) does not constitute the criminal offence of money counterfeiting, but the criminal offence of fraud from Article 208 of the Criminal Code – on condition that the offender had the intention to acquire unlawful material gain (for himself or someone else) and that he deceived the recipient or kept him under the deception regarding the authenticity of the medal or token.

39. What are the procedures and bodies established for the fight against counterfeiting?

The National Bank of Serbia, Ministry of Interior, Public Prosecutor's Office and courts are responsible for the fight against counterfeiting. The National Bank of Serbia issues notifications on the appearance of new types of more successfully made counterfeits, their features and the method of distinguishing them from authentic banknotes with the aim to recognise them more easily. In addition, the National Bank of Serbia educates employees in banks and exchange offices by holding seminars involving practical counterfeit detection training.

The Ministry of Interior is responsible for detecting persons fabricating or putting in circulation counterfeit money, the prosecution prosecutes offenders and courts determine the criminal liability and pronounce sanctions against persons who commit criminal offences of money counterfeiting.

40. Has Serbia participated in the Pericles programme?

Representatives of the National Bank of Serbia and the National Central Bureau of INTERPOL took part in seminars organised by OLAF (the European Anti-Fraud Office) in 2009 – Drac, Albania, and in 2010 – Zagreb, Croatia. From 16 to 18 November 2010, the National Bank of Serbia hosted the seminar "Strengthening the Protection of the Euro in the Financial Sector" organised by OLAF. The euro counterfeit detection training (banknotes and coins) was attended by representatives of banks and licensed exchange dealers (43 participants in total).

ANNEX

Please find attached a list of definitions (Glossary) relating to control/audit as used by the Commission (DG BUDG) in relation to assessing applicant countries' Public Internal Financial Control (PIFC) systems. It is of importance that your country and the Commission speak the same language as much as possible and the attached definitions may be of help to you in explaining your national equivalents. Please note that the term "control and inspection" relates to managerial responsibilities in the framework of managing income and expenditure and that the term "audit" relates to the independent assessment function (e.g. of control systems).

Glossary of Definitions used by the Commission in the framework of Public Internal Financial Control (PIFC)	
Term	Definition
Accounting Control System	A series of actions, which are part of the total internal control, system concerned with realising the accounting goals of the entity. This includes compliance with accounting and financial policies and procedures, safeguarding the entity's resources and preparing reliable financial reports.
Administrative Control System	A series of actions, which are part of the internal control system, concerned with administrative procedures needed to make managerial decisions, realise the highest possible economic and administrative efficiency and ensure the implementation of administrative policies, whether related to financial affairs or otherwise.
Audit	In its most generic sense this can mean any examination ex-post of a transaction, procedure or report with a view to verifying any aspect of it – its accuracy, its efficiency etc. The word usually needs to be qualified more narrowly to be useful.
Audit Evidence	<p>Information, which supports the opinions, conclusions or reports of the auditors, internal audit services or SAI. It should be:</p> <p>Competent: information that is quantitatively sufficient and appropriate to achieve the auditing results; and is qualitatively impartial such as to inspire confidence and reliability.</p> <p>Relevant: information that is pertinent to the audit objectives.</p> <p>Reasonable: information that is economical in that the cost of gathering it is commensurate with the result, which the auditor or, the internal audit service or the SAI is trying to achieve.</p>
Audit Mandate	The auditing responsibilities, powers, discretion and duties conferred on any audit body (e.g. the SAI under the constitution or other lawful authority of a country (as set out in primary or secondary national legislation).
Audit Objective	A precise statement of what the audit intends to accomplish and/or the question the audit will answer. This may include financial, regularity or performance issues.
Audit Procedures	Tests, instructions and details included in the audit programme to be carried out systematically and reasonably.

Audit Scope	The framework or limits and subjects of the audit.
Audit Trail	<p>The phrase has a rather imprecise general meaning in general audit usage. However, annex 1 of Council Regulation 2064/97 has provided a specific detailed description of the requirements of ‘a sufficient audit trail’ for the purposes of the structural funds managed by the Member States on behalf of the Commission. In brief summary it requires the maintenance of records giving the full documentation and justification at all stages of the life of a transaction together with the ability to trace transactions from summarised totals down to the individual details and vice versa.</p> <p>The overriding objective of the audit trail is to ensure a ‘satisfactory audit from the summary amounts certified to the Commission to the individual expenditure items and the supporting documents at the final beneficiary’.</p> <p>The word "audit trail" in the Regular Reports and the Accession Partnerships is to be understood in the light of the above definition which should be applied in the context of all Pre-Accession Funds to Candidate Countries.</p>
Audited Entity	The organisation, programme, activity or functions subject to audit by the SAI or the (internal) audit service.
Auditing Standards	Auditing standards provide minimum guidance for the auditor that helps determine the extent of audit steps and procedures that should be applied to fulfil the audit objective. They are the criteria or yardsticks against which the quality of the audit results is evaluated.
Charter (Internal Audit Charter)	<p>Also called Internal Audit Mission Statement, especially in non-US (-linked) organisations. The Charter/Mission Statement of the internal audit activity is a formal, written document that defines the internal audit activity's purpose, scope, and responsibility. It aims to ensure that the internal audit is looked upon with trust, confidence and credibility.</p> <p>The charter should:</p> <p>Ensure the functional independence including specification of the position of the internal audit activity within the organisation;</p> <p>Permit unrestricted access to records, personnel, and physical properties relevant to the performance of engagements;</p> <p>Define the scope of internal audit activities;</p> <p>Define reporting requirements to auditees and, where necessary, to judiciary institutions and</p> <p>State the relationship with the State Audit Office.</p>

Compliance Audits	See Regularity Audits
Constitutional	A matter which is permitted or authorised by, the constitution of fundamental law of a country.
Controls	Any kind of control on an organisation or Public funds beneficiaries, both internal and external controls on an organisation – i.e. both internal controls and controls from outside the organisation.
Due Care	The appropriate element of care and skill which a trained auditor would be expected to apply having regard to the complexity of the audit task, including careful attention to planning, gathering and evaluating evidence, and forming opinions, conclusions and making recommendations.
Economy	Minimising the cost of resources used to achieve given planned outputs or outcomes of an activity (including having regard to the appropriate quality of such outputs or outcomes).
Effectiveness	The extent to which objectives of an activity are achieved i.e. the relationship between the planned impact and the actual impact of an activity.
Efficiency	Maximising the outputs or outcomes of an activity relative to the given inputs.
Evaluation	<p>Can mean</p> <p>a) The evaluation of tenders as part of the contracting process; or</p> <p>b) Specific reviews designed to examine the overall performance of a programme or project. Its scope may vary. Its core should be setting out, obtaining or calculating the outcomes of the programme or project and considering their economy, effectiveness and efficiency, but it usually covers a much wider range of issues including the appropriateness and achievement of output objectives as well. It may be carried out before, during or after the programme or project has been completed (usually known as ex-ante, mid-term or ex-post). It shares many characteristics with performance audit</p>
Ex ante financial control (EAFC)	<p>Ex ante financial control (EAFC) is the set of control activities prior to carrying out financial decisions relating to appropriations, commitments, tender procedures, contracts (secondary commitments), and related disbursements and recovery of unduly paid amounts. Such decisions can only be taken after the explicit approval of the ex ante financial controller.</p> <p>EAFC is sometimes also called "preventive control". This is the narrower meaning of financial control. If described as EAFC there can be no ambiguity.</p>

Ex post internal audit (EPIA)	The set of audit activities that take place ex-post. I.e. in this context, after financial decisions have been made by the management. EPIA can be carried out by centralised government audit bodies, responsible and reporting to the highest levels of government (Ministry of Finance or even the Cabinet of Ministers) or decentralised audit bodies (Internal Audit Units in government budget implementation spending units, like Ministries or Agencies).
Ex-post	When referring to audit, "ex post" usually means an audit performed after the initial legal commitment of a transaction. When referring to evaluation, "ex post" usually means an evaluation performed after the transaction has been fully completed.
External audit	Any audit carried out by an auditor who is independent of the management being audited. In public finance, it means audit external to the Government financial management and control policy is carried out by the national Courts of Auditors (or similar institutions) Supreme Audit Office to objectively ensure that such management and control systems are compliant with the definition of PIFC as mentioned elsewhere in this glossary above.
Field Standards	The framework for the auditor to systematically fulfil the audit objective, including a) planning and supervision of the audit, b) gathering of audit evidence which is competent, relevant and reasonable, and c) an appropriate study and evaluation of internal controls.
Financial Audits	Cover the examination and reporting on financial statements and examine the accounting statements upon which those statements are based
Financial controller	<p>The function of the financial controller may mean different things in different organisations e.g.:</p> <p>a) the role which gives ex-ante approval to individual transactions that they are in conformity with regulations and procedures; or.</p> <p>b) the same as auditor; or.</p> <p>c) the management role which combines responsibility for the recording and processing of transactions (financial accounting) with the preparation of and reporting against budget targets (management accounting).</p> <p>In the Commission, Financial Control was originally (1973) defined as ex ante approval of any kind of financial decisions, later the internal audit function was added to the functions of the Finance Controller. Recently the trend is to split the two functions and the term "financial control" refers again only to ex ante approval.</p> <p>In the framework of Enlargement the term is used for the ex ante approval</p>

	function.
Financial controls	<p>The phrase has a wide meaning in some organisations and a narrow meaning in others (very broadly, organisations from further North take the wider meaning and those from further South take the narrower meaning).</p> <p>The wide meaning follows the meaning of internal controls except that it refers to controls, which have a specific financial component. In practice, in this context, there are few controls, which do not have a financial component and the phrase financial control can often be virtually interchangeable with internal control.</p> <p>The narrower meaning follows the narrower meaning of financial controller and refers to the specific review of the conformity of transactions with regulations and procedures described in ex-ante financial control.</p>
Financial management (FM)	In the framework of Enlargement the term is understood to be the set of responsibilities of the management (which is responsible for carrying out the tasks of government budget handling units) to establish and implement a set of rules aiming at an efficient, effective and economic use of available funds (comprising income, expenditure and assets). It refers to planning, budgeting, accounting, reporting and some form of ex ante financial control. FM is subject to internal and external audit.
Financial Systems	The procedures for preparing, recording and reporting reliable information concerning financial transactions.
Findings, Conclusions and Recommendations	Findings are the specific evidence gathered by the auditor to satisfy the audit objectives; conclusions are statements deduced by the auditor from those findings; recommendations are courses of action suggested by the auditor relating to the audit objectives.
Functional Independence (FI)	The special status of a financial controller (narrow sense) or an internal auditor (whether central or decentralised), providing him/her with the power of maintaining a free professional judgement vis-à-vis his superior of the organisation in matters of control and audit. This concept requires the maintenance of a balance between those who are responsible for managing the organisation and those who are controlling/auditing the organisation. FI should be embodied in relevant legislation. Another way to ensure FI is to have the central control/audit organisation nominate a delegate Internal Auditor into the organisation to be audited or to allow the Internal Auditor (in case of conflict of interests) to report his findings freely to the central audit body.
Fundamental	A matter becomes fundamental (sufficiently material) rather than material when its impact on the financial statements is so great as to render them

	<p>misleading as a whole.</p> <p>See also Significant Control Weakness</p>
General Standards	The qualifications and competence, the necessary independence and objectivity, and the exercise of due care, which shall be required of the auditor to carry out the tasks related to the fields and reporting standards in a competent, efficient and effective manner.
Impact	The same as result or outcome.
Independence	<p>For an external audit it means the freedom of the national Courts of Auditors or similar institutions in auditing matters to act in accordance with its audit mandate without external direction or interference of any kind.</p> <p>From an internal audit viewpoint it means that the internal audit service should be organised directly under the top management. Nevertheless, the internal audit service should be free to audit any area that it considers to be an area of risk for material errors, even when management might not think so. (see also functional independence)</p>
Internal Audit	<p>The Institute of Internal Auditors definition is:</p> <p>Internal audit is an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control, and governance processes.</p> <p>More concretely, it is the functional means by which the managers of an entity receive an assurance from internal sources (including internally subcontracted sources) that the internal controls are achieving their internal control objectives. It will cover, inter alia, Financial Audits, System Based Audits, Performance Audits, IT-Audits It has most of the characteristics of external audit except that it finally reports to the management and therefore can never have the same level of independence as external audit.</p> <p>In public finance a distinction is made between centralised internal audit and decentralised internal audit as follows:</p>
Centralised internal audit (CIA)	CIA is public ex post internal audit performed by a centralised body (e.g. the Ministry of Finance or another Internal Audit body (like the Government Control Office in Hungary or the Internal Audit Board in Malta)) on systems
Decentralised internal	DIA is the internal audit performed by specialised Internal Audit Units

audit (DIA)	located inside government or lower public budget implementation spending centres (Ministries or Agencies)
Internal Auditor (IA)	The Internal Auditor (IA) (whether located outside or inside the organisation of the Managing Director) is responsible for carrying out all relevant kinds of ex post internal audit. In public finance terms, the IA should be subject to a special "statute" (preferably written in the Internal Audit Law governing the PIFC-system in a given country) allowing him an adequate degree of functional independence. The IA can report to the MD or be assigned by a central Public Internal Audit Service, like the Ministry of Finance or an Internal Audit Board responsible to the Prime Minister of the Cabinet of Ministers
Internal Control	<p>The whole system of financial and other controls, including the organisational structure, methods, procedures and internal audit, established by management within its corporate goals, to assist in conducting the business of the audited entity in a regular, economic, efficient and effective manner.</p> <p>Internal control relate to the following categories: Control environment; Risk assessment; Information and Communication; Control activities and Monitoring of controls</p>
Internal Control Objective	<p>The primary objectives of internal control are to ensure:</p> <ol style="list-style-type: none"> 1) The reliability and integrity of information. 2) Compliance with policies, plans, procedures, laws, and regulations. 3) The safeguarding of assets. 4) The economical, efficient and effective use of resources. <p>Each organisation should design its own system of internal control to meet the needs and environment of the organisation.</p>
International Organisation of Supreme Audit Institutions (INTOSAI)	An international and independent body which aims at promoting the exchange of ideas and experience between Supreme Audit Institutions in the sphere of public financial control.
IT systems audits	Examine the sufficiency and adequacy of the protection of the security of the systems of IT applications in order to guarantee the confidentiality, integrity and availability of information and IT systems
Managerial Accountability	Represents the obligation to be accountable for a given task. Accountability covers issues like separation of duties (authorising officer, accountant, ex ante financial controller); development of Financial

	Management and Control manuals (powers, responsibilities, reporting and risk management), all financial transactions (commitments, contracts, disbursements, recovery of unduly paid amounts), links with the central harmonisation facilities, and evaluation and reporting on F/C systems
Management control	Control by management: the same as internal control, including financial control
Managing Director (MD)	The Managing Director (MD) can be a Line Minister or his delegates, responsible for the implementation of Programmes/projects relating to national or lower budget income or expenditure. The MD is responsible for setting up financial management and control systems inside his organisation and the development of financial management and control manuals and its implementation through the nomination of an Accountant. The MD and the Accountant should create a double signature system (DSS) to provide for the highest degree of transparency in financial management.
Materiality and Significance (Material)	In general terms, a matter may be judged material if knowledge of it would be likely to influence the user of the financial statements or the performance audit report. Materiality is often considered in terms of value but the inherent nature or characteristics of an item or group of items may also render a matter material - for example, where the law or some other regulation requires it to be disclosed separately regardless of the amount involved. In addition to materiality by value and by nature, a matter may be material because of the context in which it occurs. For example, considering an item in relation to the overall view given by the accounts, the total of which it forms a part; associated terms; the corresponding amount in previous years. Audit evidence plays an important part in the auditor's decision concerning the selection of issues and areas for audit and the nature, timing and extent of audit tests and procedures.
Mission Statement	See Charter (Internal audit Charter)
Opinion	The auditor's written conclusions on a set of financial statements as the result of a financial or regularity audit.
Outcomes	The effects of a programme or project measured at the highest meaningful level in proportion to the programme or project (e.g. jobs created). In practice there are always at least some external non-controllable elements, which influence whether outcomes are achieved or not. The same as results or impacts
Outputs	The directly tangible deliverables of a programme or project insofar as they are, for practical purposes, completely under the control of the implementers of the project (e.g. training seminar executed).

Passer-outre	PO is the procedure whereby the opinion of the ex ante financial controller (refusal to approve) can be overridden by the ultimate body responsible for the management of government budget implementation (e.g. Council of Ministers). A reasoned and extensive request by the MD should be the basis for such a decision, while the MD remains responsible for his acts.
Performance Audit	An audit of the economy, efficiency and effectiveness with which the audited entity uses its resources in carrying out its responsibilities. In practice there can be difficulty distinguishing Performance Audit from Evaluation. Sometimes Performance Audits are limited to consideration of outputs but this considerably limits the value of the audit. Also Evaluation may create data, particularly on outcomes, whilst Performance Audit would usually be limited to a review of data which was available (and if necessary identification of missing data) Performance Audit is usually concerned with testing performance against some given standards.
Planning	Defining the objectives, setting policies and determining the nature, scope, extent and timing of the procedures and tests needed to achieve the objectives.
Postulates	Basic assumptions, consistent premises, logical principles and requirements which represent the general framework for developing auditing standards.
Public Accountability	The obligations of persons or entities, including public enterprises and corporations, entrusted with public resources to be answerable for the fiscal, managerial and programme responsibilities that have been conferred on them, and to report to those that have conferred these responsibilities on them.
Public Financial Control (PIFC)	PIFC is the overall financial control system performed internally by a Government or by its delegated organisations, aiming to ensure that the financial management and control of its national budget spending centres (including foreign funds) complies to the relevant legislation, budget descriptions, the principles of sound financial management, transparency, efficiency, effectiveness and economy. PIFC comprises all measures to control all government income, expenditure, assets and liabilities. It represents the wide sense of internal control. It includes but is not limited to ex ante financial control (EAFC) and ex-post internal audit (EPIA)
Reasonable Assurance	Internal control, no matter how well designed and operated, can provide only reasonable assurance to management regarding the achievement of an entity's objectives. The likelihood of achievement is affected by limitations inherent in all internal control systems. These limitations may include faulty decision-making with respect to the establishment or design of controls, the need to consider costs as well as benefits, management

	<p>override, the defeat of controls through collusion, and simple errors and mistakes. Additionally, controls can be circumvented by collusion of two or more people. Finally, management may be able to override elements of the internal control system.</p> <p>Reasonable assurance is provided when cost-effective actions are taken to restrict deviations to a tolerable level. This implies, for example, that material errors and improper or illegal acts will be prevented or detected and corrected within a timely period by employees in the normal course of performing their assigned duties. Management during the design of systems considers the cost-benefit relationship. The potential loss associated with any risk is weighed against the cost to control it.</p>
Regularity Audit	Attestation of financial accountability of accountable entities, involving examination and evaluation of financial records and expression of opinions on financial statements; attestation of financial accountability of the government administration as a whole; audit of financial systems and transactions, including an evaluation of compliance with applicable statutes and regulations; audit of internal control and internal audit functions; audit of the probity and propriety of administrative decisions taken within the audited entity ; and reporting of any other matters arising from or relating to the audit that the SAI considers should be disclosed. This is normally not applicable to Internal Audit Services.
Report	The auditor's written opinion and other remarks on a set of financial statements as the result of a financial or regularity audit or the auditor's findings on completion of a performance audit.
Reporting Standards	The framework for the auditor to report the results of the audit, including guidance on the form and content of the auditor's report.
Results	The same as outcomes or impacts
Risk	An event which can result in an undesirable or negative outcome. It is characterised by the probability or likelihood of the event occurring and the resulting impact or consequence if it does occur. These two factors combine to result in a level of risk exposure.
Risk assessment	<p>Auditor's tool to help identifying audit projects offering the highest added value to the organisation. Risk assessment is the identification of all local financial management and control (FMC) systems and of their associated risks according to a number of risk factors (IIA).</p> <p>The risk assessment approach has to be used at, at least two levels:</p> <p>A. for the establishment of the annual audit programme, selecting projects of highest expected return and</p>

		<p>B. In the planning phases of the individual audit itself.</p> <p>Risk factors are: assessment of volume, sensitivity and materiality of data, the control environment, confidence in management, complexity of activities and Information systems, geographical diversity, and prior audit knowledge.</p>
Risk Management (RM)		<p>The overall process of identifying, assessing and monitoring risks and implementing the necessary controls in order to keep the risk exposure to an acceptable level. Best practice suggests that it should be an embedded part of the management process rather than something, which is added at a later stage.</p> <p>RM acts as awareness raising exercise and as a forum for sharing views at all levels in organisations; it informs and trains management and staff and increases the likelihood for success in the achievement of the objectives.</p> <p>Management creates the conditions and establishes tools necessary to evaluate, prioritise and decide before carrying out an activity to allow it to obtain a reasonable assurance of achieving the objectives with reasonable value for money. The internal control system ensures that management protects itself from unacceptable risks.</p> <p>Processes need to be developed to identify these risks and conceive and implement a system to control the most significant risks. A success factor for implementing the risk management system throughout the organisation is the management's general interest in the exercise. RM should be put on the agenda for the development of its own system for assessing the risks to which the organisation is subject.</p>
Significant Weakness	Control	<p>Significant is the level of importance or magnitude assigned to an item, event, information, or problem by the internal auditor. Significant audit findings are those conditions that, in the judgement of the director of internal auditing, could adversely affect the organisation. Significant audit findings (as well as weaknesses cited from other sources) may include conditions dealing with irregularities, illegal acts, fraud, errors, inefficiency, waste, ineffectiveness, conflicts of interest, and control weaknesses</p>
Supervision		<p>An essential requirement in auditing which entails proper leadership, direction and control at all stages to ensure a competent, effective link between the activities, procedures and tests that are carried out and the aims to be achieved.</p>
Supreme Institution (SAI)	Audit	<p>The public body of a State which, however designated, constituted or organised, exercises by virtue of law, the highest public auditing function of that State.</p>

Systems based Audit	<p>Systems based audit refers to an in-depth evaluation of the internal control system with the objective to assess to extent to which the controls are functioning effectively. It is designed to assess the accuracy and completeness of financial statements, the legality and regularity of underlying transactions and the economy, efficiency and effectiveness of operations.</p> <p>A systems based audit should be followed-up through substantive testing of a number of transactions, account balances etc to determine whether the financial statements of the auditee are accurate and complete, the underlying transactions legal and regular and/or the criteria for economy, efficiency and effectiveness have been achieved.</p>
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