

Anti-money laundering and counter-terrorist financing measures

Serbia

3rd Enhanced Follow-up Report

December 2019

Follow-up report



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

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Serbia: 3rd Enhanced Follow-up Report

I. INTRODUCTION

1. The mutual evaluation report (MER) of Serbia was adopted in April 2016. The report analyses the progress of Serbia in addressing the technical compliance (TC) deficiencies identified in its MER. Re-ratings are given where sufficient progress has been made. This report also analyses progress made in implementing new requirements relating to FATF Recommendations which have changed since Serbia's 2nd enhanced follow-up report was adopted. This concerns notably Recommendation 2. Overall, the expectation is that countries will have addressed most if not all TC deficiencies by the end of the third year from the adoption of their MER. This report does not address what progress Serbia has made to improve its effectiveness. A later follow-up assessment will analyse progress on improving effectiveness which may result in re-ratings of Immediate Outcomes at that time.

II. FINDINGS OF THE MUTUAL EVALUATION REPORT

2. The MER and the 2nd enhanced follow-up report rated Serbia as follows for technical compliance:

Table 1. Technical compliance ratings, December 2019

| | | | | | | | | | |
|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| R 1 | R 2 | R 3 | R 4 | R 5 | R 6 | R 7 | R 8 | R 9 | R 10 |
| LC | LC | LC | LC | LC | PC | LC | PC | LC | LC |
| R 11 | R 12 | R 13 | R 14 | R 15 | R 16 | R 17 | R 18 | R 19 | R 20 |
| LC | C | LC | LC | LC | LC | C | PC | LC | C |
| R 21 | R 22 | R 23 | R 24 | R 25 | R 26 | R 27 | R 28 | R 29 | R 30 |
| C | PC | PC | LC | LC | LC | LC | PC | LC | LC |
| R 31 | R 32 | R 33 | R 34 | R 35 | R 36 | R 37 | R 38 | R 39 | R 40 |
| LC | LC | LC | LC | LC | LC | LC | LC | LC | PC |

Note: There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

Source: Serbia Mutual Evaluation Report, April 2016, <https://rm.coe.int/anti-money-laundering-and-counter-terrorist-financing-measures-serbia-/1680715fdb>. Serbia 2nd Enhanced Follow-up Report, December 2018, <https://rm.coe.int/committee-of-experts-on-the-evaluation-of-anti-money-laundering-measur/1680931ea5>.

3. Given the results of the MER, Serbia was placed in enhanced follow-up¹. The first enhanced follow-up report submitted by Serbia was discussed at the 54th Plenary meeting in September 2017. Serbia did not seek any re-ratings when it submitted the first follow-up report, which was tabled for information only. The second enhanced follow-up report submitted by Serbia was discussed at the 57th Plenary meeting in December 2018. The Plenary invited Serbia to submit a third enhanced follow-up report for the 59th MONEYVAL Plenary in December 2019.

4. The assessment of Serbia's request for technical compliance re-ratings and the preparation of this report were undertaken by the following Rapporteur teams (together with the MONEYVAL Secretariat):

¹ Regular follow-up is the default monitoring mechanism for all countries. Enhanced follow-up involves a more intensive process of follow-up. This is intended to be a targeted but more comprehensive report on the countries/territories' progress, with the main focus being on areas in which there have been changes, high risk areas identified in the MER or subsequently and on the priority areas for action.

- Bulgaria
- Italy

5. Section III of this report summarises the Serbia's progress made in improving technical compliance. Section IV sets out the conclusion and a table showing which Recommendations have been re-rated.

III. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

6. This section summarises the progress made by Serbia to improve its technical compliance by:
- Addressing the technical compliance deficiencies identified in the MER, and
 - Implementing new requirements where the FATF Recommendations have changed since the 2nd enhanced follow-up report was adopted (Recommendation 2).

3.1. Progress to address technical compliance deficiencies identified in the MER

7. Serbia has made progress to address the technical compliance deficiencies identified in the MER. As a result of this progress, Serbia has been re-rated on three Recommendations (Recommendations 6, 8 and 18).

Recommendation 6 (Originally rated PC – re-rated LC)

8. In its 5th round MER, Serbia was rated PC in the light of the following deficiencies: a) the framework for the implementation of UNSCRs 1267, 1373 and 1988 did not cover all the requirements; b) the framework for designation and freezing did not ensure that measures were taken without delay.

9. According to the information and additional materials provided by Serbia, deficiencies identified in sub-criteria a-e of c.6.1, sub-criteria b of c.6.2, c.6.4, sub-criteria c-e of c.6.5 and sub-criteria a, c-e, g of c.6.6 were addressed by amendments to the relevant legal provisions and practical measures.

10. Whilst the Government now decides on a proposal for designation made by another country without obtaining the opinions of relevant state authorities (addressing the deficiency highlighted in the MER under c.6.2(c)), the Law on the Freezing of Assets (LFA) requires this decision to be taken in the “shortest time possible” which may not always be “prompt”. Accordingly, whilst this is considered to be a minor shortcoming, consideration should be given to a respective legislative amendment.

11. Moreover, with respect to c.6.5(b), there are uncertainties whether the LFA covers most categories of funds or other assets described under c.6.5(b). The Serbian authorities are of the view that the definition provided in the LFA is sufficiently wide to encompass all the categories of property set out in c.6.5(b), particularly since the definition of property (assets) within the meaning of the LFA does not make a difference between the concepts of ownership, co-ownership, possession or co-possession.

12. However, this review is not clear how the Law could apply to funds or other assets that are jointly owned in practice, considering that there are no cases that could support Serbia's position.

While this uncertainty is of a minor nature, it is suggested that the assessment team looks at this issue more closely in the 5th year follow-up assessment.

13. In general, based on the provided information and clarifications, it can be concluded that Serbia has taken the necessary steps to remedy almost all deficiencies identified in the 5th round MER. On that basis, **Serbia is re-rated as LC with R.6.**

Recommendation 8 (Originally rated PC – re-rated LC)

14. In its 5th round MER, Serbia was rated PC with R.8. In June 2016, R.8 and its Interpretive Note were significantly revised rendering the analysis of R.8 in Serbia's 5th round MER obsolete.

15. At the time of the 1st enhanced follow-up report, the subset of NPOs that fall within the FATF definition of NPOs was identified as encompassing associations, foundations and endowments. The authorities have conducted a review of the NPO sector vulnerabilities to FT, which has resulted in the production of a document entitled "Exposure of the non-profit sector in the Republic of Serbia to the risk of terrorist financing" adopted by the inter-agency Permanent Joint Coordination Group on Terrorism in May 2018. The document was based on data maintained by the authorities involved in the assessment, data held by the Serbian Business Registers Agency, independent sources, as well as studies and research conducted by relevant organisations dealing, *inter alia*, with the phenomenon of terrorism and its links with the NPO sector. Part III of the document identified vulnerabilities and gaps related to the NPO sector and Part IV identified high-risk NPOs in Serbia.

16. However, the document was confidential and could not be reviewed for the purposes of the previous FUR.

17. For the purpose of this FUR (in particular regarding c.8.1(a)), Serbia has not provided the document itself. Nevertheless, the Serbian authorities provided an explanation on the features of NPOs that make them vulnerable to FT abuse. These features were identified as a result of the review. The authorities explained that a greater risk of abuse for FT purposes is posed by NPOs which operate in specific geographical areas. However, the geographical links were not the only factors used to identify vulnerable NPOs. With respect to the revised c.8.1(b), while no document was provided to this review, Serbia has provided information and additional clarifications on the specific nature of threats and how terrorist actors could abuse those NPOs. This work was part of the NRA and the FT typologies.

18. Regarding c.8.2(a), Serbia has policies to provide transparency in the setting-up and activities of some NPOs in order to promote accountability, integrity and public confidence in the administration and management of the sector. The efforts made by the Serbian authorities are also supplemented by various self-regulatory initiatives taken by the NPOs.

19. With respect to the revised c.8.2(b), the Serbian authorities continue providing outreach to the NPO sector on FT-related matters, including through the presentation of the 2018 NRA findings, FT typologies and activities to familiarise the NPO sector with the UN TFS.

20. The Government Office for Cooperation with Civil Society reaches out to donors of NPOs through awareness and educational activities. The office has established regular communication and coordination with the numerous donor organisations in Serbia which have been targeted for this purpose alongside other civil society organisations.

21. With respect to the revised c.8.2(c), the AML/CFT Coordination Body initiated cooperation with major NPOs which resulted in a FT vulnerability self-evaluation questionnaire and a subsequent analysis of the replies. These however do not reflect on any best practices to address the FT risk and vulnerabilities and thus protect them from abuse.
22. In the 2nd FUR, Serbia reported that all registered NPOs are legal persons and, as such, are required to open and maintain a payment account with a payment service provider. However, no other additional measures have been taken to encourage the practical use of regulated financial channels.
23. Regarding c.8.3, the Working Group for supervisory inspection of the NPO sector (established by the Coordination Commission for Supervisory Inspection) developed a document called "Procedures and Criteria for Supervising NPOs". These procedures introduce steps in preparing and developing a plan for consolidated supervision of NPOs, as well as exercising consolidated supervision and related reporting, based on a number of criteria for targeting NPOs. Some of the criteria that were made available contained FT risk-related elements. The other set of criteria remains confidential and thus was not provided.
24. With respect to revised c.8.4(a), the Serbian authorities noted that in order to exercise effective supervision and coordinate the work of inspectional services, the above-mentioned Working Group for supervisory inspection of the NPO sector was established by the Coordination Commission for Supervisory Inspection. The latter is an inter-agency coordination body, tasked with aligning and coordinating the work of inspections and enhancing the effectiveness of supervisory inspection through aligning plans of supervisory inspections and training programmes, promoting the information exchange and professional and ethical standards of inspectors, monitoring and evaluation of inspections and supervision.
25. At the initiative of the Working Group for Supervision of NPOs, supervision was exercised over a total of 36 NPOs during the period November 2018 to June 2019.
26. With respect to the revised c.8.4(b), there are effective, proportionate, and dissuasive sanctions for the violation of NPO-related obligations. These include imprisonment, fines, cancellation of the Tax ID Number, striking off the NPO, as well as prohibition of activities of an endowment or a foundation (see Article 13 and 14 of the Law on Centralised Records of Beneficial Owner; Articles 72-74 of the Law on Associations; Articles 52, 62-65 of the LFE).
27. With respect to c.8.5(a), despite the fact that Serbia established different coordinating bodies, it is unclear how these inter-agency groups ensure effective co-operation, co-ordination and information-sharing at all levels of appropriate authorities and organisations.
28. With respect to c.8.5(c), NPOs in Serbia are required to maintain business records and prepare financial reports. They are also subject to financial report audits. The Serbian Business Registers Agency (SBRA) maintains the register of NPOs (which includes the name of the NPO; details concerning management, founders and areas of work; as well as financial reports).
29. With respect to the revised c.8.5(d), the Working Group for supervisory inspection of the NPO sector has established a coordination mechanism with the competent authorities involved in preventive or investigative activities, for both operational purposes and for the purposes of monitoring and responding to risks identified.

30. Serbia has meanwhile addressed most of the deficiencies under R. 8, with only minor deficiencies remaining. **On that basis, Serbia is re-rated as LC with R.8.**

Recommendation 18 (Originally rated PC – Re-rated to C)

31. In its 5th round MER, Serbia was rated PC with R.18 (c.18.1 and 18.3 were rated met and c.18.2 partly met). In the 2nd enhanced follow-up, the deficiency in relation to c.18.2 was assessed as partly met. The Serbian AML/CFT Law provided that obliged entities which are a part of an international group shall apply programmes and procedures relevant for the whole group, including the procedures for the exchange of information for the purpose of customer due diligence actions, mitigation and elimination of the ML/FT risk, as well as other actions and measures with the aim of preventing ML and FT. The provision was limited to “international groups” and does not define such groups.

32. In August 2019, the National Bank of Serbia (NBS) amended its Guidelines for the application of the provisions of the AML/CFT Law for its obliged entities to provide for group-wide programmes against ML/FT applicable to all branches and majority-owned subsidiaries of a financial group (i.e. not only limited to international groups). The NBS Guidelines apply to all financial institutions covered under the FATF Recommendations and are of a binding nature.

33. The concerns expressed in the 2nd FUR with regard to the narrow scope of the exchange of information (which was limited to unusual, suspicious transactions or activities) are also addressed by the 2019 NBS Guidelines (Section 19a, paragraph 5, bullet points 2 and 3). In particular, group-wide programmes shall contain procedures for obtaining information and data on clients, accounts and transactions from members of the financial group, branches and other business units of members of the group and majority-owned subordinated companies of members of the group, in relation to the performance of the compliance function, internal audit and AML/CFT at the group level, when this is necessary for the purpose of performing activities relating to the prevention of ML/FT.

34. As regards c.18.2(c), the NBS Guidelines (Section 19a, paragraph 5, bullet point 4) provide for appropriate mechanisms to protect the confidentiality of information and data exchanged and used at the level of the group of companies, including the mechanisms to prevent tipping-off.

35. Serbia has made significant progress under R.18 by addressing all outstanding deficiencies under C.18.2. **On that basis, Serbia is re-rated as C with R.18.**

3.2. Progress on Recommendations which have changed since adoption of the MER

36. Since the adoption of Serbia’s 2nd enhanced follow-up report, the FATF has amended R.2. This section considers Serbia’s compliance with the new requirements and progress in addressing deficiencies identified in the MER in relation to this Recommendation.

Recommendation 2 (originally rated LC – no re-rating)

37. In its 5th round MER, Serbia was rated LC with R.2 in a deficiency related to the cooperation and coordination mechanisms in place to combat the financing of proliferation of WMD.

38. The FATF Methodology for assessing R.2 was amended in October 2018 to ensure compatibility of AML/CFT requirements and data protection and privacy rules, and to promote domestic inter-agency information sharing among competent authorities. Consequently, c.2.3 was amended and a new c.2.5 was added.

39. According to the information provided by the Serbian authorities, it can be concluded that Serbia has relevant mechanisms to allow competent authorities to exchange information domestically with each other concerning the development and implementation of AML/CFT policies and activities.

40. At the policymaking level: The Coordination Body for the Prevention of ML and FT regularly reviews the effectiveness of interagency cooperation and information exchange and provides recommendations for improvements.

41. In addition, Serbia also provided case examples to show that issues related to the exchange of information are discussed at meetings of different working groups and task forces.

42. At the operational level: According to paragraph 3 of Article 71 of the AML/CFT, LEAs and supervisors are required to regularly provide the Administration for the Prevention of Money Laundering (APML) with the relevant data and information related to, *inter alia*, administrative sanctions, ML/FT cases, seized/confiscated property.

43. In addition, Serbia provided relevant provisions of agreements signed between the Serbian competent authorities that empower them to the exchange of information.

44. With respect to c.2.5, Serbia explained that, in order to ensure the compatibility of AML/CFT requirements with Data Protection and Privacy rules, formal and informal consultations are carried out, including with the Commissioner for Information of Public Importance and Personal Data Protection. In particular, such consultations include the discussion of draft amendments to the AML/CFT Law to ensure that they are in line with data protection requirements.

45. Serbia meets the requirements of c.2.3 and c.2.5. **On that basis, R.2 remains LC.**

4. CONCLUSION

46. Overall, Serbia has made progress in addressing the TC deficiencies identified in its 5th Round MER and has been re-rated on three Recommendations: Recommendations 6 and 8 (initially rated as PC) are re-rated as LC and Recommendation 18 (initially rated as PC) is re-rated as C. Further steps have been taken to improve compliance with the other Recommendations, including those Recommendations that have been revised since the adoption of the MER, but some gaps remain. Serbia is encouraged to continue its efforts to address the remaining deficiencies.

47. Overall, in light of the progress made by Serbia since its MER was adopted, its technical compliance with the FATF Recommendations has as follows:

Table 2. Technical compliance with re-ratings, December 2019

| | | | | | | | | | |
|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| R 1 | R 2 | R 3 | R 4 | R 5 | R 6 | R 7 | R 8 | R 9 | R 10 |
| LC | LC | LC | LC | LC | LC | LC | LC | LC | LC |
| R 11 | R 12 | R 13 | R 14 | R 15 | R 16 | R 17 | R 18 | R 19 | R 20 |
| LC | C | LC | LC | LC | LC | C | C | LC | C |
| R 21 | R 22 | R 23 | R 24 | R 25 | R 26 | R 27 | R 28 | R 29 | R 30 |
| C | PC | PC | LC | LC | LC | LC | PC | LC | LC |

| | | | | | | | | | |
|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| R 31 | R 32 | R 33 | R 34 | R 35 | R 36 | R 37 | R 38 | R 39 | R 40 |
| LC | LC | LC | LC | LC | LC | LC | LC | LC | PC |

Note: There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

48. Serbia will remain in enhanced follow-up and will continue to report back to MONEYVAL on progress to strengthen its implementation of AML/CFT measures. Serbia is expected to report back at the first Plenary meeting of 2021.

GLOSSARY OF ACRONYMS

| | |
|-------|---|
| AML | Anti-money laundering |
| BO | Beneficial ownership |
| CDD | Customer due diligence |
| CFT | Countering the financing of terrorism |
| DNFBP | Designated non-financial business and professions |
| FI | Financial institutions |
| FT | Financing of terrorism |
| HFIU | Hungarian Financial Intelligence Unit |
| LC | Largely compliant |
| ML | Money laundering |
| NGOs | Non-governmental organisations |
| NPOs | Non-profit organisations |
| NRA | National risk assessment |
| PC | Partially compliant |
| PF | Proliferation financing |
| R | Recommendation |
| STR | Suspicious transaction report |
| TFS | Targeted financial sanctions |
| UNSCR | United Nations Security Council Resolutions |

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Anti-money laundering and counter-terrorist financing measures - **Serbia**

3rd Enhanced Follow-up Report

This report analyses Serbia's progress in addressing the technical compliance deficiencies identified in the FSRB assessment of their measures to combat money laundering and terrorist financing of April 2016.

The report also looks at whether Serbia has implemented new measures to meet the requirements of FATF Recommendations that changed since the 2016 assessment.