MONEY LAUNDERING AND TERRORIST FINANCING ON INTERNATIONAL AND NATIONAL LEGAL LEVEL

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Abstract: This study highlights some of the phenomena of money laundering and terrorist financing at the national and international legal level. It elaborates the meaning of these two phenomena and interprets legal standards in international and internal practice. Special emphasis is put on analysis of our new *Law on Prevention of Money Laundering and Terrorist Financing* adopted on 14 December 2017. The Law was passed after Serbia entered in the procedure of enhanced supervision by The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) of the Council of Europe. This body is in charge of evaluating actions and measures taken by individual states to combat money laundering and terrorist financing. The evaluation focuses on reviewing technical compliance with international standards (International Standards against Money Laundering and Financing of Terrorism and the Proliferation of Weapons of Mass Destruction – the FATF Recommendations of February 2012). Given that Serbia is leading negotiations on accession to the EU, it must harmonize fully its legislation with European standards in this field especially with the 4th Anti-Money Laundering Directive (Directive 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing). Consequently, Serbia will have to take concrete measures from the action plan in order to avoid the appropriate risks that it could bring in the long term to the so-called a black list of countries that do not respect international standards in this area. Any failure in this plan could lead to the suspension in the accession of Serbia to the EU, and to a lengthy slowdown in the process of European integration.

Keywords: *Money laundering, terrorist financing, legal instruments.*

INTRODUCTION

Money laundering is one of the most prevalent of criminal offences whose entire process is directed towards the conversion of illegally acquired money or other assets through various business activities in a legal profit and it's incorporating into legal financial and non-financial flows. Essentially, criminals by placing this capital and illegally acquired funds into legal ones flows conceal its real origin and sources. This in fact makes it difficult to prove the criminal activity from which the "dirty money" came from (Škulić, 2015: 339). This process of "legalization" of financial capital and assets is, as a rule, an accompanying process with globalization and internationalization of the national markets which led to the emergence of new forms of transnational organized crime. Dynamics, adaptability to economic and social changes and

the concealed nature of new forms of organized crime make these actions more difficult to detect, and then to punish. It does not therefore have to be surprised that money laundering, as an accompanying form of organized crime, is rapidly spreading beyond national borders and is a threat to international security (UNDOC, 2018).[1] Hence, it should not be surprising that money laundering as a special form of criminal acts goes hand in hand with the financing of terrorism. However, while money laundering as a criminal activity relates primarily to the use of funds derived from other criminal offences for legal business transactions, the financing of terrorism refers to the collection and distribution of financial funds (legal and illegal), with the purpose of using them for various terrorist acts which in themselves constitute the most serious international crimes that can be manifested in the most diverse aspects - from war and crimes against humanity, to a separate international crime against individuals, groups, states and international organizations. Therefore, it is necessary to pay special attention to the national and international level in order to prevent its negative consequences for state's security and its political and economic systems through various preventive measures and procedures for its detection, suppression and punishment (*US Department of the Treasury, 2017).*

INTERNATIONAL LEGAL INSTRUMENTS ON COMBATING MONEY LAUNDERING AND TERRORIST FINANCING

United Nations (UN)

The international response to money laundering has taken a number of forms, including multilateral treaties, regional agreements and universal counter-laundering measures. In that sense, the UN played a very important role. This universal organisation adopted some international convention in the field of money laundering. Thus, the UN was the first to adopt the *Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances* in 1988 (Vienna Convention, 1988: 95). Although this Convention does not use the term "money laundering", its Article 3(1) (b) stipulates that every state should adopt legislation sanctioning money laundering. In fact, the Convention requires the signatory jurisdictions to take specific actions, including steps to enact domestic laws criminalizing the laundering of money derived from drug trafficking and provide for the forfeiture of property derived from such offenses. The Convention also promotes international cooperation as a key to reducing the global threat of money laundering and requires states to provide assistance in obtaining relevant financial records when requested to do so without regard to domestic bank secrecy laws. This international legal act remains until today a benchmark in identifying counter-laundering measures on an international level.

The basic international legal act of the UN which determines the obligations of states parties in the fight against money laundering is the *Convention against Transnational organized crime* from 2000 (Palermo Convention, 2000: 209). In accordance with the Article 7, the parties to the Palermo Convention should "institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions". In addition, they should ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where ap-

1 The estimated amount of money laundered globally in one year is 2 - 5% of global GDP, or $800 billion - $2 trillion in current US dollars.

propriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering. Also, the state should consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, states are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering. Also they should endeavour to develop and promote cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering. This notion of money laundering has been maintained in the following *Convention against Corruption* adopted by the UN in 2003 (New York Convention, 2003: 41). This Convention has established a special duty of criminalizing money laundering from corruption offenses. Also it has provided for certain conditions regarding the seizure of money or assets acquired through the commission of criminal acts of corruption.

In the legal sphere, the UN also played a decisive role in the regulation of the prevention and suppression of international terrorism. Special conventions concluded under the umbrella of a UN in the form of multilateral agreements are the codification and progressive development in the matter of anti-terrorism. Given the limited space of the study, at this point author shall mention only the *International Convention for the Suppression of the Financing of Terrorism* adopted 1999 which has gone furthest in terms of a comprehensive definition of terrorism. Thus, Article 2(1) (b) of the Convention defines terrorism as: "Any other act intended to cause death or serious bodily injury to a civilian, or any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or the context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act" (UN International Instruments, 2008: 91). From the definition it is clear that the financing of terrorism is just an additional offense connected with terrorist acts (Dimitrijević, 2016: 61-78). Although the definition adopted only for the purposes of this Convention, but not for the purpose to criminalize international terrorism in whole, this definition still has an essential importance because it regulates the issue of criminalization of terrorism in all its forms in which it is manifested and it was sanctioned in the convention previously adopted and listed in the Annex to the Convention.[2] In this respect, the Convention aims to more broadly establish mechanisms for combating the financing of terrorist acts by the prosecution and punishment of their perpetrators. States are obliged to cooperate in the prevention of the offenses set forth in the Convention and that, by preventing illegal activities of persons (physical and legal) who perform or encourages illegal acts of the financing of terrorists, whether direct or indirect, through groups claiming to have charitable, social or cultural goals or through engaging in illicit activities such as drug trafficking or arms trade. This Convention, unlike other anti-terrorist conventions therefore provides the liability of legal persons, which is a complete novelty. Article 5 of the Convention applies

2 The said Annex with anti-terrorist conventions listed is not constant because the Convention provides that the states may be supplemented by other relevant treaties or even excluded some of them because the convention has not been ratified. But despite that, the Convention represents a milestone in the development of international law in area of terrorism, because it is the first treaty definition to refer to the purpose of terrorism as recognized by general international law.

only to legal entities located in the territory of a contracting parties or which are established by their laws. In that sense each states has the opportunity to determine their responsibility towards their own law (criminal, civil or administrative). In addition to these novelties in the regulation of terrorism, the Convention introduced the obligation for parties to take appropriate measures to check the suspicious financial transactions and to provide identification, freezing and seizure of funds allocated for terrorist activities. States are committed to cooperate through the exchange of accurate and verifiable information, and the conduct of investigations related criminal offenses. The Convention establishes the obligation for states to inform the Secretary-General of the UN about the final outcome in action against the perpetrators of criminal acts who forwards this notification to other member states of the Convention.

Council of Europe (CE)

At the regional level, the CE, as an organization in charge of strengthening democracy, human rights and the rule of law by harmonizing public policies and establishing legal standards, adopted in 1990 the *Convention on Laundering, Search, Seizure and Confiscation of Proceedings from Crime* (Strasbourg Convention, 1990). The Strasbourg Convention obliges states parties to adopt laws sanctioning money laundering. Basically, it sets a minimum standard for facilitating international cooperation in terms of investigative assistance, search, seizure and confiscation-measures, which were considered essential for the suppression of various forms of organized crime, including of course, and money laundering. In 2005, the CE adopted a new *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism* which essentially replaced the previous Strasbourg Convention (Warsaw Convention, 2005).[3] Article 9 of the Convention defines the activities that can be used to launder money, such as: "the conversion or transfer of property, knowing that such property is proceeds, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions; the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is proceeds; and, subject to its constitutional principles and the basic concepts of its legal system; the acquisition, possession or use of property, knowing, at the time of receipt, that such property was proceeds; participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article". For the purposes of implementing or applying this legal solutions, state parties may prescribed that it shall not matter whether the predicate offence was subject to its criminal jurisdiction or they may provide that the offences set forth in Convention do not apply to the persons who committed the predicate offence. They may also adopt such legislative and other measures as may be necessary to establish as an offence under its domestic law all or some of the acts referred before, in either or both of the following cases where the offender suspected that the property was proceeds and ought to have assumed that the property was proceeds. In accordance with paragraph 4 of Article 9 of the Convention, each state of the EC may, at the time of signature or when depositing its instrument of ratification, acceptance, approval

3 In addition to the Convention, the Council of Europe has also adopted a special Convention on the Prevention of Terrorism in 2005. It aims to strengthen the efforts of member states to prevent terrorism by establishing as criminal offenses certain acts that may lead to the commission of terrorist offenses (public provocation, recruitment and training) and by strengthening co-operation on prevention both internally (national prevention policies), and internationally (modification of existing extradition and mutual assistance arrangements and additional means). The Convention contains a provision on the protection and compensation of victims of terrorism.

or accession, by a declaration addressed to the Secretary General of the CE, declare that acts referred before (in paragraph 1) applies: "only in so far as the predicate offence is punishable by deprivation of liberty or a detention order for a maximum of more than one year, or for those parties that have a minimum threshold for offences in their legal system, in so far as the offence is punishable by deprivation of liberty or a detention order for a minimum of more than six months; and/or only to a list of specified predicate offences; and/or to a category of serious offences in the national law of the party". Finally, the Convention provides that each party shall ensure that a prior or simultaneous conviction for the predicate offense is not a prerequisite for a conviction for money laundering. Also, that a money laundering judgment should in any case be based on factual evidence that proves that the property was created by some of the referenced offenses mentioned to in paragraph 1 of this article, but without the need to determine which form of criminal offense is concerned. The Warsaw Convention still prescribes the obligation for contracting parties to establish Financial Intelligence Units (FIU), as well as the adoption of the necessary legislative and other measures necessary for the proper implementation of anti-money laundering tasks.

European Union (EU)

The European Anti Money Laundering legal framework has been developed through the provisions of the four directives introduced by the competent authorities of the EU. The directives have been transposed to national legislation in the member states (Jakulin, 2015: 11-21).

The first significant act is the *Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering* (Official Journal, 1991). The First Directive introduced general standards for member states in terms of protecting the financial and non-financial sector from harmful effects of money laundering. The Directive did not limit the scope of its application to drug offences. It underlined that "preventing the financial system from being used for money laundering is a task which cannot be carried out by the authorities responsible for combating this phenomenon without the cooperation of credit and financial institutions and their supervisory authorities".

Ten years later were adopted *Directive 2001/97/EC of the European Parliament and the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering* (Official Journal, 2001). The Second Directive obliged the member states to extend the list of predicate offenses with which money laundering was related. It underlined the "trend in recent years towards a much wider definition of money laundering based on a broader range of predicate or underlying offences", and recalled the necessity of ensuring a wider range of predicate offences in order to facilitate suspicious transactions reporting. The events of terrorist attacks in New York and Washington on 11 September 2012, in addition, had diverted the attention to the fight against terrorism and "from that date on the money laundering Directive was widely considered as part of the fight against terrorism In this regard, the states have also undertaken the obligation to report suspicious transactions to the competent authorities.

Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the financial system for the purpose of money laundering and terrorist financing replaced the previous two directives (Official Journal, 2005). The Third Directive represents a significant progress in terms of the comprehensive fighting money laundering. On the one hand, while highlighting the negative effects of money laundering on the economic and financial systems of the state and the Single Market, on the other hand, this Directive establishes a certain balance between European and world standards because, it includes 40

Financial Action Task Force - FATF recommendations. (Mei&Gao, 2014: 111-120). In this respect, the Third Directive had better effects in the fight against money laundering.

Finally, with the adoption of *Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing*, Third Directive 2005/60/EC of the European Parliament and the Council has also been replaced (Official Journal, 2015). The Fourth Directive builds upon the mechanics employed by the Third Directive and brings about new, innovative changes in combating Anti-Money Laundering (AML) /Counter Terrorism Financing (CTF) across the Union. The Fourth Directive is inspired by the FATF recommendations of 2012, on improving the EU's AML - CTF laws. The fourth Directive extends the effect of not a larger circle of credit and financial institutions and legal and natural persons performing professional activities - the so-called "Obliged Entities". The Directive has expanded the list of offenses related to gambling and direct and indirect taxes. Also, the Fourth Directive expands the list of so-called Politically-Exposed Persons (PEPs) on two categories: domestic and foreign which will now be subject to the same scrutiny (for example, on heads of state, members of parliament, members of supreme courts, ambassadors, members of the governing bodies of the political parties, senior staff in international organizations, etc.). The Fourth Directive requires member states to identify, understand and mitigate the risks on a national level. These national assessments are expected to assist "Obliged Entities" in conducting their own AML risk assessments, where factors such as customer, product and geography must be taken into consideration. These assessments should be recorded and verified, as well as refreshed and updated frequently. The Commission will conduct an assessment of the AML and Terrorist Financing risks to identify cross-border threats. The Fourth Directive imposes the requirement on each EU member states to establish a Financial Intelligence Unit (FIU) to "prevent, detect and effectively combat money laundering and terrorist financing" (Article 32). Such FIUs shall be independently set up as central national units responsible for the transmission and analysis of suspicious transaction reports. Furthermore, states should require "Obliged Entities" to immediately inform the FIU and refrain from carrying out transaction in case of reasonable grounds of funds being the proceeds of criminal activity or are related to terrorist financing and to provide the FIU with any necessary information it may request in accordance with the law. It is important to point out that such disclosure of information by an "Obliged Entity" shall not constitute a breach of any restriction on disclosure of information. The Fourth Directive is in line with the Third Directive and still requires the identification of the "beneficial owner". Beneficial owner is: "any natural person who ultimately owns or controls a corporate entity or other legal entity and as well the natural person on whose behalf a transaction or activity is being conducted."[4] In accordance with the Fourth Directive, member states will be required to hold satisfactory, accurate and current information on the beneficial owners of all corporate and other legal entities (including Anglo-American trust structures) incorporated within their territory in a National Central Register. "Obliged Entities" subject to the Fourth Directive, competent authorities and the FIU will be able to access these interconnected Registers as well as any person or organization demonstrating "a legitimate interest", a term which is not defined and most certainly will raise issues in the future. The Directive has amplified the importance of cooperation between EU and member state level and between FIUs and the Commission. The Directive provides for cross-border cooperation between FIUs of the different member states in order to ensure a fully-integrated system for

4 The essence of the beneficial ownership is precisely not ownership in the ordinary sense of the word, but rather control and exercise of dominant influence. In some instances control and legal title may not lie in the same hands.

combating AML/CFT. Member states of the EU are required to undertake legislative action to implement the Fourth Anti Money Laundering Directive by June 26, 2017.[5]

DOMESTIC LEGAL INSTRUMENTS ON COMBATING MONEY LAUNDERING AND TERRORIST FINANCING

The Criminal Code of the Republic of Serbia

Since terrorism has become a threat to world peace and security, sanctioning its forms in national legal system therefore no longer are limited. This vividly shows the Criminal Code of the Republic of Serbia. According to Article 245 of the *Criminal Code of the Republic of Serbia*, money laundering is defined as a criminal offence committed by a person who conducts the conversion or transfer of property, knowing that the property originates from criminal activity, with the intention of concealing or falsely depicts the unlawful origin of the property, or conceals or falsely presents the facts of the property with the knowledge that such property originates from criminal activity, or acquires, holds or uses assets with knowledge, at the time of receipt, that that property originates from criminal activities. The law provides for imprisonment for the said offence from six months to five years as well as a fine. A qualified form of criminal offence is possible under the law if the amount of money or property is greater than 1.5 million dinars in which case the perpetrator will be punished by imprisonment of one to ten years. (Official Gazette, 2016).[6]

The Law on Prevention of Money Laundering and Terrorist Financing

In addition to the Criminal Code, Serbia has also adopted the new *Law on Prevention of Money Laundering and Financing of Terrorism* (hereinafter: the Law), on December 14, 2017, whose application was postponed until April 1, 2018 (Official Gazette, 2017). The subjects of the Law are actions and measures that are taken to prevent and detect money laundering and terrorist financing. Additionally, the Law regulates the competencies of the Administration for the Prevention of Money Laundering (within the ministry responsible for finance), and other bodies for the implementation of the provisions of this Law. According to Article 2 of the Law, money laundering is considered as: "1) the conversion or transfer of property acquired through the commission of a criminal offense; 2) concealment or misrepresentation of the true nature, origin, location of finding, movement, disposal, ownership or rights in

5 The Joint Committee of the three European Supervisory Authorities (EBA, EIOPA and ESMA – ESAs) launched a public consultation on two anti-money laundering and countering the financing of terrorism (AML/CFT) Guidelines. These Guidelines are meant to promote a common understanding of the risk-based approach to AML/CFT and set out how it should be applied by credit and financial institutions and competent authorities across the EU. The consultation closes in January 2016.

6 According to Article 393 of the *Criminal Code,* the perpetrator of the terrorist financing is the person who directly or indirectly gives or collects funds in order to use it (or knowing that it will be used), completely or in part, for the purpose of committing criminal offences (for example, for executions and killings, for kidnapping and hostage taking, for the use of conventional and non-conventional weapons, as well as for undertaking other criminal acts that could endanger the lives of people, etc.). Also, the preparatory of the terrorist financing is the person who is financing other person or an organized criminal group with the aim of carrying out such criminal offences. According to this provision, the preparatory shall be punished by imprisonment from one to ten years. As with the criminalization of money laundering, the subject of the commission of financing of terrorism under the Criminal Code is subject to confiscation

relation to property acquired through the commission of a criminal offense; 3) acquiring, holding or using property acquired through the commission of a criminal offense". The same article of the Law also defines terrorism financing as "the providing or collecting of property, or an attempt to do so, with the intention of using it, or in the knowledge that it may be used, in full or in part: 1) in order to carry out a terrorist act; 2) by terrorists; 3) by terrorist organizations. Terrorism financing means aiding and abetting in the provision or collection of property, regardless of whether a terrorist act was committed or whether property was used for the commission of the terrorist act". It is also important to note that the Law assumes the definition of a "terrorist act" in accordance with the definitions contained in international agreements whose list is attached to the International Convention for the Suppression of the Financing of Terrorism from 1999. The Law also establishes an alternative definition of this part by stating that the "terrorist act" are any other offense whose purpose is "to cause death or a serious bodily injury to a civilian or any other person not taking an active part in hostilities in a situation the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a government or international organization to do or abstain from doing any act". The Law determines the term "terrorists" as persons who, independently or with other persons, have the intent: "1) attempts to commit acts of terrorism in any way, directly or indirectly; 2) aids and abets in the commission of a terrorist act; 3) has knowledge of an intention of a group of terrorists to commit a terrorist act, contribute to the commission, or assist in the continuation of commission of a terrorist act to a group acting with common purposes".

The law refers to the so-called "obliged entities" (for example: banks; authorized bureaux de change, business entities performing money exchange operations based on a special law governing their business activity; investment fund management companies; voluntary pension fund management companies; financial leasing providers; insurance companies, insurance brokerage companies, insurance agency companies and insurance agents with a license to perform life insurance business, except for insurance agencies and insurance agents for whose work the insurance company is responsible according to law; broker-dealer companies; organizers of special games of chance in casinos and organizers of special games of chance through electronic means; auditing companies and independent auditors; e-money institutions; payment institutions; intermediaries in the real estate or lease; factoring companies; entrepreneurs and legal persons providing accounting services; tax advisors; public postal service operator established in the Republic of Serbia, established in accordance with the Law governing postal services; persons providing the services of purchasing, selling or transferring virtual currencies or exchanging such currencies for money or other property through an internet platform, devices in physical form or otherwise, or which intermediate in the provision of these services; lawyers and public notaries in accordance with the special provisions of this Law). The "obliged entities" are responsible for taking appropriate measures and actions for the prevention and detection of money laundering and terrorist financing (for example: knowing the customer and monitoring of their business transactions; sending information, data, and documentation to the Administration for the Prevention of Money Laundering; designating persons responsible to apply the obligations laid down in this Law: regular professional education, training and development of employees; providing for a regular internal control of the implementation of the obligations laid down in this Law, as well as internal audit if it is in accordance to the scope and nature of business operations of the obliged entity; developing the list of indicators for identifying persons and transactions with respect to which there are reasons for suspicion of money laundering or terrorism financing; record keeping, protection and storing of data from such records; implementing the measures laid down in this Law by obliged entity branches and majority-owned subsidiaries located in foreign countries and implementing other actions and measures). The "obliged entities" should develop and regularly update a money laundering and terrorism financing risk anal-

ysis according to the guidelines adopted by the authority in charge of the supervision of the implementation of this Law. They are also obliged to for a regular internal control of execution of tasks for the prevention and detection of money laundering and terrorism financing, within the scope of the activities undertaken for the purpose of efficient managing of money laundering and terrorism financing risk. The "obliged entity" shall carry out internal control in line with the established money laundering and terrorism financing risk. Likewise, these persons should organize an independent internal audit, whose remit includes a regular assessment of the adequacy, reliability and efficiency of the system for managing money laundering and terrorism financing risk, when a law regulating the operations of the "obliged entity" requires an independent internal audit, or when the obliged entity assesses that, given the size and nature of its business, there is a need for independent internal audit within the meaning of this Law. It is important to point out that according to the Law, the Government has an obligation to establish a coordinating body in order to ensure efficient cooperation and coordination of the tasks of the competent authorities, performed in order to prevent money laundering and financing of terrorism.

Supervision of the proper implementation of this Law should be exercised the Administration for the Prevention of Money Laundering, National Bank of Serbia, Securities Commission, State authority competent for inspectional supervision in the area of foreign and currency exchange operations and games of chance, Ministry competent for supervisory inspection in the area of trade, Bar Association of Serbia, Ministry competent for postal communication, Chamber of Notaries Public. During the supervision, a risk based assessment procedure is conducted. In the event that the said authorities determine the existence of irregularities or unlawfulness in the application of this Law, they are obliged to take one of the following measures: to require that the irregularities and deficiencies be remedied within the deadline it sets, or to file a request to the competent state authority to institute an appropriate procedure or to take other measures and activities within its competences. They also have the ability to temporarily or permanently prohibit the activity of the "obliged entity" in particularly justified cases.

Although the Law uses a lot of precise legal formulations, in some parts, however, contains provisions that are in collision or are not aligned with the provisions of other related Laws.[7] In some cases, however, the Law leaves room for legal gaps,[8] while in other cases, it significantly increases the discretionary powers of public bodies which in itself increases the risks of corruptive actions.[9]

7 For example, when defining the terms "functionaries" and "related persons with the functionary" it differs in relation to the formulation present in The Law on the Anti-Corruption Agency.

8 For example, Article 70 paragraph 1 provides that the Government establishes a coordinating body that proposes measures for the Government to improve the system for combating money laundering and terrorist financing; however, the Law does not regulate the issues of composition, conditions for the election and the duration of the mandate of the members of this body.

9 For example, in Article 76, it is not sufficiently precisely defined in which situations the Administration for the Prevention of Money Laundering will issue to the "obliged entities" a written order to monitor the financial performance of the party, which leaves the possibility of abuse of authority, also, in the case of Article 77, it is not clearly defined in which situations the Administration for the Prevention of Money Laundering start the process of collecting data, information and documentation in relation to certain transactions or persons for whom there are existing reasonable suspicion for money laundering, terrorist financing or previous criminal offense, etc.

CONCLUSIONS

Based on the previous study, it could be concluded that Serbia has made some progress in upgrading its legislative framework and has made some effort to align its legislation to the greatest extent with international standards (Official Gazette, 2017).[10] However, what is still worrying is the fact that the adoption of the new *Law on Prevention of Money Laundering and Financing of Terrorism* came about afterwards the Serbia entered into the procedure of enhanced supervision by the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and Financing of Terrorism (MONEYVAL). This body of the Council of Europe is responsible for evaluating actions and measures taken by individual states to combat money laundering and terrorist financing. The evaluation focuses on reviewing technical compliance with the International Standards against Money Laundering and Financing of Terrorism and the Proliferation of Weapons of Mass Destruction (FATF International Standards, 2012-2018). For Serbia, this assessment was made from December 2014 to April 2016 and MONEYVAL noted that FATF recommendations were not fully met (Fifth Round Mutual Evaluation Report for Serbia, 2016). In the last published report, MONEYVAL concludes that Serbia has made some progress in its anti money laundering and combat terrorist financing (AML/CFT) legal and institutional framework since the previous evaluation. Deficiencies remain with respect to some important FATF Recommendations, especially those dealing with financing terrorism and funding, proliferation financing, targeted financial sanctions, non-profit organizations, financial sanctions, supervision of certain designated non-financial businesses and professions, politically exposed persons, wire transfers and high-risk jurisdictions. According to publicly available information, Serbia accepted these recommendations and incorporated them into amendments to the Law on Accounting, the Law on Auditing and the Law on Factoring (Official Gazette, 2018).[11] Bearing in mind the aforementioned legislative response, the author consider that in the forthcoming period, through the practice of the competent state bodies and institutions, as well as through their evaluation by competent and independent international bodies, will be obtained conditions for a more realistic assessment of the effectiveness of the new systemic framework and the accepted strategic solutions of importance for combating money laundering and terrorist financing. [12]

10 In this regard, the Government of Serbia has also contributed to the adoption of strategically important documents such as *National Strategy against Money Laundering and Terrorism Financing* adopted on 31 December 2014.

11 The amendments to these laws included a predominantly ban on owners and founders of companies, members of the managing bodies of companies, as well as entrepreneurs dealing with accounting, auditing or factoring and for which there is evidence that they have been convicted in a lawsuit or are being prosecuted for criminal offenses which regulate the regulations on the liability of legal entities, i.e. for natural persons in for criminal offenses in the fields of labor, economy, property, judiciary, money laundering, financing of terrorism, public order and peace, legal traffic and official duties.

12 Considering that Serbia seeks to become a full member of the European Union, Serbia will have to increasingly align its legislation with international legal standards related to the suppression of money laundering and terrorist financing, in accordance with its assumed international obligations. In this respect, Serbia will have to develop good cooperation with the most important police organizations in the world such as International Police Organization (INTERPOL), European Union Agency for Law Enforcement Cooperation (EUROPOL) and others, as well as with all relevant AML/CFT international bodies such as: Committee of Experts on the Evaluation of Anti-Money Laundering Measures and Financing of Terrorism (MONEYVAL), the Financial Action Task Force (FATF), the Committee of Experts on Terrorism (CODEXTER), the EGMONT Group, the International Association for Insurance Supervisors (IAIS), Basel Committee on Banking Supervision (BCBS), the WOLFSBERG Group, International Money Laundering Information Network (IMoLIN), etc. Also, Serbia should use the capacities of international financial institutions such as the World Bank and the International Monetary Fund.

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