

Open-ended Intergovernmental Working Group on Prevention¹

Sixth Inter-sessional Meeting (Vienna, 31 August to 2 September 2015)

Information requested from States parties and signatories in relation to integrity in public procurement processes and transparency and accountability in the management of public finances (arts. 9 and 10)

ITransparency of public procurement process in the Republic of Serbia

- **Publishing public procurement notices**

All public procurement notices should be published² on the Public Procurement Portal as well as on the Contracting Authority website. Time limits for submission of bids are calculated from the day of the publication of a call for proposals on the Public Procurement Portal, which is managed by the Public Procurement Office. Access to the Portal is free of charge to all interested parties.

Public procurement procedures having estimated value exceeding 5,000,000 (approx. EUR 41.000) dinars for goods and services, and 10,000,000 (approx. EUR 83.000) dinars for works, respectively, shall also be published on the Portal of Official Bulletins of the Republic of Serbia and Legislation Databases.

According to article 57 of the Law on public procurement ("Official Gazette of RS", No 124/12 and 14/15)³

Method of Publishing Notices⁴

Article 57

Public procurement notices are published on the Public Procurement Portal as well as on the contracting authority's website.

Public procurement notices under Article 55, Paragraph 1, items 2), 4) through 6), 9) and 10) in public procurement procedures having estimated value exceeding 5,000,000 dinars for goods and services, and 10,000,000 dinars for works, respectively, shall also be published on the Portal of Official Bulletins of the Republic of Serbia and Legislation Databases.

- **Publishing of tender documentation on Public Procurement Portal and Contracting Authority web site for all public procurement procedures includes amendments to tender documentation and all additional clarifications.**

It is regulated by articles 62 and 23 of the Law on public procurement ("Official Gazette of RS", No 124/12 and 14/15)

Publication and Submission of Tender Documents

Article 62

¹Please see NOTA BENE at the end of this document

²above RSD 400.000 (approx. EUR 3.300)

³<http://www.ujn.gov.rs/en/propisi/zakon>

⁴Please have in mind that Articles are not fully quoted, but only the Paragraphs of Articles relating to the issue which is explained

Simultaneously with publishing the invitation to bid, contracting authority has to post tender documents on the Public Procurement Portal as well as on its website.

Amendments to Tender Documents

Article 63

Where contracting authority amends tender documents within the deadline for submission of bids, it has to publish these amendments without delay on the Public Procurement Portal and on its website.

Interested persons may request from contracting authority, in writing, additional information or clarifications concerning the preparation of bid up to five days before the expiry of time limit for bid submission.

In case under Paragraph 2 of this Article, contracting authority shall send written reply to the interested person within three days from the day of reception of request and at the same time publish this information on the Public Procurement Portal and on its website.

If contracting authority amends tender documents eight or less days before the deadline for submission of bids, it has to extend the deadline for submission of bids and publish notice on extension of deadline for submission of bids.

After the expiry of time limit set for submission of bids, contracting authority may not amend the tender documents.

- **Public opening of the bids for all public procurement procedures**

It is regulated by article 103 of the Law on public procurement ("Official Gazette of RS", No 124/12 and 14/15)

Opening Bids

Article 103

Opening bids is performed immediately after the end of deadline for submission of bids, on the same day.

Opening bids is public and any interested person may be present.

Only authorized representatives of bidders may be actively involved in the procedure of opening bids.

Contracting authority may decide to exclude the public when opening bids, if necessary to protecting data which are trade secret in terms of the law governing the protection of trade secrets, or data which are secret in terms of the law governing data secrecy and protection.

In the case referred to in Paragraph 4 of this Article, contracting authority makes decision to determine the reasons for exclusion of the public and to decide whether that exclusion of the public refers to representatives of bidders, as well.

- **Publishing all decision on amendments to public procurement contracts on Public Procurement Portal**

It is regulated by article 115 of the Law on public procurement ("Official Gazette of RS", No 124/12 and 14/15)

Amendments to Public Procurement Contract

Article 115

After conclusion of public procurement contract, contracting authority may allow change in price or other essential contractual elements for objective reasons only, which must be clearly and precisely defined in tender documents and contract, or set forth by special regulations.

Where contracting authority intends to amend public procurement contract, it has to make decision on amending contract which has to contain data in accordance with Annex 3L.

Contracting authority shall publish its decision on the Public Procurement Portal and deliver report to the Public Procurement Office and the State Audit Institution within three days from the day of making the decision.

- **Decisions of the Republic Commission for the Protection of Rights in Public Procurement Procedures regarding request for protection of rights submitted by the bidders has to be published on Public Procurement Portal and web site of the Republic Commission**

It is regulated by article 158 of the Law on public procurement ("Official Gazette of RS", No 124/12 and 14/15)

Time Limit for making and Delivering Decision

Article 158

Immediately after having it delivered to parties in the procedure, the decision of the Republic Commission shall be published on its website and posted on the Public Procurement Portal.

- **Data submitted in reports of Contracting Authority about awarded public procurement contracts and executed public procurement procedures should be announced on Public Procurement Portal**

It is regulated by article 132 of the Law on public procurement ("Official Gazette of RS", No 124/12 and 14/15)

Keeping Records and Reports on Public Procurements

Article 132

Contracting authority shall collect and keep records of data concerning public procurement procedures and awarded public procurement contracts.

Contracting authority shall deliver to the Public Procurement Office quarterly reports on:

- 1) conducted public procurement procedures;
- 2) conducted public procurement procedures to which contracting authority did not apply the provisions of this Law;
- 3) conducted negotiated procedures without invitation to bid;
- 4) costs for preparation of bids in public procurement procedures;

- 5) awarded public procurement contracts;
- 6) unit prices for goods, services and works;
- 7) amended public procurement contracts;
- 8) canceled public procurement procedures;
- 9) public procurement procedures with filed request for the protection of rights and canceled procedures;
- 10) execution of public procurement contract.

The Public Procurement Office shall define in detail the contents of reports on public procurements and the manner of keeping records in public procurements.

Contracting authority shall deliver reports referred to in Paragraph 1 of this Article no later than on the 10th day of the month following the relevant quarter.

The Public Procurement Office shall prepare aggregate quarterly reports on conducted procedures and concluded public procurement contracts on the basis of the delivered quarterly reports of contracting authorities, and to post it on the Public Procurement Portal and its website within a month after the expiration of time limit referred to in Paragraph 4 of this Article.

- **Public Procurement Principles defined through the Law on public procurement**

1. Principle of Efficiency and Cost-Effectiveness (Article 9)
2. Principle of Ensuring Competition (Article 10)

Contracting authority is obliged to facilitate as much competition as possible in a public procurement procedure.

Contracting authority may not limit competition, and in particular, it may not prevent any bidder from participating in public procurement by unjustified use of the negotiated procedure or by using discriminatory requirements, technical specifications, or criteria.

3. Principle of Transparency in Public Procurement Procedure (Article 11)
4. Principle of Equality of Bidders (Article 12)
5. Principle of Environmental Protection and Ensuring Energy Efficiency (Article 13)

- **Law on public procurement regulates in which cases Contracting Authority may award contract and in which cases have right to cancel public procurement procedure**

Every decision must state the reasons for contract award, it must be submitted to all bidders and it could be challenged by bidders in defined time limits.

It is regulated by articles 107, 108 and 109 of the Law on public procurement ("Official Gazette of RS", No 124/12 and 14/15)

Conditions for Awarding the Contract

Article 107

Contracting authority shall reject all unacceptable bids after analyzing and evaluating all bids in public procurement procedure.

Contracting authority shall rank acceptable bids by applying the criterion for awarding the contract defined in the call for competition and the tender documents.

After having performed expert evaluation of bids, contracting authority makes decision on awarding the contract, if it has received at least one acceptable bid.

Decision on Awarding the Contract

Article 108

Decision on awarding contract must be reasoned and must specifically contain data from the report on expert evaluation of bids, except for information under Article 105, paragraph 2, points 9) and 10) of this Law.

Contracting authority shall send the decision on awarding contract to all bidders within three days from the day of making such a decision.

Decision on Cancelling Public Procurement Procedure

Article 109

Contracting authority makes decision on cancelling public procurement procedure on the grounds of report on expert evaluation of bids, if the requirements were not met for awarding contract or for decision on concluding framework agreement, or if requirements were not met for making decision on recognizing qualification.

Contracting authority may cancel public procurement procedure for objective and verifiable reasons which could not have been foreseen at the time of initiating the procedure and which make it impossible for initiated procedure to be completed, or due to which contracting authority's need for the relevant procurement ceased, for which reasons it will not be repeated during the same budget year or within the next six months.

Contracting authority shall explain in writing its decision to cancel the public procurement procedure, particularly stating the reasons for cancelling the procedure, and deliver it to the bidders within three days from the day of making such a decision.

- **Requirements for Participation in Public Procurement Procedures**

Law on public procurement defines obligatory requirement for bidders in order to participate in public procurement procedure as well as additional conditions for participation (business, financial, administrative or technical capacities) which could be necessary for specific public procurement. Requirement for bidders must be defined in advance and specified through tender documentation.

It is regulated by articles 75 and 76 of the Law on public procurement ("Official Gazette of RS", No 124/12 and 14/15)

Requirements for Participation in Public Procurement Procedures

Mandatory Eligibility Requirements

Article 75

Bidder in public procurement procedure must prove that:

- 1) It is registered with the competent body, or entered in the appropriate register;
- 2) It or its legal representative have not been convicted for any criminal act as members of an organized criminal group; that it has not been convicted for commercial criminal offence, criminal offence against environment, criminal offence of receiving or offering bribe, criminal offence of fraud;
- 3) It has not been prohibited from performing economic activity by any measure in force at the time of publishing tender notice and/or call for competition;
- 4) It has paid due taxes and other public charges in accordance with laws of the Republic of Serbia or a foreign country if its registered address is in its territory;
- 5) It has valid permit issued by competent body to carry out economic activity which is the subject of public procurement, if such permit is stipulated by special regulation;

Additional Requirements

Article 76

Contracting authority in tender documents also sets additional requirements for participation in public procurement procedure.

Contracting authority in tender documents sets additional requirements for participation in public procurement procedure concerning financial, operational, technical and personnel capacities whenever it is necessary having in mind the subject of public procurement.

Contracting authority sets requirements for participation in the procedure in such way so not to discriminate bidders and to be logically related to the subject of public procurement.

- **Criteria for Awarding Contract known in advance and announced through tender documentation**

It is regulated by articles 84 and 85 of the Law on public procurement ("Official Gazette of RS", No 124/12 and 14/15)

Criteria for Awarding Contract

Determining the Criterion

Article 84

Elements of the criterion on the basis of which contracting authority will award contract must be described and weighted, must not be discriminatory, and must be logically related to the subject of public procurement.

In tender documents, contracting authority shall state, describe and weight the criterion and all elements of the criterion it intends to apply, and in particular methodology for allocation weights for each element of the criterion, which will enable subsequent objective verification of bid evaluation.

When evaluating bids, contracting authority shall apply only the criterion and elements of the criterion contained in tender documents, in the way they were described and evaluated.

Types of Criteria

Article 85

The criteria for evaluating bids are:

- 1) economically most advantageous bid, or
- 2) lowest price offered.

Criterion of economically most advantageous bid is based on various elements of the criterion, depending on the subject of public procurement, such as:

- 1) offered price;
- 2) discount to the pricelist of contracting authority;
- 3) date of delivery or performance of services or works within the minimum acceptable deadline that does not compromise the quality, and the maximum acceptable deadline;
- 4) current costs...

II Deadline for Submission of Bids

Minimum time limits for submission of bids are defined by the Law on public procurement for all procurement procedures (except for negotiated procedure without invitation to bid, in which Contracting Authority determine time limits for applications, but it have to set an adequate time limit to the bidder to submit its application)

According to the Public Procurement Annual Report from 2014, 85% of all public procurement procedures were conducted through open procedure.

It is regulated by article 95 of the Law on public procurement ("Official Gazette of RS", No 124/12 and 14/15)

Time Limits for Submission of Bids in Open Procedure, and of Application in Restricted and Qualification Procedures, and in Competitive Dialogue

Article 95

Time limit for submission of bids in **open procedure**, or for submission of applications in restricted and qualification procedures and in competitive dialogue cannot be shorter than:

- 1) 40 days from the day of published call for competition, where the estimated value of public procurement exceeds the amount referred to in Article 57 of this Law;
- 2) 30 days from the day of published call for competition, where the estimated value of public procurement does not exceed the amount referred to in Article 57 of this Law;

Time limits for submission of bids in **open procedure** or applications in the restricted and qualification procedures and in competitive dialogue cannot be shorter than:

- 1) 30 days from the day of published call for competition, where the estimated value of public procurement exceeds the amount referred to in Article 57 of this Law and where contracting authority published prior indicative notice within time limit not shorter than 30 days, and no longer than six months prior to publishing the call.
- 2) 22 days from the day of published call for competition, where the estimated value of public procurement does not exceed the amount referred to in Article 57 of this Law and where contracting authority published prior indicative notice within time limit not shorter than 30 days, and no longer than six months prior to publishing the call.

III Review of the procurement procedures, including system of appeal

Procedure of the Protection of Rights is defined by articles from 148 till 158 of Law on public procurement. In practice, first degree includes appeal submitted to Contracting Authority and second degree includes appeal submitted to Republic Commission for protection of for the Protection of Rights in Public Procurement Procedures. Republic Commission is independent body founded by the National Assembly of the Republic of Serbia.

Public Procurement Office is a special organization which monitors the application of the Law, initiates misdemeanor procedure when learns in any way of a violation of this Law which can be the grounds for minor offence liability, as well as other jurisdictions defined by article 136 of the Law on public procurement ("Official Gazette of RS", No 124/12 and 14/15).

Auditing of financial reports of Contracting Authorities containing public procurement data is executed by State Audit Institution which is independent body founded by the National Assembly of the Republic of Serbia.

IV Conflict of interest

The Law on public procurement ("Official Gazette of RS", No 124/12 and 14/15) in articles 54, 29 and 30 defines conflict of interest issues.

The Public Procurement Committee

Article 54

Persons that may be involved in conflict of interests for the specific subject of public procurement cannot be appointed to the Committee.

After making decision, members of the Committee shall sign a statement confirming that they are not involved in any conflict of interest in given public procurement.

Prevention of Conflict of Interest

Conflict of Interest

Article 29

Conflict of interests for the purpose of this Law exists where relation between contracting authority and bidder may impact impartiality of contracting authority in making decision in public procurement procedure, namely:

- 1) if contracting authority's representative or with him or her related person is involved in bidders' management;
- 2) if contracting authority's representative or with him or her related person owns more than 1% of bidder's share or stocks;
- 3) if contracting authority's representative or with him or her related person is employed or working with bidder or has business relationship with the bidder;

Prohibition on Awarding Contract

Article 30

Contracting authority cannot award public procurement contract to bidder in case of existing conflict of interest.

Person involved in conflict of interest cannot be a subcontractor for the bidder to whom was awarded contract, or a member of the group of bidders to whom was awarded contract.

V Administrative capacities

According to the Law on public procurement there is no obligation to carry out rotation of employees or similar activities. In order to strengthen public procurement system in the Republic of Serbia, Law on public procurement foreseen professionalization of staff in charge for procurement processes. Professionalization of personnel in Contracting Authorities includes certification of Public Procurement Officers through exam.

By previous Law on public procurement 1.810 Public Procurement Officers were certified. By new Law the certification exam was passed by 293 candidates out of 525 in 4 month period from November 2014 till the end of February 2015.

Public Procurement Officer

Article 134

Contracting authority shall define, in its bylaw on job classification, the position within which will be performed tasks in public procurement activities.

Contracting authority whose overall annual value of planned public procurements exceeds the sevenfold amount referred to in Article 39, Paragraph 1 of this Law, must have at least one public procurement officer.

A public procurement officer is person trained to perform public procurement tasks.

The Public Procurement Office determines the manner and the program for professional training and examination for public procurement officers.

The Public Procurement Committee

Article 54

In public procurement procedures whose estimated value is three times higher than amount in Article 39, Paragraph 1 of this Law, member of the Committee shall be public procurement officer.

Information regarding Transparency and Accountability in Public Finance Management

1. Measures undertaken for ensuring transparent procedures for adoption of the budget.

Budget System Law, via Articles 26 through 48, defines in detail preparation of budgets and financial plans, budget calendar, guidance for development of budget, submitting budget proposals, publication of the budget etc. In its reports published in 2014, the State Audit institution stated that the budget funds beneficiaries in the Republic of Serbia did not plan, execute and record expenditures in prescribed economic classifications, as prescribed by the Budget System Law. This points to the fact that, in addition to good regulations, further work is necessary on implementation of procedures regarding adoption of the budget.

2. Measures which provide that reporting on revenues and expenditures are public, timely and regular, and which ensure sanctions for entities that do not report within prescribed deadline.

Budget System Law, via Articles 74 through 79a, defines budget accounting, responsibility for adoption of budget accounting regulations, submitting reports, calendar for submitting reports and contents of the annual financial statements. This Law, in Article 103, regulates also penalties for entities which do not observe provisions of the stated Articles of the Law.

3. Measures providing that effective accounting and auditing system is in place, and that there is effective supervision over budget revenues and expenditures, with obligatory requirements regarding training and certification of state accountants and auditors.

Current Budget Accounting Decree prescribes (Article 19) that keeping business books, preparing, submitting and publishing of financial statements shall be done by a competent person, who was not convicted for criminal acts which make him unworthy of the conduct of activities in the area of accounting. Also, this Article prescribes that conditions for training professionals and acquiring professional titles shall be defined by the national standard. The national standard has not been adopted. Budget Accounting Decree has been adopted based on the Budget System Law which ceased to be valid. It is necessary to adopt a new regulation on budget accounting, which would, among other things, regulate conditions for keeping business books.

In its reports published in 2014, the State Audit institution stated that:

- certain number of transactions and changes to assets and liabilities are recorded manually in the general ledger of the Treasury, which may represent risk of non-compliance of the stated data with data recorded in business books of the funds' beneficiaries.
- Budget funds beneficiaries of the Republic of Serbia did not harmonize data from their business books in terms of expenditure transactions with transactions recorded in the general ledger, which is kept in the Ministry of Finance - Treasury.
- Accounting and information system was not defined uniformly, which makes harder to keep unified and comprehensive records on financial transactions of public funds beneficiaries, particularly including the balance and changes to assets, receivables and obligations.

Regarding state audit, Law on State Audit Institution regulates, in Article 28, who may conduct audit and conditions for acquiring auditor's titles. This Law states that the State Audit Institution is the highest authority for auditing of public funds in the Republic of Serbia. This Law regulates free access to all requested data and documents, including confidential data and documents necessary for planning and conducting audit.

4. Measures ensuring that effective and efficient risk management and internal control system is in place, with clear separation and description of duties and responsibilities, and description stating how units in charge of risk management and internal control are organized, and how they keep the data.

Budget System Law, in Articles 80 through 83, creates foundations for further definition and establishment of public internal financial control. These articles state that Public Internal Financial Control include the following: financial management and control of public funds beneficiaries, internal audit of public funds beneficiaries and harmonization and coordination of financial management and control and internal audit, exercised by the Ministry of Finance - Central Harmonization Unit.

Development Strategy for Public Internal Financial Control in the Republic of Serbia determined activity plan regarding establishment and development of comprehensive and efficient Public Internal Financial Control.

Minister of Finance adopted a Rulebook on joint criteria and standards for the setting up and functioning of the Public Internal Financial Control, prescribing criteria and standards for the setting up and functioning and reporting on the Internal Financial Control at public funds beneficiaries.

Rulebook on Joint Criteria For Organizing and on Standards and Methodological Instructions for Handling and Reporting on Internal Audit in the Public Sector prescribes joint criteria for organizing and standards and methodological instructions for handling and reporting on internal audit, and internal audit activities at public funds beneficiaries are defined in more detail.

Implementation of financial management and control system is in early stage, while risk management is not applied in a systematic manner. Drafting of bylaws for better definition of managerial accountability is yet to be done. Understanding principles of managerial accountability and internal control standards at

central and local levels and in public enterprises is still poor, and such understanding of senior managers needs to be strengthened also.

In its reports published in 2014, the State Audit institution stated that:

- in majority of audited entities, internal control system has been established in such manner that its functioning does not ensure: operations in compliance with the regulations, internal enactments and contracts; reality and integrity of financial and business reports; and achievement of other objectives in compliance with regulations; as well as that
- internal audit was not organized so that it provides full implementation of regulations, rules and procedures, as well as realization of other objectives which are the reasons for its establishment at all budget funds beneficiaries, according to the Law.

5. Measures ensuring corrective actions, in case of non-compliance with legal requirements and description of procedure for monitoring and implementation.

Budget System Law, in Article 84 through 91, regulate activities and competences of the Budget Inspection. Articles 103 and 104 of this Law regulate penalties in case of failure to observe provisions of the Budget System Law, as well as conducting misdemeanor proceedings. It is necessary to develop and define in more detail the function of Central Budget Inspection, in compliance with the requirements of PIFC.

Information requested from States parties and signatories in relation to measures to prevent money-laundering (art. 14)

1.

- Regulatory and supervisory regime in the Serbian AML CFT system has been established in line with international standards, at the first point with FATF standards and initiatives as well as standards and procedures of other relevant international organizations, like UN, OECD etc.

Standing Coordination Group (hereinafter: SCG) has been established in April 2009, and it is competent to supervise National Strategy for Combating Money Laundering and Terrorism Financing. SCG is dealing with ML and FT sectors on-going analysis of complete AML/CFT system. The state authorities relevant for prevention and detection of money laundering and terrorism financing whose representatives are engaged in work of the SCG are as follows: Ministry of Justice, Prosecutor's Office for Organised Crime, Ministry of the Interior, Ministry of Foreign Affairs, Security Information Agency, Military Security Agency, Military Intelligence Agency, Customs Administration, National Bank of Serbia, Securities Commission, Tax Administration, Administration for the Prevention of Money Laundering (APML), Ministry of trade – Trade Inspection, Anti Corruption Agency...

Article 82 Para 1 of the LAW ON THE PREVENTION OF MONEY LAUNDERING AND THE FINANCING OF TERRORISM (AML CFT Law):

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

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

- **Article 4 of the AML CFT Law:**

For the purposes of this Law, obligors shall include the following:

- Banks;
- Licensed bureaux de change;
- 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 licence to perform life insurance business;
- Persons dealing with postal communications;
- Broker-dealer companies;
- Organisers of special games of chance in casinos;
- Organisers of games of chance operated on the Internet, by telephone, or in any other manner using telecommunication networks;
- Auditing companies;
- Licensed auditors.

- 'Obligors' shall include both entrepreneurs and legal persons exercising the following professional activities:

- Intermediation in real-estate transactions;
- Provision of accounting services;
- Tax advising;
- Intermediation in credit transactions and provision of loans;
- Factoring and forfeiting;
- Provision of guarantees;
- Provision of money transfer services

Article 8 Para 1 of the AML CFT Law:

Unless otherwise stipulated in this Law, the obligor shall be obliged to:

- 1) Identify the customer;
- 2) Verify the identity of the customer based on documents, data, or information obtained from reliable and credible sources;
- 3) Identify the beneficial owner and verify the identity in the cases specified in this Law;

- 4) Obtain information on the purpose and intended nature of a business relationship or transaction, and other data in accordance with this Law;
- 5) Regularly monitor business transactions of the customer and check the consistency of the customer's activities with the nature of the business relationship and the usual scope and type of the customer's business transactions.

Article 20 of the AML CFT Law:

- (1) The obligor shall identify the beneficial owner of a legal person or person under foreign law by obtaining the data in Article 81, paragraph 1, item 14 of this Law.
- (2) The obligor shall obtain the data referred to in paragraph 1 of this Article by inspecting the original or certified copy of the documentation from the official public register, which may not be issued earlier than three months before its submission to the obligor. The data may be also obtained by directly inspecting the official public register in accordance with the provisions of Article 15, paragraphs 4 and 6 of this Law.
- (3) If it is not possible to obtain all the data on the beneficial owner of the customer from the official public register, the obligor shall obtain the missing data by inspecting the original or certified copy of a document and other business documentation submitted by a representative, procura holder, or empowered representative of the customer. If, for objective reasons, the data cannot be obtained as specified in this Article the obligor shall obtain it from a written statement given by a representative, procura holder or empowered representative of the customer.
- (4) The obligor shall, based on a money laundering and terrorism financing risk assessment, identify the beneficial owner of a legal person or person under foreign law in such a manner as to know the ownership and management structures of the customer and to know the beneficial owners of the customer.

Article 77 Para 1 of the AML CFT Law:

- (1) The obligor and lawyer shall keep the data and documentation that are obtained under this Law concerning a customer, established business relationships with a customer and executed transactions for a period of 10 years from the date of termination of the business relationship, executed transaction, or the latest access to a safe deposit box or entry into a casino.

Article 12 Para 1 of the Rulebook on Methodology for Implementing Requirements in Compliance with the Law on the Prevention of Money Laundering and Terrorism Financing:

The obliged entity and lawyer shall keep electronic records of data and information obtained according to the AML/CFT Law and the present Rulebook, as well as of documentation relating to such data and information, chronologically and in a manner which allows for adequate access to such data, information and documentation.

Article 37 Para 1 of the AML CFT Law:

- (1) The obligor shall furnish the APML with the data laid down in Article 81, paragraph 1, items 1 to 4 and 8 to 11 of this Law in case of any cash transaction amounting to the RSD equivalent of EUR 15,000 or more, immediately after such transaction has been carried out and no later than three business days following the transaction.

(2) The obligor shall furnish the APML with the data laid down in Article 81, paragraph 1 of this Law whenever there are reasons for suspicion of money laundering or terrorism financing with respect to a transaction or customer, before the transaction, and shall indicate, in the report, the time when the transaction is to be carried out. In a case of urgency, such report may be delivered also by telephone, in which case it shall subsequently be sent to the APML in writing, but no later than the next business day.

Article 58 Para 1 of the AML CFT Law: If there are reasons for suspicion on money laundering or terrorism financing in relation to certain transactions or persons, the APML may initiate a procedure to collect data, information and documentation as provided for in this Law, as well as carry out other actions and measures within its competence also at a written and grounded initiative by a court, public prosecutor, police, Security Information Agency, Military Intelligence Agency, Military Security Agency, Tax Administration, Customs Administration, National Bank of Serbia, Securities Commission, Privatization Agency, competent inspectorates and State bodies competent for state auditing and fight against corruption.

Article 59 Para 1 of the AML CFT Law: If the APML assesses, based on the obtained data, information and documentation, that there are reasons for suspicion of money laundering or terrorism financing in relation to a transaction or person, it shall inform the competent State bodies thereof in writing, in order that they may undertake measures within their competence, and send them the obtained documentation.

Article 61 Para 1 of the AML CFT Law: The APML may request data, information and documentation required for the prevention and detection of money laundering or terrorism financing from the competent bodies of foreign countries.

Article 62 Para 1 of the AML CFT Law: The APML may send data, information and documentation regarding transactions or persons with respect to which there are reasons for suspicion of money laundering or terrorism financing to State bodies of foreign countries competent for the prevention and detection of money laundering and terrorism financing at their written and grounded request or on its own initiative, under the condition of reciprocity.

- The Administration for the Prevention of Money Laundering has been established as an administrative body within the ministry competent for finance. Regardless of that, APML has distinct core functions from Ministry of Finance: collect, process, analyse and disseminate to the competent bodies the information, data and documentation obtained as provided for in the AML CFT Law and shall carry out other tasks relating to the prevention and detection of money laundering and terrorism financing in accordance with the AML CFT Law. The Administration for the Prevention of Money Laundering acts as a Serbian FIU.

- The Administration for the Prevention of Money Laundering, as a Serbian FIU, has been a Egmont Group member since 2003. Republic of Serbia is represented in the Committee of CoE - MoneyVal, one of the FSRBs.

Article 67 Para 1 of the AML CFT Law: Any natural person crossing the state border carrying bearer negotiable instruments amounting to EUR 10,000 or more either in RSD or foreign currency, shall declare it to the competent customs body.

Article 12a of the AML CFT Law:

(1) Payment and collection service provider shall collect accurate and complete data on the originator and include it in the form or message accompanying the incoming or outgoing wire transfer, regardless of the currency. Such data shall accompany the wire transfer throughout the entire payment chain, regardless of whether intermediaries participate in the payment chain and regardless of their number.

(2) Data referred to in paragraph 1 of this Article include:

- name and surname of the wire transfer originator
- address of the wire transfer originator
- account number of the wire transfer originator or the unique identifier

(3) If obtaining the data concerning the address of the wire transfer originator is impossible, the payment and collection service provider shall obtain, instead of the address, some of the following data:

- unique identifier;
- place and date of birth of the wire transfer originator;
- national ID number of the wire transfer originator

- Activities in the last few months: FATF Public statement on high-risk and non-cooperative jurisdictions was put on the APML's website on 27 October 2014, as well as on 2 March 2015. Also, MoneyVal Public Statement on Bosnia and Herzegovina of 12 December 2014 was put on website on 26 December 2014, and was also sent to financial sector.

- The APML has signed MOUs with: National Bank of Serbia, Customs Administration, Tax Administration, State Prosecutor Office, Securities Commission, National Security Authority, Anticorruption Agency, Business Register Agency.

Article 64 of the Law of State Administration (*Official Gazette of the RS*, No. 79/05, 101/07, 95/10 и 99/14: State authorities are obliged to cooperate regarding all issues of common interests and to exchange information and notices required to work. State authorities establish common bodies and project groups to execute tasks that require involvement of few state authorities.

The National Strategy Against Money Laundering and Terrorism Financing (2015 - 2019) was adopted on 31 December 2014 by Government of the Republic of Serbia. A specific feature of this National Strategy is that it highlights the importance of cooperation among all the competent authorities given that the AML/CFT system can only be effective through such cooperation, including through information and expertise sharing, access to databases, and setting-up of task forces.

Article 55 Para 1 of the AML CFT Law: In order to assess whether there are reasons for suspicion of money laundering or terrorism financing in relation to certain transactions or certain persons, the APML may request data, information and documentation required to detect and prove money laundering or terrorism financing from the State bodies, organizations and legal persons entrusted with public authorities.

- **Ensure the agencies involved in anti-money laundering can cooperate and exchange information at national and international levels**

Republic Public Prosecutor's Office has signed Memoranda of cooperation with Administration for the Prevention of Money Laundering and Privatization Agency. Also, on the basis of a verbal agreement, cooperation with the Anti-corruption Agency was established; liaison officers were determined regarding prosecution's and agency's competence.

According to Article 64 of the Law of State Administration, state authorities are obliged to cooperate regarding all issues of common interests and to exchange information and notices required to work. State authorities establish common bodies and project groups to execute tasks that require involvement of few state authorities.

In that regard, representative of the Republic Public Prosecutor's Office is one of the members of Permanent Coordinating Group which consists of representatives of state authorities and institutions involved in anti-money laundering.

- **Demonstrate use of mutual legal assistance, administrative or judicial cooperation in cases of money laundering among law enforcement, judicial authorities and financial regulatory authorities**

Republic Public Prosecutor's Office has signed 19 MoU with respective Prosecutor's Offices from EU and world regarding organised crime, money laundering and other serious criminal offences. That way, direct cooperation between prosecutors is established and less time is needed to gather and exchange necessary information.

In cases in which no ratified international treaty exists or certain subject matters are not regulated under it, mutual assistance in criminal matters is governed by the Law on mutual assistance in criminal matters of the Republic of Serbia.

Mutual assistance shall include:

1. extradition of defendants or convicted persons;
2. assumption and transfer of criminal prosecution;
3. execution of criminal judgments;
4. other forms of mutual assistance.

The authorities competent to exercise mutual assistance are national courts and public prosecutor's offices specified by law.

Requests for mutual assistance are submitted in the form of letters rogatory.

Letters rogatory and other annexed documents of the national judicial authority shall be transmitted to foreign authorities through the Ministry of Justice. At the request of the requested state, letters rogatory and other supporting documents shall be transmitted through diplomatic channels.

Other forms of mutual assistance include:

- 1) conduct of procedural activities such as issuance of summonses and delivery of writs, interrogation of the accused, examination of witnesses and experts, crime scene investigation, search of premises and persons, temporary seizure of objects;
- 2) implementation of measures such as surveillance and tapping of telephone and other conversations or communication as well as photographing or videotaping of persons, controlled delivery, provision of simulated business services, conclusion of simulated legal business, engagement of under-cover investigators, automatic data processing;
- 3) exchange of information and delivery of writs and items related to criminal proceeding pending at the requesting party, delivery of data without the letter rogatory, use of audio and video-conference calls, forming of joint investigative teams;

- 4) temporary surrender of a person in custody for the purpose of examination by the requesting party's competent body.

If the circumstances of the case justify it, joint investigative teams may be formed by an agreement between the competent authorities of the Republic of Serbia and a foreign country.

Under the condition of reciprocity, national judicial authorities may transmit, without letter rogatory, information relating to known criminal offences and perpetrators to the competent authorities of the requesting party if this is considered to be of use to criminal proceedings conducted abroad.

NOTA BENE: Given the broad scope of competences encompassed by the respective provisions of UNCAC as well as institutions involved in its implementation in Serbia, this contribution might be amended, in which case the amendments will have been communicated to UNODC in a timely fashion, i.e. prior to the commencement of the Sixth Inter-sessional Meeting.