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Screening report

Serbia

Chapter 4 – Free movement of capital

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I. CHAPTER CONTENT

As regards capital movements and payments, Member States must remove, with some exceptions, all restrictions on movement of capital both within the EU and between Member States and third countries. The relevant Treaty provisions governing the freedom of capital movements are enshrined in Articles 63 to 66 of the Treaty on the Functioning of the European Union (TFEU). The definition of the different types of movement of capital relies on Annex I of Directive 88/361/EEC. Relevant case-law of the European Court of Justice and Commission Communications 97/C220/06 and 2005/C293/02 provide additional interpretation of the above Articles.

The liberalisation of payments is also an essential requirement for the free movement of capital. Regulation EC (No) 924/2009 on cross-border payments regulates the charges levied by an institution on electronic payment transactions in euro and other notified Member State currencies (e.g. credit transfers, direct debits, card payments, ATM withdrawals). Directive 2007/64/EC on payment services aims to facilitate payment transactions within the EU, creating a legal framework for the single "domestic" payments market. The e-money Directive 2009/110/EC amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC, provides the legislative framework for the taking up, pursuit and prudential supervision of the business of electronic money and creates a single market in e-money services.

The key piece of legislation in the field of anti-money laundering is Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (amended by Directives 2007/64/EC, 2008/20/EC and 2009/110/EC) together with its implementing measures specified in the Directive 2006/70/EC. This legislation is being replaced by the new anti-money laundering Directive (Directive (EU) 2015/849) that shall be implemented by 26 June 2017. It requires entities subject to the Directive to apply customer due diligence and to report suspicious transactions, as well as to take relevant supporting measures, such as record keeping, training and establishing internal procedures. Furthermore, Regulation (EC) No 1889/2005 governs cash entering or leaving the EU and Regulation (EC) No 1781/2006 (to be replaced by Regulation (EU) 2015/847) stipulates that transfers of funds must be accompanied by meaningful information on the payer in order to ensure full traceability of funds.

In order to successfully combat financial crime, Member States need to make sure that effective administrative and enforcement capacity is in place, including co-operation between supervisory, law enforcement and prosecutorial authorities.

II. COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY

This part summarizes the information provided by Serbia and the discussion at the screening meeting.

Serbia indicated that it can accept the *acquis* regarding free movement of capital and that it does not expect any difficulties to implement the *acquis* by the time of accession.

II.a. Capital movements and payments

Serbia stated that its regime of capital movements and payments is largely liberalised and is in line with the EU regime.

Serbia informed that the Law on Foreign Exchange Operations, last amended in 2012, represents the main legal framework for all types of current and capital transactions. According to Serbia, the Law provides full liberalisation of current balance of payment transactions in accordance with Article 62 of the Stabilisation and Association Agreement (SAA). Foreign companies in Serbia have the same legal treatment as local ones. Serbia informed that liberalisation of capital movements will be achieved gradually depending on the economic, monetary and balance of payments situation in the country. Serbia confirmed that long-term capital transactions have been significantly liberalised while short-term transactions and deposit activities have been partially liberalised.

Serbia explained that the remaining restrictions, with regard to capital movements, especially short-term capital transactions, are the following:

- Residents may not execute payments for the purpose of buying foreign short-term securities. Non-residents may not make payments for the purpose of buying short-term securities in Serbia. This restriction does not apply to banks that invest in accordance with the bylaw, as well as to domestic investment and voluntary pension funds and insurance companies that invest in accordance with the laws governing their operations.
- Residents - branches of foreign legal entities and natural persons may not borrow short-term credits and loans. Residents (other than banks) may not borrow short-term financial credits and loans in foreign currency if they are not intended for imports of goods and services, performance of construction works abroad and refinancing or if they are intended for financing the agricultural production or exports of goods and services with the repayment period shorter than three months.
- Residents - entrepreneurs, branches of foreign legal entities and natural persons may not grant financial loans to non-residents. Residents - legal entities may not grant financial loans to non-residents if the resident is not the majority owner of the non-resident – borrower.
- Residents - branches of foreign legal entities and natural persons may not issue warranties and other means of collateral under foreign borrowing by residents abroad, while residents - entrepreneurs, branches of foreign legal entities and natural persons may not issue warranties and other means of collateral under credit operations between two non-residents abroad. Resident legal entities may not issue warranties and other means of collateral under credit operations between two non-residents abroad if the resident is not the majority owner of the non-resident borrower.

In accordance with Article 63 of the Stabilisation and Association Agreement – which entered into force on 1st September 2013 - Serbia indicated its commitment to ensure free movement of capital relating to portfolio investment and financial loans and credits with maturity shorter than a year by 1st September 2017. Serbia underlined that liberalisation before the SAA deadline of the short-term capital transactions with respect to EU Member States or to third countries, could threaten the sustainable macroeconomic and financial stability of the country in terms of budget and balance of payments.

In addition to limitations on short term capital transactions, Serbia explained that capital movements are subject to authorization procedures in certain cases. Resident legal entities may keep foreign exchange on accounts with banks abroad, subject to approval by the National Bank of Serbia (NBS) for specific purposes.

Serbia stated that its new Law on Insurance, adopted in December 2014, is partially aligned with the Articles 63 and 65 of the TFEU. A resident may pay insurance premiums to a non-resident insurance company only on the basis of insurance of risks for which Serbia does not provide insurance, as well as for risks that are expressly foreseen in a relevant decree of Serbia (e.g. insurance of property that is the subject to foreign economic relations, marine aviation and transport risks). The Insurance Law provides that domestic insurance companies can deposit and invest funds abroad up to 25% of their core capital in accordance with its Article 137 and with Article 30 of the Foreign Exchange Law and subject to prior authorisation by the National Bank of Serbia. In addition, foreign legal and natural persons may incorporate a joint stock insurance company in Serbia. Serbia informed that the new Law on Insurance will enable residents to conclude insurance contracts with insurance companies domiciled in the European Union from the date of accession of Serbia.

Serbia stated that its *voluntary pension funds* regulation is partially aligned with the Articles 63 and 65 of the TFEU. The Law on Voluntary Pension Funds and Pension Schemes and the decision regulating investments of the voluntary pension funds' assets include both quantitative and qualitative limits on investments that were introduced with the aim of maintaining diversification, security and liquidity of the funds' assets. Prescribed limitations relate to domestic investments, as well as to investments abroad, where a total investment of the funds' assets abroad may not exceed 10% of the funds' assets. Serbia informed that full alignment with the *acquis* regarding the operations of voluntary pension funds and their investment activities abroad will be achieved after the liberalisation of short-term capital movements.

Serbia stated that there are no limitations on cross-border investments in the sector of financial services. Nevertheless, when it comes to prospectuses, foreign issuers should get the approval of the Securities Commission for securities already offered and admitted to trading in the home country. In addition, a confirmation from the competent authority of the home country is necessary, stating that the securities are of the same class as the securities publicly offered or admitted to trading in the issuer’s home country.

Nevertheless, Serbia explained that article 38 of the Rulebook on Investment Funds provides for a limitation on investment of open-ended investment fund assets abroad. According to this limitation, 100% of assets can be invested only in liquid securities which are regularly traded on a regulated market in EU Member States, OECD countries and neighbouring countries, under the condition that at least 50% of such investment must be in securities admitted to official listings in those countries. Article 123 of the same Rulebook stipulates that the same provisions apply for investments of closed-ended funds while in accordance with Article 74 of the Law these provisions do not apply to private funds. Serbia informed that there is no privileged access for public institutions to investment funds.

As regards acquisition of *real estate* by nationals of EU Member States, Serbia informed that its Constitution entitles foreign natural or legal persons to ownership right on real estate in accordance with the law or international treaties. More specifically, the Law on Basis of Ownership and Proprietary Relations provides that foreign persons who conduct a business activity in Serbia are entitled, under conditions of reciprocity, to ownership rights on real estate in Serbia which is necessary to conduct that activity. A foreigner who does not conduct a business activity in Serbia is entitled, under requirement of reciprocity, to own an apartment or residential building under the same conditions as a Serbian citizen. Exceptionally the Law can prescribe that foreigners are not entitled to ownership rights on real estate in certain areas of Serbia. Long-term lease (i.e. from 5 to 30 years) can be transferred to foreigners. A foreign natural person is also entitled to ownership on real estate through inheritance under the same requirements as a Serbian citizen. Foreigners can transfer ownership rights through legal transactions to Serbian citizens and to foreigners who are entitled to ownership rights. Under the Law on Planning and Construction, a foreign natural person is entitled to erect buildings in Serbia if he is the owner of the parcel where the building will be erected. Under the Law on Agricultural Land, a foreign natural or legal person cannot own agricultural land; only domestic natural or legal persons can purchase agricultural land. Under the Law on Privatisation, the purchaser in a privatisation process can be either a domestic or a foreign natural or legal person. Overall, the Serbian legislation on real estate acquisition is partially aligned to the *acquis*. Serbia stated that in accordance with article 72 of the SAA it will ensure that its legislation becomes gradually compatible with the *acquis*.

Serbia informed that a *Law on Privatisation* entered into force on 29 June 2001 and expired on 12 August 2014. It was replaced by another one as from 13 August 2014 for which the adoption of by-laws is pending. According to the Law, mandatory privatisation of socially-owned property should be completed by 31st December 2015. Privatisation is being carried out and controlled by the Privatisation Agency. Serbia explained that it applies various methods of privatisation such as sale of capital, sale of assets, strategic partnership and transfer of capital free of charge. Serbia informed that it has launched the restructuring and privatisation of 512 state-owned enterprises. Serbia explained that privatised companies are only subject to the control exercised by the Privatisation Agency that the contractual obligations of the buyer are respected. When a shareholder remains in privatised companies, Serbia explained that he does not enjoy special rights (e.g. golden shares) exceeding the usual rights arising from the ownership of capital. Regulations governing specific fields of activity such as mining, energy defence and sports that prescribe certain elements of the contract as mandatory require prior approval by the government.

Serbia informed that it has concluded *bilateral investment treaties* with 52 countries. These treaties include some restrictions to the transfer of capital related to investments. Nevertheless, Serbia stated that it accepts all obligations arising from EU Regulation 1219/2012 on this subject. Serbia explained that with regard to capital movement, EU nationals and third countries' nationals are treated equally as non-residents.

In terms of *safeguard measures* relating to capital movements and payments, Serbia explained that in the event of major disruptions in the balance of payments resulting from excessive inflow or outflow of capital, which cause or threaten to cause serious difficulties in the implementation of monetary policy and foreign exchange rate policy, the Government on the proposal of the National Bank of Serbia may adopt safeguard measures to be applied for the

duration of disruptions on account of which they were adopted, but no longer than six months following their adoption. Serbia may also impose safeguard measures with a view to implementing the sanctions of the United Nations, or other international organisations of which Serbia is a member, that are imposed against other countries.

With regard to the *institutional framework*, Serbia explained that the Ministry of Finance is responsible for preparing primary legislation in the area of foreign exchange operations, while, for institutional investors (i.e. insurance companies and voluntary investment funds), the National Bank of Serbia and the Ministry of Finance both can prepare the primary legislation-. Secondary legislation is adopted by the National Bank, which is also in charge of the supervision of the implementation of the legislation in these areas. The Securities Commission is an independent authority which has the power to adopt regulations to implement the Laws on Capital Market, Takeovers and Investment Funds. Serbia considers that it has sufficient capacity to carry out its tasks. The institutions in charge of liberalisation of real estate are the Ministry of Justice and the Ministry of Construction, Transport and Infrastructure. Serbia considered that further continuous professional development and training of employees is needed, mainly through technical assistance, in order to strengthen its administrative capacity in the field of capital movements.

II.b. Payment systems

Serbia's legislative framework in the area of payment systems is defined by the Law on the National Bank of Serbia, the Law on Payment Transactions, the Law on Foreign Exchange Operations, relevant provisions of the Financial Services Consumer Protection Law and the Law on Payment Services, adopted in December 2014. Its implementation is further specified by the Decision on Capital and Capital Adequacy of Payment and Electronic Money Institutions, the Decision on Governance and Internal Control Systems of Payment and Electronic Money Institutions and on Safeguarding Funds of Payment Service Users and Electronic Money Holders and the Decision on the Contents of Registers of Payment Institutions and Electronic Money Institutions, adopted in June 2015.

The Law on Payment Transactions regulates payment transactions in dinars as well as obligations of banks and their clients. The National Bank of Serbia has adopted a number of relevant by-laws.

The Law on Foreign Exchange Operations and relevant by-laws adopted by the National Bank of Serbia regulate international payment transactions. International payment transactions are performed in foreign currency or in dinars through a bank. Residents may also perform international payment transactions through a foreign e-money institution for the purposes of making payment and collection under electronic purchase or sale of goods and services. State agencies, organisations and other budget beneficiaries of Serbia perform international payment transactions through the National Bank of Serbia. The National Bank of Serbia maintains a single register of the foreign exchange accounts of legal entities and entrepreneurs.

The Financial Services Consumer Protection Law defines the provisions concerning the protection of the rights and interests of users of services offered by banks. The National Bank of Serbia is the responsible authority for the supervision of payment services in accordance with Article 39 of the Law on Payment Transactions, Article 45 of the Law on Foreign

Exchange Operations and Article 49 of the Law on the Protection of Financial Services Consumer Protection.

According to Serbia, the newly adopted Law on Payment Services comprehensively regulates the types of payment services, payment service providers and the rights and obligations in connection with the provision of payment services, supervision of the implementation of the provisions of this law and penalties. The law allows for the establishment of new payment services providers, such as payment institutions and electronic money institutions. A special part of the Law on payment services is dedicated to the provisions that will enter into force after the accession of Serbia to the European Union. These provisions govern deadlines for the execution of cross-border payment transactions and payment transactions in euros or another currency of a Member State. They also refer to the cross-border provision of services, or business opportunities for payment institutions and electronic money institutions from Member States to Serbia and vice versa, as well as cross-border cooperation between supervisory authorities in Serbia and the EU in order to improve the performance of activities of supervision. With this law and the related secondary legislation, Serbia considers that its legislation is largely aligned with the Payment Services Directive 2007/64/EC, the Electronic Money Directive 2009/110/EC and aligned the provisions of the Settlement Finality Directive 98/26/EC and its amendments relating to the payment system. Serbia also claims that the adoption of the Payment Services Law would also create the conditions for further preparation regarding the application of Regulation (EC) 924/2009 and Regulation (EU) 260/2012 after Serbia's accession to the EU. Serbia informed that amendments to a certain number of laws already in force are necessary for the implementation of the Law on Payment Services.

As regards the institutional framework, the National Bank of Serbia and the Ministry of Finance are the competent authorities in the area of payments systems. Serbia informed that further strengthening of the administrative capacity of the National Bank of Serbia will be necessary, notably through various forms of technical assistance and cooperation with the central banks of countries in the region and the European Union.

II.c. Fight against money laundering

Serbia informed that its legal framework in this area is Article 231 on money laundering and Article 393 on financing of terrorism of its Criminal Code, the Law for the Prevention of Money Laundering and Terrorism Financing and the Rulebook of the methodology concerning the implementation of the anti-money laundering (AML) and counter-financing of terrorism (CFT).

Serbia described the provisions of the above-mentioned laws and rulebook which, amongst others: refer to definitions of money laundering and terrorism financing; designate reporting entities (the "obligors") and explain their obligations; describe the procedures and the measures that reporting entities need to take for customer due diligence (CDD); set out limitations for carrying on business with a customer; describes the conditions under which a reporting agency can conduct simplified or enhanced CDD; define the politically exposed persons and the CDD measures that need to be conducted for these persons; prohibit business transactions with shell banks; and describe the obligor's obligation to report suspicious transactions and to keep data. Serbia also described the exceptions to this obligation to

provide information (e.g. no reporting in cases of tax payments). Serbia explained that it is in the process of revising the sections on economic crime and crimes against official duty of the Criminal code, which covers money laundering, with the intention of ensuring that the offences can be more effectively prosecuted. It should be completed by mid-2016.

Serbia stated that its legislation is largely aligned with the *acquis*. Serbia informed that it is analysing the fourth AML Directive (EU) 2015/849 adopted in May 2015 with a view to further aligning its legislation with it.

Serbia presented its institutional framework for AML and CFT, as well as the respective competences of State authorities. *Inter alia*, it informed that in 2002 it established the Administration for the Prevention of Money Laundering (APML) which is in charge of collection, analysis and dissemination of relevant information. Serbia described the conditions under which the APML is empowered to request data from the obligors and from other State bodies; to monitor a financial transaction; to temporarily suspend a suspicious transaction; to disseminate information on suspicious transactions to other competent State bodies; to launch a procedure or take measures at the request of other State authorities (e.g. courts, public prosecutor, tax administration, National Bank of Serbia, Security Information Agency, Military Intelligence Agency). In terms of international cooperation, Serbia informed that the APML is member of the Egmont Group since 2003 and has concluded 44 Memoranda of Understanding. In 2013 Serbia exchanged information with the Financial Information Units (FIU) of other countries, in particular with the FIUs of Montenegro, Croatia and the former Yugoslav Republic of Macedonia.

Other authorities in charge of supervision over the Law for the Prevention of Money Laundering and Terrorism Financing include the National Bank of Serbia (for banks, insurance companies and voluntary pension funds), the Securities Commission (for banks, broker-dealer companies, and investment funds), the Tax Administration, the Ministry of Trade, Tourism and Telecommunications (for legal persons for intermediation in trade in real estates) and the Bar Association (for lawyers). In the Ministry of Interior, there is also a Section for Suppressing Money Laundering, in the Department for Suppressing Organised Financial Crime. It conducts crime investigations in cases of suspected money laundering criminal offences. The 26 Offices of the Higher Prosecutor are responsible for prosecuting money laundering offences.

In 2014, the APML received 587 reports of suspicious transactions relating to suspicion of money laundering or terrorism financing, 552 of which were submitted by banks, whereas the rest were submitted by other reporting entities (five by insurance companies, one by the Post of Serbia, nine by auditors, three by bureaux de change, three by leasing companies and thirteen by lawyers). In addition, money remitters submitted 3,828 suspicious transactions involving 644 persons. In the same period, the APML received 198,659 cash transaction reports.

In 2014, the APML worked on a total of 589 cases: 445 new analytical cases opened at the initiative of other state authorities, supervisors, at the requests of foreign FIUs and on the basis of analysis of suspicious reports submitted by obligors, while 145 cases from previous years (new information and data on persons who had already been subject to analysis in the APML). The Unit for Financial Investigation sent a total of 246 requests to the APML.

The police submitted to the Prosecutor's Office a total of 65 crime referrals against 143 suspects related to 123 suspected money laundering crimes in 2012. In 2013, the police submitted 8 crime referrals against 41 suspects on suspicion that they committed 25 criminal money laundering offences. In 2014, the police filed 11 criminal reports against 39 persons on suspicion that they committed 26 criminal money laundering offences. In 2012, three persons were convicted, none in 2013 and one in 2014.

APML has 27 employees. Serbia stated that its institutional set-up, and the cooperation and coordination mechanisms among relevant authorities are adequate. However, on the practical side, Serbia underlined that several factors prevent the APML to use its statutory functions in full. The lack of adequate office space is a persistent problem. Therefore, any other measure, such as the recruitment of 40 staff provided for under the current Rulebook on internal organisation and systematisation of jobs, depends on the resolution of this issue. Serbia stated that the current staff is facing excessive workload, staff turnover is high and budgets are too restricted. Cooperation between APML, the Prosecutor's office and the Ministry of the Interior – but also with the supervisory authorities of the relevant sectors - is key to reach the full benefits in fighting money laundering and terrorist financing. Therefore, Serbia proposes to develop greater coordination and cooperation between the competent authorities for supervision, financial intelligence, investigation, prosecution for ML and TF and asset recovery.

Finally, in 2013 Serbia carried out a national risk assessment of money laundering, using the World Bank methodology. Following this exercise, Serbian informed that it adopted in December 2014 a National Strategy against money laundering and financing of terrorism for the period 2015-1019. The objective of the strategy and the relevant action plan is to better understand money laundering and terrorism financing risks and vulnerabilities in Serbia; to develop better coordination and cooperation among the competent authorities for supervision, investigation and prosecution of money laundering and terrorism financing; to improve the quality of suspicious transactions reporting from the reporting entities; to increase the number of money laundering and terrorism financing identified and investigated cases; to improve the administrative capacity of the APML and its staff qualifications. In its Financial Investigation Strategy, which was adopted in May 2015 and covers the crime of money laundering, Serbia informed that it plans to revise its AML/CFT legislation in order implement the most recent changes of international standards (FATF).

III. ASSESSMENT OF THE DEGREE OF ALIGNMENT AND IMPLEMENTING CAPACITY

Overall, Serbia has reached a satisfactory level of alignment and applies a substantial part of the *acquis* in the fields covered by this chapter. However, Serbia needs to continue its efforts in order to fully align with the *acquis* and implement it. Overall, Serbia's administrative capacity in this area is uneven, and needs to be strengthened in certain areas, such as on AML and CFT**.**

III.a. Capital movements and payments

Serbia has a good understanding of the *acquis* in the area of capital movements and payments. It has achieved a satisfactory level of alignment with the *acquis* in this area. Serbia's regime is largely liberalised, notably in the areas of direct investment, long-term capital transactions, inward and outward portfolio investments and other operations in securities and financial loans and credit operations. A certain number of restrictions, notably on short-term capital transactions remain. Full alignment is still needed in the areas of short-term capital transactions, with the complete removal of the remaining restrictions on portfolio investment, other operations in securities and financial loans and credit operations. In accordance with Article 63 of the SAA, Serbia shall ensure as from 1 September 2017 free movement of capital relating to portfolio investments and financial loans and credits with maturity shorter than a year.

There are restrictions for the acquisition of real estate by foreigners, including by EU nationals regarding in particular the acquisition of agricultural land. In accordance with Article 63 of the SAA, Serbia is committed to adjust its legislation by 1 September 2017 with regard to the acquisition of real estate in its territory by EU nationals to ensure the same treatment with Serbian citizens.

Overall, Serbia complies with its obligations in the above-mentioned areas undertaken in the framework of the SAA.

Serbia confirmed that it does not intend to introduce special rights in companies to be privatised. Serbia stated that it will harmonise with the *acquis* in the above areas before accession.

No major problems are foreseen during the negotiations in the area of capital movements and payments.

III.b. Payment systems

The current legal framework of Serbia on payment services has reached a good level of alignment with the *acquis*. With the adoption of the Law on Payment Services, Serbia has largely aligned its legislation with the Payment Services Directive 2007/64/EC, with the Electronic Services Directive 2009/110/EC and with the provisions of the Settlement Finality Directive 98/26/EC relating to the payment system.

Further alignment on the use of the term "bank" in the Serbian Law on Payment Services is required as Directive 2007/64/EC refers to "credit institutions". The methods for calculation of own funds as outlined in Article 8 of the Directive 2007/64/EC are not yet carried across in the Serbian Law on Payment Services.

It should be borne in mind that Directive 2007/64/EC is currently being revised with a new Directive to be adopted in the near future with an enhanced supervisory role for competent authorities. The capacity of the competent authorities will need to be strengthened accordingly.

III.c. Fight against money laundering

Serbia's legislation in the area of anti-money laundering has a satisfactory level of alignment with the *acquis*. Serbia is encouraged to continue its efforts in order to fully align with the

current *acquis* and implement it. In this context, Serbia is preparing to align with the most recent amendments of the international standards of Financial Action Task Force (FATF) which is incorporated in the *acquis* through the new EU anti-money laundering Directive (Directive (EU) 2015/849). Through its Financial Investigation Strategy, Serbia has listed actions to align with the FATF recommendations.

Cooperation between the various bodies dealing with anti-money laundering needs to be improved. The administrative capacity of the relevant implementing bodies, in particular the capacity of the APML which is largely understaffed, has to be strengthened.

The level of reporting of suspicious transactions remains low, in particular outside the banking sector, and especially in the real estate sector, currency exchange offices and insurance companies. An effective system for monitoring and analysing cash transactions needs to be put in place and made operational. Judiciary and law enforcement services need better training to handle money laundering cases.

The National Strategy against money laundering and terrorism financing focusses on the main points and issues that need to be addressed in order to improve the enforcement capacity of Serbia in the area of AML and CFT. Serbia's preparedness in the field of fight against money laundering should be read in connection with its performance in applying relevant aspects covered by the *acquis* under chapter 24-Justice, freedom and security.