

INSTRUCTION ON IMPLEMENTING THE LAW ON ASSET FREEZING WITH THE AIM OF PREVENTING TERRORISM AND FINANCING OF PROLIFERATION, IN TERMS OF PREVENTING FINANCING OF PROLIFERATION

Introduction

The purpose of the Guidelines is to alert and assist the obliged entities and supervisory authorities referred to in the AML/CFT Law in identifying, detecting and preventing financing of proliferation.

The obliged entities referred to in previous paragraph are primarily those in financial sector, especially banking sector, which is particularly vulnerable and risky for financing proliferation of weapons of mass destruction (hereinafter referred to as: proliferation). This does not diminish the extent of caution and preventive actions to be taken by other obliged entities from financial sector and DNFBPs if proliferation extends to include manufacturing, trading, service and financial activities.

At the same time, guidelines, as a form of instruction, should contribute to the information campaign for general public on the importance of undertaking actions and measures in identifying, detecting and preventing financing of proliferation.

The purpose of the Guidelines is to assist obliged entities with bringing policies and procedures in better compliance with legislation.

CONTENT OF THE GUIDELINES

In terms of the content, the purpose of the Guidelines is following:

- 1. What is proliferation of weapons of mass destruction?**
- 2. What is financing of proliferation?**
- 3. What international obligation regulates proliferation and financing of proliferation?**
- 4. Financial measures and possible difficulties encountered by obliged entities related to identification when preventing the financing of proliferation**
- 5. What risk assessment and measures should one pay attention to when detecting and preventing financing of proliferation?**
- 6. Lists of designated persons and a procedure for designating a person related to proliferation**
- 7. How are activities suspected of being related to the financing of proliferation reported to the APML?**
- 8. Indicators for identifying financing of proliferation.**

1. WHAT IS PROLIFERATION OF WEAPONS OF MASS DESTRUCTION?

Proliferation of weapons of mass destruction is development, manufacture, acquisition, possession, stockpiling, delivery, brokering, trans-shipment and transfer of weapons of mass destruction, as well as of their means of delivery.

In a broader sense, the above refers to nuclear, chemical or biological weapons. It implies the use of technology, equipment, computer software, services or provision of expertise.

2. WHAT IS FINANCING OF PROLIFERATION?

Financing of proliferation includes provision of funds in all its forms, or provision of all types of financial services aimed in part or in whole at development, manufacture, acquisition, possession, stockpiling, delivery, brokering, trans-shipment and transfer of weapons of mass destruction, as well as of their means of delivery.

3. WHAT INTERNATIONAL OBLIGATION REGULATES THE ISSUE OF PROLIFERATION AND FINANCING OF PROLIFERATION?

- UN SC Resolution 1540 (2004) on preventing illegal production and proliferation of nuclear, chemical and biological weapons of mass destruction and their means of delivery, as well as all successor resolutions (such as UN SC Res 1673, 1810, 1977, 2325);
- UN SC Resolution 1718 (2006) on Democratic People's Republic of Korea, as well as all successor resolutions (such as 1874, 2087, 2094, 2270, 2321, 2356, 2371, 2375, 2397);
- UN SC Resolution 2231 (2015) on Islamic Republic of Iran.

The Guidelines also relate to all future resolutions on the prevention of financing of proliferation of weapons of mass destruction.

4. FINANCIAL MEASURES AND POSSIBLE DIFFICULTIES ENCOUNTERED BY OBLIGED ENTITIES RELATED TO IDENTIFICATION WHEN PREVENTING FINANCING OF PROLIFERATION

4. Financial measures to be undertaken in terms of effective prevention and combat are based on notion that proliferation is subject to the process of manufacturing, trade and control, which consequently results in a range of documents, of which commercial documents are of particular importance as they are the basis for financial transactions of payments for technology, equipment, computer services and professional expertise. Therefore, financial institutions, primarily banks, effect payment orders for business activities and should make sure to pay *special* attention to clients that might be involved in

proliferation. Other relevant documents based on which project financing could be approved and conducting, credit arrangements, insurance and other legal and financial actions should not be neglected either.

Difficulties in identifying financing of proliferation from obliged entities' perspective are as follows:

- A client of a financial institution (usually bank) can possibly show a growing trend of purchase and sale of certain goods (equipment, materials), which is opposite to the production and business policy; a dilemma might arise in respect of dual use items that can be used both for civil and military purposes. Such equipment is normally difficult to identify, technical knowledge is required and it is usually listed in commercial documents using plain, unequivocal language, although such an item has dual use (for example, a pump or nitroglycerine).
- Trading network is usually complex in its structure, as this is sensitive and problematic equipment, whereby traces of origin are disguised, documentation on actual parties to the business is forged. In the same way financial flows aim to disguise actual originators and beneficiaries of funds using predominantly front and shell companies the beneficial owner of which is difficult to establish.
- It is possible to encounter completely legal sources of funds used to pay for WMD, with an intricate chain of intermediaries in shipping the equipment to disputed and unknown parties in business activities (provider and purchaser - user).
- It can happen in reality that companies and individuals which are beyond any suspicion are completely engaged in WMD business, which is usually compensated by high consultant's fees, all of which can aggravate the identification of the true purpose and intended nature of the business as well as of other participants in the business.

5. RISK ASSESSMENTS AND MEASURES TO PAY ATTENTION TO IN DETECTING AND PREVENTING OF PROLIFERATION FINANCING

Risk assessment and analysis that obliged entities should pay attention to (especially financial institutions - banks):

Geographic risk of the country:

Countries of origin of goods for production and proliferation of WMD are countries under sanctioning regime;

Countries that do not apply or insufficiently apply FATF AML/CFT standards:

Risk of a client:

Pay attention if a client is involved in the supply chain of equipment and other products that might indicate WMD, in purchase and sale of dual use items (for civil and military purposes), which can be regarded as WMD or military equipment; pay attention to military research activities, especially if there is a link with high risk countries (jurisdictions) engaging in the production or trade in WMD.

Risk of products and services

There is an increased risk in delivery of goods and services, especially if they originate from countries under sanctioning regime or jurisdictions with higher risk for proliferation;

Transactions for various services (representations, fees, certificates, project documentation, project financing etc), as well as insurance transactions related to countries of higher risk for proliferation of WMD or transactions indicating proliferation activities;

Deliveries of sensitive products (equipment), especially those that can have dual use (civil and military), especially products particularly sensitive for possible production of WMD;

Undertaking certain measures/paying necessary attention

- Enhanced CDD should be undertaken for high risk transactions and persons involved in such transactions
This is within obliged entities' competence and is in line with AML/CFT Law; obliged entities are required to adopt and enhance CDD measures if such a need arises on the basis of CDD measures and risk analysis.
- Pay increased attention to commercial transactions and activities surrounding business activities which supposedly indicate potential production of or provision of services for proliferation (ie, products and anything surrounding final stage of production, insurance, crediting - all of it observed through available financial and other documentation;

6. LIST OF DESIGNATED PERSONS AND A PROCEDURE FOR DESIGNATION OF PERSONS BROUGHT IN CONNECTION WITH PROLIFERATION**List of designated persons****Lists of designated persons of United Nations Security Council and of other international organizations**

A designated person means natural person, legal person, or a group or an association of citizens, whether registered or not, designated and listed as a terrorist, terrorist organisation or terrorist financier, and listed on the list of persons linked to proliferation of weapons of mass destruction and special lists based on: relevant United Nations Security Council Resolutions or acts of international organizations of which Serbia is a member, proposal of competent state authorities or a justified request of a foreign state.

Designated person shall also cover any natural and legal person linked, within the meaning of this law, with proliferation of weapons of mass destruction.

Natural or legal persons linked to designated persons and acting on behalf of or upon instruction by, or otherwise controlled by designated persons may be close family members of the designated person (marital or extramarital partner, parents, brothers and sisters, children, adopted children and step-children, and their marital or extramarital partners), natural and legal persons having a business relationship with designated persons and on which the designated persons have, directly or indirectly, a dominant influence in terms of business operations and decision-making, and other natural and legal persons having an interest-based relationship with designated persons.

List of designated persons is found on the website of the APML:

www.apml.gov.rs, under the title *Terrorism Financing*

Section:

Prevention of proliferation

UN SC Consolidated sanctions list

<https://www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-list>

UN SC Res 1718 list - DPRK

<https://www.un.org/sc/suborg/en/sanctions/1718/materials>

UN SC Res 2231 (2015) list - Iran

<http://www.un.org/en/sc/2231/list.shtml>

7. HOW ARE ACTIVITIES SUSPECTED OF BEING RELATED TO THE FINANCING OF PROLIFERATION REPORTED TO THE APML?

In case of recognizing suspicious activities indicating financing of proliferation and designated persons (as referred to in item 6), the obliged entities referred to in the APML/CFT Law, as well as all members of public, private and public institutions shall provide information with such content on the e-mail address uprava@apml.gov.rs.

In line with the Law, the APML notifies through its website persons required to apply measures for the prevention of proliferation on any change to the UN SC lists of designated persons, without delay.

On the APML's website there is a search tool for a UN SC List of designated persons (<http://www.unsearch.apml.gov.rs/>). The search tool enables all interested natural and legal persons to check quickly and simply if they have contacts, and/or business cooperation with this category of persons, so that they could undertake actions and measures from the Law in time.

Developing this kind of tool has enabled a direct search of UN SC Designated persons lists, referring to the Resolution 1267 (1999), 1989 (2011) and 2253 (2015) on ISIL, Al-Qaida and related individuals, groups of persons, commercial and other entities; to the Resolution 1718 (2006) and successor resolutions on DPRK, as well as to the Resolution 1988 (2011) on the Taliban and related individuals, groups of persons, commercial and other entities.

The search tool itself is designed in such a manner that any natural and legal person may enter at least one piece of information that they have and check whether they have a contact with a designated person. At the same time, the one who does the search must select a group of users they belong to (banks, insurance companies, lawyers, notaries, NPO, endowments...). If the search criterion is too broad, the tool will show all the persons included by the search (for example, all the persons with the same name, etc), showing at the same time all available data for those particular persons (name, surname, alias, date of birth, country of origin, date of designation, the Resolution referring to the person).

Data on designated persons is automatically downloaded on a daily basis from relevant UN sanctions list, which produces correct and timely results when using the search tool.

In addition to cooperation agreements with the authorities above, which define areas of cooperation, the APML also has an agreement with the Serbian Chamber of Commerce, on the website of which there is a link to the list of designated persons, as well as useful information related to the prevention of proliferation. All of it is intended for awareness raising in all stakeholders, undertaking timely actions, preventing consequences and strengthening effectiveness of the system. With the same aim, business associations in financial and non-financial sectors, which further the interests of the obliged entities from the AML/CFT Law, are informed.

8. INDICATORS FOR POTENTIAL IDENTIFICATION OF PROLIFERATION FINANCING

For the purpose of better identification of potential suspicion of proliferation financing, the text to follow contains indicators that may facilitate identification and raise caution during the analysis by an obliged entity, as referred to in the AML/CFT Law.

The first group of indicators is more detailed and they are *red flag* indicators - special attention indicators, classified on the basis of parameters recognized in commercial documentation (client, transaction - payment orders, country of origin of goods and shipments from problematic countries, etc).

In addition, there is a list of indicators recommended by FATF, as a wider list of Money Laundering of indicators, which is a reference list for identifying potential suspicions of proliferation financing. This list has been taken from *FATF Guidance on Counter Proliferation Financing*.

RED FLAG INDICATORS RELATED TO:

CLIENT

- A client or its business partners is on the list of designated persons issued by the UN SC and other international organizations of which Serbia is a member;
- Client's business activities are inconsistent with a usual business profile, especially when it comes to activities (involving goods or services) which indicate WMD ;
- Client engages in provision or delivery as well as in purchase and sale of dual use items (civil-military), possibly for manufacturing and proliferation of WMD; especially if the origin of goods is related to jurisdictions suspected of manufacturing and proliferation of WMD;
- Client engages in military business or research and has business links with jurisdictions suspected of manufacturing and proliferating of WMD;
- The knowledge of a client is rather unclear, vague and imprecise and the end user of goods or services is difficult to recognize; if the client is requested to provide additional information, there is no response or it refuses to cooperate;
- A new customer requests or enquires about complex financial payment instruments, such as letter of credit (delayed payments, transferrable) whilst still awaiting approval of its account and business cooperation;
- Client uses complex payment instruments and disguises money flows by using layered letters of credit and front companies, usually registered in off-shore jurisdictions, acting as intermediaries and brokers.

TRANSACTIONS

- Transactions related to dual use items, possibly used in manufacturing and proliferation of WMD or for military purposes, are suspected to be illegal;
- Transactions of natural or legal persons with jurisdictions suspected of being involved in manufacturing and proliferation of WMD;

- Transactions between intermediary companies, whereby one can conclude that there are the same managers or owners behind them, aiming to conceal actual participants in the business and transactions;
- Transactions in favour of beneficiaries in countries which in all logic cannot manufacture, export and import dual use items or goods to be used in manufacturing WMD;

JURISDICTIONS AND OTHER PARAMETERS RELATED TO TRADE AND FINANCE (PAYMENTS FOR GOODS, COMMERCIAL DOCUMENTATION, PROJECT FINANCING, LETTERS OF CREDIT)

- Countries that do not apply or insufficiently apply FATF AML/CFT standards;
- Countries cooperating with countries under UN sanctioning regime related to proliferation;
- Deliberate insertion and involvement of third countries, intermediaries into the supply chain, especially in terms of dual use items;
- Countries where the industry manufactures and trades in dual use items and WMD to a significant extent;
- The end user of goods supposedly used for proliferation is unknown;
- Accompanying documents do not correspond to the actual (true) state in terms of declared value of goods, invoices (inflated/deflated), commodity lists, forwarding services, and especially, financial documentation;
- Complex project financing and credit arrangements, which indicate *intricate and complex structure* of business activities and parties involved, whereby it is difficult to see the line between operational agents and end users;
- Significant participation of intermediaries in the transfer of goods and financial operations when it comes to dual use items or goods supposedly used in manufacturing and proliferation of WMD;
- Data in payment orders are not in line with data from available documentation (customs declaration, invoices, commodity list), and/or the payment order contains unusual items or specifications, which is incongruous to/opposite from the intended purpose;

FATF List of Indicators

ANNEX A: SITUATIONS INDICATING POSSIBLE ACTIVITIES OF PROLIFERATION FINANCING

1. The 2008 FATF Typologies Report on Proliferation Financing, which was published in FATF Guidance in February 2018, provides a starting point to assist both public and private sectors in understanding the threats and situations where customers, transactions and other account activities may be involved in proliferation financing. Since then, proliferators have developed more sophisticated networks to hide such activities. Some of these recent proliferation financing-

related sanctions evasion techniques have been captured in the reports submitted by the UN Panel of Experts (PoE) to relevant UNSC or UNSCR committees.

2. In addition to the FATF typologies and UN PoE reports, national authorities and academic institutions have identified a number of situations below, which may indicate possible proliferation financing activities. However, information contained in this Annex is not uniquely determinative of proliferation financing, and proliferation financing activities may share similar traits with money laundering (especially trade-based money laundering) and terrorist financing activities.

A. Elements that may indicate proliferation financing

(a) Indicators of possible proliferation financing as mentioned in Annex 1 to the 2008 FATF Typologies Report on Proliferation Financing (with updated order)

(i) Transaction involves a person or entity in a foreign country of proliferation concern.

(ii) Transaction involves a person or entity in a foreign country of diversion concern.

(iii) The customer or counter-party or its address is similar to one of the parties found on publicly available lists of “denied persons” or has a history of export control contraventions.

(iv) Customer activity does not match business profile, or end-user information does not match end-user’s business profile.

(v) A freight forwarding firm is listed as the product’s final destination

(vi) Order for goods is placed by firms or persons from foreign countries other than the country of the stated end-user.

(vii) Transaction involves shipment of goods incompatible with the technical level of the country to which it is being shipped, (e.g. semiconductor manufacturing equipment being shipped to a country that has no electronics industry).

(viii) Transaction involves possible shell companies (e.g. companies do not have a high level of capitalisation or displays other shell company indicators)

(ix) Transaction demonstrates links between representatives of companies exchanging goods i.e. same owners or management.

(x) Circuitous route of shipment (if available) and/or circuitous route of financial transaction.

(xi) Trade finance transaction involves shipment route (if available) through country with weak export control laws or weak enforcement of export control laws.

(xii) Transaction involves persons or companies (particularly trading companies) located in countries with weak export control laws or weak enforcement of export control laws

(xiii) Transaction involves shipment of goods inconsistent with normal geographic trade patterns (e.g. if the country involved normally exports/imports that kind of goods).

(xiv) Transaction involves financial institutions with known deficiencies in AML/CFT controls and/or domiciled in countries with weak export control laws or weak enforcement of export control laws.

(xv) Based on the documentation obtained in the transaction, the declared value of the shipment was obviously under-valued vis-à-vis the shipping cost.

(xvi) Inconsistencies in information contained in trade documents and financial flows, such as names, companies, addresses, final destination, etc.

(xvii) Pattern of wire transfer activity that shows unusual patterns or has no apparent purpose.

(xviii) Customer is vague/incomplete on information it provides, reluctant to provide additional information when queried.

(xix) New customer requests letter of credit transaction awaiting approval of new account.

(xx) Wire instructions or payment from or due to parties not identified on the original letter of credit or other documentation.

B. Additional potential indicators of sanctions evasion activity mentioned in third-party reports (e.g. UN PoE Reports, academic research)

(i) Involvement of items controlled under WMD export control regimes or national control regimes.

(ii) Involvement of a person connected with a country of proliferation concern (e.g. dual citizenship), and/or dealing with complex equipment for which he/she lacks technical background.

(iii) Use of cash or precious metals (e.g. gold) in transactions for industrial items.

(iv) Involvement of a small trading, brokering or intermediary company, often carrying out business inconsistent with their normal business.

(v) Involvement of a customer or counter-party, declared to be a commercial business, whose transactions suggest they are acting as a money-remittance business.

(vi) Transactions between companies on the basis of “ledger” arrangements that obviate the need for international financial transactions.

(vii) Customers or counterparties to transactions are linked (e.g. they share a common physical address, IP address or telephone number, or their activities may be coordinated).

(viii) Involvement of a university in a country of proliferation concern.

(ix) Description of goods on trade or financial documentation is non-specific, innocuous or misleading.

(x) Evidence that documents or other representations (e.g. relating to shipping, customs, or payment) are fake or fraudulent.

(xi) Use of personal account to purchase industrial items.