

Pursuant to Article 39, paragraph 6, and Article 46, paragraph 1 of the Law on Foreign Exchange Operations (RS Official Gazette, Nos 62/2006, 31/2011, 119/2012, 139/2014 and 30/2018) and Article 15, paragraph 1 of the Law on the National Bank of Serbia (RS Official Gazette, Nos 72/2003, 55/2004, 85/2005 – other law, 44/2010, 76/2012, 106/2012, 14/2015, 40/2015 – CC decision and 44/2018), the Executive Board of the National Bank of Serbia issues the following

D E C I S I O N

ON DETAILED CONDITIONS AND MANNER OF CONDUCTING SUPERVISION OF EXCHANGE OPERATIONS

Basic provisions

1. This Decision prescribes detailed conditions and manner of conducting supervision of the exchange operations of:

- 1) resident economic entity providing postal services and performing exchange operations pursuant to a separate law governing its activity (hereinafter: public postal operator);
- 2) resident legal entities and entrepreneurs which, in accordance with the Law on Foreign Exchange Operations (hereinafter: Law) received the authorisation to perform exchange operations (hereinafter: authorised exchange dealers).

Supervision of exchange operations shall be carried out in accordance with the law governing banks and regulation governing detailed conditions and manner of conducting bank supervision and special bank audits.

2. The purpose of supervision from Section 1 hereof shall be to verify and determine the legality and regularity of performing exchange operations in accordance with the Law, NBS regulation governing conditions and manner of performing exchange operations and other foreign exchange regulations, as well as the agreement on performing exchange operations that the public postal operator, and/or authorised exchange dealer (hereinafter: supervised entity), has entered into with (a) bank(s).

3. The concepts *exchange office*, *currency exchange counter*, *software* and *exchange dealer's working day*, within the meaning of this Decision, have been defined in the Law and the NBS regulation governing the conditions and manner of performing exchange operations.

Working day, within the meaning of this Decision, is any day other than Saturday, Sunday and public and religious holiday declared non-working in the Republic of Serbia.

Conditions and manner of conducting supervision

4. The NBS shall conduct supervision referred to in Section 1 hereof (hereinafter: supervision) in the following manner:

1) off-site – by collecting, monitoring, verifying and analysing the reports and other documents submitted by the supervised entity in accordance with the Law and NBS regulations, and/or upon its request and/or other documents and information in possession of the NBS;

2) on-site – by supervising the performance of exchange operations in an exchange office and currency exchange counter and at other locations that are related to the performance of exchange operations, and/or in all premises of the supervised entity and in the premises of an entity which is in property, management or business relations with the supervised entity, by examining business books, agreements and other documents concerning exchange operations of the supervised entity, and/or operations of that entity.

When conducting supervision the NBS shall cooperate with the Tax Administration, customs authorities, and/or other competent authorities. This cooperation shall mean, in particular, exchange of data, findings and information required for the supervision.

Off-site supervision

5. The NBS shall continuously verify the legality and regularity of the performance of exchange operations based on the reports that a supervised entity delivers in accordance with the regulation from Section 3, paragraph 1 hereof, other documents delivered by the supervised entity in accordance with the Law and NBS regulations, and/or upon NBS request and other documents, and/or data in possession of the NBS.

6. The NBS shall make a report on the completed off-site supervision if the supervision established illegalities, and/or irregularities in the performance of exchange operations by the supervised entity.

The procedure after the report on off-site supervision is made shall be subject to the provisions of this Decision referring to on-site supervision.

On-site supervision

7. On-site supervision shall be conducted by the NBS staff appointed by the decision of the governor or a person authorised by the governor (hereinafter: authorised persons).

The decision referred to in paragraph 1 of this Section shall particularly specify: the name of the supervised entity, subject of supervision and date of the commencement of supervision.

The decision from paragraph 1 of this Section may be amended during the course of on-site supervision.

On-site supervision of an entity commences with the issuance of the decision from paragraph 1 of this Section. This decision shall be delivered to the representative, and/or other authorised person of the supervised entity or other person employed by the supervised entity who happens to be in its business premises when the NBS staff arrive in those premises.

The NBS may hire other persons to attend on-site supervision for the purposes of providing adequate expert support to authorised persons conducting supervision.

8. A supervised entity shall enable unhindered supervision to an authorised person and shall cooperate with that person.

A supervised entity shall enable access to the exchange office and foreign currency counter as well as other locations, to an authorised person for supervision purposes. It shall also provide for inspection business books, documents and data required by that person – in paper or electronically and shall enable unhindered and full access to equipment, data bases, computer programmes and software used, and/or other information system resources.

If documents and data from paragraph 2 of this Section have been prepared in a language other than Serbian, the NBS may require from the supervised entity to have those documents and data translated into Serbian by a court interpreter at their own cost.

Representatives, and/or responsible and authorised persons of the supervised entity shall provide to the authorised person, at his request answers to the questions asked, in writing and within the deadline set in the request and they shall also, when the need arises, provide evidence corroborating those answers.

9. When conducting on-site supervision, an authorised person may take the following actions:

- 1) access the exchange office and foreign currency counter, and other locations connected with the performance of exchange operations, and/or other premises of the exchange dealer;
- 2) request copies of documents concerning the subject of supervision and/or technical support for access to electronic business books;
- 3) inspect business locations and/or business premises, objects, devices and equipment in connection with the subject of supervision;
- 4) establish the identity of the person assigned with the tasks that are under supervision, and the identity of the exchange dealer's responsible persons;
- 5) communicate directly with responsible persons and workers performing exchange operations directly for the purpose of obtaining information and explanations regarding the subject of supervision;
- 6) request refraining from any action that is contrary to the provisions of the Law and other regulations.

10. In the course of on-site supervision of an entity, the NBS and/or the authorised person may temporarily seize from the supervised entity foreign exchange, foreign currency cash, cheques, securities, dinars, objects, official documents and papers, and documentation – if there is reasonable doubt that they were used for the perpetration of a criminal offence or misdemeanour or were intended for such use or originated from the perpetration of a criminal offence or misdemeanour.

The authorised person shall issue a certificate on temporarily seized assets and objects from paragraph 1 of this Section.

Temporary seizing of foreign exchange and dinars from paragraph 1 of this Section that are in monetary accounts of the supervised entity shall be performed pursuant to the NBS decision ordering the blocking of these assets and their transfer to the special purpose account of the NBS.

An authorised person shall immediately and not later two days following the seizing of the assets and objects from paragraph 1 of this Section, deposit foreign currency cash, cheques and securities to the special purpose account of the NBS or in the NBS depository; dinar cash – to the special purpose account of the NBS; objects, official documents and papers, and documentation – in the NBS depository or in another appropriate place.

Following the seizure of assets and objects from paragraph 1 of this Section, the NBS shall launch an appropriate procedure before the competent authority.

Prevention of supervision

11. It is considered that a supervised entity failed to enable access to the NBS to conduct supervision within the meaning of this Decision if it did not act in accordance with Sections 8 and 9 hereof and particularly if it prevented the authorised person from carrying out insight into the business books and other documentation or from inspecting objects, premises or other facilities or did not allow temporary seizure of foreign exchange, foreign currency cash, cheques and dinar cash, objects, official documents and papers and documentation from Section 10, paragraph 1 of this Decision.

In the event referred to in paragraph 1 of this Section, an authorised person shall make a report on the prevention of supervision.

12. If an authorised exchange dealer prevents supervision within the meaning of Section 11, paragraph 1 hereof, the NBS, based on the report from paragraph 2 of that Section, shall issue a decision on the suspension of exchange operations in the exchange office under supervision for a period of up to 30 working days.

The authorised exchange dealer shall immediately upon the receipt of the decision from paragraph 1 of this Section, and at the latest on the exchange dealer's first following working day, visibly display that decision at the exchange office under supervision and shall sell all the foreign currency cash in the exchange office to the bank(s) with which it entered into agreement, paying the dinars generated by that sale and the dinar cash to its current account.

The authorised exchange dealer shall deliver the evidence of meeting the obligations from paragraph 2 of this Section to the NBS immediately or at the latest on the exchange dealer's first following working day.

13. If an authorised exchange dealer does not meet the obligations from Section 12, paragraphs 2 and 3 hereof, the NBS shall issue a decision ordering the authorised exchange dealer to eliminate irregularities immediately upon the receipt of the decision, and/or to meet the obligations from paragraph 2 of that Section by no later than the exchange dealer's first following working day, and the obligation from paragraph 3 of that Section by no later than the first following working day, under threat of a decision on revoking the authorisation for performing exchange operations for the exchange office under supervision or for all exchange offices.

An authorised exchange dealer shall notify the NBS in writing that it has carried out the order specified in the decision from paragraph 1 and shall

deliver the evidence thereof no later than on the day following the expiry of the deadline for eliminating the established irregularities from that decision.

The NBS shall verify whether the order from the decision referred to in paragraph 1 of this Section has been carried out and if it determines that not all orders from that decision have been carried out, it shall issue a decision on revoking the authorisation for performing exchange operations for the exchange office under supervision or for all exchange offices.

In the event of revoking the authorisation referred to in paragraph 3 of this Section, the provisions of Section 22 hereof shall apply accordingly to the obligations of the authorised exchange dealer.

Reports and other documents

14. The authorised person shall make a report on completed on-site supervision (hereinafter: report on supervision).

The report on supervision shall specifically include the following details: date of making the report, subject of supervision and the relevant data, findings on established factual situation, and the signature of the person who made the report.

The NBS shall deliver the report on supervision to the supervised entity, which may file its objections within five working days from the day of receiving the report.

The supervised entity's objections to the report, including evidence, shall be signed by the authorised person of that entity.

If an on-site supervision of an authorised exchange dealer has established illegalities and/or irregularities, a copy of the report on supervision shall be delivered simultaneously to the bank with which the authorised exchange dealer has entered into agreement on performing exchange operations.

The provisions of Section 24 hereof shall apply accordingly to the actions of banks and their employees with regard to the report on supervision from paragraph 5 of this Section.

15. If by examining the objections from Section 14, paragraph 4 hereof it establishes that the factual situation differs significantly from the situation described in the report on supervision, the NBS shall supplement the report

(hereinafter: supplement to the report) and deliver it to the supervised entity within five working days from receiving those objections.

The NBS may verify the statements presented in the objections from this Section also directly at the supervised entity.

16. The NBS shall not consider the supervised entity's objections relating to a change in factual situation that occurred after the completion of supervision (cut-off date), but may consider them when preparing the order from this Decision.

If the delivered objections to the report on supervision are unfounded, if they do not substantially change the factual situation established by the supervision, and/or if they do not lead to a change in the findings of established illegalities and/or irregularities, the NBS shall make an official note thereof and deliver it to the supervised entity within five working days from the day of receiving those objections.

17. The NBS shall issue a decision on the termination of supervision in the following cases:

- 1) if the report on supervision, and/or supplement thereto established no illegalities and/or irregularities or only minor illegalities and/or irregularities;
- 2) if the supervised entity refutes in its objections and within the prescribed deadline all the findings in the report on supervision or refutes some of those findings so that the remaining portion of findings relates to minor illegalities and/or irregularities.

The Decision from paragraph 1 of this Section shall be delivered to the supervised entity.

Decision on orders and revocation of authorisation

18. If based on the factual situation described in the report on supervision an illegality and/or irregularity in the performance of exchange operations which can be eliminated is established, the NBS shall issue a decision ordering the supervised entity to eliminate the established illegality, and/or irregularity within the set deadline.

The supervised entity shall act pursuant to the decision from paragraph 1 of this Section, in the way and within the deadlines set by that decision.

The supervised entity shall notify the NBS in writing that it has carried out the order from the decision referred to in paragraph 1 of this Section and deliver evidence thereof within the deadline set by the NBS in the decision which cannot be longer than three working days from the day of the expiry of the deadline for eliminating the established illegality and/or irregularity from that decision.

The NBS shall verify whether the order from the decision referred to in paragraph 1 of this Section has been carried out and if it establishes that orders have been carried out, it shall issue a decision to terminate the supervision procedure.

19. If the NBS establishes that the authorised exchange dealer has not carried out the order from the decision referred to in Section 18 of this Decision, it shall issue a decision on revoking the authorisation from that authorised exchange dealer for performing exchange operations for the exchange office under supervision or for all exchange offices.

20. The NBS shall issue the decision on revoking the authorisation from the authorised exchange dealer in the event that it established the following facts in the supervision procedure:

1) that the authorised exchange dealer no longer meets the conditions for performing exchange operations stipulated by the Law and the NBS regulation;

2) that the authorised exchange dealer did not start to operate within 30 days from receiving the authorisation;

3) that the authorisation was granted based on false and incorrect information;

4) that the authorised exchange dealer did not perform exchange operations in the period longer than five working days, without a proper justification.

21. A copy of the decision on orders from Section 18 of this Decision, and/or decision on revoking the authorisation from Sections 19 and 20 of this Decision shall be delivered simultaneously to the bank(s) with which the supervised entity has entered into agreement.

The provisions of Section 24 hereof shall apply accordingly to the actions of banks and their employees with regard to the decisions from paragraph 1 of this Section.

Obligations of authorised exchange dealer in the event of revoking of authorisation

22. When the NBS issues a decision to revoke the authorisation for performing exchange operations for a certain exchange office from the authorised exchange dealer with several exchange offices, that authorised exchange dealer shall immediately upon the receipt of this decision and no later than on the exchange dealer's first following working day transfer all the foreign currency cash and dinar cash from that exchange office to the exchange office which continues to operate or pay those amounts into its account with a bank and/or banks.

When the NBS issues a decision to revoke the authorisation for performing exchange operations for the exchange office from the authorised exchange dealer with one exchange office, that authorised exchange dealer shall immediately upon the receipt of this decision and no later than on the exchange dealer's first following working day sell all the foreign currency cash to the bank(s) with which it has entered into agreement and shall pay the dinars generated by that sale and dinar cash to its current account.

The authorised exchange dealer shall deliver the evidence of meeting the obligations from paragraphs 1 and 2 of this Section to the NBS in writing, immediately or at the latest on the exchange dealer's first following working day.

23. If the exchange dealer does not meet the prescribed obligations in the event of revoking of authorisation, and/or if it does not act in accordance with the decision on revoking of authorisation, the NBS may file a request to the competent authority for initiating offence proceedings, in accordance with the law, and that request may also be submitted in other cases envisaged by the law.

Confidentiality in supervision procedure

24. Information which authorised persons and other persons hired in the procedure of supervision of exchange operations within the meaning of this Decision learn in any way and which refers to the supervision of operations of the supervised entity including the documents containing such information, as well as the orders for removing the established irregularities and/or illegalities and the decision on revoking authorisations from this Decision shall be determined and protected as confidential with the inscription of the degree of confidentiality as "CLASSIFIED" or "RESTRICTED" in accordance with the law governing the confidentiality of information.

Persons from paragraph 1 of this Section shall keep the information and documents from that paragraph as secret, that is, they shall not make them available to third parties except in the cases prescribed by the law.

The obligation to preserve information secrecy for persons from paragraph 1 of this Section does not end with the termination of employment contract with the NBS or with the termination of other capacity based on which those persons had access to information from that paragraph.

Notwithstanding paragraph 2 of this Section, the NBS may make the information and documents from paragraph 1 of this Section available to domestic and foreign supervisory authorities on condition that those authorities use them solely for the purposes for which they were obtained.

Publication of information from paragraph 1 of this Section in aggregate form so that the identity of the supervised entity cannot be established based on that information, shall not be considered the breach of obligation to preserve information secrecy.

Transitional and final provisions

25. The activities of supervision of exchange operations of banks, the public postal operator and authorised exchange dealers initiated by the Ministry of Finance – Tax Administration and not completed by 31 December 2018 – shall be completed by the NBS in accordance with the Law and this Decision.

26. This Decision shall be published in the RS Official Gazette and shall come into force on 1 January 2019.

NBS Executive Board No 91
29 October 2018
B e l g r a d e

Chairperson
of the NBS Executive Board
G o v e r n o r
National Bank of Serbia

Dr Jorgovanka Tabaković