COMMITTEE OF EXPERTS ON
THE EVALUATION OF ANTI-MONEY
LAUNDERING MEASURES AND
THE FINANCING OF TERRORISM
(MONEYVAL)

MONEYVAL(2015)21

6th REGULAR FOLLOW-UP PROGRESS REPORT

4th ROUND MUTUAL EVALUATION OF ALBANIA

SEPTEMBER 2015

Albania is a member of MONEYVAL. This progress report was adopted at MONEYVAL's 48th Plenary meeting (Strasbourg, 14-18 September 2015). For further information on the examination and adoption of this report, please refer to the Meeting Report of the 48th plenary at http://www.coe.int/moneyval.

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This report, submitted by Albania under the regular follow-up process provides an overview of the measures that Albania has taken to address the major deficiencies relating to Recommendations rated NC or PC since its last mutual evaluation. The progress shown indicates that sufficient action has been taken to address those major deficiencies, and in particular those related to Recommendations 1, 5, 13, 23 and 35 and Special Recommendations I, II, III, IV and V. It should be noted that the original rating does not take into account the subsequent progress made by Albania.

LIST OF ACRONYMS

ALL	Albanian Lek (Albanian currency)
AML/CFT	Measures against money laundering and terrorism financing
Art.	Article
ASP	Albanian State Police
BoA	Bank of Albania
CC	Criminal Code
CDD	Customer due diligence
CEPs	Compliance Enhancing Procedures
CETS	Council of Europe Treaty Series
CFT	Combating the financing of terrorism
CPC	Criminal Procedure Code
CTR	Cash transaction report
DNFBPs	Designated Non-Financial Businesses and Professions
ECDD	Enhanced customer due diligence
FATF	Financial Action Task Force
FI	Financial institution
FIU	Financial Intelligence Unit
FSA	Financial Supervisory Authority
FT	Financing of Terrorism
GDPML	General Directorate for the Prevention of ML
ICRG	International Cooperation Review Group
IMF	International Monetary Fund
Law on MTF	Law no. 157/2013 "on Measures against Terrorism Financing"
LC	Largely compliant
LEA	Law Enforcement Agency
MER	Mutual evaluation report
ML	Money Laundering
MLA	Mutual legal assistance
MoJ	Ministry of Justice
MoU	Memorandum of Understanding
MVTSPs	Money and Value Transfer Service Providers
NC	Non-compliant
NPO	Non-Profit Organisation
NRA	National Risk Assessment
OEM	Other enforceable mean
PACA	Project Against Corruption in Albania
PC	Partially compliant
PEP	Politically Exposed Persons
R	Recommendation
SAR	Suspicious Activity Report
SIS	State Intelligence Service
SR	Special recommendation
SUGC	Supervision Unit of the Games of Chance
UN	United Nations
UNSCR	United Nations Security Council resolution

Mutual Evaluation of Albania: 6th follow-up report

Application to move from regular follow-up to biennial updates

Note by the Secretariat

1. INTRODUCTION

1. The purpose of this paper is to introduce Albania's updated follow-up information report to the Plenary concerning the progress that it has made to remedy the deficiencies identified in the mutual evaluation report (MER) on the fourth assessment visit on selected FATF Recommendations. [1]

2. The on-site visit to Albania, which was conducted by the IMF on behalf of MONEYVAL, took place from 15 to 30 November 2010. MONEYVAL adopted the MER of Albania under the fourth round of assessment visits at its 35th Plenary meeting (April 2011)[2]. As a result of the evaluation process of Albania, all FATF Recommendations were evaluated, out of which 3 as "compliant", 12 as "largely compliant" (LC), 30 as "partially compliant" (PC), 3 as "non-compliant" (NC) and one was "not applicable".

Core Recommendation rated PC[3]
R.1, R.5, R.13, SR II, SR.IV
Key Recommendation rated PC[4]
R.23, R.35, SR.I, SR.III, SR.V
20 other Recommendations rated PC
R.8, R.11, R.12, R.15, R.16, R.17, R.18, R.20, R.21, R.24, R.25, R.27, R.29, R.30, R.32, R.33, R.38, SR.VI, SR.VII, SR.IX
3 other Recommendation rated NC
R.6, R.9, SR.VIII

3. Albania was placed into regular follow-up on the basis of Rule 48 (a) of the Rules of Procedure. In accordance with Article 49 of MONEYVAL's Rules of Procedure, Albania was required to report back to the plenary and provide information on the actions it has taken or is taking to address the factors/deficiencies underlying any of the 40 + 9 Recommendations that are rated PC or NC within two

[1] It should be pointed out that the FATF Recommendations were revised in 2012 and that there have been various changes, including their numbering. Therefore, all references to the FATF Recommendations in the present report concern the version of these standards before their revision in 2012.

[2] www.coe.int/moneyval

[3] The Core Recommendations as defined in the FATF procedures are R.1, SR.II, R.5, R.10, R.13 and SR.IV.

[4] The Key Recommendations are R.3, R.4, R.23, R.26, R.35, R.36, R.40, SR.I, SR.III and SR.V.

years from the discussion of the 4th round MER (April 2013).

4. The current Rules of Procedure indicate that MONEYVAL states and territories are encouraged to seek removal from the follow-up process within three years after the adoption of the 4th round MER (i.e. by April 2014), or very soon thereafter, though the Plenary will always have the discretion to allow further time where this is necessary.

5. In a letter dated 27 February 2013, Albania expressed its intention to be removed from regular follow-up, considering that sufficient steps have been taken to address the deficiencies. Albania submitted its follow-up report on 3 April 2014 for consideration by MONEYVAL at its 41st Plenary meeting (8-12 April 2013). Since Albania's report was not submitted two months prior to the plenary (as required by Art. 52 of the Rules of Procedure), the report was presented as an information paper and the Plenary heard a presentation by Albania on the contents of the report.

6. Albania re-submitted an updated report for the Plenary's consideration on 18 July 2013, together with a confirmation of its intention to request removal from regular follow-up. The analysis highlighted that progress had been made on a number of issues; however, due to a number of outstanding deficiencies which had not yet been addressed, Albania was not yet in a position to meet the criteria for exiting the follow-up process. MONEYVAL invited Albania to make an interim report back at its plenary meeting in April 2014. At that plenary, Albania agreed that it was premature to seek to come out of regular follow-up. MONEYVAL invited Albania to report back to the plenary in September 2014 with a fuller written report.

7. Albania re-submitted an updated report for the Plenary's consideration on 7 July 2014, together with a confirmation of its intention to request removal from regular follow-up. At the 45th Plenary meeting, the Plenary acknowledged that Albania had made real progress and that has taken positive action to remedy major deficiencies, including in respect of certain aspects of effectiveness. The secretariat expressed its considerations that however further substantive and contextual information was necessary to be provided on a number of aspects, as detailed in the review of progress in respect of several recommendations, before being in a position to firmly conclude that Albania had achieved an LC level of compliance with the relevant recommendations. The Plenary concluded that Albania would remain under the regular follow-up process and invited it to report back in December 2014, with an updating report, covering additional supporting information on the outstanding issues where the report by Albania was considered to lack clarity or detail.

8. This paper is thus an updated version of the previous analysis presented at the 45thPlenary meeting, on the basis of the additional information provided by Albania in this context.

9. As prescribed by the mutual evaluation procedures (Rule 13(2) paragraph 16), Albania should apply to be removed from the follow-up process when it considers that all the recommendations set out below are at the level of or at a level essentially equivalent to a C or LC:

- money laundering and terrorist financing offences (R.1 & SR.II);
- freezing and confiscation (R.3 and SR.III);
- financial institution secrecy (R.4) and customer due diligence (R.5);
- record-keeping (R.10);
- suspicious transaction reporting and the FIU (R.13, 26 & SR.IV);
- financial sector supervision (R.23); and
- international co-operation (R.35, 36 and 40; and SR.I & V).

10. The procedure is a paper based desk review, and by its nature is less detailed and thorough than a mutual evaluation report. The analysis focuses on the recommendations that were rated NC/PC, which

means that only a part of the AML/CFT system is reviewed. This analysis essentially consists of looking into the main laws, regulations and other material to verify the technical compliance of domestic legislation with the FATF standards. In assessing whether sufficient progress had been made, effectiveness is taken into account to the extent possible in a paper based desk review and primarily through a consideration of data provided by the country. It is also important to note that these conclusions do not prejudge the results of future assessments, as they are based on information which was not verified through an onsite process and is not, in every case, as comprehensive as would exist during a mutual evaluation.

2. MAIN CONCLUSIONS AND RECOMMENDATIONS TO THE PLENARY ON PROGRESS MADE SINCE THE 4TH ROUND MER

Core Recommendations

11. *Recommendation 1:* Albania amended the Criminal Code to resolve the technical deficiencies identified in the MER. The categories of predicate offences have been covered and the physical elements of ML have been brought in line with the Vienna and Palermo Conventions. There is an ascending trend of securing ML convictions and the examples provided include convictions for ML of a broad variety of predicate criminality, including third-party ML. In addition, recent jurisprudence shows positive developments with regard to the flexibility of the burden of proof required for securing a ML conviction. Overall effectiveness will have to be demonstrated within the context of an on-site visit. It can be nevertheless concluded that sufficient steps have been taken in order for R.1 to be considered essentially equivalent to largely compliant.

12. *Special Recommendation II:* The FT incrimination has been brought to a large extent in line with the FT Convention standards. Minor technical deficiencies remain as set out in the analysis. Albania has taken the necessary steps to bring compliance with Special Recommendation II up to a level essentially equivalent to largely compliant.

13. The Albanian authorities have taken significant steps to address the deficiencies identified under R.5. Pursuant to the amendments of the AML/CFT Law, a comprehensive legal framework has been established with regard to CDD measures, which is broadly in line with the requirements of R.5. The measures taken have brought a level of compliance essentially equivalent to LC.

14. With regard to *Recommendation 13 and Special Recommendation IV*, the amendments to the Criminal Code and to the AML/CFT Act appear to address several technical deficiencies identified in the 4th round report and have increased the level of compliance to a level essentially equivalent to LC**.**

Key recommendations

15. Concerning *Recommendation 35* and *Special Recommendation I,* the amendments to the Criminal Code address many of the technical deficiencies identified in the 4th round report. Both Recommendations are now considered to be as essentially equivalent to LC.

16. Several important steps have been taken by the authorities to address the identified deficiencies under *Recommendation 23* and the large majority of technical issues have been clarified. The numbers of inspections undertaken, in particular with regard to the insurance, securities and currency exchange sectors. Also, a number of other proactive initiatives aimed at increasing the overall effectiveness of the supervision of FIs have been undertaken. It can be therefore concluded that the level of implementation of Recommendation 23 is essentially equivalent to LC.

17. As regards *Special Recommendation III*, as noted in the review, adequate progress has been achieved, especially with regard to the technical aspects of the requirements and as such compliance with Special Recommendation III is considered to have been brought at a level essentially equivalent to LC.

18. As regards *Special Recommendation V,* the MER identified a number of technical deficiencies which were mainly cross-over deficiencies from other Recommendations. These issues have all been either addressed or largely addressed; thus it can be considered that the level of compliance can be effectively considered to a level essentially equivalent to LC.

Conclusion

19. Since the on-site visit in November 2010, Albania has made progress and implemented the required measures in order to strengthen the effectiveness of its AML/CFT system and bring its legal and regulatory framework in line with the FATF recommendations. These measures are detailed in the analysis and address numerous identified deficiencies related to the key and core recommendations. In addition, Albania has also reported the progress made in addressing the deficiencies related to the non-core and non-key recommendations rated PC or NC.

20. The mutual evaluation follow-up procedures indicate that for a country to have taken sufficient action to be considered for removal from the process, it must have an effective AML/CFT system in force under which it has implemented all core and key recommendations at a level essentially equivalent to C or LC, taking into account that there would be no re-rating.

21. Albania has made adequate progress in respect of all Core and Key Recommendations subject to this analysis. Consequently, the Plenary decided to remove Albania from the regular follow-up process. Albania shall be expected to present its first biennial update in September 2017, subject to Plenary's discretion should this fall within the one year period before the 5th round on-site visit.

3. OVERVIEW OF ALBANIA'S PROGRESS

22. Albania has taken action to address numerous deficiencies identified in the 4th round assessment and strengthen preventative measures in the financial sector. The updated legal framework addresses many of the legal shortcomings described in the fourth round mutual evaluation report. A number of steps were reported aimed at enhancing the effectiveness of their implementation.

23. Some of the key points of progress reported by Albania are as follows:

Legislative developments:

24. The following changes were made to the relevant legislation in force:

- On the 1st of March 2012, Albania's Parliament adopted **Law no. 23 "On some amendments and additions to Law no. 7895, dated 27.1.1995 "Criminal Code of the Republic of Albania"**, as amended, which addressed several, but not all identified deficiencies. Several articles were amended and new articles were introduced notably: Article 9-Persons protected from international law, Article 230-Article 230/a Financing of terrorism, Article 287-Laundering of proceeds of criminal offence or criminal activity, Article 287/b-The appropriation of money or goods which derive from the criminal offence or criminal activity, Article 143/a/1-Market manipulation, Article 143/a/2-Unauthorized use and dissemination of preferential information Article 143/a/3-Manipulation of prices and dissimilation of false information, Article 143/a/4-Presentation of false data and their unauthorized dissemination, Article 143/a/5-Unauthorised registration of titles in stock-exchange, Article 143/a/6-Concealment of properties, Article 143/a/7-Illegal marketing of titles. The Criminal Code of the Republic of Albania was further amended on 31 July 2014 by the Law no. 98/2014, introducing criminal offences of joining foreign military forces or participating at foreign armed conflicts.

- On 7 June 2012, the Parliament of Albania adopted the **Law no.66/2012 "On some amendments and additions to Law n. 9917, dated 19 May 2008, "*On prevention of money laundering and the financing of terrorism*"**, as amended. This amendment addresses several of the deficiencies identified previously with regard to customer due diligence, as well as it introduces a number of changes to the reporting framework.
- On 28 February 2013, Albania's Parliament also adopted **Law no. 92 "on some amendments and additions to Law no. 8788, dated 07.05.2001 "On Non-Profit Organizations"** as amended. This law establishes some new competencies of the highest decision-making authority and the executive authority of non-profit organisations (NPOs) regarding the prevention of the abuse of NPOs for terrorism financing purposes. It also provides for the civil and criminal liability of NPOs, for the obligation to keep funds and make transactions with them through the bank system and also for the transparency of requests for transactions showing the aim for which donations are being gathered and the obligation of NPOs to prove that funds are being used for the declared aim. The draft law provides for the obligation of NPOs to register tax data and to publish financial reviews of the NPOs, it determines tax organs as supervisory authority for NPOs within the meaning of the AML/CFT Law, provides for the right of tax organs and the FIU to access accountability reports and financial reviews whenever it is necessary.
- The **Law "On some amendments and additions to Law no. 10193, dated 3.12.2009 "On jurisdictional relations with foreign authorities in criminal matters**" was adopted in Parliament on 18 March 2013. The law has been intended to provide a higher ability for assistance. It provides among others for the obligation of the Ministry of Justice to translate the outgoing requests for legal assistance or material responsive to the outgoing request. In the 4th round MER, the prosecutors' obligation to translate these materials was considered to be a serious barrier in securing effective international assistance, and likely to have a particular impact when a matter was urgent.
- A new **Law no. 157/2013** "**on Measures against Terrorism Financing"** (Law on MTF) was adopted in 2013. This Law establishes a comprehensive legal framework for the implementation of the UN sanctions regime, in particular for designations and freezing under UNSCR 1373. The new Law also introduces procedures for delisting and de-freezing, and sets out a supervisory regime for compliance with the requirements of the Law.
- Amendments to the **Law no. 54/2014 "On amendments and additions to the Law no. 9572, dated 03.07.2006, "For the Financial Supervisory Authority"**, were approved by the Parliament on 22 May 2014. These amendments accord the Financial Supervisory Authority (FSA) explicitly the power to make inquiries on behalf of foreign counterparts.
- **Law No. 99/2014, "On some additions and changes to the Law no. 7905 dated 21.3.1995 on the Criminal Procedure Code of the Republic of Albania,** as amended, was adopted on 31 July 2014. Article506 of the Criminal Procedure Code (CPC) defines now specific timelines for the process of transmission of acts from the Ministry of Justice to the court and their execution. It also clarifies the role of the Ministry of Justice in the context of extradition proceedings.
- **Law no. 52, dated 22.05.2014, "On the activity of insurance and reinsurance"** was adopted in 2014.This law regulates, amongst other, the exchange of information and cooperation for AML/CFT purposes with regard to the insurance sector. In addition, it introduces the full set of fit and proper criteria for managers, directors and significant shareholders of companies providing insurance services.

25. In addition, the following regulations and guidance were issued by the competent authorities:

- Council of Ministers Decision no. 922"On the way of organization and functioning of the general directorate for the prevention of money laundering" was adopted on 21 December 2011;
- Order of the Minister of Justice no. 126/80 "On the form, content and technical rules of the Non-Profit Organisations Register" was approved on 3 July 2012. This act provides for the obligation of the District Court of Tirana, to reflect the data of the Register of Non-Profit Organisations (a manual one) in an electronic form which has the same structure and content as the manual register. The District Court of Tirana is also obliged to continuously update the electronic register.
- Decision no. 63, on the approval of the regulation "On core management principles of banks and branches of foreign banks and criteria on the approval of their administrators was issued on 1 November 2012. This Decision establishes the criteria for the qualifications, experience and documentation requirements for the approval of administrators of financial institutions.
- Instruction no. 28 "On methods and procedures for reporting and undertaking of preventative measures by the obligors of the Law no. 9917, dated 19 May 2008, "For the prevention of money laundering and financing of terrorism", as amended, was adopted on 31 December 2012;
- Instruction no. 29, "On DNFBPs reporting methods and procedures" was adopted on 31 December 2012;
- Decision no. 01 "On the approval of Regulation "On licensing and activity of non-bank financial institutions" issued by the Bank of Albania on 17 January 2013. This Regulation foresees fit and proper criteria for directors and senior managers of microcredit and electronic money institutions
- Decision no.44, dated 10.06.2009, was amended in August 2013 by the Decision No.55 of the Supervisory Council of the Bank of Albania on the approval of the Regulation on Prevention of Money Laundering and Terrorist Financing. This Regulation lays down the procedures and documentation for the identification of customer, regulations for record-keeping, preservation of data and their reporting to the responsible authority from the subject of this Regulation.
- Instruction no.1 "On the setting of rules and procedures for allowable expenses on other funds and assets confiscated from designated individuals" was adopted on 16 January 2014;
- Guideline no.1 "On Establishing the Rules and Procedures for Allowable Expenses on the Funds and other Seized Assets of Designated Persons" was issued on 16 January 2014 by the Ministry of Finance;
- Decision no. 58 on the Regulation "On due diligence and on enhanced due diligence from subjects of Law on Prevention of Money Laundering and Terrorism Financing" was approved by the FSA on 30 June 2015. This Regulation reiterates the obligation for reporting entities to apply a number of key preventative measures foreseen by the AML/CFT Law. It is applicable to reporting entities subject to supervision by the FSA, in particular participants on the capital market and entities providing life insurance.

Other progress:

26. In addition, the Albanian authorities have informed that they have undertaken necessary steps to assess the ML/FT risks for the country, involving a wide range of key institutions that have cooperated closely in this process. The risks identified are being reviewed continuously in order to evaluate the relevant changes as well as to identify new potential areas that warrant further attention. The predominant proceeds generating offences continue to be those associated with narcotics, tax evasion, smuggling and human trafficking. A risk assessment regarding the exposure of the non-profit sector in Albania to the financing of terrorism was completed in February 2012.

27. In November 2012, the General Directorate for the Prevention of ML (GDPML) finalised a ML/TF National Risk Assessment (NRA). Also, Albania has participated in the Preliminary Risk Assessment based on the IMF methodology. At the end of 2012, the GDPML has published a typologies report comprising concrete cases analysed and has disseminated it to relevant agencies. The authorities reported that, in 2015, the ML/TF NRA was reviewed in order to reflect current developments.

28. In 2012, the GDPML, within the scope of Project Against Corruption in Albania (PACA - a joint project of the Council of Europe and the European Union), also elaborated and published guidelines for reporting entities on risk management procedures for politically exposed persons (PEPs) and for private accountants and auditors.

29. Finally, it is to be noted that following the adoption of the 4th round MER, Albania was identified by the FATF as a jurisdiction with strategic deficiencies of its AML/CFT framework. A number of shortcomings identified in the 4th round MER were under review by the FATF's International Cooperation Review Group (ICRG) as issues of key interest to be remedied as a matter of urgency. In June 2012, Albania expressed a high-level political commitment to remedy the key deficiencies identified and was consequently subject to a periodic review by the ICRG. In January 2015, representatives of the ICRG undertook an on-site visit in Albania and interviewed a number of key national authorities. As a result, the FATF Plenary concluded in February 2015 that Albania has achieved sufficient progress on the issues identified by the agreed action plan and decided that it shall no longer be subject to monitoring under the global ICRG compliance process.

4. REVIEW OF THE MEASURES TAKEN IN RELATION TO THE CORE RECOMMENDATIONS RATED PC

30. This section sets out the Secretariat's detailed analysis of the progress which Albania has made in relation to the Core Recommendations rated PC.

Recommendation 1 – Money laundering offence (rated PC)

31. The Albanian authorities have reported substantial changes of the relevant text on criminalisation of ML. For a better understanding of them the table below includes the relevant provisions for comparison purpose:

The relevant provisions considered by the 4th round Report	***The provisions in force at the time of the follow up process***
Article 287, para. 1 of the CC criminalized as "*laundering of the proceeds of the criminal offence*" the following conducts: *Laundering of the proceeds of the criminal offence committed through:* a) *the conversion or transfer of an asset that is known to be a product of a criminal offence with the purpose of hiding, concealing the origin of the asset or aiding to avoid legal consequences related to the commission of the criminal offence;* *b) the concealment or disguise of the true nature, source, location, disposition, movement*	**Article 287** **Laundering of criminal offence or criminal activity proceeds** *(As amended by Law No. 9086 dated 19. 06. 2003, article 8; added letter "dh" by Law No. 9275 dated 16. 09. 2004, article 24, as amended, letter "a" of first paragraph, letter "ç" repealed by Law No. 9686 dated 26. 2. 2007, article 24 as amended by Law No. 23/2012 dated 1. 3. 2012, article 37)* The laundering of criminal offence or criminal activity proceeds through: a) The conversion or transfer of property, for the purpose of concealing or disguising the illicit origin of the property, knowing that

or ownership of an asset or rights that are the proceeds of a criminal offence; *c) performance of financial activities and fragmented/structured transactions to avoid reporting according to the money laundering law;* *d) advice, encouragement, or public call for the commission of any of the offences described above;* *e) the use and investment in economic or financial activities of money or objects that are the proceeds of a criminal offence.* A different provision of the CC, Article **287/b** criminalized "*whoever purchases, receives, hides or, in any other way, appropriates for himself or a third party, or assists in purchasing, taking, hiding of money or other goods, knowing that another person has obtained these money or goods, as a result of a criminal offence*". Article **287 para. 3** provided for the application of the Article "*in cases where the person that has committed the offence the proceeds derive from, cannot be a defendant, cannot be convicted or there is a cause that wipes out the offence or one of the conditions for criminal proceedings of such an offence is missing.*" A similar provision was also found in **Article 287/b,** which stated that "*the lack of responsibility of the person or the barrier for the prosecution of the related criminal offence does not exclude the responsibility of the person that committed the criminal offence of appropriation of stolen money or goods in the meaning of this article*".	such property is the proceeds of criminal offence or criminal activity; b) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of criminal offence or criminal activity; c) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of criminal offence or criminal activity; ç) Commission of financial actions or divided transactions to avoid reporting according to the legislation on the prevention of money laundering; d) Investment in economic or financial activities of money or objects, knowing that they are proceeds of criminal offence or criminal activity; dh) Consultation, assistance, instigation or public call for the commission of each of the offences defined above, shall be punishable by five up to ten years of imprisonment. If this offence is committed in the course of the exercise of a professional activity, in complicity or more than once, it shall be punishable by a term from seven up to fifteen years of imprisonment. The same offence, if inflicting serious consequences, shall be punishable by not less than fifteen years of imprisonment. The provisions of this article shall apply even if: a) the criminal offence whose proceeds are laundered, is committed by a person who cannot be taken as a defendant or cannot be sentenced; b) the prosecution for the criminal offence, the proceeds of which are laundered, is subject to the statute of limitations or amnesty; c) the person who commits laundering of proceeds is the same with the person who has committed the criminal offence deriving the proceeds; ç) no criminal case is instituted or no final criminal judgment is rendered in respect of the criminal offence whose proceeds are derived; d) the criminal offence whose proceeds are

	laundered, is committed by a person, notwithstanding his citizenship, out of the territory of the Republic of Albania and at the same time it is punishable both in the foreign state and in the Republic of Albania*;* Awareness and purpose required by the first paragraph of this article may be revealed from objective circumstances of the fact; "**Article 287/b** **Acquisition of money or goods resulting from the offense or criminal activity** *(Added by Law No. 9686 dated 26. 2. 2007, article 25, as amended by Law No. 23/2012 dated 1. 3. 2012, article 38)* Whoever purchases, receives, hides or, in any other way, appropriates for himself or a third party, or assists in purchasing, taking, hiding of money or other goods, knowing that another person has obtained this money or goods, as a result of a criminal offence or criminal activity, shall be punishable by 6 months up to 3 years of imprisonment. The first paragraph of this Article shall apply notwithstanding the legal prohibition to incur criminal liability to a person that has committed the criminal offense of appropriation of money or goods.

Deficiency no.1 – Self laundering is not criminalized in the case of conduct under Article 287/b.

Recommended action no.1 - The authorities should enact a provision or amend existing provisions so that self-laundering is covered for the Article 287/b offences;

Measures adopted and implemented: This deficiency has been fully addressed and the recommendation fully implemented.

32. In March 2012 Albania adopted Law no.23/2012 "On some additions and amendments to Law no. 7895, dated 27.1.1995 `Criminal Code of the Republic of Albania`", as amended. This law amends articles 287 and 287b.

33. The title of Article 287 of the Criminal Code (CC) has been amended and now covers the "*laundering of the proceeds of the criminal offence or laundering of the criminal activities*". This change is welcomed as it signals the legislator's intention to move away from the previous conservative jurisprudence developed as a result of the restrictive ML offence. It is expected that this should create the necessary legal conditions for a more adequate approach in relation to the level of proof for the predicate offence, enhancing in this way the legal framework to prosecute and obtain conviction for stand-alone ML criminal cases. Similarly the title of Article 287/b has been amended.

34. Self-laundering is now criminalised under article 287 (c) of the CC with respect to acquisition, possession or use of property.

35. It should however be noted that article 287/b as amended (*Acquisition of money or goods resulting from the offence or criminal activity*) could be read as limiting acquisition, possession or use of property, as set out in its provisions, in respect of money or other goods obtained by a third person as a result of a criminal offence or criminal activity. The authorities' view is that these articles should be applied separately and that as such they do not hinder the application of self-laundering as set out in 287 (c). The secretariat remains of the view that this issue requires clarification, given at a minimum the overlapping scope of the provisions. The consequences of this apparent redundancy and the way in which these concurrent provisions are interpreted by the practitioners is an issue which should be verified during the 5th evaluation round.

Deficiency no.2 - Article 287/b offences provision is limited to stolen goods.

Recommended action no.3 - The authorities should amend Article 287/b so that it is clear that its coverage extends beyond acquisition, possession or use in the case of stolen goods;

Measures adopted and implemented: This deficiency has been fully addressed and the recommendation is fully implemented.

36. This deficiency arised from the wording of the former Article 287/b of the CC according to which: "*the lack of responsibility of the person or the barrier for the prosecution of the related criminal offence does not exclude the responsibility of the person that committed the criminal offence of appropriation of stolen money or goods in the meaning of this article*"

37. In the current version of Article 287/b the reference to the "*stolen money or goods*" has been removed.

Deficiency no.3 - Full coverage of predicate offences is lacking as insider trading and market manipulation are not criminalized.

Recommended action no.4 - The authorities should enact provisions to cover insider trading and market manipulation.

Measures adopted and implemented: This deficiency has been fully addressed and the recommendation is fully implemented.

38. Albania has enacted provisions to cover all predicate offences, including insider trading and market manipulation. The relevant provisions of the amended Criminal Code are as follows:

- Article 143/a/1 of the CC (Market Manipulation)[5];

Article 143/a/1 **Market manipulation** Inaccurate presentation, on purpose, of the value of goods, services or money, aiming to mislead the free and fair function of the market, is sentenced by fine or up to four years imprisonment.
Article 143/a/2 **Unauthorized use and dissemination of preferential information** The person, who, in authorized or unauthorized manner, is informed of preferential information, for which the public is not aware of, and which he can use for his own material benefits, for a third party or for the damage of the latter, through one of the following ways: a) buying or selling marketable titles in the territory of the Republic of Albania, or marketed by an emissary with the seat in the Republic of Albania; b) knowing the preferential nature of information, transmits it, without authorization, to a third party; c) knowing the preferential nature of information, advices a third party to buy or sell marketable titles in the territory of the Republic of Albania or marketed by an emitting-agency with the seat in the Republic of Albania, is sentenced by imprisonment from six months up to three year. When this offense is committed in cooperation, more than once, or has caused severe consequences, is sentenced up to five years imprisonment.
Article 143/a/3 **Manipulation of prices and dissemination of false information** Action or inaction of the person who: a) signs a fictive contract for selling or replacing titles; b) makes requests for purchasing or selling titles, for which the requests are made with the same price, or whether he uses such titles as counter-requests; c) disseminates false information or other facts for increase or fall of prices of titles, or for creating their active fictive marketing for the purpose of his own benefits, or for a third party, or for the damage of the latter, is sentenced by imprisonment from six months up to three years. When this offense is committed in cooperation, more than once, or has caused severe consequences, is sentenced by imprisonment from two to five years.

- Article 143/a/2 (Unauthorized use and disclosure of privileged information);
- Article 143/a/3 (Price manipulation and the spreading of false information);
- Article 143/a/4 (Submission of false data and their unauthorized distribution);
- Article 143/a/5 (The registration of the securities in an unauthorized manner);
- Article 143/a/6 (Concealment of property);
- Article 143/a/7 (Illegal trading of securities);
- Article 149 / a (Violation of industrial property rights);
- Article 149 / b (Violation of the rights of the topography of semiconductor circuit).

Deficiency no.4 - Ancillary conduct is not covered in all instances.

Recommended action no.6 - The authorities should enact provisions so that required ancillary activity is covered in situations where currently it is not (for instance applies to facilitating even in the absence of an agreement);

Measures adopted and implemented: This deficiency has been largely addressed and the recommendation is fully implemented.

39. The 4th round MONEYVAL report underlined that the simple acts to aid and abet or facilitate or to counsel commission did not appear to be encompassed under the CC provisions that deal with collaboration in general. At that time, the CC provided that collaboration involves an agreement between two or more persons to commit a criminal act and several types of collaboration were described in particular (i.e. organizers, executors, helpers and instigators). The evaluators of the 4th round have observed that the gap left by the general part of the CC provisions was filled only partially by the ancillary conduct that was incorporated directly in the ML provisions themselves (i.e. "*Article 287 para. 1(d) criminalizes the "advice, encouragement or public call" for the ML offences that are specified in Article 287 (1)(a)-(c). In the case of Article 287/b offences, the provision provides that persons are liable if they assist in the conduct.*")

40. The amended Article 287/1/dh) now reads as follows: "*Laundering of proceeds of criminal offence or criminal activity through:…….**consultation, assistance, instigation or public call** for the commission of each of the offences defined above, shall be punishable by five up to ten years of imprisonment*."

41. The Albanian authorities indicated that with the amendment of article 287/1/ subsection "dh), ancillary conducts are covered in all circumstances, including "assistance", and that the latter is interpreted broadly in Albanian language.

42. In conclusion, it appears that the wording of the legislation has been amended in a way to cover all the actions required by the international standards. This issue remains, however, to be confirmed by

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Article 143/a/4 **Presentation of false data and their unauthorized dissemination** The person, who as a member of the management or of the supervising committee of a emitting-agency, allows or facilitates distribution of a prospect, different from that determined by law, or allows and facilitates presentation of false information or false representation of facts of material value in a prospect, is sentenced by imprisonment from six months up to three years. When this offense is committed in cooperation, more than once, or has caused severe consequences, is sentenced up to five years imprisonment.

Article 143/a/5 **Unauthorised registration of titles in stock-exchange** The person, who, as a member of the management of the stock-exchange, allows registration in quotation one, the quotation of anonym public company or in other quotation of titles, which do not meet the legal conditions of titles, is sentenced by imprisonment from six months up to three years. When this offense is committed in cooperation, more than once, or has caused severe consequences, is sentenced from two to five years imprisonment.

Article 143/a/6 **Concealment of properties** The person, who on purpose do not provide information on properties to the Authority of Financial Supervision, for titles according to law, is sentenced by fine or up to one year imprisonment. When this offense is committed in cooperation, more than once, or has caused severe consequences, is sentenced from two to five years imprisonment.

Article 143/a/**7 Illegal marketing of titles** The person dealing with unauthorized intermediation for purchasing or selling titles, is sentenced by fine or up to one year imprisonment. When this offense is committed in cooperation, more than once, or has caused severe consequences, is sentenced from two to five years imprisonment.5

judiciary practice before being able to firmly conclude that the concept of "assistance" is broad enough to cover the simple acts of aiding and abetting or facilitating the commission of a ML offence.

Deficiency no.5 - Few convictions for ML.

Recommended action no. 8 - Utilize Article 287/b CC more pro-actively by instituting proceedings for use of property knowing that it was obtained as a result of a criminal offence particularly in subject matter areas where there is a significant criminality problem;

Measures adopted and implemented: This deficiency is partially addressed and the recommendation is largely implemented.

43. According to the data provided by the authorities, a total number of 25 final convictions for ML offence in the period of 2011- May 2014 (2011: 5; 2012: 6; 2013: 6; - May 2014: 8).[6]

44. The authorities provided summaries of a number of first instance and final convictions for the purposes of this assessment, which present a broad range of cases prosecuted by Albanian authorities. Convictions for money laundering have been achieved in cases related to different types of predicate criminality (tax offences, abuse of office, fraud, organised crime, etc.), in cases with a foreign element (in particular foreign predicate criminality), as well as both for third party and self-laundering. In the majority of cases, sentence was imposed both for predicate criminal activity together with money laundering. Nevertheless, examples were also provided of cases without a conviction for the predicate offence, for example when such conviction was not possible due to the statute of limitation or when the predicate offence was prosecuted in a foreign jurisdiction and the proceedings were not yet concluded.

45. Most importantly, the authorities informed that a final conviction has been achieved for stand-alone money laundering in 2014. The defendant was a foreign citizen, who transferred significant funds to Albania and was not able to prove the origin of the funds. The investigation by Albanian authorities revealed previous extensive criminal activity of the defendant abroad. The conviction for money laundering was substantiated by the reasoning that the previous criminal activity and lack of ability to demonstrate legitimate origin of the assets in question were sufficient to substantiate the conviction for money laundering and stressed that it is not necessary in this context to provide reference to a concrete predicate criminal act. Assets involved were subject to confiscation. This development of the jurisprudence of Albanian courts is a welcomed step in ensuring higher flexibility in the level of proof required for achieving convictions in money laundering cases.

46. In addition, the authorities provided statistical information on proceedings for Article 287/b of the CC, which demonstrate that this article is being applied in practice:

Article 287/b	**Convictions (first instance)**	**Convictions (final)**
2011	4 cases/ 8 persons	4cases/ 6 persons
2012	12 cases/25persons	3 cases/5 persons
2013	19cases/25 persons	3 cases/ 9 persons
2014	27cases/ 52persons	-

47. As stated above, the jurisprudence provided by the authorities clearly demonstrates a broad range of cases of ML where convictions are achieved. In addition, it appears that the courts are adopting a more flexible approach to the level of proof required for a ML conviction. Nevertheless, it is to be

[6] It is to be noted that the numbers provided by the authorities in this context do not correspond to the total number of convictions per year included in the table below under Deficiency no. 6 (also provided by the authorities). It appears that the difference could be caused by the fact that the table below contains information only on convictions achieved in proceedings initiated without a prior input from the financial intelligence unit (FIU).

noted that the numbers of ML convictions remain low compared to the values of proceeds generating offences in the country. It can be therefore concluded that the courts have achieved a number of significant judgments and that the ML provisions are being applied in a broad variety of circumstances. The full extent to which the deficiency has been addressed will, however, have to be reviewed within the next on-site assessment visit.

Deficiency no.6 - Demanding proof level impact ability to use provisions.

Recommended action no. 7 - Provide training for courts, prosecutors and judicial police that instruct regarding practices in Europe and elsewhere that will permit better use of existing provisions under more liberal standards;

Recommended action no. 9 - Address the issue of the demanding proof levels by considering the legislative and practical approaches taken in other civil law systems where for instance the amount of the proceeds may be estimated, and confiscation may extend to proceeds of other criminal activity once a single criminal offence is established.

- Measures adopted and implemented: This deficiency has been partially addressed and the recommendations have been largely implemented.

48. The Albanian authorities have explained that Article 287 as amended has impacted positively on prosecutors and investigating officers in developing ML cases because of the low degree of proof that is considered necessary to establish before the court the elements of ML. The statistics data provided by the Ministry of Justice and General Prosecutor's Office can be summarised as follows:

	ML/TF Investigations by law enforcement carried out independently without prior STR (cases/persons)	**Prosecutions commenced** (cases/persons)	**Convictions (first instance)** (cases/persons)	**Convictions (final)** (cases/persons)
2011	84/130	14	8/17	5/6
2012	117/148	8/13	14/32	3/5
2013	87/109	6/12	20/26	4/11
2014	182/ 198	7/39	6/9	7/11
2015 (Jan - June)	158/178	23/28	3/3	---

49. As has been described in further detail above under Deficiency no. 5, the authorities provided several examples of cases where convictions for money laundering were achieved. These cases demonstrated that convictions are achieved in a broad variety of ML offences. Particular emphasis should be set on the conviction for autonomous ML confirmed by the Court of Appeal in 2014.

50. On another hand the number of the prosecutions commenced in the reference years remains low considering the level of criminality and the data provided in respect of generating proceeds offences

set out in the context of the 4th round evaluation. It can be considered that 29 cases in a timeframe of almost 4 years still could reflect an inhibition of the prosecutorial approach in ML investigations.

51. The follow-up report provided by the Albanian authorities illustrates, under Recommendation 30, Deficiency no. 2 (training of the judiciary on money laundering and financial crimes is insufficient), that an important number of trainings has been provided to judges, prosecutors, judicial police officers and other categories of law enforcement in last three and a half years. The thematic of these trainings seems to be adequate to the practical and theoretical knowledge which should be enhanced among the practitioners, as recommended by the evaluators of the 4th round. It is nevertheless difficult to assess to what extent these training activities have focused on the issued underlined in the context of the recommended actions 7 and 9 above. These recommendations appear to have been largely implemented.

52. From the cases provided by the authorities, it appears that the jurisprudence of the courts is clearly showing increasing flexibility of the level of proof required for achieving a conviction in money laundering cases. It is therefore considered that significant developments are taking place with regard to this shortcoming identified by the evaluators. Due to the limitations of the desk-based review, the extent to which the deficiency has been addressed in practice will have will have to be examined in further detail in the scope of the next on-site visit.

Recommended action no. 2 - The authorities should extend criminalization of use beyond the use and investment in economic or financial activities.

Measures adopted and implemented: This recommendation is fully implemented.

53. The current version of the ML offence provided in Article 287 para. 1(c) of the CC is reading as follows:

"*The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of criminal offence or criminal activity*."

54. In the same time letter (d) of Article 287 of the CC provides the laundering of criminal offence or criminal activity proceeds through "*Investment in economic or financial activities of money or objects, knowing that they are proceeds of criminal offence or criminal activity*"

55. There are no doubts that the criminalization has been extended to any kind of use of proceeds not only to use and investment in economic and financial activities as it was in the previous version of Article 287.This recommendation has been addressed.

56. As there appears to be an overlap between letter c and letter d of the same article, it will need to be clarified during the next on-site visit whether this issue could lead to any practical implications.

Recommended action no. 5 - The authorities should make clear that property derived indirectly is covered, if needed by way of amendment;

Measures adopted and implemented: This recommendation has been partially implemented.

57. The evaluators of the 4th round of assessment underlined that Article 287 of the CC covered at that time "*assets derived from criminal offence*." Article 287/b covered "*money or other goods, knowing that another person has obtained these money or goods, as a result of a criminal offence*." No definition of these terms was provided at the time of the evaluation that would indicate that they extend to property derived indirectly from the offence. The prosecutors met during the visit indicated that these terms were broadly interpreted and that they include property derived indirectly. They cited Article 36 para 1(b) of the CC which identifies the assets to be confiscated upon conviction. That

provision defines criminal offence proceeds as "*including all property as well as documents or legal instruments that prove title or other interests in the property that is derived or acquired directly or indirectly from the commission of the penal offence.*" There was neither a judicial decision nor relevant practice on coverage of indirect proceeds.

58. The current version of Article 287 of the CC replaced the subject matter of the ML offence which now is read as "*property*". The subject matter of the offence provided by the new wording of Article 287/b is "*money or goods*". These terms (i.e. "property" and "money or goods") are not defined in the CC. It remains unclear why the legislator has decided to use two different concepts to refer to the subject matter of the ML offence in the modalities described by these two articles.

59. As at the time of the 4th round assessment, the wording of the legislation does not include an explicit reference to proceeds derived indirectly. Nevertheless, the authorities maintain their opinion that the provisions are broad enough to cover all the different possible types of proceeds. As no court judgments were provided in support of this view and due to the limitations of a desk based review, this issue will have to be subject to a further analysis within the next on-site visit.

Overall conclusion

60. Since the adoption of the 4th round mutual evaluation report, Albania has taken a number of steps to enhance compliance with the requirement set under Recommendation 1, including by amending the legislation to resolve the technical deficiencies identified in the MER. The physical elements of money laundering have been brought more into line with the Vienna and Palermo Conventions. The predicate offences appear to be fully covered. Several final ML convictions were achieved since 2010 and there is an ascending trend of securing convictions in this matter. In addition, the cases presented by the authorities for the purposes of this assessment demonstrate that convictions for ML are being achieved for a broad range of predicate criminality. Also, the cases demonstrate that the jurisprudence developed by the courts appears to confirm an increasing flexibility with regard to the level of proof required to secure a conviction for the offence of ML. Overall, on the technical level, major improvements have been made. As regards the effectiveness of the implementation of the legislative framework, positive developments have been demonstrated by the authorities. Nevertheless, as has been stated in the analysis above, a number of issues, as well as the full assessment of the extent of effectiveness will have to be assessed in the context of the next on-site visit. **Based on this desk based review, R.1 can be considered essentially equivalent to LC**.

Special Recommendation II (Criminalisation of terrorist financing) (rating PC)

Deficiency No.1 – FT criminalization provisions in Chapter VII of the CC do not comply with the standard in that:

- *Article 230/a does not clearly apply regardless of whether the terrorist act is actually committed or attempted.*
- *It is not clear that the financing prohibited extends to the full extent of "funds" as that term is defined in the FT Convention.*

Recommended action 1 - The authorities should enact amendments to the FT criminalization provisions in Chapter VII of the CC provisions, so that:

- *Articles 230/a applies regardless of whether the terrorist act is actually committed or attempted and when there is only an intention that the funds be used;*
- *it is clear that the financing prohibited extends to the full extent of "funds" as that term is defined in the FT Convention;*
- *the financing of individual terrorists regardless of whether the funds are provided or collected to support terrorist activities is criminalized.*

Measures adopted and implemented: This deficiency has been fully addressed and the recommendation is fully implemented.

61. Albania has made substantive amendments to the FT criminalisation provisions in Chapter VII of the Criminal Code. These were adopted on 1 March 2012 by Law No. 23/2012. MONEYVAL has analysed the progress in respect of the FT offence under the CEPs procedures, which were lifted in July 2012. This deficiency is fully addressed as explained below.

62. Article 28 of Law 23/2012, amending the Albanian Criminal Code, appears to cover the deficiencies previously identified. The key TF offence is now contained in Article 230/a of the CC. Terrorism financing is defined as

"*Provision or collection of funds by any means, directly or indirectly, with the unlawful intention that they should be used or in the knowledge that they are to be used, in full or in part in order to:*
d) to commit offences with terrorist purposes;
e) by a terrorist organization;
f) by an individual terrorist"

63. To a large extent the new provisions of the FT offence identically reproduce the text of the Essential criterion II.1 (a) of the FATF Methodology. Provision or collection of funds with the unlawful intention that they should be used or in the knowledge that they are to be used, in the circumstances described by Article 230/a, apply regardless of whether the terrorist act is actually committed or attempted.

64. The new Article 230/a paragraph 2(c) provides as follows:

"The provisions of this article shall apply:
c) in the case provided for in the first paragraph of this article, notwithstanding if the funds are in fact used for the commission of the offence with terrorist purposes or if they are related to a specific offence with terrorist purposes;"

65. It is clear now that the offence applies regardless of whether the funds were actually used to commit an offence and regardless of whether a link with a specific terrorist act can be established.

66. The new Article 230/a paragraph 2(a) provides as follows:

"The provisions of this article shall apply:

to all funds including property of any kind, corporeal or incorporeal, movable or immovable, notwithstanding the way how they are obtained and legal documents or instruments of any kind and by electronic or digital media, demonstrating the rights or interest over such property, including the bank loans, travellers' cheques, banking cheques, cash warrants, shares, securities, bonds, pay-orders, letters of credit and any other similar financial instruments"

67. The new provision reproduces almost literally the definition of funds as it is provided by the TF Convention.

Deficiency No.2 – The financing of individual terrorists is criminalized only if the funds are provided or collected to support terrorist activities:

- *Article 230 CC does not cover each specific action that is required to be criminalized under all the treaties that are annexed to the FT Convention.*
- *Article 230 CC does not covers actions "intended to cause" death or serious bodily harm, only those that "might" cause this.*
- *Specific purpose or intent requirement set forth in Article 2 para. 1 (b) of the FT Convention are required in the case of the conducts specified in the annexed treaties (Article 2, para. 1(a)).*
- *Article 230 sets forth a purpose to compel Albanian or foreign governmental agencies rather than such governments.*

Recommended action 2 - The authorities should enact amendments to Article 230 CC so that:

- *it covers each specific action that is required to be criminalized under all the treaties that are annexed to the FT Convention;*
- *it covers actions "intended to cause" death or serious bodily harm, not simply that "might" cause this;*
- *the specific purpose or intent requirement set forth in Article 2 para. 1 (b) of the FT Convention is not required in the case of the conducts specified in the annexed treaties (Article 2, para. 1(a));*
- *the purpose set forth in the Article is to compel the Albanian or foreign government rather than "Albanian or foreign governmental agencies".*

Measures adopted and implemented: This deficiency has been largely addressed and the recommendation is largely implemented.

68. The current version of Article 230/a of the CC provides, as a modality of the TF offence, the provision or collection of funds in order to commit offences with terrorist purposes.

69. *Offences with terrorist purposes* shall include, *inter alia*, abduction of aircrafts, ships, other means of transport or fixed platforms, destruction of a functioning aircraft, ship or fixed platform, murder or abduction of an internationally protected person, handover, possession, use, transfer, alienation, possession or distribution of the nuclear material and distribution, placement, unloading or explosion of narcotic substances or of other lethal equipment in public places, offices of a state or government, public transport system or public infrastructure. The illegal behaviour is described under 19 subsections of the new Article 230 of the Criminal Code and covers the Treaties listed in the Annex to the TF Convention.

70. When enumerate the acts which shall be comprised by the offences with terrorist purposes, Article 230 paragraph2 (a) CC is referring to "*offences against the person who may cause death or serious injury*." In this reading Article 230 CC still does not cover actions "intended to cause" death or serious bodily harm.

71. The current provisions of Article 230 CC still requires that the terrorist acts (as they are referred to), to be committed "*with the view of spreading panic among the population or to force the Albanian or foreign state bodies to commit or not a certain act or to destroy or seriously destabilize crucial political, constitutional, economic or social state structures of another state, institution or international organization*". This last condition is more limitative that the FT Convention, in that it requires the previously mentioned act to be committed with this purpose; whereas the Convention indicates that this should be considered as terrorist acts, without any other purpose needed to be demonstrated.

72. This approach, which adds an element not specified in the FT Convention, is one which a number of countries have adopted to ensure that the generic definition is not used in circumstances where it was not intended. The authorities should assess the advantage of this approach in the domestic context in implementing the Convention, and ensure that Albania's ability to prosecute in factual settings contemplated by the Convention would not be negatively impacted.

73. It should be observed that most of the acts provided for in the list of treaties in the annex to the TF Convention contain a purposive element. It is possible that in a residual number of annex Convention situations satisfying the additional purposive elements contained in Article 230 might prove to be problematic (e.g. when the offence has been committed solely for financial gain). In such circumstances the financing of those offences can be prosecuted as ancillary offences such as complicity to the corresponding offences in the Criminal Code to the extent to which these offences are explicitly provided by the Criminal Code.

74. With regard to the last identified shortcoming under Deficiency no. 2, Albanian authorities clarified that this issue is a result of the inconsistency between the original Albanian version and the translation provided for the purposes of the 4th round evaluation. The authorities explained that the term used in the Albanian version of the CC is "public bodies" and not "governmental agencies". The definition of "public bodies" is provided in the Code of Administrative Procedure and comprises also the government.

75. In conclusion, one out of four issues under deficiency 2 has not been addressed, as explained above.

Deficiency No.3 – Not all ancillary conduct is covered.

Recommended action 3 - The authorities should either revise CC provisions on ancillary offences to deal with gaps in coverage as set forth in Recommendation 1, or incorporate coverage for all required ancillary conduct (facilitating in the absence of an agreement) directly in the CC Chapter VII – Terrorist Act provisions.

Measures adopted and implemented: The deficiency has been largely addressed and the recommendation has been partially implemented.

76. No changes of the relevant provisions on ancillary offences and no other actions in this respect have been reported by the Albanian authorities. The main concerns on ancillary offences related to TF offence, expressed through the 4th round report, remain. The CC provisions do not cover in full the required ancillary conduct. This is because they require an agreement between two or more persons and simple participation as an accomplice are not encompassed by the CC collaboration provisions.[7]

[7] **CHAPTER IV OF THE CRIMINAL CODE**
COLLABORATION OF PERSONS IN COMMITTING CRIMINAL ACTS
Article 25
Meaning of collaboration
Collaboration is the agreement of two or more persons to commit a criminal act.
Article 26
Collaborators

77. The authorities informed that the interpretation of the provisions governing criminalisation of ancillary activities was unified by a judgment of the High Court from 15 April 2011, in particular with regard to the practical characteristics of the required "agreement" between the persons involved. The information on the details of this court decision provided for the purposes of this assessment was however not clear enough to draw a fully substantiated conclusion. The application in practice of these provisions shall be review further during the next on-site visit.

Recommended action 4 - The authorities should work towards developing additional cases as domestic intelligence, coordination with foreign partners working on FT and terrorism matters, and SAR reporting provide such opportunities.

Measures adopted and implemented: This recommendation has been partially implemented.

78. The authorities reported a number of initiatives which have been put in place with the view of enhancing the effectiveness of the counter terrorism and CTF framework (for details please refer below to information on "Effectiveness"). In addition, Albanian law enforcement agencies (LEAs) participated on three occasions since October 2014 (since the establishment of the Anti-Terrorist Directorate) in joint operations with Italian authorities.

79. It can be concluded that a certain extent of a proactive approach has been demonstrated by the authorities. Given the limitations of a desk-based review, consideration will have to be given to the issues in more detail during the next on-site visit.

Recommended action 5 - The authorities should also consider making it clear that the Article 230 reference of "actions with terrorist purposes" is coextensive with the Article 230/a use of the term "terrorism".

Measures adopted and implemented: This recommendation has been fully implemented.

80. This recommendation has been implemented as far as Article 230/a does not longer contain references to "*terrorism*" but only to "*offences with terrorist purposes*".

Effectiveness

81. There have been no prosecutions or convictions in Albania for terrorism financing in the period under review. There was one TF investigation initiated in 2011. With regard to terrorist acts, there have been 6 investigations and three prosecutions initiated in 2015.

82. The authorities reported a number of actions undertaken with the view of enhancing cooperation and coordination of counter terrorism and counter terrorism financing initiatives. The most relevant activities demonstrating a pro-active approach to the issue are the following:

- a joint Task Force was established in December 2013, including representatives from the State Intelligence Service (SIS), the State Police and the Prosecutor's Office;

Collaborators in committing a criminal act are considered: the organizers, executors, instigators, and helpers.
Organizers are those persons who organize and manage the activity to commit the criminal act.
Executors are those persons who carry out direct actions to carry out the criminal act.
Instigators are those persons who instigate the other collaborators to commit a criminal act.
Helpers are those persons who, through advice, instructions, provision of means, abolition of obstacles, promises to hide collaborators, tracks or objects deriving from the criminal act, help to carry it out.

- an Anti-Terrorist Directorate was established within the Ministry of Internal Affairs in 2014 by Order no. 548/7, dated 17 October 2014;
- initiative "Alfano" was launched, which shall lead to the establishment of a joint centre for data processing of information related to terrorism;
- the authorities are in the process of drafting the National Strategy for the Prevention of Radicalisation/Extremism in Albania;
- legislation was reviewed on a number of occasions, lastly in particular in order to criminalise participation in foreign military forces, in order to reflect current developments.

Overall conclusion

83. The Albanian authorities have taken important steps to address the deficiencies related to SR.II in the 4th round MONEYVAL report. With the amendment of Articles 230 and 230/a of the Criminal Code, the provisions criminalising FT are to a large extent in line with the FT Convention standards. The terrorism offences cover the terrorist acts indicated in Article 2(1)(a) of the TF Convention. It still does not cover the actions "intended to cause death or serious bodily injuries" as required by Article 2(1)(b) of the Convention but only those that "may" cause this. The financing of terrorism set out in Article 230/a now clearly applies regardless of whether a terrorist act is actually committed or attempted. The full extent of "funds" as defined in the TF Convention is covered explicitly by the new provisions. The financing of individual terrorists, regardless of whether the funds are provided or collected to support terrorist activities, is criminalized.

84. The current provisions of Article 230 of the CC still requires that the terrorist acts to be committed with a specific purpose, which is more limiting that the FT Convention. Concerns remain, as to whether ancillary conduct is fully covered in all circumstances.

85. Although it is noted that there remain actions to be implemented to fully remedy the identified shortcomings, it is nonetheless considered that **Albania has taken the necessary steps to bring compliance with Special Recommendation II up to a level equivalent to largely compliant.**

Recommendation 5 – Customer due diligence (rating PC)

Deficiency no. 1 - Availability of financial instruments in bearer form;

Recommended action no. 1 – The authorities should amend Articles 1025 and 1026 of the Civil Code and/or pass legislation to prohibit the issuing of bearer passbooks;

Recommended action no. 2 – The authorities should pass legislation to prohibit the issuing of any other bearer instruments (e.g. certificates of deposit);

Recommended action no. 3 – The authorities should prohibit the use of cheques with multiple endorsements over a certain threshold.

Measures adopted and implemented: This deficiency has been partially addressed, the recommendations have however not yet been implemented.

86. The 4thround MER raised that despite the prohibition of the maintenance and opening of anonymous accounts under the AML/CFT Law, Albanian legislation continued to allow the issuance of passbooks in bearer form, the use of checks with multiple third party endorsements and certificates of deposit in bearer form. Following amendments, the prohibition under the AML/CFT Law has been extended to prohibit the issue of "*bearer passbooks and other bearer instruments*" (Art. 4/1 (3)). No further legislative or regulatory measures have been taken to address further this issue.

87. The authorities reported in July 2014 that according to the Annual Legislative Plan of the normative acts to be drafted by the Ministry of Justice, the draft law on amendments and additions to the Civil Code is foreseen to be approved in the 3rd trimester of 2014. At the time being, these amendments have not yet been adopted and the authorities reiterated their expectations for them to be adopted within 2015. The foreseen amendments to the Civil Code shall, according to the authorities, address the existence of bearer instruments. The draft amendments have not been presented for the purposes of this assessment and it is therefore not possible to assess the level to which they will remedy the deficiencies. The authorities confirmed that the other pieces of legislation, on the basis of which bearer instruments may be issued (such as the Decree no. 3702 on Checks or the Bank of Albania (BoA) Guideline no. 79, which permits the issuance of certificates of deposit), shall also be amended together with the Civil Code in order to ensure full harmonization of the legal framework.

88. Finally, it is to be noted that the representatives of the Bank of Albania informed that, in practice, anonymous financial products are not available in Albania. This statement was confirmed by the private sector during the on-site mission of the ICRG in Albania in January 2015.

Deficiency no. 2 - CDD provisions only apply to identification and verification.

Recommended action no. 4 – The authorities should extend the circumstances when "CDD" is required to all aspects of CDD, not just identification and verification

Measures adopted and implemented: This deficiency has been largely addressed and the recommendation is largely implemented.

89. At the time of the 4th round mutual evaluation, Art. 4 of the AML/CFT Law only required entities subject to the law to undertake identification and verification of their clients, but did not provide for the whole set of CDD, as required by Recommendation 5.

90. Following the amendments to the AML/CFT Law, Art. 4 of the AML/CFT Law now requires the obliged entities to undertake "CDD measures", which are defined in Article 2 (19/1) as follows:

"19/1 'Due diligence' is the entirety of measures that the subject should apply in order to identify as well as fully and accurately verify the customers, the ultimate beneficial owner, ownership and control structure of legal persons or legal arrangements, nature and purpose of the transaction and the business relationship as well as the on-going monitoring of the business relationship and the continuous consideration of the transactions, in order to ensure that they are in conformity with customer's business activity and risk profiles, including, where necessary, the source of funds."

91. This definition is further developed in Art. 4/1 (1), which has also been inserted in the Law within the last amendments, and which sets forward the specific actions to be undertaken by the obliged entities. It reads:

"Article 4/1

Due diligence measures

In the framework of the exercise of due diligence, the subjects shall:

a) Identify the customer (permanent or occasional, natural person, legal entity or trust) and verify his identity through documents, data or information received from reliable and independent sources.

b) For the customers who are legal persons or legal arrangement:

i) verify if any person acting on behalf of the customer is so authorized and to identify and verify his identity;

ii) verify their legal status through the documents of foundation, registration or similar evidence of their existence and provide information about the name of the customer, the name of trustees (for the legal arrangements), legal form, address, managers and/or legal representatives (for legal persons) and provisions regulating legal relationships;

c) Identify the beneficial owner and adopt reasonable measures to verify his/her identity through information or data provided from reliable sources on the basis of which the subject establishes his/her identity.

ç) Determine for all customers, before establishing business relationships, if they are acting on behalf of another person and take reasonable measures to obtain adequate data for the identification of that person.

d) Understand the ownership and control structure for the customers who are legal persons or legal arrangement;

dh) Determine who are the individuals owning or controlling the customer, including those persons who exercise the ultimate effective control over the legal persons or legal arrangement

e) Obtain information about the purpose and nature of the business relationship and to establish the risk profile during the on-going monitoring.

ë) Conduct continuous monitoring of the business relationship with the customer, including the analysis of transactions executed in the course of duration of this relationship, to ensure that they are consistent with the knowledge of the subject about the customer, nature of his/her business, risk profile and source of funds.

f).Ensure, through the examination of customers' files, that documents, data and information obtained during the process of due diligence are updated, relevant and appropriate, especially for the customers or business relationships classified with high risk.

g) Verify the identity of the customer and beneficial owner, before or in the course of establishing of a business relationship or conducting a transaction for the occasional customers.

The verification of identity of the customer and beneficial owner may be carried out after the establishment of business relationship, provided that:

i) it occurs as soon as practically possible;

ii) does not interrupt the normal conduct of the business activity;

iii) money laundering risks are effectively managed by the subject.

gj) Define the risk management procedures to be applied in cases where a customer may be permitted to enter into a business relationship with the customer, prior or during the completion of the verification process. These procedures shall inter alia include measures such as the limitation of number, type and/or amount of transactions that may be executed, as well as the monitoring of large and complex transactions carried out outside of the scope of the expected profile of the characteristics of that relationship.

h) Comply with the aforementioned obligations for the existing customers based on evidence, facts and risk of exposure to money laundering and financing of terrorism."

92. The provisions of Art. 4/1 of the AML/CFT Law have therefore implemented the majority of the requirements of Criteria 5.3 to 5.7, 5.13 to 5.14.1 and 5.17, as they establish a comprehensive system of CDD measures to be applied by the obliged entities. There remain however a few minor shortcomings with regard to the FATF Standards.

93. Firstly, Art. 4/1 allows entities to undertake verification measures after the establishment of a business relationship in para. g), the conditions are however broader than under Criterion 5.14.

Pursuant to the AML/CFT Law, one of the conditions under which the delay in verification is possible is that it should not interrupt the normal conduct of business activity, whilst the FATF Standards allow a delay in verification in cases when it is necessary in order to avoid the interruption of the normal conduct of business. The condition under the FATF Recommendations is therefore more restrictive than the provision of the AML/CFT Law. Furthermore, Instruction no. 28 allows for verification posterior to the establishment of the business relationship when: "it is necessary not to interrupt the normal continuation of the business activity of the subject", which is in line with the international standard. The authorities have pointed that this is a translation error and not an inconsistency.

94. In addition, the requirements under the AML/CFT Law in relation to beneficial ownership raise some questions; this issue will be discussed further under the analysis of the measures undertaken in relation to Recommended Action no. 8.

Deficiency no. 3 - Inconsistent legislative provisions for on-going monitoring leading to poor implementation by FIs

Recommended action no. 13 - Clarify the requirements in the AML/CFT Law on carrying out "continuous monitoring", and on "periodically" updating client data by either amending the Law itself or issuing further guidance to ensure that on-going monitoring is fully and consistently implemented by the obliged entities

Measures adopted and implemented: This deficiency has been largely addressed, the recommendation has however not been implemented.

95. As may be observed above under the analysis of the measures taken with regard to the previous deficiency, within the amendments to the AML/CFT Law, Art. 4/1 ë) and f) broadly introduce the requirements of Criterion 5.7.1 and 5.7.2 into Albanian legislation. Nevertheless, there remain concerns about the term "*continuous monitoring of the business relationship*", which is used in paragraph ë) instead of on-going due diligence, as this term is not further defined in the Law. There remain questions as to whether this would embrace the whole set of measures established in the Law under due diligence. The same term is used in the Instruction no. 28 and Decision no. 44, which are described below.

96. Instruction no. 28 on the Reporting Methods, Procedures and the Preventive Measures taken by the Subjects of the AML/CFT Law emphasises in the general part that CDD is an on-going process. It further contains an article on continuous monitoring of business relationships (Art. 8), which merely repeats the text from the AML/CFT Law. An additional clarification can be found in Art. 4 (8), providing that the internal audit should, among other things, evaluate the on-going monitoring of the business relationship and ensure that this relationship continues to be consistent with the new profile of the customer, in cases that changes occur in the business relationship of the client (as a result of organizational changes of the client, new services or products, new business or contractual relationships within or outside the country). Given that this is the only provision provided for in this Instruction, which sets specific situations when on-going monitoring should be undertaken, it is not clear whether the obligated entities would not undertake on-going monitoring exclusively in such cases, instead of foreseeing a periodic system. Furthermore, the Instruction requires entities to undertake enhanced/increased on-going monitoring with regard to PEPs and NPOs, within the scope of enhanced customer due diligence (ECDD). Nevertheless, further details are also not provided as to what exactly and when should it be done by the obliged entities to implement these provisions in practice.

97. The Guideline to Measure Risk Arising from Money Laundering and Terrorist Financing, which is included in the annex of Decision no. 44 issued by the BoA and which was last amended in 2013, also

refers to continuous monitoring of business relationships, especially with the purpose to measure risk or as a result of being identified as a high risk customer. This provision does not set any further details regarding the undertaking of such continuous monitoring.

98. In conclusion, the legal basis for the requirement to undertake on-going due diligence has been set explicitly in law and is broadly in line with the requirement. Nevertheless, there remain questions with regard to the implementing secondary legislation or guidance, as to whether the scope of this requirement and what it should entail has been clarified, as recommended by the assessment team.

Deficiency no. 4 - No requirement to verify the identity of beneficial owners.

Recommended action no. 7 - Include a requirement in law or regulation to verify the identity of a beneficial owner

Measures adopted and implemented: This deficiency has been largely addressed and the recommendation is largely implemented.

99. This deficiency has been addressed by the amendments to the AML/CFT Law, where pursuant to Art. 4/1 c), the obliged entities are required to "identify the beneficial owner and adopt reasonable measures to verify his/her identity through information or data provided from reliable sources on the basis of which the subject establishes his/her identity". This obligation is further repeated in Art. 4/1 g), which sets the conditions under which a delay in the verification of identity of a customer or beneficial owner is possible and which also implicitly implies the obligation to verify the beneficial owner information.

100. It is considered a positive development that the requirement to verify the identity of the beneficial owner has been introduced in the AML/CFT Law. There remains however questions about the definition itself of the term beneficial owner, as it does not cover explicitly relations with legal arrangements. This issue is discussed below in the analysis of the Deficiency no. 8.

Deficiency no. 5 - No requirement to establish whether a person is acting on behalf of another.

Recommended action no. 11 – The authorities should establish a requirement in law or regulation to determine whether a person is acting on behalf of another.

Measures adopted and implemented: This deficiency has been largely addressed and the recommendation is largely implemented.

101. Pursuant to the amendments to the AML/CFT Law, Article 4/1 ç) requires obliged entities to "*determine for all customers, before establishing business relationships, if they are acting on behalf of another person and take reasonable measures to obtain adequate data for the identification and verification of that person*".

102. The requirement in Art. 4/1 ç) applies only to situations "before establishing a business relationship"; it therefore does not cover all instances. The Instruction no. 44 sets a broader application in this matter, referring to both "before establishing a business relationship", as well as "during the monitoring of this relationship" It is questionable to what extent additional obligations can be set out in implementing instructions. In addition, as has also been already pointed out in the 4th round MER, the definition of the beneficial owner covers also "the natural person, which owns or, is the last to control a customer and/or the person on whose behalf is executed the transaction", which would partially cover the requirements under Criterion 5.5.1, as there are requirements to both identify and verify the beneficial owner. This provision is however only applicable to cases, when transactions are executed, which does not cover all the possible situations. It is clear that even though

the majority of the situations are covered under the legislative framework, the provisions do not cover all the possible situations, they are inconsistent and they could lead to confusing application by obliged entities.

103. In conclusion, it is recommended to the authorities to review article 4/1 ç and ensure that it covers all cases envisaged by the standard, and harmonise relevant implementing regulations and guidance.

Deficiency no. 6 - Inconsistent legislative provisions for beneficial ownership.

Measures adopted and implemented: This deficiency has been largely addressed.

104. Several deficiencies were identified at the time of the 4th round evaluation with regard to the definition of beneficial owner, as well as regarding the implementation of the obligations set by the FATF standards with regard to the beneficial ownership. Following the amendments made to the AML/CFT Law, the majority of these shortcomings were remedied.

105. There remains an issue in relation to the definitions of "beneficial owner", "customer" and "person" in the AML/CFT Law, as they refer only to legal persons and do not appear to cover legal arrangements. Instruction no. 28 and Decision no. 44 use the definitions set in the AML/CFT Law, which avoids different interpretation between the normative acts; it however therefore also copies the omission of the legal arrangements. These definitions are used throughout the text of the normative acts and have therefore a cascading effect on the scope of the provisions, in which they are utilised. (For more detail on this issue, the reader is referred to the analysis under Deficiency no. 8). The authorities consider however that the term 'legal person" would cover legal arrangements. The Decision no. 44 does not provide any further specification or guidance additional to the framework set by the above mentioned legislative acts.

106. It has not been therefore demonstrated that the provisions related to beneficial ownership would apply to legal arrangements in all circumstances. In this context, however, it should be taken into consideration that legal arrangements cannot be established under Albanian legislation. Despite the fact that legal arrangements established in a foreign jurisdiction could exercise activities in Albania, the risk associated with such is not considered as high. This was confirmed by the authorities, which reported that during inspections of financial institutions, no business with legal arrangements was encountered.

107. On a positive note, the indicators for establishing a suspicion frequently refer to the beneficial owner (for example in cases, when the beneficial owner would have a connection to an off-shore company with bearer shares, etc.). It is also welcomed that the BoA increasingly focuses on the identification of beneficial owners both within the scope of inspections of obligated entities, as well as in the context of awareness raising activities for the private sector.

Deficiency no. 7 - Very limited requirement to establish nature and intended purpose of business relationship.

Recommended action no. 12 – The authorities should include a requirement in law, regulation or OEM that obliged entities obtain information on the purpose and intended nature of the business relationship

Measures adopted and implemented: This deficiency has been fully addressed and the recommendation is fully implemented.

108. Art. 3 of the AML/CFT Law includes the identification of the purpose and nature of a transaction or business relationship as an essential part of CDD measures to be undertaken by obliged entities.

These should, according to Art. 4/1 e), "*obtain information about the purpose and nature of the business relationship and establish the risk profile during the on-going monitoring*".

109. Article 3 of the Instruction 28 also emphasises the "*collection of information on the purpose and intended nature of the business relationship*" as one of the pillars of CDD.

Deficiency no. 8 - Incomplete requirements for legal arrangements.

Recommended action no. 8 – The authorities should extend the requirements in relation to beneficial ownership to include beneficial ownership of legal arrangements

Measures adopted and implemented: This deficiency has been largely addressed and the recommendation is partially implemented.

110. The definition of the term "beneficial owner" in the AML/CFT Law remains the same as at the time of the 4th round mutual evaluation, all the provisions related specifically to beneficial owner are therefore related only to legal persons. Furthermore, the definition of customer also refers only to "persons" and this term is defined under the AML/CFT Law as covering only natural and legal persons. The authorities indicated that according to the the Albanian legislation the term "persons" includes only natural and legal persons, and thus they are of the opinion that the legal arrangements are implicitly captured by this definition.

111. Legal arrangements are however included in some of the requirements under Art. 4/1 (a, b, d, dh), such as that the obligated entities should "understand the ownership and control structure for the customers who are legal persons or legal arrangement" and "determine who are the individuals owning or controlling the customer, including those persons who exercise the ultimate effective control over the legal persons or legal arrangement". In Article 4/1 (a), reference is made to customers, followed in brackets by a list of persons and entities considered for the purposes of this paragraph as customers; this list includes legal arrangements.

112. Instruction no. 28 also frequently refers to legal arrangements, especially with regard to CDD, whilst Decision no. 44 only speaks of customers and beneficial owners.

113. Despite the fact that the majority of the CDD measures do cover legal arrangements by explicitly referring to them, throughout the AML/CFT Law, the Instruction no.28 and especially Decision no. 44, reference is made often only to customers or beneficial owners, definitions which are taken from the AML/CFT Law and do not cover legal arrangements. There remain therefore a number of requirements and obligations, where legal arrangements are not covered. In addition, it may result as confusing for the application of the requirements that the Decision no. 44 does not apply to legal arrangements at all. This is particularly relevant in the context of this Decision being the key guidance document for FIs supervised by the BoA, as it sets instructions for assessing risk, as well as it offers indicators for suspicious activities.

Deficiency no. 9 - No requirement for CDD on existing clients

Recommended action no. 17 – The authorities should set out in law, regulation or OEM a requirement to apply CDD measures to existing clients on the basis of materiality and risk, for example by clarifying what is meant by the term "periodically" in Article 6 of the AML/CFT Law.

Measures adopted and implemented: This deficiency has been fully addressed and the recommendation is fully implemented.

114. The requirement to conduct CDD on existing customers is set in Art. 4/1 h), which imposes on the obliged entities to comply with all the CDD measures set in the same article also for existing

customers, based on evidence, facts and risk of exposure to money laundering and financing of terrorism.

115. Instruction no. 28, dated 31.12.2012, on the Reporting Methods, Procedures and the Preventive Measures taken by the Subjects of the AML/CFT Law, in Art. 4 on CDD measures, states that the CDD measures on existing customers should be undertaken regardless of the risk exposure level to ML and TF and it further specifies when should such CDD measures be taken. The measures shall be applied in the following cases (the list is not exhaustive):

- a transaction may be outside the customer's business profile;

- the customer's documentation standards change substantially;

- when there is a material change in the usage of the account;

- or when it is noticed that the sufficient information on the customer is lacking.

Deficiency no. 10 - Inconsistent application of CDD measures in circumstances where there is a suspicion of ML/TF among FIs.

Deficiency no. 11 - Poor implementation of beneficial ownership requirements.

Deficiency no. 12 - Inconsistent implementation of requirement to conduct on-going due diligence.

Deficiency no. 13 - Inconsistent implementation of measures to be taken when enhanced due diligence.

Measures adopted and implemented: The deficiencies have been partially addressed.

116. The deficiencies set out above relate to effectiveness. It should be noted that since this is a desk-based review, effectiveness cannot be assessed to the same extent as during an on-site visit.

117. In general, it is likely that effectiveness has been enhanced by the new amendments to the AML/CFT Law, as the provisions related to CDD measures are now formulated in a more comprehensive and clear manner. Given however the lack of understanding of some of the basic obligations the evaluators have encountered during the on-site visit, it seems that legislative changes are not sufficient to enhance effective application of the provisions in practice and clearer and more direct guidance is necessary.

118. Regarding beneficial ownership, guidance is embedded in the Instruction no. 28, providing a few charts and explanations as to the identification of the shareholder with more than 25% of the shares of the company in an exemplifying manner. These instructions are a step in the right direction and appear to provide clarity on these provisions.

119. Regarding the application of ECDD measures, as well as the risk-based approach, a comprehensive framework has been established by the amendments to Decision no. 44. As has been however repeated several times, this decision is relevant only for the entities subject to supervision of the BoA, and it is therefore repeated with urgency that such guidance should also be issued for the other FIs.

120. The authorities have also provided a list of persons within the obliged entities trained by the GDPML in AML/CFT matters.

121. In addition, the authorities have reported that the supervisors have been focusing on the issues identified under Deficiencies no. 10 – 13, when undertaking inspections, due to which the effective application has been enhanced.

122. The figures provided on the number of on-site inspections undertaken raise questions, notably as it is noted that in respect of non-banking financial institutions (FIs), especially money and value

transfer service providers (MVTSPs), participants on the capital market and savings and credit associations, very few or no inspections have been undertaken in the past years.

123. In addition, the authorities reported that a high number of submitted suspicious transaction reports (STRs) were related to beneficial ownership information, this pointing to the fact that the private sector is aware of its obligations in this respect and it demonstrates a certain extent of application of the obligations in practice.

Recommended action no. 5 – The authorities should clarify or amend the term "reasonable doubt for money laundering or terrorist financing" in Article 4 of the AML/CFT Law to ensure that it fully covers cases where there is a suspicion of money laundering or terrorist financing.

Measures adopted and implemented: This recommendation has been fully implemented.

124. At the time of the 4th round mutual evaluation, the AML/CFT Law required the undertaking of CDD measures, amongst other situations, when there was a reasonable doubt for ML or TF. The term "reasonable doubt" required thus from obliged entities a higher level of assessment and proof regarding the existence and risk of ML and TF than a suspicion. Article 4 (ç) of the AML/CFT Law has since been amended and now requires the undertaking of CDD measures "*in all cases when, regardless of the reporting thresholds stipulated in this article, there are doubts about money laundering or financing of terrorism*". Even though the term "*doubts*" is not synonymous to "*suspicion*", it enables a broader interpretation and lower level of proof.

Recommended action no. 6 - Clarify in law or regulation the requirement to verify that a person acting on behalf of another is so authorized.

Measures adopted and implemented: This recommendation is considered as fully implemented.

125. Following the amendments to the AML/CFT Law, Art. 4/1 b) requires that for the customers who are legal persons or legal arrangement, the obliged entity shall "*verify if any person acting on behalf of the customer is so authorized and identify and verify his identity*". The same provision is included in Art. 4 (4) of the Instruction no. 28.

126. There remains a slight technical deficiency, as the provision of the Albanian legislation would appear to apply only to a person "acting" on behalf of the customer, which is more restrictive than the requirements of the FATF Standards, which refer to a person "purporting to act" on behalf of the customer. The authorities have indicated that the term used in the Albanian language would cover also instances of a person "purporting to act on behalf of a customer".

Recommended action no. 10 – The authorities should clarify the inconsistency between the AML/CFT Law and Instruction 12 regarding the threshold for identifying the shareholding and voting rights of legal persons in determining beneficial ownership.

Measures adopted and implemented: This recommendation has been fully implemented.

127. At the time of the 4th round mutual evaluation, the AML/CFT Law based the definition of "last effective control" on identifying the person with majority shareholding in the company, referring therefore to 50% + 1 vote. The Instruction of the Ministry of Finance at force at the time (Instruction no. 12) contained contradictory provisions referring to the ownership of a majority of shares, as well as to possession of over 25% of the shares. It has been therefore recommended to the authorities to harmonise in a clear way the provisions of these normative acts.

128. Following the amendments to the AML/CFT Law, last effective control is currently defined in the definition of beneficial owner as the relationship in which a person:

i. owns through direct or indirect ownership at least 25 per cent of stocks or votes of a legal entity;

ii. by himself owns at least 25 per cent of votes of a legal person, based on an agreement with the other partners or shareholders;

iii. defines de facto the decisions made by the legal person;

ç) controls by all means the selection, appointment or dismissal of the majority of administrators of the legal person.

129. Regarding Instruction no. 28, which is currently in force, the provision defining last effective control has been removed and it applies the definition from the AML/CFT Law. Following Art. 3 on CDD, a set of clear examples are provided for the purposes of identifying the ultimate natural person with a 25% shareholding, illustrated with comprehensive charts. This seems to provide adequate guidance to the institutions about how to identify the person with "last effective control" under the basis of 25% shareholding within complex legal structures.

Recommended action no. 11 – The authorities should clarify the meaning of "de facto controls the decisions made by the legal person" in the AML/CFT Law, or otherwise provide a specific requirement in law, regulation or other enforceable means ("OEM") to understand the ownership or control structure of customers who are legal persons, and in law or regulation the requirement that obliged entities must take reasonable measures to determine who are the natural persons who exercise effective control over a legal person or arrangement;

Measures adopted and implemented: This recommendation has been fully implemented.

130. It has been pointed out by the evaluators at the time of the 4th round evaluation that there was no requirement to understand the control structure of the customer. Furthermore, the definition of beneficial ownership based on effective control was limited to "*de facto controls the decisions made by the legal person*"; this provision has not been explained in the law, nor has guidance been issued to explain its application in practice.

131. The AML/CFT Law has preserved the definition of the person, who undertakes the last effective control, as the person, who "*de facto controls the decisions made by the legal person*". In the newly introduced Art. 4/1 (d), it is now however required to understand the ownership and control structure for the customers who are legal persons or legal arrangements.

132. This provision is further developed in Art. 4 on CDD of Instruction no. 28, which in paragraph 4 (e) sets the obligation to "*determine who are the natural persons that ultimately own or control the customer. This includes those persons, who exercise ultimate effective control over a legal person or a legal arrangement. For legal persons this shall include the identification of the natural persons who constitute the decision making and the management part of the legal person. In the case of legal arrangements this includes the identification of the settlor, the beneficiary, the trustee or the person with an effective control on them*".

133. It is considered that the general provision incorporated within the Law, together with the guidance set in the Instruction of the Ministry of Finance, provide sufficient basis to ensure compliance with the FATF standards in this matter.

Recommended action no. 14 – The authorities should provide further guidance on the categorization of clients deemed to require enhanced due diligence for all obliged entities, and (for entities supervised by the BoA) clarify that the indicators of suspicious activity given in Annexes I and II of Decision 44 can be used for this purpose, as well as for SAR reporting

Measures adopted and implemented: This recommendation is largely implemented.

134. The provisions regarding ECDD in the AML/CFT Law remain the same as at the time of the 4th round visit, they have been however complemented by a general definition of EDD. The law requires obligated entities to undertake ECDD towards the following categories of clients:

- PEPs
- NPOs
- Non-resident customers
- Business relationships and transactions with all types of the customers residing in or carrying out their activity in countries which do not apply or partially apply the relevant international standards for the prevention and fight against money laundering and financing of terrorism
- Business relationships and transactions with customers such as trusts and companies with nominee shareholders
- complex transactions, with large and unusual values, which have no apparent economic or legal purpose
- cross-border corresponding bank services

135. Furthermore, the AML/CFT Law requires the obliged entities to "*identify other categories of business relationships, customers and transactions which, on a risk sensitive basis, pose a higher risk and to which enhanced due diligence measures shall be applied*".

136. The Instruction no. 28 repeats the same list of fixed categories of persons, to which ECDD measures should be applied, and requires the obliged entities to define other categories of business relationships, customers and transactions, which are valued at a high risk and to which ECDD measures should be applied. For this purpose the subjects should develop and implement procedures and policies to identify the level of risk according to the categories of customers or business relationships. The Instruction further offers the obligated entities a set of indicators for identifying these other categories of customers to which ECDD should be applied on a risk sensitive basis,

i. the risk that the client represents, his geographical position and integrity of products and services;

ii. the customer acceptance policy and monitoring of the business relationship;

iii. the process of categorizing customers according to the level of risk.

137. Regarding Decision no. 44, it has been amended in 2013 and currently contains a chapter setting a framework for assessing the levels risk, stating explicitly that where high-level risk is identified, enhanced CDD has to be applied in all circumstances. The following chapter presents risk factors to guide the obliged entities in the evaluation of the risk, these factors are divided into three categories:

- geographical risk,
- customer's risk, and
- the risk of products, services/transactions and business relationships

For each of the categories, examples are enumerated, providing an exhaustive guidance for the obliged entities, but without limiting their discretion.

138. Decision no. 44 is only applicable to the obligated entities subject to regulation and supervision of the BoA. The Financial Supervisory Authority approved on 30 June 2015 Decision no. 58 on the Regulation "On due diligence and on enhanced due diligence from subjects of Law on Prevention of Money Laundering and Terrorism Financing". This Regulation applies to participants on the capital market, pension funds and entities engaged in life insurance business. This Regulation, however, does not contain provisions which would provide guidance with regard to the categorisation of clients for the purposes of ECDD. The FSA reported in this respect that the guidance with regard to categorization of clients for the purpose of ECDD will be drafted in the near future.

139. In conclusion, it is considered that as regards the entities subject to supervision and regulation of the BoA, the recommended action has been fully implemented. Regarding the other financial institutions, substantial progress has been achieved since the 4th round evaluation, it is however recommended to provide further guidance on the assessment of customers on a risk basis, in order to identify those, to which ECDD measures should be applied.

Recommended action no. 15 – The authorities should clarify in law, regulation or OEM, or in guidance, the steps to be taken in when obliged entities are required to apply enhanced due diligence;

Measures adopted and implemented: This recommendation has been partially implemented.

140. Regarding the application of ECDD measures in general, the AML/CFT Law sets only one concrete requirement to be undertaken by obliged entities, and that is that they should require the physical presence of customers and their representatives a) prior to establishing a business relationship with the customer; or b) prior to executing transactions on their behalf.

141. Furthermore, more comprehensive lists of measures to be undertaken within the application of ECDD are put forward by the AML/CFT Law with regard to the specific categories of customers, towards which ECDD should be applied, such as PEPs, NPOs, etc. The requirement to apply these measures is however limited only to each of the specific groups and no obligation or recommendation is set for the entities to apply these also to other categories of customers, which have been identified on the basis of a risk assessment.

142. Instruction no. 28 merely repeats the provisions of the AML/CFT Law in this matter.

143. On the basis of Chapter 5 of the Decision no. 44, in case higher risk level is identified by an obligated entity with regard to a customer or a transaction, the following measures may be applied to mitigate the exposure to risk:

- Additional information on customer's profile (internet, public data base);

- Increase of frequency of data updating for the customer;

- Additional information on the intended nature of the business relationships, by requesting justifying documentation;

- Receiving the additional information on the source of funds;

- Receiving additional information on the reasons and purpose of this transaction or group of transactions;

- Receiving the approval from high-level managers on the beginning and continuance of business relationships with the customer, in cases when the relationship between the business and the customer is established and the entity concludes that the customer or the beneficial owner has changed the category;

- Enhanced due monitoring.

144. The Decision no. 58 of the FSA on the Regulation "On due diligence and on enhanced due diligence from subjects of Law on Prevention of Money Laundering and Terrorism Financing" approved on 30 June 2015 defines ECDD as *"a deeper process control, beyond procedures "Know your customer", which aims at establishing enough security to verify and evaluate the identity of the customer, to understand and test his profile, his business and his bank account activity, to identify relevant information and to evaluate the potential risk of money laundering/terrorism financing, to support decisions aimed at protecting the financial risks, regulatory or reputational and adaption to legal requirements"*. No further concrete measures to be applied by the institutions are, however, foreseen by the Regulation.

145. As results from the analysis above, the recommendation has been implemented only through the Decision no. 44. The recommendation to issue such guidance for the entities not subject to supervision and regulation of the BoA is therefore repeated.

Recommended action no. 16 – The authorities should establish in law, regulation or OEM requirements for all obliged entities not to open accounts and to consider submitting an SAR when they are unable to comply with criteria 5.6, and additionally for all obliged entities not supervised by the Bank of Albania when they are unable to comply with criteria 5.1 to 5.5;

Measures adopted and implemented: This recommendation is largely implemented.

146. As has been described above, Art. 4/1 of the AML/CFT Law now contains a comprehensive set of CDD measures to be applied to customers. Paragraph 2 of the same article then handles the situation when the obligated entities are unable to comply with the customer due diligence obligations according to this article and articles 4, and 5 of this law, in this case the entities:

a) shall not open accounts, perform transactions or commence a business relationship;

b) shall terminate the business relationship if it has commenced;

c) shall send a suspicious activity report to the "Responsible Authority".

147. The actual application of this provision is, nevertheless, hindered by the remaining deficiencies identified above with regard to the CDD measures established under the AML/CFT Law. Despite the technical compliance of this provision with Criteria 5.15 and 5.16, the authorities are urged to remedy the previously identified shortcomings, in particular with regard to beneficial ownership and legal arrangements, in order to avoid the cascading effect of these shortcomings.

Recommended action no. 18 – The authorities should consider prohibiting cash transactions in all currencies over a certain threshold, given the AML risk in Albania associated with the use of cash;

Recommended action no. 19 – The authorities should consider prohibiting cash transactions in all currencies over the amount of lek 1,000,000 in circumstances where the customer declares that the source of funds is from his/her employment abroad, unless accompanied by a relevant customs declaration form.

Measures adopted and implemented: These recommendations are partially implemented.

148. The Albanian authorities have considered the recommended actions. They have decided to take a different set of measures regarding cash transactions:

- from 2013, any real estate transaction must be executed through the bank account of the notary, avoiding the use of cash between the parties;
- legal entities are allowed to carry cash transactions only up to 150.000 ALL (1070 Euro).

Effectiveness

149. For the assessment of effectiveness, the reader is referred to the analysis under the Deficiencies no. 10 – 13.

Overall conclusion

150. The Albanian authorities have taken significant steps to address the deficiencies identified under R.5 in the 4th round MER. Pursuant to the amendments of the AML/CFT Law; a comprehensive legal framework has been established with regard to CDD measures, which is broadly in line with the requirements of R.5. There remain however several minor technical issues regarding the general CDD framework as set out in detail above.

151. The authorities have provided some information which suggests that action has been undertaken to assist FIs to better understand the new requirements of the CDD and ECDD requirements and that they are working to improve their level of implementation. The authorities stressed that particular focus is being put on the understanding and implementation of the requirements connected to beneficial ownership by the private sector.

152. Since the time of the 4th round on-site visit, Albania has undertaken significant progress which substantively addressed the majority of the deficiencies identified in the MER. As regards technical compliance, it can be concluded that, apart from minor remaining issues, the shortcomings identified have been largely remedied. In addition, the authorities have presented information which demonstrates efforts undertaken with the view of enhancing the effectiveness of implementation of the measures. The assessment of effectiveness is however limited in the context of a desk based review and remains to be demonstrated in the context of an on-site visit. As a result, from a desk based review, it is assessed that **Albania has brought R.5 to a level equivalent essentially to LC**.

Recommendation 13 – Suspicious transaction reporting (rating PC)

Deficiency no. 1 - Deficiencies in criminalization of ML (insider trading and market manipulation).

Recommended action no. 1 – The authorities should ensure that the SAR requirement extends to all categories of offences required in the FATF standards

Measures adopted and implemented: This deficiency has been fully addressed and the recommendation is fully implemented.

153. The reporting obligation set in the Albanian AML/CFT Law refers to all criminal activity without specification. The deficiencies identified in the 4th round MER were therefore based on the fact that several of the FATF designated predicate offences were not criminalised at all in Albanian legislation at the time of the evaluation. For information about the measures taken in this respect, the reader is referred to the analysis of Deficiency no. 3 under Recommendation 1.

Deficiency no. 2 - Definition of FT might limit the scope of the reporting obligation.

Measures adopted and implemented: This deficiency has been largely addressed.

154. For further details on the action taken with regard to the deficiencies identified in relation to the criminalisation of TF, the reader is referred to the analysis under SR.II, which outlines that progress

has been achieved in this respect and that this deficiency has been addressed to a large extent. The authorities are of the view that in practice the scope of the reporting obligation is not limited.

Deficiency no. 3 - *Provisions only extend to "intended" terrorist financing.*

Measures adopted and implemented: This deficiency has been largely addressed.

155. It has been raised in the 4th round MER that the reporting obligation only covered the cases "*when the entities suspect that the property is proceeds of a criminal offence or is intended to be used for financing terrorism*" and the evaluators concluded that the restriction only to funds "*intended to be used for financing of terrorism*" was not in line with the requirements of R.13.

156. Article 12 of the AML/CFT Law has been amended since the 4th round mutual evaluation and paragraph 1 currently reads:

"1. Subjects submit a report to the "Responsible Authority", in which they present suspicions for the cases when they know or suspect that laundering of the proceeds of crime or terrorism financing is being committed, was committed or attempted to be committed or funds involved derive from criminal activity."

157. The new wording of the reporting obligation is now based on a reference to the criminal offences of ML and TF or funds derived from criminal activity. This direct reference in the reporting obligation to the actual criminal offences has remedied the deficiency identified in the 4th round MER, but it however raises additional questions.

158. First of all, whilst Criterion 13.1 only requires a suspicion that funds are proceeds of crime, the nexus with the ML offence limits the scope of the reporting obligation by referring to a number of actions under the ML offence. Furthermore, the ML offence is based on a mental element that the perpetrator knew or should have known that the funds are proceeds of crime, which would limit the application of the reporting obligation in the cases, where there is a suspicion that funds are proceeds of crime by the obliged entity, but the person couldn't have known about it. In practice this would add an additional element for the obliged entity to assess, to which however it would not be likely to have adequate expertise or capacity.

159. This issue could be mitigated by the last part of the reporting obligation, which refers to a suspicion that "*funds involved derive from a criminal activity*". There remain however doubts as to the scope of this provision, as the term "funds" is not used or defined anywhere in the AML/CFT Law and it is therefore not clear whether it would cover all the necessary types of assets as required under the term "proceeds of crime".

160. Regarding TF, the new wording of Article 12 applies only to cases, when the subjects know/suspect that TF is being, was or is attempted to be committed; Criterion 13.2 however refers to a suspicion that the funds are linked or related or to be used in terrorism, terrorist acts, terrorist organisations or those, who finance terrorism. The reporting obligation, as currently set under the AML/CFT Law, may not cover all the possible situations, as covered by R.13 (such as suspicion about a mere intention to commit TF or when funds are related or linked to terrorism/terrorist acts/terrorists/terrorist organisations, for example owned by them without any action or used for other purposes). Notwithstanding, it is questionable to what extent would this technical issue impact on the actual reporting by the reporting entities.

Deficiency no. 4 - Exemptions from requirement to report are not in line with the FATF standard.

Recommended action no. 4 – The authorities should remove the exemptions in Article 13 of the AML/CFT Law that relate to SARs

Measures adopted and implemented: This deficiency has been fully addressed and the recommendation is fully implemented.

161. The exemptions, which were identified in the 4th round MER as restricting the reporting obligation in a way incompatible with international requirements, have been removed from the AML/CFT Law at the time of the last amendment. There are no more exemptions contained in the relevant laws or regulations.

Deficiency no. 5 - No explicit requirement to report attempted transactions.

Recommended action no. 3 – The authorities should set out an explicit requirement in law or regulation that attempted transactions should be reported

Measures adopted and implemented: This deficiency has been partially addressed and the recommendation has been partially implemented.

162. Given that the reporting obligation at the time of the 4th round mutual evaluation was related to a suspicion emanating from property, without any reference to transactions, it has been pointed out by the evaluators that the law did not set an explicit obligation to report attempted transactions.

163. The authorities have reported that this deficiency has been remedied by para. 1 of Art. 12, as the subjects are currently obliged to report when they know or suspect that laundering of the proceeds of crime or terrorism financing is being committed, was committed or attempted to be committed or funds involved derive from criminal activity.

164. Whilst Recommendation 13 requires the reporting of attempted transactions, where there was a suspicion that proceeds of criminal activity were involved or the funds were linked or related to or to be used for terrorism, terrorist acts or by terrorist organisations or by those, who finance terrorism, Art. 12 requires to report when the offences of ML or TF were attempted. The reporting obligation of attempted transactions is therefore partially covered, but in general it is subject to the same limitations as have been described under Deficiency no. 3 with regard to the reporting obligation itself.

165. Finally, it is necessary to point out that attempted transactions have been reported in practice already at the time of the 4th round evaluation, which has been acknowledged by the evaluators in the MER, as well as they are reported at present. Number of SARs and number of SARs related to attempted transactions received by the GDPML in the years 2009 to June 2015.

Year	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**Jan- June 2015**
SARs reported	186	211	383	556	558	1230	697
Attempted transactions	6	2	6	17	26	23	11

Deficiency no. 6 - The number of SARs overall and in comparison with CTRs give concerns about the effectiveness of the reporting regime.

Recommended action no. 6 – The authorities should encourage greater reporting of SARs by obliged entities by raising awareness of the reporting requirement in sectors/parts of sectors which have submitted few SARs

Recommended action no. 5 - The authorities should take steps to raise awareness amongst obliged entities of the difference between the currency transaction reports, suspicious activity reports and suspicious transaction reports that are required under the AML/CFT Law

Measures adopted and implemented: This deficiency has been largely addressed and the recommendations have been largely implemented.

166. The authorities have reported that the number of SARs has increased since the time of the 4th round evaluation and this especially in the context of the legislative changes, which have limited the CTR reporting obligations, and which entered into force in 2012 (for further information about these amendments, please refer to the analysis under Recommended action no. 8 below).

167. As may be observed in the table below, from the statistics provided by the authorities on the SARs and CTRs received by the GDPML in the last years, it is possible to conclude that a significant increase of SARs has been achieved.

Number of SARs and CTRs received by the GDPML in the years 2009 to June 2015

Year	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**	**Jan-June 2015**
SARs reported	186	211	383	556	558	1230	697
CTRs reported	985.447	1.624.983	693.711	777.533	608.755	607.158	231.629

168. As has been stated earlier, the authorities have provided information about trainings undertaken by the GDPML for representatives of the obliged entities which have included issues related to different types of reporting (CTR, SARs), among other topics like CDD and ECDD measures, risk based approach, trends and typologies reports associated with sanitized ML/FT cases encountered both nationally as well as internationally, on-going monitoring of business relationship, attempted transactions, new methods of payments, application of prohibitions for persons designated through the relevant UN Security Council Resolutions (UNSCRs) and the national legislation etc.

Recommended action no. 2 – The authorities should extend the definition of SAR (Article 12 para 2) to include the proceeds of criminal activity.

Measures adopted and implemented: This recommendation is partially implemented.

169. The authorities have amended Art. 12 para. 2 in order to extend the reporting obligation also to cases, where there is a suspicion that the funds involved in a transaction derive from criminal activity. As has been however pointed out above, the meaning of the term "funds" is not explained in the AML/CFT Law and it is therefore not clear, whether its scope would cover all the aspects of the term "proceeds of crime".

170. Furthermore, the application of Art. 12 para. 2 remains limited only to cases when an obliged entity has a suspicion "upon being asked by the customer to carry out a transaction". This wording restricts the application of this provision, as has already been identified by the evaluators in the 4th round MER and does not therefore fully present a suspicion transaction reporting obligation as required under R.13.

Recommended action no. 7 - The authorities should ensure that all instances of tax evasion are reported

Measures adopted and implemented: This recommendation is fully implemented.

171. It has been identified in the 4th round MER that tax evasion is only criminalised once committed for the second time , the first time committed it is treated merely as an administrative misdemeanour. The authorities have informed that a growing number of SARs submitted to the GDPML are related to tax evasion and this clearly indicates that the obliged entities do apply their AML/CFT obligations regardless of the underlying offence or criminal activity involved. Additionally, they have mentioned that Article 180 of the Criminal Code was amended in 2013, and according to the current provisions the offence of tax evasion can be considered a criminal offence even when committed for the first time. In this respect, the authorities have also reported that the obligation to report suspicious transactions related to proceeds of tax offences in all cases was also included in the outreach efforts to the private sector undertaken by the authorities.

Recommended action no. 8 - The authorities should consider reviewing the whole CTR reporting system to determine whether it adds value to the fight against ML/TF, especially given that FIs give it precedence over reporting suspicion;

Measures adopted and implemented: This recommendation was largely implemented.

172. The authorities have reported they have considered this recommendation made by the evaluators, but they have come to the conclusion that SARs and CTRs as different parts of the AML/CFT regime and that both have an important role within the system. The amendments to the AML/CFT Law have however led to legislative changes regarding the obligation to report transactions above a threshold. The threshold for reporting cash transactions has been lowered to 1,000,000 ALL (the previous threshold used to be 1,500,000 ALL) and for linked transactions a limit has been set requiring that they occur within the period of 24 hours. Furthermore, the requirement to report non-cash transactions from Art. 12 (3,b) has been deleted. The authorities have underlined that the issue of the different types of reporting (CTR, SARs) has been specially focused among others, within the trainings provided to the obliged entities.

Recommended action no. 9 - The authorities should provide adequate and timely feedback to obliged entities which report SARs.

Measures adopted and implemented: This recommendation has been fully implemented.

173. The GDPML issues and publishes on its website its annual report. This report contains detailed typologies of some cases, which have been analysed by the GDPML, as well as statistics on the reporting of SARs and CTRs, together with statistics on the cases transmitted to the LEAs. The information contained in the report seems comprehensive and gives a general overview of the work of the GDPML. In addition, the GDPML has recently issued a comprehensive typologies report, which describes the latest and most significant ML cases; this report has been finalised with the help of OSCE.

174. The GDPML further stated that it provides feedback on an individual basis to obliged entities. The feedback provided by GDPML is automated to ensure the acknowledgement of the receipt of a SAR. Furthermore feedback is provided to the greatest extent possible for all the cases when the narrative as well as the relevant documentation is deemed as adequate as well as in those cases when additional steps should have been performed by the compliance units. In addition general feedback is provided also to major FI annually on an individual basis.

Effectiveness

175. It has been positively noted that within the digitization of the GDPML, a system for online reporting has been established. The GDPML has also issued a manual for the online reporting of the SARs by the obliged entities.

176. As has been already described in the analysis under Deficiency no. 6, the number of SARs received by the GDPML has significantly increased since the 4th round evaluation.

177. Given that a clear majority of the SARs continue to be send by banks, there remain concerns about the awareness of the reporting obligation by other reporting entities, in particular about their knowledge of how to assess adequately the risks and evaluate a suspicion. This may be caused by the fact that the only indicators and guidance in this matter is included in the Decision no. 44, which does not cover all the reporting entities. Notwithstanding, it is to be stressed that an increasing number of SARs are being filed by MVTSPs since 2012.

178. In the Annual Report of the GDPML it is stated that in 2013, from 558 received SARs, 23% were further transmitted to LEAs (115 to the Police authorities and 17 to the Prosecutor's Office). The Albanian authorities have reported that GDPML maintains detailed statistics regarding the number of disseminations generated from SARs reported by obligors. It has been reported that an inter-institutional memorandum of understanding (MoU) was signed in 2013 by the Prosecutor's Office, Ministry of Interior, GDPML and the Albanian State Police, based on the exchange of information under this MoU the authorities have reported that the Albanian State Police during the period January - September 2014 investigated 137 ML cases out of which 80 were based on disseminations by GDPML.

Overall conclusion

179. There have been several important measures taken by the authorities to address the deficiencies identified in the 4th round MER. Most of the deficiencies have been addressed to a large extent. Thus **Albania appears to have brought R.13 to a level equivalent essentially to LC**.

Special Recommendation IV – Suspicious transaction reporting (rating PC)

Deficiency no. 1 - Deficiencies in criminalization of TF.

Measures adopted and implemented: This deficiency has been largely addressed.

180. As it is described in details under Special Recommendation II above, the deficiencies in criminalisation of TF which can pose a real impact on the reporting activities envisaged by SR.IV have been addressed.

Deficiency no. 2 - Definition of FT might limit the scope of the reporting obligation

Measures adopted and implemented: This deficiency has been largely addressed.

181. For further details on the action taken with regard to the deficiencies identified in relation to the criminalisation of TF, the reader is referred to the analysis under SR.II. The possible limitations of the scope of the reporting obligation from this perspective are negligible.

Deficiency no. 3 - Provisions only extend to "intended" terrorist financing.

Measures adopted and implemented: This deficiency has been largely addressed.

182. The reader is referred to the analysis of Deficiency no. 3 under Recommendation 13.

Deficiency no. 4 - Exemptions from requirement to report are not in line with the FATF standard.

Measures adopted and implemented: This deficiency has been fully addressed.

183. The reader is referred to the analysis of Deficiency no. 4 under Recommendation 13. The exceptions have been removed.

Deficiency no. 5 - No explicit requirement to report attempted transactions;

Measures adopted and implemented: This deficiency has been largely addressed.

184. The reader is referred to the analysis of Deficiency no. 5 under Recommendation 13.

Deficiency no. 6 - Low numbers of SARs relating to TF give rise to concerns about the effectiveness of the reporting regime

Recommended action no. 1 – The authorities should encourage greater reporting of SARs related to TF by obliged entities by raising awareness of the reporting requirement in sectors/parts of sectors which have submitted few SARs.

Measures adopted and implemented: This deficiency has been partially addressed and the recommendation is partially implemented.

185. The table below shows the numbers of SARs related to terrorism received by the GDPML in the period 2009 to June 2015:

2009	2010	2011	2012	2013	2014	Jan – June 2015
4	7	1	3	4	8	1

186. The authorities have claimed in this respect that they consider the number of filed TF related SARs commensurate to the TF risk identified in the country.

187. No further information has been provided about the measures taken to remedy the deficiency identified in the 4th round MER.

Recommended action no. 2 – The authorities should ensure that the SAR requirement extends to all categories of TF offences required in the FATF standards, and that it applies to situations beyond intended terrorist financing.

Measures adopted and implemented: This recommendation has been largely implemented.

188. This issue has already been discussed under Deficiencies 1 – 3 above.

Effectiveness

189. The analysis of the general effectiveness of the reporting obligation, as presented under Recommendation 13, is applicable to SR.IV as well.

190. Furthermore, a list of indicators for reporting entities on identification of possible TF is published on the website of the GDPML. The authorities reported that they include TF in the awareness raising activities they undertake, as well as they have included in the outreach efforts outcomes of the NRA and international typologies works related to current trends related to TF.

191. It is to be noted, however, that the authorities remain of the opinion that the low values of TF related SARs are principally due to the fact that the level of the risk of TF in the country is low. The level of identified risk should however not have an impact on the level of knowledge and awareness of this issue by the reporting entities, as the preventive measures should be implemented to full extent in order to avoid any potential risk. This approach should therefore be reconsidered by the authorities in order to ensure that potential risks are not neglected.

Overall conclusion

192. Equally as for Recommendation 13, several measures have been taken by the authorities to address the deficiencies identified in the 4th round MER. Most of the technical deficiencies appear to be addressed to a large extent. The overall situation as regards the effectiveness remains comparable to the situation at the time of the 4th round evaluation.

193. From a desk-based review, it would appear that **Albania has brought SR IV to a level equivalent essentially to LC.**

5. REVIEW OF THE MEASURES TAKEN IN RELATION TO THE KEY RECOMMENDATIONS RATED PC

Recommendation 23 (Supervision financial institutions) (rating PC)

Deficiency No.1 - Existence of the non-licensed and non-supervised informal financial sector.

Recommended action no.1 - Ensure that all the Albanian financial activities are subjected to adequate AML/CFT regulation and supervision.

Measures adopted and implemented: This deficiency has been largely addressed and the recommendation has been largely implemented.

194. The 4th round report has noted that "the existence of an informal currency exchange sector ("informal cambiste") that are neither registered nor supervised is a high risk the AML/CFT system."[8]

195. The authorities have reported that this deficiency is addressed with the amendments of the Criminal Code, indicating of relevance at this point Article 170/c and 170/ç.[9]

196. They have also indicated that in order to address this phenomenon, operational measures programs have been prepared as a result of an order of the Director General of State Police. The authorities have also provided the table below.

Table of offense "Exercise of financial activity without license" in years 2011 – June 2015

2011	2012	2013	2014	Jan – June 2015
-	46	27	125	33

[8] MONEYVAL, Report on Fourth Assessment Visit para 1018 – 1021
"1018.Notwithstanding the efforts of the BoA for licensing this activity and also police efforts to pursue and terminate illegal activity in the exchange bureaus sector, the informal market operations in he seems to be still quite significant. The so-called "informal cambiste", are individual persons whose activity is to exchange money in the street. In 2009 a targeted police operation closed more than 88 "informal cambiste" but the activity, even significantly reduced is still clearly visible in the streets of Tirana.
1019. The "informal cambiste", represent an ML/FT risk, as they are operating outside the law without any supervision. The data on the significance of the activity of those "cambiste" are estimated to be between 20% up to 40%. Also the "informal cambiste activity" might be extended to small foreign currency loans and it seems that an informal and small trading exchange market exists where the exchange rates are daily established for this sector. The existence of an informal agent neither registered nor supervised makes preventing AML/CFT system less efficient.
1020. Aditional relevant information arose from the FIs interviews was the possible relation of those "cambiste" with the construction activity which is another ML/FT risk sector indentified in Albania.
1021. In addition, the existence of informal 87organized money remittance systems appears to be very significant. "Informal networks of cross border cash couriers" through long distance bus services and travel agencies is highly vulnerable to ML/FT and a potential threat for the Albanian economy and the national strategy fight against ML/FT."

[9] Article 170/c **Exercise without license of the banking activity**
Exercise of banking activity by persons who are not licensed for this purpose according to bank law in force, is sentenced by fine or up to three year imprisonment. The same penal offense when has caused severe consequences for the public interests or for the interests of nationals, is sentenced by fine or up to seven years imprisonment.
Article 170/ç **Exercise financial activities without license** (Added by Law nr.23/2012, dated 03.01.2012, Article 25)
The exercise of one or several different financial activities of banking activity, by persons who are not licensed for this purpose, according to banking legislation and / or financial authorities, is punishable by fine or imprisonment up to three years.
The same act, when it has caused serious consequences to state interests or those of citizens, shall be punished by fine or imprisonment up to five years.

Note: Due to a legal gap in 2011 there have not been such cases, but with the amendment of article 170/ç of the CC (added by law no.23/2012, dated 1.3.2012) the number of investigation cases has increased.

197. It remains unclear whether there have been any prosecutions undertaken or convictions achieved. This is an issue which would need to be verified further during the next evaluation round.

Deficiency No.2 - Absence of fit and proper tests for senior managers and directors in the case of some financial institutions subject to the Core Principles.

Recommended action no.5 - Establish legal requirements for fit and proper tests for all the FIs that are subject to the Core Principles.

Measures adopted and implemented: This deficiency is fully addressed and the recommendation has been fully implemented.

198. With regard to directors and senior managers of banks, the evaluation team at the time of the 4th round assessment visit concluded that the fit and proper criteria assessed were fully in place. In addition, the BoA approved in 2012 Decision No. 63, dated 14. 11. 2012, which establishes criteria for the qualifications, experience and documentation requirements for approval of administrators of a bank. The evaluation team, however, raised concerns about the lack of such requirements with regard to the other financial institutions subject to Core Principles.

199. The authorities clarified that with regard to the participants on the capital market the fit and proper criteria for directors and senior managers were set out in the following legislation:

- Law no. 10198, dated 10.12.2009, "On collective investment undertakings" with regard to management companies of investment funds (Article 18);
- Law no. 10197, dated 10.12.2009, "On voluntary pension funds" with regard to management companies of pension funds (Article 25);
- Regulation no. 165, dated 23.12.2008, "On the licensing of the brokerage/intermediary companies, the broker and the investment advisor" with regard to investment advisors, brokers and brokerage/intermediary companies (Articles 12 and 14);
- Regulation no. 120, dated 02.10.2008, "On the licensing and supervision of the securities exchange" with regard to the stock exchange (Article 6).

200. In addition, the Law no. 52 "On the activity of insurance and reinsurance" was adopted on 22 May 2014, which sets out in Articles 17 and 20 fit and proper criteria with regard to managers and directors of insurance companies.

201. The set of fit and proper criteria foreseen by the above listed laws and regulations is comprehensive and contains all the basic requirements of the international standards. In addition, the requirements apply also to qualified shareholders of the FIs in question.

202. Finally, the Bank of Albania also issued on 17 January 2013 Decision no. 01 "On the approval of Regulation "On licensing and activity of non-bank financial institutions". This Regulation foresees fit and proper criteria for directors and senior managers of other FIs (not subject to the Core Principles), namely microcredit and electronic money institutions.

Deficiency No.3 - Insurance and securities sector are not supervised by the FSA for AML/CFT compliance.

Recommended action no.3 - Ensure adequate and effective AML/CFT supervision of the insurance and securities sector by the FSA.

Measures adopted and implemented: This deficiency has been largely addressed and the recommendation is partially implemented.

203. The 4th round MER underlined that the FSA, which is the unit in charge with the supervision of insurance and securities sector among others, was not currently carrying out AML/CFT inspections of financial institutions. FSA inspections of the insurance sector thus far appeared to have largely focused on macro prudential issues. The FSA received technical assistance from the World Bank to develop its supervisory regime which envisages the development of risk-based onsite inspections manuals, though this manual does not address ML/FT risks. The authorities claimed that the insurance sector is very small and the segment of life insurance is negligible and generally tied to loans. The stock market was also very small and mainly involved in trading of treasury bills and bonds issued by the Bank of Albania.

204. In order to address the shortcoming identified, the staff of the FSA was trained in 2014 and 2015 in collaboration with the GDPML (9 inspectors in total) on the AML/CFT system and FSA's role therein, as well as on the concrete obligations and role of the insurance sector in the AML/CFT framework.

205. Following the training activities, 9 inspections including AML/CFT matters were undertaken of participants on the insurance market in 2014, including the first ML/TF risk-based inspection undertaken by the FSA, and four in 2015. In 2015, the FSA and GDPML also undertook joint inspections of two insurance companies and a Cooperation Agreement was signed between the two institutions with the view to pursue this practice also in the future

206. Regarding the securities sector, Albanian authorities informed that the FSA conducted one one-site inspection in the securities market in July 2013. The issues inspected included internal AML/CFT procedures of the FI, internal audit with regard to AML/CFT measures, SAR and CTR reporting. Furthermore, the FSA conducted three inspections in 2014 and eleven in 2015 (until June 2015) of securities market participants.

207. An AML/CFT Inspection Manual has also been prepared by the FSA with the assistance of the Financial Services Volunteer Corps and the first draft is currently being discussed between the relevant experts. This manual introduces fully risk-based approach to AML/CFT supervision of financial institutions by FSA, emphasising in particular the importance of gathering information and assessing risk, as well as duly planning the inspections and their scope prior to the undertaking of on-site inspections.

208. Finally, the authorities reported that the FSA is undergoing a number of organisational and structural changes which should reflect the actual situation of the sectors for the supervision of which the FSA is responsible and increase the effectiveness of its work. These changes were introduced by Decision no. 27, dated 28.04.2015, of the Board of the FSA by which two separate units were created within the supervision department. The division of responsibilities between the units is by sectors of which they undertake supervision; one unit is therefore responsible for the supervision of the insurance sector and the second one of supervising pension and investment funds, as well as the participants on the securities market. The authorities expect that the establishment of separate sector-specific units will lead to a higher specialisation and re-enforcement of the expertise of the staff.

209. As results from the information provided above, it is to be acknowledged that the authorities have undertaken a number of steps to remedy the deficiency identified in the MER. Given the limitations

of a desk based review, further consideration shall however be dedicated during the next on-site mission to a full assessment of the effectiveness of the supervision undertaken.

Deficiency No.4 - Inadequate off-site supervision.

Recommended action no.4 - Improve the offsite surveillance and risk-based onsite supervision.

Measures adopted and implemented: This deficiency has been partially addressed and the recommendation has been partially implemented.

210. In the 4th round MER, the evaluation team emphasised the lack of application of the risk-based approach with regard to the supervision in respect of all the sectors of the financial market. The recommendation was therefore addressed to all supervisors in order to increase the use of off-site supervision for the purpose of undertaking on-site inspections.

211. The GDPML reported that it had increased the undertaking of off-site supervision, having inspected 108 exchange bureaus, notaries, accountants and non-bank financial institutions in the course of 2012.The FSA also foresees to introduce risk-based approach to all its AML/CFT supervisory activities (please refer to the information provided above on the draft AML/CFT Inspection Manual).

212. No further information has been provided in this respect.

Deficiency No.4 - Limited scope and number of the inspections of natural and legal persons providing money or currency changing services

Recommended action no.2 - Increase the inspections carried out on natural and legal persons providing a money or value transfer services and to a money and currency changing services.

Measures adopted and implemented: This deficiency has been largely addressed and the recommendation is largely implemented.

213. The 4th round report noted the sharp increase of licensed exchange bureaus (i.e. from 60 in 2006 to 283 in 2009), coupled with the relatively, low number of inspections, which was considered a significant deficiency that exposes the sector to a higher degree of ML/FT risk. This was particularly the case where no AML/CFT inspections have been carried out by the BoA (whose main focus had been on banks) especially with respect to new licensees.[10]

214. The follow-up report submitted by the Albanian authorities informs that GDPML has performed, either individually or jointly with the BoA, an increased number of inspections that are represented in the following table:

[10]	2005	2006	2007	2008	2009	2010
Total number Exchange Bureaus		60	112	189	221	283
Exchange Bureaux inspected by FIU	-	5	16	6	3	24
Exchange Bureaux inspected by BoA	17	25	45	13	-	-

YEAR	2010		2011		2012		2013		2014		Jan – June 2015	
	On-site	Off-site	On-site	Off-site	On-site	Off-site	On-site	Off-site	GDPML	BOA (on-site)	GDPML	BOA (on-site)
Inspected exchange offices	24	11	25	111	26	87	2	110	27 (19 on-site/8 off-site)	8	15 (14 on-site/1 off-site)	17

Note: As regards the values for 2015, 5 inspections were undertaken jointly between the GDPML and the BoA (this concerns 5 inspections included in both the column of supervision by BoA and column listing the on-site inspections undertaken by the GDPML).

215. The authorities also provided an updated information on the size of the currency exchange sector, the size of which continues to increase:

Dec 2010	Dec 2011	Dec 2012	Dec 2013	Dec 2014	March 2015
284	301	322	333	356	363

216. As can be observed from the table above, the authorities have increased the number of undertaken inspections of currency exchange bureaus. Given the limitations of a desk based review, the scope and effectiveness of the supervision of currency exchange bureaus overall shall be assessed in further detail within the next on-site visit.

Recommended action no. 6 - Authorities should also consider including in the supervision plan a yearly minimum number of joint inspections to be carried out by supervision authorities in order to supervise more types of financial entities.

Measures adopted and implemented: This recommendation has been partially implemented.

217. As stated above, the GDPML and the FSA reported two occasions when joint inspections of insurance companies were undertaken. In addition, a Cooperation Agreement was signed between the two authorities on 8 May 2015, governing mutual exchange of information and the undertaking of joint inspections and trainings with the view of preventing ML and TF and strengthening the system in the country.

218. The BoA reported that it cooperates and shares information with the GDPML with regard to the supervision of banks undertaken and the outcomes thereof. In addition, 5 joint inspections of exchange bureaus were undertaken by the BoA and GDPML in the first quarter of 2015.

219. This issue shall be examined in further detail within the scope of the next on-site visit in order to fully understand the impact the reported cooperation between the authorities has on the effectiveness of supervision of the financial sector in practice. It can be however concluded that some efforts have taken place.

Overall conclusion

220. Several important steps have been taken by the authorities to address the identified deficiencies under Recommendation 23.The authorities also clarified that the full set of fit and proper criteria apply to directors and senior managers of all Core Principles FIs.

221. A number of measures have been taken to address the issue of the existence of the non-licensed and non-supervised informal financial sector and this is an issue which remains to be verified during the next evaluation round.

222. From the information provided by the authorities, it appears that the effectiveness of supervision of FIs has been increased in the period under assessment. It has been demonstrated that the number of inspections has increased, in particular with regard to the insurance, capital market and currency exchange sectors. The authorities also reported other initiatives which show a pro-active will to enhance effectiveness of the framework, in particular on-going efforts to introduce risk-based approach to AML/CFT supervision, as well as the provision of trainings to supervisory authorities and coordination amongst them.

223. **Given the limitations of a desk based review, it is to be stressed that the overall level of effectiveness of supervision of FIs will have to be fully assessed within the next on-site visit. Nevertheless, from the information provided it can be concluded that the measures put in place bring the compliance of R.23 to a level essentially equivalent to largely compliant.**

Recommendation 35 (Conventions) (rating PC)

Deficiency No.1 - Criminalization of ML not fully in line with Vienna and Palermo Conventions: Issues on coverage for self-laundering in the case of some Article 287/b offences.

Measures adopted and implemented: This deficiency has been fully addressed.

224. This issue has been addressed in Article 287 c) of the CC though there remain questions about the overlap and interpretations which may arise out of the provisions under Article 287/b, as amended (see supra the analysis for Rec.1, Deficiency No.1).

Deficiency No.2 - Criminalization of ML not fully in line with Vienna and Palermo Conventions: Use of proceeds restricted to financial and economic activities in Article 287.

Measures adopted and implemented: This deficiency has been fully addressed.

225. The previous Article 287 of the CC considered by the 4th round report was reading as follows:

"*Laundering of the proceeds of the criminal offence committed through:*

dh) the use and investment in economic or financial activities of money or objects that are the proceeds of a criminal offence."

226. The current version of Article 287 of the CC, as amended, has rectified the shortcoming. (see R.1)

Deficiency No.3 - Criminalization of ML not fully in line with Vienna and Palermo Conventions: Limitation of Article 287/b to stolen goods.

Measures adopted and implemented: This deficiency has been fully addressed.

227. The current version of Article 287/b, as amended, has addressed this shortcoming. (see R.1)

Deficiency No.4 - Criminalization of ML not fully in line with Vienna and Palermo Conventions: Some required ancillary activity not covered.

Measures adopted and implemented: This deficiency has been fully addressed.

228. This deficiency appears to have been addressed. (see R.1,Deficiency No.4)

Deficiency No.5 - Criminalization of ML not fully in line with Vienna and Palermo Conventions: Consequent limitations for confiscation, mutual legal assistance and extradition.

Measures adopted and implemented: This deficiency has been fully addressed.

229. Most of the deficiencies related to criminalisation of ML have been addressed (i.e. *issues on coverage for self-laundering in the case of some Article 287/b offences; use of proceeds restricted to financial and economic activities in Article 287; limitation of Article 287/b to stolen goods; market manipulation and inside trading offences are now criminalised*). As a result of this progress there should no longer be any further limitations for confiscation, MLA and extradition.

Deficiency No.6 - Effectiveness issues: Very few convictions.

Measures adopted and implemented: This deficiency has been largely addressed.

230. See the analysis for the effectiveness issues on Rec.1 and outstanding issues of concern which require further clarifications.

Overall conclusion

231. As outlined above, the technical deficiencies set out in relation to compliance with R.1 have been addressed and impact positively on compliance with **R.35, which can be considered as having been brought to a level essentially equivalent to LC**.

Special Recommendation I (Implement UN instruments) (rating PC)

Deficiency No.1 -Criminalization of FT not fully in line with FT Convention: Not all terrorist actions required to be covered are covered.

Measures adopted and implemented: This deficiency has been largely addressed.

232. Substantive amendments to the FT criminalisation provisions in Chapter VII of the Criminal Code have been made by Albania. The authorities reported that these amendments have been made in compliance with the MONEYVAL Recommendations given in the framework of the 4th round assessment process, Compliance Enhancing Procedures (CEPs) and also ICRG/ERRG findings.

233. The draft amendments to the Criminal Code were approved by the Parliament of Albania on 1 March 2012 by Law No. 23/2012. The progresses in FT criminalisation have been commended by MONEYVAL under the CEPs procedures as a result of which reporting on SR.II was lifted on July 2012.

234. Article 28 of Law 23/2012, amending the Albanian Criminal Code, seems to cover the deficiency previously identified.

235. This deficiency is dealt with under Special Recommendation II above.

Deficiency No.2 -Criminalization of FT not fully in line with FT Convention: Issues with intent requirements ("intended to cause" not clearly covered); some intent and purpose requirements extended to Annex 1 acts; application to government agencies rather than government).

Measures adopted and implemented: This deficiency has been largely addressed.

236. This deficiency is also dealt with under Special Recommendation II above.

237. The terrorism offences cover the terrorist acts indicated in Article 2(1)(a) of the TF Convention but still not cover the actions "*intended to cause death or serious bodily injuries*" as required by Article 2(1)(b) of the Convention but only those that "*may*" cause this.

238. The current provisions of Article 230 CC still requires that the terrorist acts to be committed with a specific purpose which is more limiting that the FT Convention.

239. The restriction referring to "government agencies" has, however, been clarified by the authorities as a result of an inaccurate translation and refers to in the original version to "public bodies" (a definition of which covers also the government).

240. The amendments to the Criminal Code regarding criminalisation of FT would appear to partially remedy the identified deficiencies.

Deficiency No.3 -Criminalization of FT not fully in line with FT Convention: Lack of clarity that the offence provision applies regardless of whether the terrorist act is actually committed or attempted.

Measures adopted and implemented: This deficiency has been fully addressed.

241. With the adoption of the Law 23/2012, amending the Albanian Criminal Code, this deficiency has been addressed as it was described under Special Recommendation II above.

Deficiency No.4 -Criminalization of FT not fully in line with FT Convention: Lack of clarity that the financing prohibited extends to the full extent of "funds" as that term is defined in the FT Convention.

Measures adopted and implemented: This deficiency has been fully addressed.

242. With the adoption of the Law 23/2012, amending the Albanian Criminal Code, this deficiency has been addressed as described under Special Recommendation II.

243. It is clear now, pursuant to the new Article 230/a paragraph 2(c) of the CC that the FT offence applies regardless of whether the funds were actually used to commit an offence and regardless of whether a link with a specific terrorist act can be established.

Deficiency No.5 - UNSCR Implementation: Legal basis in the case of UNSCR 1373 matters uncertain.

Measures adopted and implemented: This deficiency has been fully addressed.

244. In 2013, a new Law no. 157/2013 on Measures against Terrorism Financing (Law on MTF) was adopted. The general provisions in Article 5 have been redrafted to provide the Council of Ministers with a legal basis for designation in the case of UNSCR 1373 matters. These are further enhanced by the provisions of Article 15 which establishes the specific internal procedures for designation.

245. This framework for the implementation of UNSCR 1373 is described in further detail in the analysis with under Special Recommendation III above. The deficiency identified in the 4th round MER appears to be remedied.

Deficiency No.6 - UNSCR Implementation: Provisions for challenging listing in UNSCR 1373 context not adequate.

Measures adopted and implemented: This deficiency has been largely addressed.

246. Article 25 of the Law on MTF regulates the change and revocation of the decision of the Council of Ministers to include a person on the national list of designated persons.

247. For the reasons explained under Special Recommendation III above, it is considered that this provision sufficiently addresses the deficiency identified by the evaluators in the 4th round MER in this context.

Deficiency No.7 - UNSCR Implementation: Absence of provisions/mechanism to address requests for subsistence.

Measures adopted and implemented: This deficiency has been fully addressed.

248. The legal basis for enabling access to funds for subsistence and other expenses remains the same as at the time of the 4th round evaluation, and is now in Art. 23 of the new Law on MTF. It has been however identified in the 4th round MER that the framework lacks secondary provisions specifying the concrete procedure. In order to remedy this shortcoming, in January 2014, the Ministry of Finance adopted the Guideline no. 1 on Establishing the Rules and Procedures for Allowable Expenses on the Funds and other Seized Assets of Designated Persons.

249. This Guideline defines in Art. 2 both basic and extraordinary expenses in line with S/RES/1452(2002) and applies to persons designated both on the basis of Art. 14 and 15 of the Law on MTF (therefore to persons designated under both UNSCR 1267 and 1373).

250. This issue is described in further detail under Special Recommendation III (Deficiency No.2) above; and it has been concluded that this deficiency has been fully addressed.

Deficiency No.8 - UNSCR Implementation: Inadequate legal basis for some supervision.

Measures adopted and implemented: This deficiency has been fully addressed.

251. The new Law on MTF in Article 7 defines the authorities competent for monitoring compliance with the requirements of this law, as well as for sanctioning the violations of its provisions, namely the Bank of Albania and the Financial Supervisory Authority for the entities that they license and/or supervise; the Ministry of Justice for the Immovable Properties Registration Office and notaries; Ministries or the relevant authorities, for subordinated institutions and entities that license and/or supervise, maintain or manage the registries of the funds and other properties.

252. The Law on MTF further sets in Art. 27 the sanctions applicable in case of violations of the obligations set by the Law on MTF and provides that the GDPML will be the responsible authority for the control and supervision of the compliance of the activity of subjects of law with the requirements of legal acts and bylaws on the measures against terrorism financing.

253. Administrative sanctions, based on Art. 27 para. 1, are imposed by the Minister of the Finance based on the proposal of the General Directorate for the Prevention of Money Laundering.

254. For further details on the supervisory competencies, the reader is referred to the analysis under SR.III. It is considered that this deficiency has also been remedied.

Deficiency No.9 - Effectiveness: Irregular schedule of updating on lists.

Measures adopted and implemented: This deficiency has not been addressed.

255. The authorities have reported that the Inter-institutional Working Group for the Prevention of Money Laundering and Financing of Terrorism takes into account on regular bases (bimonthly) any proposal from the relevant institutions in Albania with regard to domestic listings in accordance with the UNCSR 1373. No such proposal has however been made up to date.

256. Regarding the listings made on the basis of UNSCR 1267, there remain concerns about the timeliness of the updating of the Council of Ministers' list based on the changes of the UN Sanctions Committee List. This issue is described in further detail in the analysis under SR.III.

Deficiency No.10 - Effectiveness: Lack of guidance and inadequate supervision.

Measures adopted and implemented: This deficiency has been partially addressed.

257. It has been reported that the GDPML undertakes outreach to the reporting entities, which encompasses FATF best practices regarding implementation of SR.III. No comprehensive guidance has however been issued for the reporting entities, nor for the public at large. Based on analysis under SR III above (i.e. Deficiency No.11) it can be therefore concluded that the lack of guidance for obliged entities remains an issue and it may impact on the effectiveness of the application of the regime established by the Law on MTF.

258. The authorities have stated that following the adoption of the Law on MTF, supervision has been undertaken by the authorities in the form of both on-site and off-site inspections.

Recommended actions

259. The recommended actions related to SR.I are closely related to the recommended actions under SRII and SR III and the status of their implementation is detailed in the corresponding sections of this analysis.

Overall conclusion

260. Most of the identified deficiencies related to the criminalisation of TF have been addressed with the adoption of the Law 23/2012, amending the Albanian Criminal Code. The terrorism offences cover the terrorist acts indicated in Article 2(1)(a) of the TF Convention but still not cover the actions "*intended to cause death or serious bodily injuries*" as required by Article 2(1)(b) of the Convention but only those that "may" cause this. Financing of terrorism key offence provided by Article 230/a now clearly applies regardless of whether the terrorist act is actually committed or attempted. The full extent of "*funds*" as the term is defined in the TF Convention is covered by the explicitly new provisions. The financing of individual terrorists regardless of whether the funds are provided or collected to support terrorist activities is criminalized. The current provisions of Article 230 CC still requires that the terrorist acts to be committed with a specific purpose which is more limiting that the FT Convention. The ancillary conduct is still not fully covered.

261. Steps have been also taken by the Albanian authorities in order to further enhance the framework, which implements the UN sanctioning regime, in particular with the view to remedy the deficiencies related to the procedures under UNSCR 1373. It is however recommended to the authorities to accompany the significant developments of the legislative framework with ensuring the timeliness of the updating of the Council of Ministers' List, as well as with further efforts to provide guidance to the private sector and the public. **It can be concluded that the measures undertaken have brought the level of compliance of SR I to a level essentially equivalent to LC.**

Special Recommendation III – Freezing and confiscating terrorist assets (rating PC)

Deficiency no. 1 - SFT Law does not provide clear legal basis for Council of Ministers designation pursuant to UNSCR 1373.

Recommended action no. 1 - The authorities should revise the SFT Law to provide a clear legal basis for the Council of Ministers to make a designation pursuant to UNSCR 1373.

Measures adopted and implemented: This deficiency has been largely addressed and the recommendation is largely implemented.

262. This deficiency was formulated on the conclusion that the Law on Measures against Terrorism Financing from 2004 restricted Art. 5 (2) the power of the Council of Ministers to include persons on the list it issued only to "*the persons declared by virtue of acts of other international organizations or from other international agreements, where the Republic of Albania is a party.*" Given that UNSCR 1373 (2001) does not contain a specific list of persons, it was considered by the evaluators that designations under this Resolutions were not possible.

263. In 2013, a new Law n. 157/2013 on Measures against Terrorism Financing (Law on MTF) was adopted. Article 5 has been redrafted in this Law and currently stipulates that *"The Council of Ministers, upon the proposal of the Minister of Foreign Affairs, pursuant to the relevant resolutions of the United Nations Security Council, approves the list of designated persons and undertaking of measures to implement obligations emanating from these resolutions. The Council of Ministers, upon the proposal of the Minister of Finance pursuant to Resolution 1373(2001) of the United Nations Security Council, any international agreements to which Albania is party to, the decisions of the European Union or the decision of another state, related to combating terrorism and its financing, may decide to include them in the list of designated persons".*

264. This general provision is further enhanced by Art. 15, which establishes the internal procedures for designation and states in para. 1 the following: *"Responsible authorities, law enforcement agencies, intelligence services, the Ministry of Foreign Affairs and the General Directorate for the Prevention of Money Laundering, when in the exercise of their duties and functions obtain notifications or suspicions based on circumstantial evidence concerning the involvement of persons in any form, in terrorist acts or the financing of terrorism, committed or attempted to be committed, within or outside the territory of the Republic of Albania, are obligated to propose immediately to the Minister of Finance their inclusion in the list of the designated persons as well as undertake measures envisioned in this law".*

265. In conclusion, the provisions of the new Law on MTF are considered as a significant progress in order to fully implement UNSCR 1373 and appear to be broadly in line with the international requirements.

266. Albania has reported that two individuals have been listed in 2015 based on a request from a foreign jurisdiction. This request was received by the Ministry of Finance and the individuals were designated pursuant to the Council of Ministers Decision no. 589 issued on 1 July 2015.

Deficiency no. 2 - Secondary provisions or mechanisms not yet adopted to address potential requests by affected persons for subsistence or other expenditures.

Recommended action no. 3 – The authorities should adopt secondary provisions or mechanisms to address potential requests by affected persons for subsistence or other expenditures.

Measures adopted and implemented: This deficiency has been fully addressed and the recommendation is fully implemented.

267. The provision enabling access to funds for subsistence and other expenses remains the same as at the time of the 4th round evaluation, and is now in Art. 23 of the new Law on MTF. The delay within which the Ministry of Finance authorizes payments from assets and other seized properties has been prolonged from 72 hours to 5 days following the request. In case of refusal, the person can appeal against the decision of the Ministry of Finance to the competent court within 5 days after the decision. The article also keeps paragraph 3, which states that the Ministry shall adopt a specific instruction that would set detailed rules and procedures to obtain access to the permitted expenses. This provision has led to the identified deficiency, as it has been pointed out that no such document has been adopted at that time by the Ministry. In order to remedy this shortcoming, in January 2014, the Ministry adopted the Guideline no. 1 on establishing the Rules and Procedures for Allowable Expenses on the Funds and other Seized Assets of Designated Persons.

268. This Guideline defines in Art. 2 both basic and extraordinary expenses in line with S/RES/1452(2002). The procedure related to persons designated pursuant to Art. 14 of the Law on MTF (persons designated on the basis of UNSCR 1267) is embedded in Art. 5 of the Guideline. The request must be addressed to the Ministry of Finance, which when it considers the request substantiated, notifies the UN Security Council Sanctions Committee and in the absence of a negative decision within three days of the notification, authorises the payment; this procedure is applicable for the case of basic expenses. In case of extraordinary expenses, the Ministry of Finance requests authorisation from the Sanctions Committee and authorises access to funds only when such authorisation is granted. The communication between the Ministry of Finance and the UN Sanctions Committee is undertaken through the Ministry of Foreign Affairs.

269. It has been noted with appreciation that the Guideline also establishes a system for access to assets and funds for basic and extraordinary expenses for persons designated under Art. 15 of the Law on MTF (persons designated on the basis of UNSCR 1373). This procedure is set in Art. 6 of the Guideline and gives full discretion to the Ministry of Finance, which may convene an ad-hoc advisory committee for the purposes of taking such decision. The definitions of basic and extraordinary expenses set in Art. 2 of the Law on MTF apply equally for this procedure. It is therefore concluded that Additional element III.15 is also fully implemented.

Deficiency n. 3 - Absence of legal mandate for supervision of the compliance of those covered by the AML/CFT Law with the obligations arising from Council of Minister Decisions and Ministry of Finance freeze orders.

Deficiency n. 4 - Responsibility for reviewing the compliance with resolution obligations by supervised entities is not clear.

Recommended action n. 4 - Provide a legal mandate for the review of the compliance by entities subject to the AML/CFT Law with their obligations regarding the Council of Ministers list and regarding freezing of funds.

Measures adopted and implemented: This deficiency has been fully addressed and the recommendation has been fully implemented.

270. The new Law on MTF in Art. 7 defines the authorities competent for monitoring compliance with the requirements of this law, as well as for the implementation of its provisions. It reads as follows:

"Article7

Responsible Authorities for the implementation of measures against terrorism financing

The responsible authorities for the implementation and supervision of the measures provided for in this law are:

- *The Bank of Albania and the Financial Supervisory Authority for the entities that they license and/or supervise;*
- *The Ministry of Justice for the Immovable Properties Registration Office and notaries;*
- *Ministries or the relevant authorities, for subordinated institutions and entities that license and/or supervise, maintain or manage the registries of the funds and other properties.*

The oversight authorities supervise through inspections the compliance of the activity of the subjects that they license and/or supervise. For the purposes of this Law, and notwithstanding specifications of any other law, oversight authorities may demand from a subject the production or access to any information or documents related to that subject's compliance with this Law.

The oversight authorities perform also the following duties:

- *check theimplementationbytheentitiesofmeasuresagainstterrorismfinancing as well as ensure the adequacy of these measures;*
- *inform in a timely manner and cooperate with the General Directorate for the Prevention of Money Laundering on issues of noncompliance, the results of their inspections, corrective measures to be taken and administrative sanctions, if applied;*
- *cooperate with the General Directorate for the Prevention of Money Laundering and provide specialized assistance in accordance with their domain of activity, in the field of implementation of measures against financing of terrorism;*
- *prepare and distribute training programs within the scope of the implementation of this law."*

271. The new Law on MTF further sets in Art. 27 the sanctions applicable in case of violations of the obligations set by the Law on MTF, as well as it establishes the GDPML as the authority competent to apply the sanctions for incompliance with the requirements of the Law on MTF. The supervisory and sanctioning powers of the GDPML are set as follows:

"Article 27

Administrative violations

Non-compliance by the responsible bodies and subjects with the obligations provided for in this Law, when it is not considered a criminal offence, constitutes an administrative violation and is sanctionable with a fine from 50 thousands to 10 million Lek.

The General Directorate for the Prevention of Money Laundering will be the responsible authority for the control and supervision of the compliance of the activity of subjects of law with the requirements of legal acts and bylaws on the measures against terrorism financing.

Administrative sanctions, based on paragraph 1, of this article, are imposed by the Minister of the Finance with the proposal of the General Directorate for the Prevention of Money Laundering.

The procedures for the review, appeal and execution of the decisions on administrative violations are done in conformity with the Law no. 10 276, May 20 2010, "On administrative violations".

272. It has been further confirmed by the authorities that the different competent institutions cooperate for the purposes of undertaking supervision and fully implementing the system.

Deficiency 5 - Persons listed in the UNSCR 1373 context do not have a right to challenge their listing (on grounds in addition to mistaken identity) only a freeze.

Recommended Action n. 2 – The authorities should enact a provision that gives persons listed in the UNSCR 1373 context a right to challenge not only a freeze but their listing (on grounds in addition to mistaken identity).

Measures adopted and implemented: This deficiency has been largely addressed and the recommendation has been largely implemented.

273. Article 25 of the Law on MTF regulates the change and revocation of the decision of the Council of Ministers to include a person on the national list of designated persons. Pursuant to this article, the Council of the Ministers may decide the change or the revocation of the list of the designated persons within 15 days from the submission of the proposal of the Minister of Finance, the Minister of Foreign Affairs or based on the request of the designated person, along with the explanations for the change of the respective circumstances that have motivated the issue of the decision.

274. Whilst the proposal of the Minister of Foreign Affairs would be mainly related to designations on the basis of UNSCR 1267, the Ministry of Finance and the designated person itself would challenge a designation on the basis of UNSCR 1373.

275. The change or the revocation of the decision of the Council of the Ministers regarding a designation on the basis of UNSCR 1373 shall be based on:

- A relevant decision of other international organizations, European Union, or an international agreement Albania is party to.
- A delisting decision regarding the designated person, taken upon the request of the country seeking designation.
- A final decision of the competent court that was taken on the appeal of the designated person;
- A change of the circumstances, facts and reasons upon which the designation was made.

276. The revocation of the seizing measure against the funds and other properties of designated persons as a result of the change or revocation of the list of designated persons is carried out within 3 months from the entry into force of the decision of the Council of Ministers.

277. It is therefore considered that this provision sufficiently addresses the deficiency identified by the evaluators in the 4th round MER in this context.

Deficiency 6 - No publically-available information on how to seek de-listings or unfreezing of funds.

Recommended action no. 11 – The authorities should develop guidance and make it available publically on how to seek de-listings or unfreezing of funds for instance through appropriate websites.

Measures adopted and implemented: This deficiency has been partially addressed and the recommendation has been partially implemented.

278. A comprehensive legal basis for the procedures of de-listing and unfreezing of funds has been established under the new Law on MTF for persons designated under both UNSCRs. Regarding the access to funds for necessary expenses, a detailed procedure is described in the Guideline on

establishing the Rules and Procedures for Allowable Expenses on the Funds and Other Seized Assets of Designated Persons.

279. Furthermore, no information has been provided by the authorities about the public availability of such procedures, a publicly accessible guidance on such issues or a general and automatic practice of notifying the persons listed about their rights to question their listing. The same applies for the procedures applicable to listings under both UNSCRs.

280. The authorities have reported that upon the enactment of the law, the Minister of Finance will within a three month period approve the necessary sublegal act that will include information on how to seek de-listing, as well as unfreezing of the funds. No such legal act or detailed information about it have however been provided for the purposes of this assessment.

Deficiency no. 7 - Council of Minister's domestic list not updated frequently.

Recommended action no. 5 – The authorities should continuously update the Council of Minister's domestic list or provide a legal mechanism for automatic incorporation of the UNSCR 1267 list.

Measures adopted and implemented: The deficiency has not been addressed and the recommendation has not been implemented.

281. The information provided regarding the number of updates made does not enable to conclude with certainty that the domestic list has always been amended whilst respecting the requirement of timeliness. It is therefore considered that the measures taken in respect of this Deficiency are not sufficient and the regime, as it is established now, does not ensure timely transposing of the UNSCR 1267 List into the domestic framework. The authorities are invited to reconsider an automatic incorporation of the UNSCR 1267 List.

Deficiency no. 8 - No clarity for other States regarding a responsible Albanian authority to receive foreign requests under UNSCRs.

Recommended action no. 6 – The authorities should provide clear information to other States regarding the authority within Albania responsible (e.g., MoFA, FIU) to receive foreign requests under UNSCR 1373.

Measures adopted and implemented: This deficiency has been fully addressed and the recommendation has been largely implemented.

282. The authorities have confirmed that the authority responsible to receive foreign requests under UNSCR 1373 is the Ministry of Finance. Art. 5 of the Law on MTF, which states in paragraph 2 that the Ministry of Finance proposes persons for listing to the Council of Ministry, amongst others, also on the basis of proposals by foreign countries. In their opinion this provision provides clear guidance as to whom should foreign authorities address.

283. Whilst this provision supposes that foreign requests would necessarily pass through the Ministry of Finance, it does not provide a clear basis for foreign authorities to direct themselves exclusively to the Ministry of Finance. No further information has been provided about any guidance or publicly available information for this purpose.

284. It is to be noted however that Albania has recently designated individuals on the basis of a foreign request. It can be therefore concluded that it has been demonstrated that the system is functioning in practice. For further information in this respect, the reader is referred to the analysis under Deficiency no. 1.

Deficiency no.9 - Freezing orders not available immediately to other institutions and entities that may hold assets of the same person/entity.

Recommended action no. 7 – The authorities should adopt practices such that freezing orders issued by the Ministry of Finance are available more quickly to other institutions and entities that may hold assets of the same person/entity.

Measures adopted and implemented: This deficiency has been partially addressed and the recommendation has been partially implemented.

285. Pursuant to Art. 16(2) of the Law on MTF, the order of the Minister of the Finance for the temporary freezing of funds and other properties enters into force immediately and is *"communicated for execution"* to the responsible authorities provided in Art. 7 of the Law (the BoA and the FSA, the Ministry of Justice, Ministries or the relevant authorities). There is however no provision, which would further set the actions, which are to be undertaken by these authorities in order to "execute" the freezing order.

Deficiency no. 10 - No consideration on a regular basis of whether there are persons/entities that should be designated domestically under UNSCR 1373 or designations made.

Recommended action no. 8 – The authorities should consider on a regular basis whether there are persons/entities that should be designated domestically under UNSCR 1373 and make such designations.

Measures adopted and implemented: This deficiency has been largely addressed and the recommendation has been largely implemented.

286. The Inter-institutional Working Group for the Prevention of Money Laundering and Financing of Terrorism takes into account on regular bases (bimonthly) any proposal from the relevant institutions in Albania with regard to domestic listings in accordance with the UNCSR 1373. No such proposal has been made up to date.

Deficiency no. 11 - Lack of adequate guidance to the private sector and the public at large about their obligations.

Recommended action no. 9 – The authorities should provide guidance to the private sector and the public at large about their obligations.

Measures adopted and implemented: This deficiency has been partially addressed and the recommendation is partially implemented.

287. The lack of guidance for obliged entities remains an issue and it may impact on the effectiveness of the application of the regime established by the Law on MTF.

288. The authorities have reported that the outreach efforts of the GDPML encompass FATF best practices regarding implementation of SR.III, no further specific information has however been provided about the details of the type of outreach, the entities to which it was addressed, the exact content, etc.

289. It would be recommendable for the authorities to issue a comprehensive guidance about the obligations emanating from the UNSCRs and their purpose; this guidance should not only be addressed to the obligated entities, but also to large public.

Deficiency no. 12 - Inadequate supervisory review of institutions for compliance.

Recommended action no. 10 – The authorities should undertake more vigorous supervisory review of institutions for compliance with UNSCR obligations and include material in supervisory inspection manual/checklists.

Measures adopted and implemented: This deficiency has been partially addressed.

290. The authorities have stated that following the adoption of the Law on MTF, supervision has been undertaken by the authorities in the form of both on-site and off-site inspections.

Recommended action no. 12 - The authorities should also consult and use in an appropriate manner as a reference point the EU lists of designated terrorists as well as other lists developed by neighbouring countries.

Measures adopted and implemented: This recommendation has been fully implemented.

291. The proposal to include a person on the domestic list is made by the Ministry of Finance on the basis of a proposal by the authorities enumerated in Art. 15 of the Law on MTF. These authorities should make such proposal on the basis of notifications or suspicions raised in the exercise of their duties and functions. It is therefore possible that LEAs or other authorities would be confronted within the undertaking of their duties with foreign terrorist lists.

292. Furthermore, Art. 5 of the Law on MTF gives the Ministry of Finance the competence to make proposals on the basis of the decisions of the EU, as well as on the basis of decisions of another state. Given that there is no requirement for the Ministry of Finance to receive an official request for undertaking action against the persons included on foreign lists, it seems that the Ministry of Finance has the discretion to consult such lists out of its own initiative.

Recommended action no. 13 – The authorities should also consider, whether it is necessary to make it clear that the law in covering "control rights" extends to both direct and indirect control.

Measures adopted and implemented: This recommendation has not been implemented.

293. It has been raised in the 4th round MER that Art. 15 (4) stated merely that *"Measures provided for in Art. 6 of this Law are imposed on all assets and properties on which the declared person exercises property rights, control or other rights or interests"*, without specifying whether the control of the assets covered is both direct and indirect. The evaluators have reached the conclusion that, given that Albanian law generally affords broad interpretation to terms, it would most probably cover both possibilities.

294. This provision has remained identical in the new Law on MTF (Art. 6 para. 4).

Effectiveness

295. Given that this is a desk-based review, it has to be noted that effectiveness cannot be assessed to an extent comparable as during an on-site visit. No freezing orders have been issued by the Ministry of Finance since the 4th round evaluation. It is not yet demonstrated that Albania is updating the decrees to implement UNSCR 1267 timely. The most recent decree (of 08.10.2014) updating the UNSCR 1267 listings was completed within the 30-day window of the temporary freeze.

296. It is to be noted that Albania has designated several individuals as a result of a request submitted by a foreign jurisdiction, which shows the practical functioning of the newly established framework for the implementation of the regime under UNSCR 1373.

Overall conclusion

297. A number of steps have been taken by the Albanian authorities in order to address the recommendations from the 4th round MER. It has been acknowledged that significant progress has been achieved with regard to the legislative framework, especially concerning the procedures under UNSCR 1373. As a remaining issue, the authorities are invited to address the timeliness of the up-dating of the Council of Ministers' list and to consider enhancing the guidance and outreach in general about the measures under the Law on MTF.

298. In conclusion, important progress has been achieved. **Special Recommendation III has attained a level *essentially equivalent to largely compliant.***

Special Recommendation V (International cooperation on FT) (rating PC)

Deficiency No.1 - The shortcomings identified under SR II may limit the Albanian ability to provide MLA.

Measures adopted and implemented: This deficiency has been largely addressed.

299. As it was described under Special Recommendation II above most of the identified shortcomings on criminalisation of TF have been addressed.

Deficiency No.2 - Dual criminality is always applied although legal framework does not require it in all circumstances.

Measures adopted and implemented: This deficiency has been largely addressed.

300. At the time of the 4th round report it was retained that under CPC Article 506 para. 4, an incoming request could be be denied if the facts the foreign authority presents do not equate to a criminal offence under Albanian law. The only exception was when an international convention or bilateral mutual legal assistance (MLA) treaty provides otherwise. The evaluators underlined that this approach would represent barriers to effective assistance. Dual criminality was apparently applied in every instance even though for the requests under the European MLA Convention, which form the majority of requests to Albania, there are many instances when dual criminality should not be required. While this had apparently not had practical effect for denials since the Ministry of Justice (MoJ) had found dual criminality in almost all instances, it did reflect a lack of understanding of the international instruments that take precedence. Consequently it has been recommended to Albania (i.e. Recommended action no.4) to undertake a review of possible barriers to more efficient provision of MLA assistance including the application of dual criminality principles and the requirement for use of diplomatic channels. "*In this regard there should be an identification of the circumstances (i.e. the legal basis for the request) in which these principles or requirements must be applied. The authorities should then work to eliminate the barriers to the extent possible*."

301. Albania has reported that the principle of dual criminality is applied as required in international conventions and in cases where this is not required, it shall not be applicable, given that international conventions take precedence. Trainings are conducted for staff dealing with international mutual

assistance in order to ensure that they understand adequately the processes that need applying for MLA purposes. The information provided suggests that Albania is taking measures to address the concerns expressed at the time of the 4th round evaluation.

Deficiency No.3 - For assistance in confiscating assets, there is a limited ability under the current legal framework to execute foreign requests.

Recommended actions No. 3: Review existing domestic legal provisions that Albania uses to implement obligations to provide assistance in identification, freezing, seizing and confiscation pursuant to various international instruments to which Albania is a party, determine their adequacy to meet all such obligations, and adopt provisions as necessary to meet fully such obligations.

Measures adopted and implemented: This deficiency has been fully addressed and the recommendation has been fully implemented.

302. The 4th round report concluded that Albania had taken the necessary steps to ratify many important conventions such as the 2005 Warsaw Convention that relate to an ability to assist foreign partners with MLA in freezing, seizing and confiscation. However, Albania had relied largely on pre-existing legal provisions to deal with its obligations to implement such convention obligations and should rather be reviewing and updating domestic provisions so as to fully implement the CoE obligations. In the same time the evaluators of the 4th round have observed that a number of the issues raised in the previous report remained. Although it was clear that the treaty and convention provisions take precedence over domestic provisions, it was often not well understood what those provisions are or in what instances they would need to take precedence on the basis that they are broader than CPC and MLA Law provisions. The MLA Law does provide a clearer basis for executing foreign requests to sequester assets. However the provisions that permit execution of foreign confiscation judgments were unchanged and continued to be problematic.

303. Albania has modified its criminal procedure legislation (Law 99/2014 dated 31/7/2014) to clarify the processes for granting assistance and executing requests.

Deficiency No.4 - Ability to grant extradition limited by deficiencies in the FT offence (for instance, the amendments noted in SR II as necessary to CC Articles 230/a, 230/d and 230.

Recommended action No.8 Address the deficiencies in ML and FT criminalization identified in the sections of this report under Recommendations and SR II to avoid cascading effect on ability to provide MLA where dual criminality is applied. For ML, for instance, deficiencies as coverage of insider trading and market manipulation and self-laundering (which does not apply in the case of all kinds of ML offences) and for FT, for instance, the amendments noted as necessary to CC Articles 230/a, 230/d and 230.

Measures adopted and implemented: This deficiency has been largely addressed and the recommendation is largely implemented.

304. Most of the deficiencies identified in the FT offence have been addressed. A detailed analysis of the undertaken measures is provided under Special Recommendation II above.

305. Currently it appears that the most problematic issue that might impede the ability to grant extradition could be related to the additional purposive element still provided by the current version of the FT offence. Article 230 CC still requires that the terrorist acts to be committed with a specific purpose which is more limiting that the FT Convention. (see the analysis above). This shortcoming would become more critical in the context of the dual criminality issues.

Deficiency No.5 - CPC provides too wide discretion to MoJ to impose requirements on extradition.

Measures adopted and implemented: This deficiency has been fully addressed.

306. The 4th round report concluded that Article 491(3) of the CPC, which was of concern in the 2006 MER, was unchanged since that time. Although the provision did not appear to contemplate an outright denial of extradition, it was possible that, under this provision, a Minister of Justice could impose requirements on an extradition that have the effect of defeating the possibility of effective proceedings in the requesting country. It was recommended therefore to amend the CPC (Article 491 para. 3) on this aspect.

307. Albania has addressed the concerns under this deficiency, as Law 99/2014 dated 31/7/2014, amended article 490 para 3. To date, Albania has never refused an extradition request for ML/TF offences.

Deficiency No.6 - No channels of cooperation have been established with DNFBP supervisors on CFT issues.

Measures adopted and implemented: This deficiency has not been addressed.

308. At the time of the 4th round of evaluation excepting the BoA, FSA and GDPML, the other supervisory bodies such as Ministry of Justice, the Chamber of Advocates and the Supervision Unit of the Games of Chance (SUGC), did not appear to have information exchange mechanisms in place. Therefor it was recommended to Albania to establish channels of cooperation with AML/CFT supervisors in the non-banking sectors.

309. The Albanian authorities have reported that the GDPML in collaboration with the Ministry of Justice (the supervisory authority for notaries), the National Chamber of Advocates (the supervising authority for lawyers) and the National Chamber of Notaries, on November 20, 2012 held a training activity with the theme "The system of the prevention of money laundering and terrorism financing and the role of the reporting entities 'lawyer' and 'notary' as well as supervising authorities") for the heads of Regional Chambers of Notaries and Advocates. Furthermore a training activity was organized by GDPML in cooperation with the SUGC, with participation of all inspectors of this unit that conduct on-site inspection and licensing. A number of training activities for the subjects were performed in 2013, in cooperation with the SUGC, the FSA, the Ministry of Justice, National Chamber of Notaries, BoA, and Albanian Banker's Association as well as on individual basis.

310. Appreciating these kinds of activities for enhancing the awareness on the obligations of these entities within AML/CFT system it should be said that the deficiency has not been addressed as far as no information exchange mechanism with foreign counterparts has been established.

Deficiency No.7: BoA and FSA do not have clear authority to make inquiries on behalf of foreign counterparts.

Measures adopted and implemented: This deficiency has been largely addressed.

311. At the time of the 4th round evaluation no information was provided on the ability of the BoA and the FSA to make inquiries on behalf of foreign counterparts.

312. The Albanian authorities have reported that a new provision is included in the amendments of the Law no 54/2014 "On amendments and additions to the law no. 9572, dated 03.07.2006, "For the financial supervisory authority", approved by Parliament on 22.05.2014. This law has entered into

force on 17.07.2014. Article 18/1 stipulates specifically the power of FSA of making inquiries on behalf of foreign counterparts[11].

313. As regard the BoA, the provisions of the Law no. 8269/1997 "On the Bank of Albania" as amended and Law no. 9662/2006 "On banks in the Republic of Albania" do not prevent the BoA to perform inquiries on behalf of counterparts.

314. BoA has also informed that it has not received any request from its foreign counterparts with a view to perform inquiries on their behalf. As it can be seen from the data reported by Albania, there are no outgoing requests either.

315. The deficiency can be considered as having been addressed, though there remain questions more generally as regards the effectiveness of international co-operation by the supervisory authorities

Deficiency No.8 - No demonstration by ASP, BoA and FSA of safeguards in place to protect information received by foreign counterparts.

Measures adopted and implemented: This deficiency has been largely addressed.

316. At the time of the 4th round of evaluation the Albanian State Police (ASP), FSA and BoA did not provide information on safeguards in place to protect the information received by foreign counterparts.

317. In the follow up report the Albanian authorities have mentioned that with regard to the exchange of information and performing inquiries on behalf of counterparts BoA relies on Article 91 para. 1, of Law no. 9662 18 December 2006 "On Banks in Republic of Albania" according to which the administrators, employees, actual as well as previous agents of the bank, judicial authorities, and the inspectors or other employees of the Bank of Albania or of other respective foreign authorities of banking supervision, shall keep the secrecy for every information obtained in the exercise of their activity in the bank or branch of a foreign bank and shall not utilize it for personal profits or third parties outside the bank or branch of a foreign bank, whom they serve or have served.

318. This obligation is also covered in the MoUs that BoA have signed with these foreign authorities and they have expressed their conclusion that the law on banks provides the sufficient guarantees of secrecy.

[11] Article 18/1
Cooperation and exchange of information

1. The Authority shall conclude cooperation memorandums or agreements with other domestic or foreign supervising authorities, with supervising authorities in the financial sector, agencies or institutions for the prevention of money-laundering and financing of terrorism or other institutions recognized by law, to cooperate, exchange information or conduct joint inspections.
2. The Authority shall conduct inquires on the account and behalf of other domestic or foreign financial supervisory authorities, agencies or institutions for the prevention of money-laundering and financing of terrorism or other institutions recognized by law, to cooperate exchange information or conduct joint inspections.
3. The Authority shall exchange information with domestic or foreign authorities and institutions defined in the para. (1) of this article, relevant to their scope of activity:
   a. Information required on supervised entities;
   b. Information required on licence issuing;
   c. Information related to the prevention of money-laundering and terrorism financing;
   d. Information related to fraud committed during the course of activity in the supervised fields;
   e. Financial data;
   f. Information on natural persons holding key positions in the supervised entities.
4. Any information submitted to the Authority and any information given to another supervising Authority shall be treated as confidential and shall be used only for the purposes specified in this law and bylaws.
5. The Authority shall be responsible for the collection and processing of information about the facts and circumstances related to the accomplishment of its supervising duties and responsibilities defined by this law".

319. The current legal and regulatory framework allows the FSA to obtain and share information with other relevant supervisors and law enforcement authorities, including foreign ones, based on mutual agreements and subject to confidentiality and purpose.

320. According to Article 25 of the Law "On the FSA" the information received by the foreign country supervisor will be passed only as agreed in the mutual agreement by both parties, the parties being the FSA and the foreign country supervisor. Also the Authority has issued a regulation on the confidentiality that regulates and strengthens more the professional secrecy regime inside the FSA. According to Article 3 of the Regulation no.114, dated 11.09.2008 "On the Confidentiality in the FSA", every information the Authority receives from foreign supervisors will be treated as confidential. The procedures of exchanging and treatment of information with foreign authorities will be regulated upon specific bilateral or multilateral agreements drafted for this purpose. According to the terms of the MoU signed between FSA and other supervisors, where one Authority has information, which will assist the other Authority in the performance of its regulatory functions, the former may provide such information, or arrange such information to be provided, to the extent permitted by law, on a voluntary basis even though no request has been made by the other authority. Any information, which FSA receives and any information, which is provided to anther supervisory authority, shall be handled as confidential and it shall be used solely for supervisory purposes. Exemptions from the obligation of the professional secrecy are stipulated inArticle 25 of the FSA Law.

321. As concerns the protection of information by the ASP, Law no. 108/2014 "on the State Police" was adopted in 2014, which together with the Law no. 8457, dated 11.2.1999, "on Classified Information", as amended, contain safeguards for the protection of information held by the ASP. Article 127 of the Law on State Police obliges the Police to take a number of organisational and technical measures to protect personal data maintained by the ASP, whilst pursuant to the Law on Classified Information, the ASP must clasify all information to several categories of confidentiality. A list of clasified documents is issued by the Ministry of Interior, with regard to the ASP, this list was issued by the Ministry of Interior with the Order no. 341, dated 1.10.2010. It is to be noted however that the information received did not enable to assess whether these measures ensure an adequate level of protection of information received from foreign counterparts.

Deficiency No.9 - Effectiveness: Complex and incompletely understood framework could hamper the provision of MLA.

Recommended action no.10 Develop written guidance for prosecutors, law enforcement and the judiciary so that there is a clear understanding of the similarities and differences between the various legal instruments Albania uses to seek and grant MLA and of the international agreements and their broader and wider standards. With this there should be instruction on which provisions of the CPC and MLA Law also apply when the request has a treaty or convention basis. There should also be accurate and widely-distributed translations of international instruments and explanatory materials that are not already in Albanian.

Measures adopted and implemented: This deficiency has not been addressed.

322. The recommended action to address the identified deficiency refers to the need of a written guidance for the practitioners of different tiers to clarify this complex legal framework based on various domestic and international provisions. No such guidance has been referred by the authorities. As well, no information have been provided on measures undertaken to provide the practitioners with accurate and widely-distributed translations of international instruments and explanatory materials that were not already in Albanian at the time of the adoption of the 4th round report.

323. Albania reported that numerous trainings have been provided by the School of Magistrates in 2015. Whilst these trainings addressed to a certain extent AML/CFT issues and international standards in this respect, none of the trainings focused specifically on MLA.

Recommended action no. 11 Through training, improve understanding by the judiciary and law enforcement of the wider options available under international instruments with a view towards addressing the tendency of the courts to apply strict interpretations and standards.

Measures adopted and implemented: This deficiency has been partially addressed.

324. As stated above, the authorities provided information on trainings organised for representatives of the judiciary and prosecutors' offices. Nevertheless, full information on the content of these trainings was not provided and it is therefore not possible to fully assess the implementation of this recommendation.

Deficiency No.12 - There are a few practical barriers to more effective provision of assistance for instance, application of dual criminality in all circumstances, necessity of a court order for every execution and occasional use of diplomatic channel.

Recommended action no.13 Consider altering the CPC requirement that each letter rogatory must go to the court for an authorization to execute in those matters where a request could be executed using prosecutorial powers.

Measures adopted and implemented: This deficiency has been largely addressed and the recommendation has been fully implemented.

325. The issue of application of dual criminality has been analysed under Deficiency no.2 above.

326. Law 99/2014 dated 31/7/2014 has modified the execution process of letters rogatory, introducing timelines to ensure that the process is smoother. It was also clarified by the authorities that Article 509 of the CPC does not require use of diplomatic channel and it is just an alternative channel of communication, in line with reservations that other states have made to the European Convention on MLA.

327. No statistics have been provided to illustrate the current use of these provisions in MLA matters.

Deficiency No.13 - Effectiveness of collaboration between supervisors and law enforcement with their foreign counterparts could not be assessed.

Measures adopted and implemented: This deficiency has been partially addressed.

328. The information provided by the Albanian authorities under Rec. 40, Deficiency no. 4, of the follow-up illustrates that the collaboration between law enforcement authorities and their foreign counterparts has improved in the last two years and progress is noted.

329. There remains however still room for progress on effectiveness of the co-operation between supervisors and their counterparts.

Overall conclusion

330. Since the onsite visit, Albania has implemented new legislation that revisits the legal framework on a number of issues raised under SR V. This legal framework is new and information concerning effectiveness is not available on several aspects. **Overall these changes improve Albania's implementation of the requirements of SR V, and could be considered to bring its level of compliance to a level essentially equivalent to LC**.

MONEYVAL Secretariat