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Third Workshop

Pristina, 22 June 2015

Revision Process of the AML/CFT Law

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**Legal Opinion
on Amendments and Supplements
to the AML/CFT Law**

Introduction

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Objectives:

- to provide a legal opinion on the proposed amendments to the AML/CFT Law

through

- a review of draft amendments with comments and recommendations to ensure compliance with international standards

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Output:

- Legal Opinion in the form of a Technical Paper with comments and recommendations
- Proposed drafting text where appropriate as *guidance* to the authorities to redraft some of the proposed or new amendments

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Methodology: *based upon*

- The English version of the AML/CFT Law with proposed amendments as at 5 June 2015 - incomplete;
- The Concept Document on Upgrading the Level of Prevention of ML and TF (Government Decision No. 08/12 of 5 February 2015);
- The PECK AR on Compliance with International AML/CFT Standards as adopted on 2 December 2014;
- The Joint Report of the PECK Mission to Pristina on 25 – 27 March 2015;
- International Standards (FATF and European Union).

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Legal Opinion on Amendments and Supplements to the AML/CFT Law

Executive Summary

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Some positives...

- The proposed amendments to the AML/CFT Law should aim to enhance its harmonisation with international standards;
- The amendments have addressed various weaknesses that had been identified in the PECK Assessment Report;
- The amendments have removed some of the identified legal inconsistencies, ambiguities and uncertainties.

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..... **but...**

- In some instances the objective of the review seems to deviate from that of harmonisation with international standards – powers for the FIU-K;
- In general the revised AML/CFT Law remains fragmented: creating inconsistencies, at times verging on the discriminatory, in the process;
- Moreover the *verbatim* approach for the transposition of certain international obligations continues to feature in these amendments – treatment for Trusts (unless provided with services).

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Repressive Measures & FIU - *some identified shortcomings*

- The keeping of a duplicative set of ancillary offences for ML and issues related to criminal corporate liability;
- The duplicate criminalisation of TF creating legal uncertainty and posing a serious risk to the effective application of the TF criminal provisions;
- An incomplete framework for the implementation of UNSCRs concerning targeted financial sanctions related to terrorism and TF;
- Structure and operations of the FIU-K regarding the effect of non-core functions on the efficiency of the FIU-K; and
- Administrative Sanctions and Remedial Measures.

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Repressive Measure & FIU - *some recommendations*

- Further considerations regarding the criminalisation of money laundering and the criminalisation of terrorist financing;
- A rethink of the rationale for the non-core functions of the FIU-K and implications on its efficiency and effectiveness;
- A rethink of the entire sanctioning regime for administrative, prudential and criminal offences including the introduction of graduated remedial measures; and
- Consideration of the proposed additional amendments to the AML/CFT Law recommended in the Legal Opinion.

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Preventive Regime *some identified shortcomings*.....

- Sporadic provisions for the assessment and prevention of risk;
- Non-application of all CDD measures to all reporting subjects;
- CDD issues related to PEPs, beneficial owners and beneficiaries of life or other investment related insurance business;
- Protection and prohibition of disclosure;
- Supervision and compliance regime;
- No provisions for maintenance of meaningful and comprehensive statistics.

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Preventive Regime *some recommendations*.....

- Consideration of further recommendations made in the PECK Assessment Report;
- A rethink on the fragmentation of the Law;
- A rethink of the compliance supervisory regime;
- A review of proposed approach to risk assessment and risk management provisions;
- Consideration of the proposed additional amendments to the AML/CFT Law.

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